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September 2, 2003

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, NW
Washington, DC 20423-0001



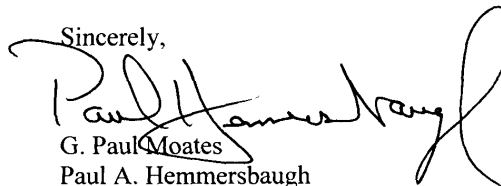
**Re: The Kansas City Southern - Control -The Kansas City Southern
Railway Company, Gateway Eastern Railway Company, and The
Texas Mexican Railway Company - Finance Docket No. 34342**

Dear Mr. Williams:

Enclosed for filing in the above-referenced docket are an original and 25 copies of "Norfolk Southern Corporation's and Norfolk Southern Railway Company's Response to Comments and Requests for Conditions." Also enclosed is a diskette containing an electronic copy of the document.

Please date-stamp the two extra copies and return them to the courier. If you have any questions concerning this, please contact one of the undersigned.

Sincerely,


G. Paul Moates
Paul A. Hemmersbaugh

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34342

KANSAS CITY SOUTHERN

- CONTROL -



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

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**NORFOLK SOUTHERN CORPORATION'S
AND NORFOLK SOUTHERN RAILWAY COMPANY'S
RESPONSE TO COMMENTS AND REQUESTS FOR CONDITIONS**

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") hereby submit their Response to other parties' comments and requests for conditions on the Railroad Control Application of Kansas City Southern. As NS explained in its opening Comments, its concerns relate both to 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.¹

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, investment in and maintenance of that line to high standards is critical. Service over the Meridian Speedway

¹ 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.

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.²

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. 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. 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 full proposed transactions are completed, 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"). If – as projected – trade between the United States and Mexico increases in the coming years, the Laredo Gateway and TFM routes will assume even greater importance. To a large 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.

**Notwithstanding Recent Developments, Both Issues
Remain of Concern and Should Be Addressed by the Board**

The National Industrial Transportation League ("NITL") announced in its comments that it had reached an agreement with Applicants that addressed its concerns regarding the proposed combination (the "Agreement"), and allowed the NITL to support the Application.

² NS' concerns regarding the Meridian Speedway remain unchanged. *See* Comments of Norfolk Southern at 2-5 (Aug. 4, 2003), NS-2, STB F.Doc. No. 34342 (incorporated by reference herein).

See Comments and Statement of Support of The National Industrial Transportation League, NITL-3 (Aug. 4, 2003). The Agreement does not address the Meridian Line. Moreover, the Agreement does not fully address the potential effect of the proposed transaction (particularly the full “NAFTA Rail” transaction, whereby the new entity would control KCS, Tex Mex, and TFM) on competition for rail traffic to and from Mexico through the Laredo Gateway. *See, e.g.*, Letter from Nicholas J. DeMichael and William A. Mullins to David L. Meyer (August 18, 2003), NITL-4/KCS-17 (indicating, *inter alia*, that the Agreement would not require NAFTA Rail to maintain commercially reasonable rates for traffic interchanged between TFM and UP at the Laredo Gateway).

NS is also aware that recent actions in Mexico have created some doubt as to whether Applicants will succeed in acquiring control of TFM, and perhaps even whether KCS will ultimately retain its controlling interest in Tex Mex. *See, e.g.*, “Grupo TMM Announces Repurchase by TFM of Stake in Mexrail” (press release dated August 28, 2003) (in which TMM announced that its subsidiary TFM had exercised its “right to repurchase” Mexrail, Inc. (the holding company that owns Tex Mex and the U.S. portion of the Laredo Bridge), which Applicant KCS had purchased in May 2003); “Kansas City Southern Reviews Mexrail Repurchase Notice” (August 29, 2003) (KCS press release acknowledging receipt of TMM’s “demand for TFM to repurchase from KCS shares of Mexrail sold to KCS in May 2003,” but stating that “this does not change our position that we have a valid agreement in place to acquire TFM [and KCS] plan[s] to enforce that agreement.”) Applicant KCS has repeatedly expressed

its continuing commitment to completing the proposed transaction, including the acquisition of a controlling interest in TFM. *See id.*³

As KCS' statements suggest, whether or not it will ultimately obtain control of TFM remains to be determined, just as it was when KCS filed its Application. Equally important, Applicants have not modified or amended their Application following recent events, actions, and announcements, and the full Application (including the proposed acquisition of control of TFM and control of the Laredo Bridge and Laredo Gateway) remains before the Board for its consideration. Because KCS is committed to pursuing the full NAFTA Rail transaction, and has not modified its Application to exclude TFM, the Board should address the entire set of transactions proposed in the Application.

NS' renewed request – 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 – is consistent with the Board's recent practice in control proceedings.⁴ Neither the recent NITL settlement nor the shareholder vote, nor any other recent

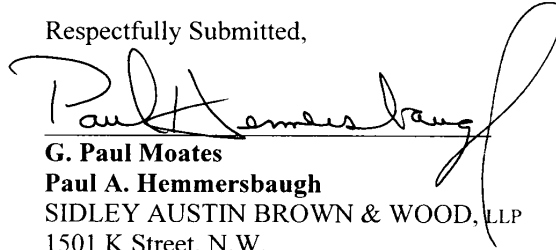
³ *See also* KCS Press Release (Aug. 21, 2003) ("KCS remains committed to this transaction as it was agreed to under the acquisition agreements . . . KCS has notified TMM of its intent to move forward with the acquisition agreement and advised them of its intent to exercise all legal and administrative means available to protect its rights under the acquisition agreements. We believe the transaction agreements as agreed to by both parties are still in force and still binding upon the parties.").

⁴ *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. 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

action or event eliminates the need for the requested actions, should the Board issue a Decision in this case upon the current record.

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Respectfully Submitted,


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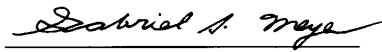
Counsel to Norfolk Southern Railway Company and Norfolk Southern Corporation

Dated: September 2, 2003

applicants' fulfillment of commitments in a minor transaction).

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of September, 2003, I caused the foregoing
“Norfolk Southern Corporation’s and Norfolk Southern Railway Company’s Response to
Comments and Requests for Conditions,” to be served by first class mail, or more expeditious
method, upon all parties of record.

A handwritten signature in cursive script, reading "Gabriel S. Meyer", written over a horizontal line.

Gabriel S. Meyer