

SIDLEY AUSTIN BROWN & WOOD LLP

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

BEIJING
GENEVA
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8198

WRITER'S E-MAIL ADDRESS
thynes@sidley.com

September 2, 2003

By Hand Delivery

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

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 Mr. Williams:

I have enclosed for filing in the above-referenced docket an original and 25 copies of the Reply Comments of Canadian Pacific Railway Company, designated as CPR-4. Also enclosed is a diskette in Word Perfect 10 format.

Please date-stamp the two extra copies and return them to the courier. Thank you.

Sincerely,


Terence M. Hynes

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SEP 02 2003

**Part of
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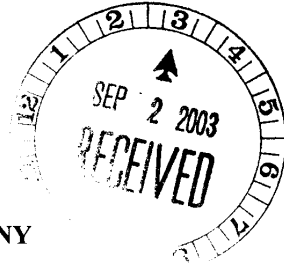
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Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB 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 CANADIAN PACIFIC RAILWAY COMPANY

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Marcella Szel
Paul Guthrie
Canadian Pacific Railway Company
401 9th Avenue, S.W.
Gulf Canada Square, Suite 500
Calgary, Alberta T2P 4Z4 Canada
(403) 319-6184
(403) 319-6770 (Fax)

Terence M. Hynes
Gabriel S. Meyer
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (Fax)

Counsel for Canadian Pacific Railway Company

DATED: September 2, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 34342

**KANSAS CITY SOUTHERN
— CONTROL —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY
GATEWAY EASTERN RAILWAY COMPANY,
AND THE TEXAS MEXICAN RAILWAY COMPANY**



REPLY COMMENTS OF CANADIAN PACIFIC RAILWAY COMPANY

Pursuant to the Board's *Decision No. 2* served in the above-captioned proceeding on June 9, 2003, Canadian Pacific Railway Company and its wholly-owned subsidiaries, Soo Line Railroad Company ("Soo") and Delaware and Hudson Railway Company, Inc. ("DHRC") (collectively, "CPR") submit these reply comments concerning the proposed acquisition of control of The Texas Mexican Railway Company ("TexMex") by Kansas City Southern ("KCS").

In its initial comments, CPR requested that the Board condition any approval of the proposed transaction by requiring Applicants to enter into a written agreement (or agreements) that would assure the future ability of all rail carriers serving the "NAFTA corridor" to offer competitive interline rail service to and from Mexico via the vital rail gateway at Laredo, Texas. As CPR's comments explained, such a condition is necessary to give substance to Applicants' vaguely worded commitment to keep the Laredo gateway open "on commercially reasonable terms" following KCS' proposed acquisition of TexMex and TFM. *See* CPR-3, Comments filed August 4, 2003 at 3-6.

On August 4, 2003 – the date upon which initial comments on the proposed transaction were due – Applicants and the National Industrial Transportation League (“NITL”) announced that they had entered into an agreement pursuant to which KCS agreed to “provide certain protections for League members and other rail shippers” in return for NITL’s endorsement of the proposed KCS-TexMex transaction. *See* NITL-3, Comments and Statement of Support of NITL at 3.¹ Asserting that the KCS-NITL Agreement “contains provisions that will protect League members and other rail shippers from anticompetitive effects, if any should arise as a result of this transaction” (NITL-3, Comments at 5), NITL requests that the Board impose the KCS-NITL Agreement as a condition on the Board’s approval of the proposed transaction (*id.* at 3-4).

Given the timing of the announcement regarding the KCS-NITL Agreement, CPR did not have an opportunity to address that agreement in its initial Comments. However, based upon a review of that agreement, and subsequent representations by Applicants and NITL regarding its scope and interpretation, it is clear that the KCS-NITL Agreement falls far short of ensuring that non-Applicant railroads will be able to access the Laredo gateway on commercially reasonable terms following the creation of the proposed “NAFTA Railroad.”

In response to a request by UP for clarification of the KCS-NITL Agreement, Applicants and NITL have stated unequivocally that “[t]he NITL-KCS Agreement will not require NAFTA Rail to establish and maintain commercially reasonable contract or common carrier rates and charges with respect to traffic interchanged between UP and TFM at the Laredo Gateway.” NITL-4/KCS-17, Letter to Mr. Meyer dated August 18, 2003 at 1. Rather, the agreement applies only to U.S-Mexico cross-border movements in which KCS and/or TexMex are participating carriers. (Indeed, it appears that the “protections” afforded by the KCS-NITL

¹ A copy of the KCS-NITL Agreement was submitted as Attachment 1 to NITL’s Comments.

Agreement are intended primarily to preserve existing interline routes at interchange points other than Laredo.)

As Applicants themselves have shown (KCS-3/TM-3, Application at 85, V.S. Grimm), the vast majority of U.S. - Mexico rail traffic moving through the Laredo gateway is currently interchanged between UP and TMM.² Likewise, nearly 90 percent of the rail traffic to and from Mexico in which CPR participates moves via Laredo (virtually all in conjunction with UP and TFM). *See* CPR-3, Comments at 4. By its terms (as clarified by Applicants and NITL), the KCS-NITL Agreement would not require NAFTA Rail to establish commercially reasonable rates and terms for the cross-border routings (involving UP and TFM) via which the great majority of U.S. – Mexico rail traffic currently moves. The KCS-NITL Agreement therefore does little (if anything) to address the competitive concerns discussed in CPR’s initial Comments.

Accordingly, CPR reiterates its request that the Board impose a condition in this proceeding requiring Applicants to enter into a written agreement (or agreements) that would assure access to the Laredo gateway on commercially reasonable terms for all “NAFTA corridor” traffic moving between points in the United States and Canada, on the one hand, and points in Mexico, on the other hand. Such agreement(s) must apply to all rail routing via Laredo, including the TFM-UP routes excluded from the scope of the KCS-NITL Agreement. As stated previously (CPR-3, Comments at 6), the specific terms of such an arrangement can be left, in the first instance, to negotiation by Applicants and other carriers serving the NAFTA corridor. However, if the parties cannot reach agreement in timely fashion, the Board should take

² According to Applicants, based upon 2001 data, UP participated in 91 percent of northbound traffic, and 71 percent of southbound shipments, through the Laredo gateway. KCS-3/TM-3, Application at 85.

whatever further action may be necessary to keep the Laredo gateway open following consummation of the proposed transaction.³ The condition requested by CPR is necessary to preserve the vitality of rail competition for NAFTA traffic, notwithstanding the KCS-NITL Agreement.

Finally, CPR understands that the shareholders of TFM's parent, Grupo TMM, S.A. ("TMM"), recently voted to reject the agreement (the "KCS-TMM Agreement") under which KCS proposed to acquire TMM's interest in TFM, and that TMM subsequently announced its intention to exercise a right to repurchase its stake in Mexrail (which was placed into a voting trust pending STB approval of the proposed transaction).⁴ However, KCS has indicated publicly that it remains committed to acquiring control of TFM.⁵ In an August 27, 2003 press release, KCS stated that "[it] believes the Acquisition Agreement between KCS and TMM is still valid and effective."⁶ A recent letter from KCS' counsel to TMM's counsel (which was submitted to the Securities and Exchange Commission), indicated that "KCS intends to move forward with this [KCS-TFM] transaction, in one form or another." *See* Attachment 1 at 3. So long as KCS continues to pursue STB authorization for the proposed transaction, the public interest requires that the Board continue to evaluate "the broader transaction, incorporating the related KCS/TFM component," as contemplated by *Decision No. 2*.

³ In its initial comments, UP suggests that Applicants be given 90 days to negotiate such an agreement with interested parties. UP-7A, Comments at 12. CPR believes that a 90-day negotiation period would provide an adequate opportunity for the carriers to reach agreement without the need for further regulatory intervention.

⁴ *See* Grupo TMM Press Release issued August 29, 2003 (available at www.grupotmm.com).

⁵ *See* KCS Press Release issued August 18, 2003 (available at www.kcsi.com).

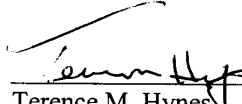
⁶ *See* KCS Press Release issued August 27, 2003 (available at www.kcsi.com).

CONCLUSION

For all of the foregoing reasons, and those set forth in CPR's initial Comments, CPR respectfully requests that the Board condition its approval of the proposed transaction by requiring Applicants to enter into a written agreement (or agreements) that effectively assure the future ability of all North American railroads (including CPR) to route traffic to or from Mexico via the Laredo gateway on commercially reasonable terms.

Respectfully submitted,

Marcella Szel
Canadian Pacific Railway Company
401 9th Avenue, SW
Gulf Canada Square, Suite 500
Calgary, Alberta T2P 4Z4 CANADA
(403) 218-7474

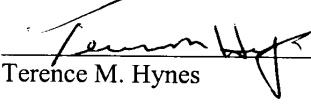

Terence M. Hynes
Gabriel S. Meyer
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Canadian Pacific Railway Company

DATED: September 2, 2003

CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of September, 2003, that I caused copies of the foregoing Reply Comments of Canadian Pacific Railway Company to be served, by hand-delivery on Applicants' counsel, and by first-class mail, postage prepaid, on all other Parties of Record.



Terence M. Hynes

Attachment 1

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):
August 21, 2003

KANSAS CITY SOUTHERN

(Exact name of company as specified in its charter)

DELAWARE	1-4717	44-0663509
(State or other jurisdiction of incorporation)	(Commission file number)	(IRS Employer Identification Number)

427 West 12th Street, Kansas City, Missouri 64105
(Address of principal executive offices) (Zip Code)

Company's telephone number, including area code:
(816) 983 - 1303

Not Applicable
(Former name or former address if changed since last report)

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Item 7. Financial Statements And Exhibits

(c) Exhibits

EXHIBIT NO.	DOCUMENT
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(99)	Additional Exhibits
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99.1	Letter, dated August 21, 2003, from Sonnenschein Nath & Rosenthal LLP to Milbank, Tweed, Hadley & McCoy LLP attached hereto as Exhibit 99.1
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Item 9. Regulation FD Disclosure

Kansas City Southern ("KCS" or "Company") is furnishing under Item 9 of this
Current Report on Form 8-K the information set forth in Exhibit 99.1 to this

Report. Exhibit 99.1 was sent by Sonnenschein Nath & Rosenthal LLP, counsel for the Company, to Milbank, Tweed, Hadley & McCoy LLP, counsel for Grupo TMM, S.A. ("TMM") in response to TMM's announcement on August 18, 2003 that TMM's shareholders voted down the Acquisition Agreement, dated as of April 20, 2003, by and among KCS, KARA Sub, Inc., TMM, and TMM Holdings, S.A. de C.V.

The information included in this Current Report on Form 8-K, including Exhibit 99.1, is furnished pursuant to Item 9 and shall not be deemed to be "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that Section.

SIGNATURE

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Pursuant to the requirements of the Securities Exchange Act of 1934, the Company has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

Kansas City Southern

Date: August 21, 2003

By: /s/ Ronald G. Russ

Ronald G. Russ
Executive Vice President and
Chief Financial Officer

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[SONNENSCHN NATH & ROSENTHAL LLP LETTERHEAD]

August 21, 2003

VIA FACSIMILE - 213-629-5063
AND FEDERAL EXPRESS

Kenneth A. Ostrow, Esq.
Milbank, Tweed, Hadley & McCloy LLP
601 S. Figueroa Street, 30th Floor
Los Angeles, CA 90017-5735

Dear Mr. Ostrow:

Our client, Kansas City Southern (KCS) was shocked by the announcement on Monday, August 18, 2003, by Grupo TMM, S.A., (TMM) that TMM's shareholders voted down the Acquisition Agreement covering KCS's proposed purchase of TMM's

ownership of the Mexican railroad, TFM.

KCS was also surprised that TMM's press release failed to disclose that the Serrano and Segovia families effectively controlled that result through their control of the voting rights of the vast majority of TMM stock. KCS was further dismayed by the press release's failure to explain why the individuals who signed the Acquisition Agreement on behalf of TMM - TMM's Chairman, Jose Serrano, and Chairman Serrano's nephew, Javier Segovia, TMM's CEO - and who as TMM directors recommended approval of the Agreement to TMM shareholders, turned around as the controlling TMM shareholders, rejecting their own recommendation, and voted against that approval.

KCS believes it was misled by previous statements from TMM representatives, including as recently as last Friday, August 15, 2003, when, in a telephone conversation between TMM CEO Javier Segovia and KCS Assistant to the CEO, Larry Lawrence, Mr. Segovia advised that the TMM shareholder vote was assured to be in favor of the Acquisition Agreement. KCS is perplexed at what could have happened over the week-end to change that prediction.

You should nevertheless understand that KCS does not consider the action taken by Mr. Serrano at the TMM shareholders' meeting to preclude completion of this acquisition. TMM shareholder approval, while contemplated in the Agreement and referred to publicly (KCS having been assured it was a "mere formality") was, as you must know, not included as one of the conditions precedent to TMM's obligation to close the transaction.

Therefore, we want to advise you, so that you may inform the Board of TMM, that KCS considers the Acquisition Agreement to remain valid and in effect. In particular, KCS calls your attention to Article 7 of that agreement, which places many restrictions upon the conduct of the business of Grupo TFM and its subsidiaries, including TFM, pending completion of this transaction. Those restrictions must continue to be observed.

In addition to its shock and dismay, KCS considers that it, and its stockholders may have suffered serious financial loss from this latest action, as well as from other actions, by Mr. Serrano and TMM. Those matters will be addressed in a more appropriate forum.

An equally disturbing aspect of Mr. Serrano's actions at the TMM stockholder meeting is their timing. KCS is advised that the Mexican Foreign Investment Commission is about to decide in the next few days whether or not KCS, as NAFTA Rail, will be permitted to acquire the controlling interest in TFM. KCS understands that the FIC has not issued a negative decision on such an issue in ten years, and has received positive feedback on the consideration of this transaction. This causes KCS concern that the TMM shareholder action was timed to influence the FIC review process.

KCS intends to move forward with this transaction, in one form or another. Because of Mr. Serrano's action, KCS must now explore all of its options and alternatives, legal and commercial. These alternatives may include arbitration or litigation to enforce compliance with the Acquisition Agreement. KCS would have preferred, of course, to avoid that expensive and divisive alternative, but it is resolved to take all appropriate action to protect its stockholders' interests, including the pursuit of any party unlawfully interfering with its contract rights.

KCS continues to believe that this transaction will benefit not only KCS and its stockholders, but also TMM, its stockholders and its creditors, including TMM's long-suffering bondholders, many of whom have called KCS to express their disappointment. In that respect, we must remind you that TMM also

has an obligation under the Acquisition Agreement to use its commercially reasonable efforts to obtain those bondholders' consent. KCS has been disappointed in the lack of progress toward meeting that obligation.

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Mr. Kenneth A. Ostrow, Esq.
August 21, 2003
Page 2

If anyone at TMM has specific issues regarding the transaction which they believe KCS should address, we are sure that KCS is always willing to listen. You must understand, however, that KCS considers that it has a lawful and binding agreement arrived at after 14 months of intensive negotiations. KCS has spent considerable sums of money, including raising the financing necessary for this transaction, based upon Messrs. Serrano and Segovia's representations and those of others at TMM. KCS is certainly not going to allow TMM to violate the Agreement and walk away from the transaction under those circumstances.

Very truly yours,

John F. Marvin

JFM/pst

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-----END PRIVACY-ENHANCED MESSAGE-----