



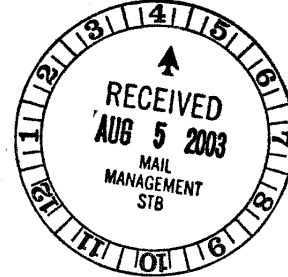
BRUSSELS CINCINNATI CLEVELAND COLUMBUS DAYTON NEW YORK WASHINGTON, D.C.

208630

August 5, 2003

By Messenger

Ho. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001



RE: Finance Docket No. 34342, *Kansas City Southern - Control - Kansas City Southern Ry. Co. et al*

Dear Mr. Williams:

Yesterday, in accordance with the schedule in Decision No. 2 in the above proceeding, we filed an original and 25 copies of the Comments and Statement in Support on behalf of The National Industrial Transportation League, identified as NITL-3. As indicated in our cover letter of yesterday, the agreement in Attachment 1 to NITL-3 was a copy of the agreement with signatures transmitted by telecopy. Because of unexpected delays in receiving the executed originals of the agreement, we were unable to attach a copy of the signed original. Enclosed for filing with the Board, as required by Decision No. 2 in the above proceeding, are 26 copies of the signed original of the agreement in Attachment 1 to NITL-3. An IBM-compatible floppy diskette with a copy of the enclosure, including the attachment, was filed yesterday.

If there are any questions regarding the enclosure, please do not hesitate to contact me by telephone or electronic mail.

Respectfully,

Frederic L. Wood

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Part of
Public Record

Enclosures

cc: (with enclosures)
Parties of Record

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Agreement between The National Industrial Transportation League
And
Kansas City Southern

This Agreement is made this 1st day of August 2003 between The National Industrial Transportation League ("League"), and Kansas City Southern and its affiliated rail carriers ("KCS").

Whereas,

KCS and The Texas Mexican Railway Company ("Tex Mex") (together, "Rail Carriers"), have filed an Application before the Surface Transportation Board ("STB") seeking the STB's approval of the acquisition of control of Tex Mex by KCS ("Transaction");

KCS has agreed, subject to various governmental and shareholder approvals, to acquire control of TFM, S.A. de C.V. ("TFM"), a rail carrier operating entirely in Mexico, and upon such approval, KCS will change its name to NAFTA Rail;

The League and KCS desire to record the terms on which the League, having reviewed the Application, has agreed to support the Transaction; and

The League and KCS desire to record the promises given by KCS to the League for the benefit of the members of the shipping public in exchange for the League's support;

Now, therefore, in consideration of the mutual covenants contained herein, KCS and the League agree as follows:

1) **League Support.** The League agrees to support STB approval of the Transaction. Within a reasonable time after the execution of this Agreement and no later than August 4, 2003, the League will submit a statement to the STB supporting approval of the Transaction by the STB. Either the Rail Carriers or the League may request to have this Agreement made a condition of the Transaction. The League will neither support nor oppose the imposition of any other conditions.

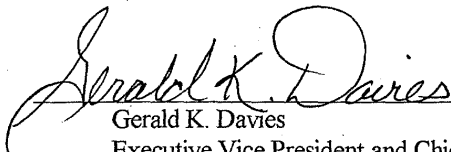
2) **Interchange Protection.**

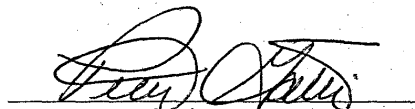
- a) Subject to the provisions of this Section 2, at the request of a shipper or connecting railroad on behalf of a shipper, KCS and/or Tex Mex will establish and maintain commercially reasonable contract or common carrier rates and charges over any existing interchange with that railroad. Such rates and charges shall be either through rates and charges or, if requested by a shipper or connecting railroad on behalf of a shipper to support the commercial terms of trade where the title to the goods being shipped transfers at the border, rates and charges for service within the U.S. to or from the international border

between Mexico and the U.S or within Mexico to or from the international border between Mexico and the U.S.

- b) Where rates or rate factors exist in agreements between KCS or Tex Mex on the one hand and other U.S. carriers on the other, those agreements will be honored to their normal expiration date, and when they expire, if requested by the involved railroad, KCS or NAFTA Rail will negotiate in good faith to establish commercially reasonable rates going forward.
- c) Any dispute regarding rates and charges described in paragraph (a) or (b) will be resolved by arbitration promptly following the selection of an arbitrator under the arbitration procedure established in Section 6 of this agreement. In no event will the time for completing arbitration of any dispute under this section exceed 90 days after selection of the arbitrator. Such arbitration procedures shall only apply to disputes regarding rates and charges applicable in whole or in part within the U.S.
- 3) **Confidentiality of Shipper Information.** If control over TFM is achieved by KCS, NAFTA Rail will ensure that any confidential commercial information about a shipper's move, including transportation services and rates, will not be disclosed to other U.S. railroads not within the NAFTA Rail corporate family.
- 4) **Service Measurements.** KCS and NAFTA Rail will maintain and strive to improve the service levels between Beaumont and Laredo, TX. With the understanding that about 70% of that route involves the use of trackage rights over the Union Pacific Railroad Company ("UP"), KCS and NAFTA Rail will report, based upon agreed specific service measurements, to the Surface Transportation Board ("STB") on the service level provided for each quarter for the past two years and for each quarter for a period of three years from the effective date of the Transaction. If service falls below the levels in existence at the time of this agreement, KCS and NAFTA Rail will provide the STB with a corrective action plan which may include a request for assistance if it were determined that the UP was responsible for the service problems.
- 5) **Applicability of this Agreement.** This Agreement was negotiated on the expectation that KCS will consummate the acquisition of control of Tex Mex and TFM. Other than each party's obligations under Section 1 hereof, the rights and obligations set forth in this Agreement are contingent upon and will become effective only on the date of such consummation. This Agreement will have no continuing force or effect if the STB does not authorize or KCS does not consummate the Transaction. If KCS does not consummate the acquisition of TFM, then any provisions of this Agreement relating to TFM will not go into effect. However, if KCS does consummate the Transaction, then any individual Shipper that uses the Rail Carriers and/or any NAFTA Rail carrier affected by any of the provisions of this Agreement shall be a third-party beneficiary of this Agreement. No party other than such a Shipper, the League, or the Rail Carriers shall be a beneficiary of this Agreement.

- 6) **Dispute Resolution.** If a dispute arises under this Agreement, the exclusive means by which any party to or beneficiary of this Agreement may seek to enforce the terms of this Agreement shall be through arbitration as provided in any agreement between a Shipper and the Rail Carriers or, if no such provision has been made, under the Commercial Arbitration Rules administered by the American Arbitration Association. Any disputes arising under this Agreement with respect to matters within Mexico, including disputes involving rates or rate factors in Mexico, will be resolved in accordance with the requirements established by the Government of Mexico.
- 7) **Governing Law.** This agreement will be governed by the law of the District of Columbia, without regard to rules pertaining to choice of law.


Gerald K. Davies
Executive Vice President and Chief
Operating Officer
Kansas City Southern


Peter Gatti,
Acting President
The National Industrial
Transportation League