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208611
August 4, 2003

By Hand

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

Office of Proceedings

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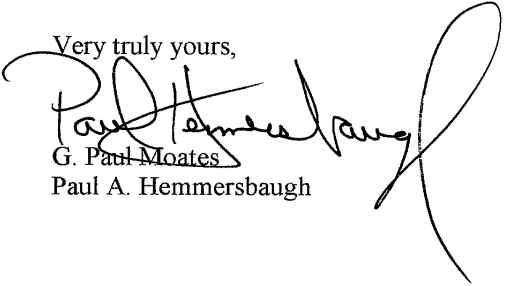
Re: Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company, STB. Finance Docket No. 34342

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding an original and twenty-five copies of the Comments of CSX Transportation Inc., and CSX Corporation (collectively, "CSX"). Also enclosed is a computer disk containing an electronic copy of CSX's 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

BEFORE THE
SURFACE TRANSPORTATION BOARD

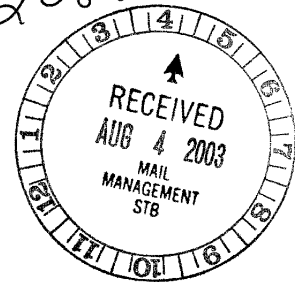
208611

ORDER
of Proceeding
AUG - 4 2003
Part of
Public Record

Finance Docket No. 34342

KANSAS CITY SOUTHERN

- CONTROL -



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

COMMENTS OF CSX CORPORATION AND CSX TRANSPORTATION, INC.

CSX Transportation, Inc. ("CSXT") and CSX Corporation (collectively, "CSX") hereby submit their comments on the Railroad Control Application of Kansas City Southern. CSX Corporation is the parent company of several subsidiaries that provide freight transportation and related services in North America and around the world. The core business unit of CSX is CSXT, which operates the largest rail network in the Eastern United States, covering more than 23,000 miles in 23 states, the District of Columbia and two provinces of Canada. One of CSXT's affiliates, CSX Intermodal, Inc. ("CSXI"), is the nation's only transcontinental intermodal transportation service company, providing, among other things, multimodal movement of containers and highway trailers across the United States and into key markets in Canada and Mexico. For the reasons set forth below, CSXT's primary interest in the proposed combination is that the principal rail gateway between the United States and Mexico – the Laredo Gateway – be kept open on fair, non-discriminatory and commercially reasonable terms in the event that the Board authorizes the combination of Kansas City Southern Railway

(“KCS”) and The Texas Mexican Railway Company (“Tex Mex”), particularly with the incorporation of TFM S.A. de C.V. (“TFM”) to the combined “NAFTA Railway” system.

I. BACKGROUND AND SUMMARY OF INTERESTS OF CSX

The transportation of goods to and from Mexican markets has become a significant and growing part of both CSXT’s transportation business, and that of its affiliate, CSXI. With the adoption of the North American Free Trade Agreement (“NAFTA”), the development of a vibrant and growing manufacturing and industrial base, and ever improving standards of living, Mexico is becoming not only a productive source of goods destined for the eastern United States and beyond, but also an expanding market for materials, parts and consumer goods produced in the United States and elsewhere. In 2002, CSX and its affiliates handled 103,515 carloads bound to or from Mexico. That traffic generated over \$100 million in revenues to CSX.

Today, virtually all CSXT traffic originating in or destined for Mexico is handled on a joint line basis with the Union Pacific Railroad (“UP”), the Burlington Northern Santa Fe Railway (“BNSF”) or KCS. Of those carriers, UP is CSXT’s predominant interline partner. The vast majority of CSXT’s joint line traffic with UP (80%) enters and leaves Mexico through the Laredo Gateway, interchanging at the border with TFM. Most of the traffic moved by CSXT with UP is interchanged at St. Louis, MO, with lesser volumes handed off or received at the New Orleans, LA; Chicago, IL; and Memphis, TN gateways.

Interline traffic between CSXT and BNSF is interchanged primarily at Chicago, New Orleans, St. Louis and Memphis. Most Mexican traffic between CSXT and KCS is

interchanged at New Orleans, Brookwood, AL, and St. Louis. Laredo is the primary Mexican entry point for CSXT's joint line traffic with KCS.

With its interline partners, CSXT participates in the movement of a broad array of products to and from the Mexican markets, from metals and chemicals, to automobiles and their parts, to agricultural products and consumer goods. Over 60,000 carloads of these products moved over CSXT's lines headed to or from Mexico in 2002, more than 80% of which were handled jointly with UP. In that same year, CSXT combined with BNSF to move roughly 10% of CSXT's Mexican carload traffic, and KCS was the interline partner with respect to the balance.

Mexico has also become an important player in the robust growth of North American intermodal transportation. CSXI has joined with UP and KCS/Tex-Mex to aggressively promote the use of containers and trailers in moving intermodal freight to and from Mexican markets. For example, CSXI has worked with one of its major customers and UP to establish regular service between Detroit, MI and manufacturing facilities in Mexico for the movement of automotive parts needed for the assembly of finished vehicles. The NAFTA Express program was established by CSXI, KCS and Tex-Mex to make available North American Container System ("NACS") equipment in serving the general transportation needs of a broad spectrum of intermodal users desiring transportation to or from Mexico. Over 40,000 intermodal units moved to or from Mexico in 2002 utilizing services provided by CSX, primarily over the Laredo gateway.

The corresponding growth in combined CSXT and CSXI Mexican traffic has been significant. From 2000 to 2002, the number of carloads and container loads moving to or

from Mexico using CSX services increased by over 70%. Intermodal volumes in 2003 to date are running more than 30% ahead of 2002 levels. Demand for new services continues to grow and there is every indication that Mexico will become an ever more important trading partner of the United States, resulting in increased volumes of cross-border freight and the need for more efficient transportation and additional capacity between them.

To that end, and in recognition of the tremendous growth potential represented by the Mexican markets, several CSX affiliates have established a presence in Mexico to help promote their portfolio of services. CSX de Mexico, S.A. de C.V., a subsidiary of CSX Corporation, was formed in 1993 to provide personal attention and information to customers regarding available CSX services. CSX de Mexico now supports a staff of eight full time and two part time employees, and continues to grow with the expansion of Mexican activities on the part of both companies.

More recently, TRANSFLO Corporation ("TRANSFLO"), another CSX-affiliated company, has ventured into the Mexican market as well. Through subsidiaries, TRANSFLO operates a network of terminals in the eastern United States engaged in the business of transloading bulk materials between transportation modes, primarily truck and rail, as well as the delivery of a variety of other logistics services. With the growth in Mexican business on the part of CSXT and CSXI, TRANSFLO recognized that the services it provides are also needed in Mexico. TRANSFLO opened its first operation in 2002, and development of a network of terminals in Mexico is expected to further enhance opportunities for transportation by rail and truck of bulk materials to and from Mexican markets. Several terminals are currently in the planning stages.

II. The Board Should Require Applicants to Honor Their Commitment to Keep the Laredo Gateway Open on Commercially Reasonable Terms.

CSX is pleased that Applicants have made commitments designed to facilitate continued competition for freight traffic to and from Mexico, particularly through the Laredo Gateway. However, CSXT shares some of the concerns expressed by UP and others that KCS' pledge to keep the Laredo Gateway open on commercially reasonable terms be given greater substance. As KCS notes, Laredo is the primary and most important rail gateway between the United States and Mexico. *See* V.S. Curtis Grimm, KCS Control Application at 84. The Board has previously found that maintenance of competitive routings through the Laredo Gateway is important to competition, and the benefits that flow to shippers and consumers from such competition. *See, e.g. Union Pacific Corp. et al – Control and Merger – Southern Pacific Rail Corp, et al*, 1 STB 233 (1996), Decision No. 44 Slip Op. at 148. If KCS successfully completes its intended transactions and acquires control of both Tex-Mex and TFM, the new combined entity ("NAFTA Rail") would be able to exercise control over the Laredo Gateway in a manner that could discourage and substantially reduce competition for rail transportation services to and from important commercial locations in Mexico. It is therefore important to the continued growth of US-Mexico rail traffic that Applicants be required to keep the Laredo Gateway open on commercially reasonable terms.

To its credit, KCS has recognized the importance of maintaining effective rail transportation competition through the Laredo Gateway, and has undertaken commitments designed to protect and preserve such competition. Acknowledging that "all affected parties are interested in keeping the Laredo Gateway open on commercially reasonable terms," KCS has committed that, if the Board approves the proposed control transaction, the new combined entity will maintain such an open gateway at Laredo. *See* William Mullins Letter to David Meyer at 2

(July 21, 2003) (“Keeping the Laredo Gateway Open”); V.S. Gerald Davies at 15, KCS Supplement to Application (June 23, 2003) (“To alleviate any concerns by shippers that KCS intends to quote rates to the Laredo gateway or provide service only to or from the Laredo gateway, KCS commits that it will keep the Laredo gateway open on commercially reasonable terms.”) (emphasis added). KCS has further committed to “continue to work with UP and BNSF” to provide reasonable interchange conditions (including cooperation on pre-blocking rail cars, improving automated customs pre-clearance procedures, supplying cars for shipments, accommodating run-through service, and promptly quoting rates) with both carriers for rail traffic travelling to and from Mexico. *See* V.S. Gerald Davies, *id.* at 14-16. KCS has also committed that it will honor all existing marketing and pricing agreements involving Tex Mex and TFM. *Id.* at 15. Finally, KCS has promised that “all carriers will be treated fairly at the Laredo Bridge,” with respect to dispatching and operating practices. *Id.* at 15-16.

CSXT applauds these commitments and believes that, if they are objectively implemented and honored in good faith, they should go a long way toward preserving and, in fact enhancing, competition for rail traffic to and from Mexico through the Laredo Gateway. There may be powerful incentives and temptations, however, for Applicants to disregard or fail to fulfill some of these commitments fully – and thereby diminish competition – after the consummation of the transaction. In order to ensure that Applicants adhere to those commitments and preserve adequate rail competition, CSX requests that the Board impose a condition requiring Applicants to meet the commitments undertaken in this proceeding.

CSX supports a condition that would expressly require Applicants to meet the commitments they have undertaken with respect to the Laredo Gateway (*see* V.S. Davies at 14-

16, KCS Supplement; Mullins Letter to Meyer (July 21, 2003) (reiterating those commitments)).¹

In addition, CSX requests that the Board impose oversight and monitoring of Applicants' compliance for an appropriate period. Such a condition would be consistent with the Board's recent practice of holding control applicants to their commitments by imposing them as a condition of the Board's approval, and requiring a reasonable period of monitoring and oversight to ensure Applicants' compliance with the conditions.² 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 –*

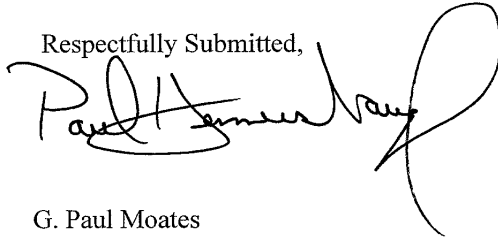
¹ In summary, using KCS' own language, the four principal commitments (each of whose implementation would obviously require a number of related actions by Applicants) are: (i) to "Keep the Laredo Gateway open on commercially reasonable terms"; (ii) to "Treat[]" all carriers "fairly at the Laredo Bridge"; (iii) to "Continue to Work with UP and BNSF . . . to provide reasonable interchange and operating conditions" for those carriers; and (iv) to "Honor all existing Tex Mex and TFM agreements" for their full term. See Supplement, V.S. Grimm at 14-16.

² KCS also has stated that, at least with respect to some of these commitments, it would agree to the Board making them conditions of its approval. See Mullins Letter to Meyer at 2-3 ("KCS expects to be able to agree to the imposition of its commitments on the Laredo Bridge and on working with UP and BNSF . . . as conditions upon the STB's order approving the KCS-Tex Mex transaction.").

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).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul A. Hemmersbaugh", with a large, stylized flourish extending from the end of the signature.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of August, 2003, I served the foregoing
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be delivered by first class mail, postage paid, or by a more expeditious method of delivery to:

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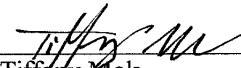
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