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August 4, 2003

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By Hand

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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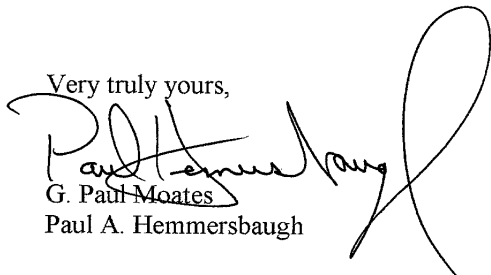
Re: Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company, STB. Finance Docket No. 34342

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding an original and twenty-five copies of the Comments of Norfolk Southern Corporation and the Norfolk Southern Railway Company (collectively, "NS"). Also enclosed is a computer disk containing an electronic copy of NS' Comments.

Please date-stamp the extra copy provided and return it with our messenger. If you have any questions or need further information, please contact one of the undersigned.

Very truly yours,


G. Paul Moates
Paul A. Hemmersbaugh

208607

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34342

KANSAS CITY SOUTHERN

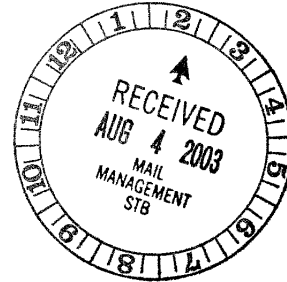
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THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY



COMMENTS OF NORFOLK SOUTHERN CORPORATION
AND THE NORFOLK SOUTHERN RAILWAY COMPANY

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") hereby submit their comments on the Railroad Control Application of Kansas City Southern. NS' concerns relate both the potential effects of the proposed transaction on KCS' line and service between Dallas and Meridian, Mississippi, and to the maintenance of the Laredo Gateway as an efficient key interchange point for NS-Mexican traffic. NS operates 21,500 route miles in 22 States, the District of Columbia, and the province of Ontario. NS links its customers to markets throughout the United States and the world, serving 20 ports, and connecting with rail partners in the Western United States (including the important link between Meridian and Dallas, owned and operated by KCS) and Canada. NS maintains the most extensive intermodal network in the East, and provides comprehensive logistics services to its customers.

As noted, NS has two primary concerns about the proposed transactions. First, in order to support and enhance the important, competitive east-west rail service provided by NS via haulage rights on KCS' Meridian-Dallas line, Applicant KCS must continue to invest in and maintain that line to high standards. Service over the Meridian Speedway provides an effective competitive alternative to other, more congested Mississippi River routes for east-west traffic moving to and from the Southeast. Maintenance of this effective east-west rail competition depends on Applicants' commitment to continue to provide reliable service on commercially reasonable terms between Dallas and Meridian. Second, to facilitate the growth of cross-border trade and transportation on competitive terms, it is important that Applicants adhere to their commitments to keep the Laredo gateway open on commercially reasonable terms.

I. Maintenance of Efficient, Commercially Reasonable Service Over The Meridian Speedway is Necessary to Ensure the Availability of Competitive Alternatives to the Two Heavily Used Gateways for East-West Traffic along the lower Mississippi River.

Working with KCS, NS and The Burlington Northern and Santa Fe Railway Company ("BNSF") provide transcontinental intermodal (as well as carload) through service between the West Coast and the Southwest on one hand, and the Southeast United States on the other. KCS is a vital link in this service, because it provides the connection from NS' gateway terminal in Meridian, Mississippi to BNSF's terminal in Dallas, hauling traffic in both directions between the two railroads.

In 1992, KCS acquired from the former Atchison, Topeka and Santa Fe Railway 90 miles of track between KCS' former terminus at Greenville, TX and Dallas, TX. In 1994 KCS acquired the MidSouth Corporation, whose rail operation included a rail segment between Shreveport, LA and Meridian, MS. Together with the original KCS properties (including the

segment between Greenville, TX and Shreveport, LA), these acquisitions enabled KCS to create the Meridian – Dallas corridor, which it has dubbed the *Meridian Speedway*. Prior to the creation of this route, NS¹ interchanged fewer than 20,000 car loads per year at Meridian.

In late 1994, NS and KCS instituted direct Atlanta – Dallas intermodal service over the Meridian corridor. Fueled by growth of this intermodal lane, NS-KCS interchange at Meridian began to rise, reaching 65,500 car loads in 1995 and 84,800 in 1996. In August 1996, NS and KCS inaugurated new carload run-through train service traversing the Meridian gateway, replacing a series of separate daily interchange moves formerly made at Meridian. A significant portion of the carload traffic that previously had been interchanged between NS and KCS at New Orleans subsequently shifted to the new service over Meridian.

The Federal Railroad Association in 1995 awarded a contract to study, *inter alia*, ways to reduce rail traffic passing through neighborhoods in the New Orleans suburbs, including interchange traffic between railroads at New Orleans, such as that between NS and KCS. After NS and KCS instituted the Meridian run-through service in August 1996, the railroads jointly advised the FRA of the benefits to the New Orleans area, which the FRA's contractor determined to have resulted in the elimination of two through train movements each day. NS-KCS traffic interchanged at Meridian continued to climb to almost 93,000 carloads in 1997 and topped 100,000 in 1998, while interchange at New Orleans declined from 10,800 in 1996, to 8,500 by 2000, and to 6,400 in 2002.

¹ The carrier operating at Meridian was and is The Alabama Great Southern Railway Company, a subsidiary of Norfolk Southern Railway Company.

In May 2000, NS and BNSF initiated through transcontinental intermodal service between the West Coast, Southwest and the Southeast. The service links Richmond, Modesto, Fresno, Los Angeles, San Bernardino, CA., and Phoenix with Atlanta, Charlotte, N.C., and Jacksonville, FL. BNSF provides service between the West Coast and Dallas, and NS provides service between Dallas and the Southeast via a haulage arrangement with KCS between Dallas and Meridian. In 2001, NS and KCS interchanged 202,200 loads at Meridian, with volumes rising to 210,700 loads in 2002 (of which 178,200 or 85% consisted of intermodal traffic).

Routing traffic over the Meridian Speedway provides an effective, and often more efficient, alternative to routes through the other two primary east-west gateways in the southern United States (New Orleans and Memphis, both of which can become congested). The availability of the Meridian Speedway enhances competition for east-west rail service, and offers an important alternative to service through the Memphis and New Orleans gateways.

It is essential to the maintenance and growth of this important NS-BNSF transcontinental service that the proposed consolidated KCS-Tex Mex entity ("NAFTA Rail") continue to maintain the Meridian-to-Dallas line, providing good, reliable, quality service over that line. NS is aware, however, that the primary focus of the new combined railroad will be on north-south and cross-border traffic. NS is therefore concerned that the new NAFTA Rail's focus on building and growing a competitive north-south system may unduly divert attention and resources away from its Dallas-Meridian service, which in turn could reduce the effectiveness and competitiveness of east-west rail service over the Meridian Speedway.

Any erosion in the quality of service over the Meridian Speedway as a result of the proposed combinations would likely reduce east-west rail transportation competition, which

would be detrimental to shippers and consumers. *See* 49 U.S.C. s 11324(c), (d); 49 C.F.R. § 1180.6(a)(2). Shippers could suffer from reduced price and routing competition for rail transportation. Poorer service or less favorable terms for KCS' service over the Meridian Speedway has significant potential to impede the growing volume of east-west intermodal traffic.

NS hopes that the Applicants' adhere to their commitments that "the common control of KCSR, Gateway Eastern, and Tex Mex through stock ownership will not substantially change the level of maintenance of railroad property" (Railroad Control Application, KCS-3/TM-3, at 41) and that "KCS's acquisition of control of Tex Mex will not cause rail service to any shipper on either rail system to decline" (*Id.* at 67). Although NS understands that KCS' primary orientation following consummation of the proposed transaction, including the integration of TFM into the NAFTA Railway family, will be on north-south traffic moving across the U.S.-Mexico border, it is essential that KCS not allow its focus on such traffic to cause it to neglect its commitment to provide high-quality service on the Meridian-Dallas line. If the transaction at issue were to have that result, it would be an unwelcome effect, and one that NS and the Board would need to address.

II. If The Board Approves the Proposed Combination, It Should Impose a Condition Requiring the Combined Entity to Adhere to its Commitments Regarding the Laredo Gateway.

The Laredo gateway is the largest and most important rail gateway between the United States and Mexico. *See, e.g.,* V.S. Curtis Grimm, KCS Control Application at 84 ("Laredo has long been the principal rail gateway between the U.S. and Mexico. This fact is due to Laredo's superior infrastructure . . . and its location on the shortest route between many U.S. and Mexican origins and destinations, particularly between major Mexican industrial and

population centers and the Midwest and Eastern U.S.”). The primary routes for cross-border traffic, including the large and growing volumes of automobiles and automobile parts, are via the Laredo gateway. If the combined transaction is completed (the acquisition of control of both Tex Mex and TFM), the new “NAFTA Rail” will fully control the Laredo Gateway and the best and most direct rail routes from the Mexican border to and from Mexico City, Monterrey and the important ports of Veracruz and Tampico (the “TFM Corridor”). As trade between the United States and Mexico increases in the coming years – as projected – the Laredo Gateway and TFM routes will assume even greater importance. To an overwhelming extent, the prospects for growth in trade over the TFM Corridor will depend on the continued vitality of competition for cross-border traffic through the Laredo Gateway.

As the Board recognized when it directed Applicants to supplement their Application, common control of the KCS/Tex-Mex/TFM system will likely have substantial effects on rail traffic in the United States, on rail competition, and on the rates paid by shippers and ultimately their customers. *See* Decision No. 2 at 11, STB F.D. 34342 (served June 9, 2003). Therefore, the Board should ensure that Applicants adhere to their commitment to keep the Laredo gateway open on commercially reasonable, non-discriminatory terms. Applicants’ good faith fulfillment of such commitments will ensure that shippers have multiple rail transportation options, and thereby sustain, and perhaps enhance, competition.

Consistent with the Board’s recent practice in control proceedings, NS requests that the Board impose a condition requiring Applicants to honor their commitment to keep the Laredo gateway open on commercially reasonable terms, and providing for an appropriate period of Board monitoring and oversight of Applicants’ compliance with that condition. *See, e.g.*, Decision No. 37, Slip Op. at 39-40, *Canadian National Railway Company et al – Control –*

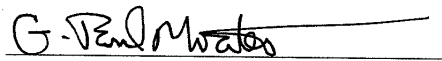
Illinois Central Railroad Company, et al, STB F.D. No. 33556 (served May 25, 1999) (requiring applicants to adhere to representations and commitments made during the control proceeding and imposing five-year oversight period); Decision No. 89, Slip Op. at 152-53, Ordering ¶¶ 1, 18, 19, *CSX Corporation et al and Norfolk Southern Corporation et al – Control and Operating Leases/Agreements – Conrail Inc., et al*, STB F.D. No. 33388 (served July 23, 1998) (to same effect); *see also*, Decision No. 10, Slip Op. at 19-21, *Canadian National Railway Company et al –Control –Wisconsin Central Transportation Co. et al*, STB F.D. No. 34000 (served Sept. 7, 2001) (requiring monitoring of operations and applicants’ fulfillment of commitments in a minor transaction).

Applicants apparently do not object to such a condition, as it essentially provides for the enforcement of a commitment they have made voluntarily and repeatedly in this proceeding. For example, Applicants have expressly committed to “keep the Laredo gateway open on commercially reasonable terms.” V.S. Davies at 15, Supplement to Application (June 23, 2003).² They have further acknowledged the universality of this concern, stating that “all affected parties are interested in keeping the Laredo Gateway open on commercially reasonable terms.” Letter from William F. Mullins to David L. Meyer (July 21, 2003). Thus, NS simply requests that the Board impose as a condition to any approval a commitment that Applicants

² In his July 31, 2003 testimony before the Board regarding this transaction, KCS’ Executive Vice President Gerald Davies affirmed that Applicants did not object to the Board imposing a condition requiring them to keep the Laredo Gateway open on commercially reasonable terms, and that Applicants expected the Board to impose such a condition.

have already made and acknowledged is of widespread concern and importance. NS further asks that the Board give this condition practical effect and enforceability by imposing a continuing oversight and monitoring requirement.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "G. Paul Moates", is written over a horizontal line.

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Dated: August 4, 2003

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of August, 2003, I served the foregoing
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causing one copy thereof to be delivered by first class mail, postage paid, or by a more
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