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MICHAEL R. HAVERTY
CHAIRMAN, PRESIDENT AND
CHIEF EXECUTIVE OFFICER

ENTERED
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AUG 01 2003

Public Record



August 1, 2003

The Honorable Roger Nober
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 20433



Re: *Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern Railway Company, And The Texas Mexican Railway Company; Finance Docket No. 34342*

Dear Chairman Nober:

I read the letter of July 31, 2003 from Covington and Burling's David L. Meyer attempting to defend Union Pacific's lack of knowledge of a tentative trackage rights agreement in Mexico between TFM, Kansas City Southern's affiliate in Mexico, and Ferromex, Union Pacific's affiliate in Mexico. I have three comments to make:

- First of all to set the record straight, I was in a meeting on June 18 at the Chairman of Ferromex's home in Mexico City along with other KCS and TFM representatives to discuss outstanding issues between TFM and Ferromex. In that meeting Alfredo Caesar, the CEO of Ferromex, volunteered that TFM and Ferromex had reached a tentative agreement on trackage rights but once NAFTA Rail was announced (on April 21, 2003) "things changed." When I pressed him on how the changed ownership in TFM would in any way affect trackage rights, he could not answer. The Chairman of Ferromex, German Larrea, spoke up and acknowledged the announcement of NAFTA Rail had nothing to do with competitive issues. However, Ferromex obviously believes it gives them negotiating leverage to get conditions attached to NAFTA Rail approval.
- Secondly, while it is a stretch to believe that Union Pacific has never seen a tentative agreement dealing with an issue that it felt important enough to highlight at yesterday's STB public hearing, Mr. Meyer does, in fact, acknowledge that UP knew of the tentative agreement. Therefore, it seems to

The Honorable Roger Nober
August 1, 2003
Page 2

me that ethically Mr. Hemmer was obligated yesterday to at least mention the tentative agreement rather than trying to mislead you and STB staff into believing TFM is proposing trackage rights at such unreasonable rates that they are non-competitive and Ferromex could not accept them in the interest of competition.

- Thirdly, and most importantly, why is Union Pacific making a presentation to the Surface Transportation Board on what is clearly a Mexico issue? The privatization of the Mexican rail system is subject to Mexican laws, Mexican courts, terms of the concession agreements as well as applicable laws, rules, regulations, and oficios issued by Mexico's Secretary of Communication. The concession and oficios issued by the SCT on trackage rights fees by Mexico have been the basis for negotiations between TFM and Ferromex. We have already indicated to the Mexican Government that if NAFTA Rail takes control of TFM, we are willing to accept binding arbitration under International Chamber of Commerce rules in a third party country to settle the issues outstanding between TFM and Ferromex including trackage rights. We have not seen Ferromex or its 25% investor, Union Pacific, make such a proposal.

Yesterday you asked Paul Cunningham, counsel for Canadian National, why the STB should intervene in Mexico issues. He responded that Mexican regulatory agencies were not as concerned about competition as the STB. CN's and UP's condescending attitude toward Mexico and its ability to manage its own transportation affairs by trying to get the STB to rule on a Mexico matter is a dangerous precedent for not only matters relating to rule of law in both countries, but also could interfere with country relations.

Thank you and your staff for a fair and impartial hearing yesterday.

Sincerely,


Michael R. Haverty

MRH/lfr

cc: The Honorable Vernon A. Williams
All Parties of Record in STB Finance Docket No. 34342