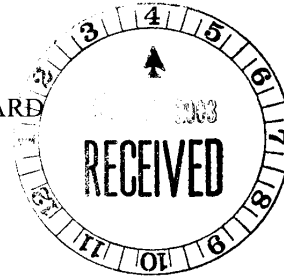


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UP-8

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

**UNION PACIFIC RAILROAD COMPANY'S RESPONSE
TO NITL'S COMMENTS AND REQUEST FOR CONDITIONS**

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September 2, 2003

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**UNION PACIFIC RAILROAD COMPANY'S RESPONSE
TO NITL'S COMMENTS AND REQUEST FOR CONDITIONS**

Pursuant to Decision No. 2, Union Pacific Railroad Company ("UP") submits its response to the comments and request for conditions filed by National Industrial Transportation League ("NITL") on August 4, 2003 ("NITL-3").¹

In its comments, NITL asks the Board to impose, as a condition to approval of KCS's control of The Texas Mexican Railway ("Tex Mex"), an agreement NITL reached with Kansas City Southern, The Kansas City Southern Railway, and Gateway Eastern Railway (collectively, "KCS"). With the exception of one provision, discussed below, UP agrees that NITL's agreement should be imposed as a condition in this case. However, the Board should understand that the NITL Agreement does not adequately address the competitive harms that would be caused by KCS's control of both Tex Mex and Transportación Ferroviaria Mexicana ("TFM").

¹ The factual material in Sections II and III herein is verified by John T. Gray, UP's Executive Director, Interline.

UP showed in its comments that KCS's acquisition of control of Tex Mex and TFM would harm competition for traffic moving via the Laredo Gateway, which the Board has consistently regarded as having "separate and surpassing economic significance."² With control of the Laredo Bridge and TFM's system in Mexico, KCS would have the incentive and ability to degrade or eliminate the primary competitive alternative to its own system for traffic moving via the Laredo Gateway. KCS will be able to manipulate or eliminate TFM rates for UP-TFM movements via the Laredo Gateway, discontinue TFM cooperation with UP on a wide array of efficient interline services, and impede UP operations at the Laredo Bridge. UP-7A at 48-58.

Earlier in this proceeding, KCS made commitments with respect to each of those issues. If made concrete and enforceable, those commitments would adequately address the competitive problems. *Id.* at 85-103. However, the NITL Agreement does not implement, or even purport to implement, KCS's key commitments:

- First, and most importantly, the NITL Agreement does not implement KCS's commitment to use its control of TFM to keep the Laredo Gateway open on commercially reasonable terms; the Agreement applies only when shippers use Tex Mex north of Laredo. As KCS and NITL acknowledge, the Agreement does nothing to keep the Laredo Gateway open to efficient UP-TFM cross-border transportation options that many shippers prefer; indeed the Agreement is fully consistent with a NAFTA Rail strategy to (a)

² *UP/SP*, 1 S.T.B. 233, 422 (1996).

extinguish competition over the Laredo Gateway and (b) force shippers who wish to ship via Laredo to use less efficient Tex Mex routes.

- Second, the NITL Agreement does not implement KCS's commitment to use its control of TFM to cause TFM to "continue to work" with UP on cross-border traffic moving via Laredo; the Agreement does not apply to traffic interchanged between UP and TFM.
- Third, the NITL Agreement does not implement KCS's commitment to operate the Laredo Bridge in a non-discriminatory manner; the Agreement does not even mention the Laredo Bridge.

The NITL Agreement thus does not implement any of KCS's key promises relating to the Laredo Gateway, and it is no substitute for conditions that would make those promises enforceable. The Board should impose UP's proposed conditions in addition to the NITL Agreement.

Moreover, whether or not the Board imposes the NITL Agreement as a condition, it should find Section 3 of the Agreement to be anticompetitive and direct Applicants and NITL to remove it from the Agreement. Section 3 creates a "confidentiality" requirement that would prevent TFM from sharing rate and service information with UP. It would severely impair the development of competitive UP-TFM rate and service offerings; indeed, it contradicts KCS's promises to cause TFM to continue to work with UP.

I. RECENT DEVELOPMENTS DO NOT ALTER THE BOARD'S RESPONSIBILITY TO CONSIDER THE COMBINED EFFECTS OF KCS CONTROL OF TEX MEX AND TFM

UP is aware that recent developments raise questions about whether the KCS/Tex Mex/TFM transaction will occur. On August 18, the shareholders of Grupo TMM

voted not to consummate the sale of TFM to KCS, and Grupo TMM subsequently notified KCS that it was terminating KCS's acquisition of TFM.³ Then, on August 27, TFM exercised its contractual right to reacquire the shares of Mexrail, Inc., that KCS had acquired and placed in a voting trust pending Board approval of KCS's application to acquire control of Tex Mex.⁴

There may be no transaction for the Board to address. Under the Stock Purchase Agreement submitted to the Board for approval in this proceeding, TFM's right to repurchase the Mexrail shares is "unconditional and may be exercised in the sole discretion of TFM by written notice to KCS given by the Chairman of TFM and without any other corporate approvals of TFM or GTMM."⁵ KCS has announced that it is reviewing TFM's notice of repurchase of KCS's Mexrail shares.⁶

KCS has repeatedly asserted, however, that it intends to proceed with the acquisition of TFM notwithstanding the Grupo TMM shareholder vote. If and when KCS acquires TFM, of course, it would control *both* TFM and Tex Mex even if TFM has

³ See Grupo TMM Press Releases, "Grupo TMM, S.A. Stockholders Do Not Approve Grupo TFM Sale," Aug. 18, 2003 (Exhibit 1) & "Grupo TMM's Board of Directors Terminates Transaction for Sale of Its Interest in Grupo TFM," Aug. 25, 2003 (Exhibit 2) (available at www.grupotmm.com). As a result of the Grupo TMM shareholder vote, the Mexican Foreign Investment Commission ("FIC") terminated its proceeding addressing KCS's acquisition of TFM. See Grupo TMM Press Release, "Mexican Foreign Investment Commission Closes Administrative Process of Investment Authorization," Aug. 28, 2003 (Exhibit 3) (available at www.grupotmm.com).

⁴ Grupo TMM Press Release, "Grupo TMM Announces Repurchase by TFM of Stake in Mexrail," Aug. 28, 2003 (Exhibit 4) (available at www.grupotmm.com).

⁵ Stock Purchase Agreement By and Among Kansas City Southern, Grupo TMM, S.A., and TFM, S.A. de C.V., § 7.1 (Application (KCS-3/TM-3) at 177).

⁶ KCS Press Release, "Kansas City Southern Reviews Mexrail Repurchase Notice," Aug. 29, 2003 (available on www.kcsi.com) (Exhibit 5).

reacquired the Mexrail shares. KCS has announced that it “remains committed to completing the transaction,”⁷ and that it believes “the Acquisition between KCS and TMM is still valid and effective, and that both parties are still bound by that agreement.”⁸ In a letter to Grupo TMM filed with the SEC, KCS stated that it “intends to move forward with this transaction, in one form or another.”⁹ KCS has also announced that it will shortly trigger the dispute resolution provisions of the TFM acquisition agreement in order to compel Grupo TMM to carry out the transaction.¹⁰ As KCS explains, moreover, it has a “right of first refusal” to acquire TFM from Grupo TMM.¹¹

The status of the transaction may be unclear, but there is no doubt that KCS’s proposed acquisitions of Tex Mex and TFM remain “components of a single, larger transaction.” Decision No. 2 at 11. KCS remains committed to acquiring *both railroads*, either in the artificial “two-step” form originally contemplated or through a single

⁷ KCS Press Release, “Kansas City Southern Issues Statement in Reaction to TMM Announcement,” Aug. 18, 2003 (available on www.kcsi.com) (Exhibit 6).

⁸ KCS Press Release, “Kansas City Southern Receives Notice of Mexican Foreign Investment Commission Decision on KCS Control of TFM,” Aug. 27, 2003 (available on www.kcsi.com) (Exhibit 7).

⁹ Letter from KCS counsel, John F. Marvin, Esq., to Grupo TMM counsel, Kenneth A. Ostrow, Esq., dated Aug. 21, 2003 (“KCS intends to move forward with this transaction, in one form or another.”) (filed with SEC and available at www.sec.gov) (Exhibit 8); *see also* KCS Press Release, “Kansas City Southern Reactions to TMM Shareholder Vote Appear in Letter Filed With SEC,” Aug. 21, 2003 (available on www.kcsi.com) (Exhibit 9) (describing Aug. 21 letter).

¹⁰ *See* August 27 KCS Press Release (Exh. 7). Although the FIC’s order terminating the proceeding appears to require a new application in the event the disputes between KCS and Grupo TMM are resolved in KCS’s favor, KCS has stated that it regards the FIC decision as “leaving the door open for us to complete this transaction” (*id.*), and allowing “the transaction to move forward once the dispute between the parties is resolved.” KCS Press Release, “Special Employee Update,” Aug. 28, 2003 (Exhibit 10).

¹¹ *See* August 27 KCS Press Release (Exh. 7) (“KCS has, under the GTFM bylaws, a right of first refusal regarding the sale of TMM’s interest in GTFM”).

acquisition of TFM once TFM reacquires the Mexrail shares. In either event, the Board will continue to have the jurisdiction and responsibility to address the transaction's "broader potential implications in the U.S." *Id.*

Recent developments may affect the timing of KCS's ultimate acquisition of control of Tex Mex and TFM, but they do not affect the need to preserve competition via the Laredo Gateway in the event of such an acquisition. If the Board proceeds to act on the Application,¹² it should continue to treat the proposed Tex Mex and TFM acquisitions as part of a single transaction and impose the conditions proposed by UP. (The Board could allow KCS to defer negotiation of agreements to implement conditions relating to KCS's exercise of its control of TFM until KCS control of TFM is imminent.) Alternatively, if the Board chooses to defer a decision because of uncertainties about the KCS/Tex Mex/TFM transaction, it should hold this docket open so that *all aspects* of KCS's ultimate acquisition of both Tex Mex and TFM can be considered and appropriate conditions imposed.¹³ The NAFTA Rail participants should not be permitted to manipulate their transactions to evade Board jurisdiction over rail competition for international trade via Laredo.

¹² If the Board does act on the Application, it may be appropriate to afford interested parties the opportunity to file supplemental comments addressing any new agreements or other arrangements that result from KCS's efforts to require that Grupo TMM carry out the sale of TFM and Tex Mex.

¹³ For example, were the Board inclined to grant permissive approval to the Tex Mex component of the transaction while deferring action on the TFM-related aspects of the transaction, it could impose conditions to (a) ensure non-discriminatory operation of the Laredo Bridge and also (b) require KCS to assent to continued Board jurisdiction and provide advance notice of control of TFM, so that the Board will have the opportunity to issue a supplemental order addressing conditions needed to address the anticompetitive effects of common control of KCS, Tex Mex, and TFM.

II. THE NITL AGREEMENT DOES NOT REMEDY THE MOST SIGNIFICANT COMPETITIVE HARMS POSED BY THE TRANSACTION

The NITL Agreement does not adequately remedy the proposed transaction's anticompetitive effects. NITL appears to recognize this. Although NITL claims that the Agreement "will protect [its] members and other rail shippers from anti-competitive effects" that result from KCS's control of Tex Mex, it recognizes that "there may well be issues raised about the competitive effects of the broader transaction" in which KCS seeks control of TFM as well as Tex Mex. NITL-3 at 5-6. And it acknowledges that the Agreement addresses only "*some* of the transnational effects of the broader transaction" *Id.* at 5 (emphasis added). NITL does not oppose the imposition of other conditions. *See* NITL Agreement § 1.

The NITL Agreement does not remedy the transaction's potential harms because it does not implement the three commitments Applicants made in this proceeding to protect competition for traffic moving via the Laredo Gateway.¹⁴ Nor does it otherwise address the competitive harms arising from KCS control of Tex Mex and TFM, which UP identified in its comments.

UP showed in its comments that KCS control of Tex Mex and TFM threatens competition for traffic moving via the Laredo Gateway because it allows KCS to weaken or eliminate the primary competitive alternative for this traffic. KCS would have the incentive and ability to degrade UP-TFM service options, manipulate or eliminate TFM rates for UP-TFM movements via the Laredo Gateway, and impede UP operations at the Laredo Bridge.

¹⁴ *See* Supplement to Application (KCS-11/TM-11) at 4, 24-25 & Davies V.S. at 14-16; *see also* Letter from William A. Mullins, Esq., to David L. Meyer, Esq., dated July 21, 2003 (filed with the Board and served on all parties of record).

UP-7A at 48-58. KCS made commitments with respect to each of those issues which, if made concrete and enforceable, would adequately address the competitive problems. *Id.* at 85-103.

The NITL Agreement does not implement those commitments because it does nothing to prevent KCS from acting to disable or impede competition from efficient UP-TFM services, which the vast majority of shippers prefer. Instead, the Agreement appears designed to force international customers to use *Tex Mex* as part of their shipping route. By its terms, it provides rate protection only for shipments that are routed via Tex Mex, whether to KCS, BNSF, or other carriers (including UP).¹⁵ To the extent the Agreement addresses any of the competitive harms resulting from the creation of NAFTA Rail, it is limited to the narrow issue raised by BNSF concerning KCS's plans to increase the rate factors Tex Mex demands in connection with BNSF-Tex Mex interline routes. It does not address NAFTA Rail's ability to restrict or eliminate competition at Laredo, with its well-established customs and brokerage capabilities and other unique features.

Because it is no substitute for conditions enforcing Applicants' earlier on-the-record commitments to protect the Laredo Gateway, the Board cannot rely on the NITL Agreement to remedy the transaction's anticompetitive effects. Moreover, were the Board to approve the NITL Agreement or impose it as a condition in this case without requiring KCS to live up to its other commitments in a meaningful and enforceable way, the Board

¹⁵ This intention was confirmed by the joint letter of NITL and KCS responding to UP's request for clarification of the NITL Agreement. *See* Letter from Nicholas J. DiMichael, Esq., Frederic L. Wood, Esq., and William A. Mullins, Esq., to David L. Meyer, Esq., dated Aug. 18, 2003, p. 1 (filed with the Board and served on all parties of record) ("NITL/KCS August 18 Letter") (Exhibit 11).

would further tilt the competitive landscape toward forced Tex Mex routings and against the efficient UP-TFM competitive options that most shippers prefer. Accordingly, whether or not the Board imposes the NITL Agreement as a condition in this case, it should impose the conditions proposed by UP, which would require Applicants to honor their commitments (a) to keep the Laredo Gateway open on commercially reasonable terms; (b) to continue to support U.S.-Mexico service with UP via the Laredo Gateway; and (c) to administer the Laredo Bridge in a non-discriminatory manner. *See* UP-7A at 11 & nn.3-5.

A. Keeping the Laredo Gateway Open on Commercially Reasonable Terms

The NITL Agreement does not purport to keep the Laredo Gateway open on commercially reasonable terms.¹⁶ To keep the gateway open, TFM must continue to participate with UP – TFM’s only connection other than Tex Mex at Laredo – in rates that are competitively viable, as TFM does today. Keeping the Laredo Gateway open thus means preserving effective UP-TFM competitive options for shippers. The Agreement does not purport to do this. As KCS and NITL acknowledge, it “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.”¹⁷

In the NITL Agreement, KCS promises to “establish and maintain commercially reasonable contract or common carrier rates and charges via any existing interchange with [KCS or Tex Mex].” NITL Agreement § 2(a). That promise also purports

¹⁶ In fact, Section 3 would work to close the gateway, as discussed below in Section III.

¹⁷ *See* NITL/KCS August 18 Letter, p. 1 (Exh. 11).

to extend to the portion of KCS/Tex Mex/TFM rates offered by TFM within Mexico.¹⁸

However, the Agreement provides no protection for shippers who would prefer to use UP-TFM services *or* who would leverage a UP-TFM option to negotiate a better deal with KCS/Tex Mex.¹⁹ For most shippers, that means the Agreement forces them to use Tex Mex.

Unless shippers who are considering using UP and the Laredo Gateway can obtain competitively viable rates for movements south of the border, KCS will be able to use its control of Tex Mex and TFM to reduce competition for traffic moving to and from TFM-served points in Mexico. In its comments, UP described how KCS could manipulate TFM's rate factors to make TFM services more expensive for UP shippers, causing them to pay more and in some cases to accept inferior KCS/Tex Mex/TFM offerings. *See* UP-7A at 49-

¹⁸ In the NITL Agreement, KCS accepts that the Board can and should regulate KCS's exercise of control over TFM rate setting. NITL and KCS have confirmed that, under the Agreement, KCS "would be required to use its control of TFM to cause TFM to establish and maintain commercially reasonable rates for its portion of through movements between Mexico and the U.S." that are interchanged with its NAFTA Rail affiliates. NITL/KCS August 18 Letter, p. 1. In these circumstances, where KCS does not object to NITL's asking for a condition that limits TFM rates, the Board should not hesitate to impose a condition holding KCS to its commitments to use its control of TFM to ensure that TFM continues to support international service with BNSF and UP and to offer competitively viable rates for UP interline traffic moving on TFM via Laredo.

¹⁹ Moreover, even for shippers who use Tex Mex routings, the Agreement does not provide adequate protection with respect to the level of TFM's rates and/or rate factors. The Agreement provides for arbitration but specifies that the arbitrator "would not have the authority to rule upon that portion of the rate in Mexico." NITL/KCS August 18 Letter, p. 3. Instead, disputes about the "reasonableness" of "rates or rate factors in Mexico" will be resolved in accordance with some unspecified "requirements established by the Government of Mexico." Agreement § 6; *see also* UP-7B, Verified Statement of Francisco Fuentes Ostos at 3-4 (explaining that there are no established procedures for determining rate reasonableness under Mexican law).

52.²⁰ KCS's promise to provide "reasonable" rates for KCS/Tex Mex-TFM (or BNSF-Tex Mex-TFM) movements will not protect shippers from harm, even assuming that shippers could enforce the promise to provide "reasonable" rates in Mexico.²¹ As UP explained, KCS can disable effective competition from UP-TFM options without raising *Tex Mex-TFM* rates. KCS could raise the costs to shippers of using otherwise preferred UP-TFM routings by raising the rates TFM charges for UP-TFM routings or undermining UP-TFM services. *See* UP-7A at 49-52; UP-7B Gray V.S. at 27-28; *id.* Hausman V.S. at 10-11. In order to prevent such strategies, it is necessary to preserve UP's ability to offer competitive rates and services for U.S.-Mexico traffic moving via the Laredo Gateway. KCS's commitments, if made concrete and enforceable, would protect shippers by preserving existing competition for traffic moving via the Laredo Gateway.

Applicants may argue that the NITL Agreement ensures competition among NAFTA Rail, BNSF, and UP by ensuring that BNSF and UP can obtain "reasonable" divisions for traffic routed via Tex Mex and/or KCS. That argument is flawed for three reasons.

First, as UP explained in its comments, most shippers prefer UP-TFM routings for good reason: those routings are more efficient or otherwise superior in meeting shippers' needs. *See* UP-7A at 37-42; UP-7B, Gray V.S. at 10-20. The harm those shippers will suffer when UP-TFM options are degraded will not be avoided just because KCS-Tex

²⁰ Indeed, KCS could cause TFM to refuse to provide connecting rates for shippers who use UP and use TFM's unique access to Laredo's infrastructure to charge shippers a premium for Laredo service.

²¹ *See* note 19, *supra*.

Mex and BNSF-Tex Mex (and perhaps UP-Tex Mex or UP-KCS-Tex Mex) options remain available. Moreover, by eliminating UP-TFM routings, NAFTA Rail would have the only access to Laredo's infrastructure, allowing it to raise prices for service over that gateway.

Second, competition between KCS/Tex Mex and BNSF-Tex Mex options north of Laredo is not a satisfactory substitute for the continued viability of UP-TFM competitive options. Rather, *UP's* competitive position via Laredo must be preserved in order to carry out the Board's vision of two-carrier competition at the Laredo Gateway. *See UP/SP*, 1 S.T.B. at 448. In *UP/SP*, the Board acted to preserve effective competition between UP-TFM and Tex Mex-TFM routes (as to which Tex Mex interlined with both BNSF and KCS), not competition between BNSF and KCS. As BNSF recently explained in its comments, the limited geographic reach of KCS's system means that effective competition for traffic moving via the Laredo Gateway must include competition between BNSF-Tex Mex and UP options north of the border:

“[T]he Board envisioned BNSF serving as the principal competitive replacement to UP through Laredo. Decision No. 44 at 422. Over the past six years, BNSF *has been the primary competitive alternative for good reason*. First, KCS' routes are longer even than BNSF's routes from most points. . . . Second, KCS does not offer the same geographic scope of single-line service that BNSF or UP can offer, making KCS less attractive to shippers with multiple origination points.”

BNSF-4 at 16 (emphasis in original in part). Even if the NITL Agreement were successful in preserving BNSF competition against KCS, it would not begin to preserve the competitive status quo.

Third, forcing shippers to use Tex Mex to take advantage of the meager protections afforded by the NITL Agreement would deprive shippers of competitive options north of Laredo that are independent of KCS. KCS/Tex Mex would be an indispensable

intermediary in every movement via Laredo, and would accordingly be privy to (and part of) every rate and every service commitment offered to customers.²² In this environment, effective competition with KCS/Tex Mex would be impossible.²³

B. Using KCS Control of TFM to Ensure that TFM Continues to Work with UP

In its comments, UP explained that, even if it could obtain reasonable TFM rates for UP-TFM routings, KCS could force traffic onto less-attractive KCS/Tex Mex routes by causing TFM to discontinue cooperation with UP on operational and service matters or refrain from improving UP-TFM service offerings. UP-7A at 48, 85 & n.130; UP-7B, Gray V.S. at 31-33. The NITL Agreement does not address the level of service TFM will provide for international traffic of any kind, much less UP-TFM movements.²⁴

²² For example, as explained by KCS and NITL, the Agreement's provision regarding the commercial reasonableness of rates would be applied "by the parties to the process of establishing and maintaining the rates and charges to the shipper as a whole (not to individual railroad divisions or rate factors)." NITL/KCS August 18 Letter, p. 2. Thus, obtaining the limited protections of the Agreement would apparently require disclosure to KCS/Tex Mex of the UP (or BNSF) portion of any "rates and charges to the shipper."

²³ By contrast, the Board could (and should) effectively implement KCS's commitments to cause TFM to work with UP and to keep the Laredo Gateway open on commercially reasonable terms in a manner that would allow effective competition without KCS/Tex Mex becoming involved in or privy to competitive UP-TFM rate quotes and service offerings. See UP-7B Gray V.S. at 41-50.

²⁴ The Agreement requires KCS to provide reports "based upon agreed specific service measurements" for NAFTA Rail service between Beaumont and Laredo, Texas, but it does not describe these "measurements," and the obligation does not apply at all to TFM service in Mexico. Agreement § 4. The Agreement also states that NAFTA Rail may seek Board assistance "if it were determined that UP was responsible" for a decline in NAFTA Rail service levels. *Id.* This provision is inappropriate to the extent it seeks to impose any obligation on UP, which is neither an applicant nor an entity controlled by an applicant to the transaction. See *Major Rail Consolidation Procedures*, STB Ex Parte No., 582 (Sub-No. 1) (STB served June 11, 2001) at 32 ("Moreover, imposing such conditions on carriers that are not applicants or controlled by applicants is not within our merger conditioning authority, which gives us only the power to 'impose conditions governing the

(footnote continued ...)

The Agreement is thus no substitute for a condition making concrete and enforceable KCS's commitment to ensure that TFM continues to provide UP and its shippers with the same level of service they have experienced in the past and to make improvements to that level of service where possible.

C. Ensuring Fair and Equitable Treatment of UP-TFM Traffic at the Laredo Bridge

In its comments, UP explained how KCS control would create new incentives for Tex Mex and TFM to use their ownership and operational control of the Laredo Bridge to prefer Tex Mex-TFM traffic over UP-TFM traffic and how such preferential treatment would harm shippers. UP-7A at 55-58.²⁵ The NITL Agreement does nothing to address these problems – in fact, it does not even mention the Laredo Bridge. The Agreement is thus no substitute for holding KCS to its commitments to ensure that the Laredo Bridge is administered in a non-discriminatory manner.

III. THE BOARD SHOULD ORDER KCS AND NITL TO REMOVE FROM THE NITL AGREEMENT THE ANTICOMPETITIVE PROHIBITION ON TFM'S DISCUSSION OF RATES AND SERVICES WITH RAILROADS OUTSIDE THE NAFTA RAIL FAMILY

Whether or not the Board imposes the NITL Agreement as a condition, it should reject Section 3 of the Agreement as anticompetitive and as directly contrary to

(... footnote continued from previous page)

transaction.”). Such a provision is also unnecessary. As UP explained in its comments, Tex Mex's operations over UP's lines between Beaumont and Robstown/Corpus Christi are already subject to extensive protections– including Board oversight – that ensure that UP does not discriminate against Tex Mex trains. In addition, Tex Mex has declined invitations to participate in the dispatching of these UP lines. *See* UP-7A at 77-82.

²⁵ UP also explained, for example, that existing agreements governing Bridge operations are insufficiently precise to reliably guard against the manipulation of Bridge operations by Tex Mex and TFM. *Id.* at 57-58.

KCS's promises in this proceeding. Section 3 states that, if KCS gains control of TFM, it "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." Agreement § 3. This provision, which purports to protect shippers, would instead prevent UP (and BNSF) from working with TFM to develop competitive options to KCS/Tex Mex/TFM service. It would thus undermine any effort to keep the Laredo Gateway open on commercially reasonable terms.

In this proceeding, certain shippers expressed concern that the proposed transaction would allow KCS to obtain confidential information about their movements that TFM acquired as a result of participation in UP-TFM movements. They asked the Board to prevent KCS from obtaining confidential UP information.²⁶ The NITL Agreement does the opposite. Section 3 "would allow NAFTA Rail to share with KCS and Tex Mex confidential information about a shipper's move acquired by TFM as a result of a participation in UP-TFM movements."²⁷

Rather than address shippers' confidentiality concerns, Section 3 would harm shippers by precluding UP and BNSF from working with TFM to develop competitive rates

²⁶ See Submission of Weyerhaeuser Company, filed July 29, 2003, at 2 ("Weyerhaeuser's major concern is the need for the commonly controlled railroad to provide a 'firewall' between its marketing effort and that of the Mexican carrier TFM who will become a partner in the new NAFTA railway. Without such protection, the KCS/TM will have an unfair advantage over other connecting railroads.").

²⁷ NITL/KCS August 18 Letter, p. 2. The provision appears designed to ensure that TFM can share with its NAFTA Rail affiliates any rate and service information it obtains for use in formulating joint rates with UP or BNSF. Thus, a shipper could never obtain the full benefits of competitive bidding from KCS/Tex Mex and another railroad for the portion of the movement within the U.S. – KCS/Tex Mex would always know what the other railroad was offering.

and services. KCS and NITL have attempted to defend the provision, stating that it “will not prevent TFM from discussing with UP shipper needs for joint moves *as long as information about shipper needs does not include ‘confidential commercial information about a shipper’s move, including transportation services and rates.’*”²⁸ Thus, TFM will not be allowed to discuss with UP (or BNSF) a shipper’s needs or even the rates TFM will offer the shipper. However, information about a shipper’s “transportation services and rates” is precisely what carriers need to develop competitive rates and services. Section 3 would thus severely restrict UP’s and BNSF’s efforts to develop joint rates and services with TFM as alternatives to KCS/Tex Mex/TFM offerings. In effect, UP (and BNSF) will be required to compete while blindfolded.

Section 3 is also squarely inconsistent with KCS’s commitments in this proceeding. If KCS were to comply with Section 3’s mandate that TFM not share information about rates and services with UP, KCS could not at the same time live up to its commitments to use its control of TFM to cause TFM to continue to work with UP on interline service offerings and to provide commercially viable terms for UP-TFM services.

In the Burlington Northern/Santa Fe merger proceedings, the Interstate Commerce Commission struck down an anticompetitive provision in a settlement agreement.²⁹ In that case, the Commission found that the provision “could undermine the

²⁸ *Id.* (emphasis added).

²⁹ *Burlington Northern Inc. & Burlington Northern R.R. – Control & Merger – Santa Fe Pacific Corp. & The Atchison, Topeka & Santa Fe Ry.*, 10 I.C.C.2d 661, 773-74 (1995). The provision was contained in a settlement agreement between the applicants and Southern Pacific (“SP”) that, among other things, granted SP trackage rights over the applicants’ lines between Pueblo and Fort Worth. It stated that if UP acquired a certain interest in SP,

(footnote continued ...)

efficacy” of a remedy that was imposed as a condition on the merger. It directed the applicants and the settling party to remove the offending provision from the settlement agreement.³⁰ The Board should follow the same course here. It should order KCS and NITL to remove Section 3 from the Agreement because this provision would interfere with the development of UP-TFM and BNSF-TFM rates and services.

CONCLUSION

The Board should not be misled into believing that the NITL Agreement addresses the significant competitive concerns UP has raised and that KCS earlier purported to address with several promises. Those concerns can be addressed only by imposing conditions to ensure that KCS’s commitments to preserve UP-TFM competition for traffic moving over the Laredo Gateway are made concrete and enforceable. In addition, the Board should ensure that the NITL Agreement does not undermine competition by disabling NAFTA Rail’s competitors.

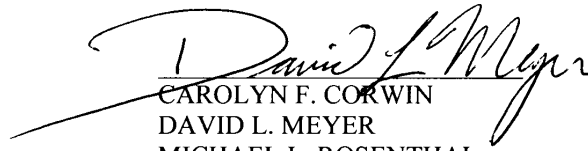
(... footnote continued from previous page)

compensation to allow certain coal movements between Pueblo and Fort Worth would automatically increase. *Id.* at 773.

³⁰ *Id.* at 774.

Respectfully submitted,

J. MICHAEL HEMMER
LAWRENCE E. WZOREK
Law Department
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000

A handwritten signature in cursive script, appearing to read "David L. Meyer", is written over the printed names of the attorneys.

CAROLYN F. CORWIN
DAVID L. MEYER
MICHAEL L. ROSENTHAL
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-5582

Attorneys for Union Pacific Railroad Company

September 2, 2003

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 2nd day of September, 2003, I caused a copy of Union Pacific's Response to NITL's Comments and Request for Conditions to be served by hand on:

William A. Mullins
David C. Reeves
Baker & Miller PLLC
915 Fifteenth Street, NW
Suite 1000
Washington, DC 20005-2318

Richard H. Streeter
Barnes & Thornburg
750 Seventeenth Street, NW
Suite 900
Washington, DC 20006

and by overnight mail on:

Allan Van Fleet, Esq.
Vinson & Elkins
2300 First City Tower
1001 Fannin
Houston, TX 77002-6760

W. James Wochner
Thomas J. Healy
Kansas City Southern
427 West 12th Street
Kansas City, MO 64105

and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all other parties of record in Finance Docket No. 34342.

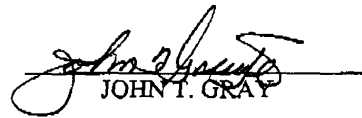


Michael L. Rosenthal

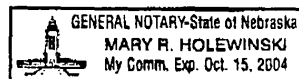
VERIFICATION

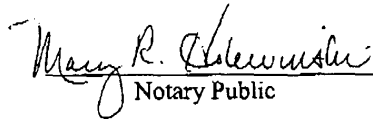
STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

I, John T. Gray, Executive Director, Interline for Union Pacific Railroad Company, state that I am familiar with the contents of Sections II and III of Union Pacific's Response to NTTL's Comments and Request for Conditions in STB Finance Docket No. 34342. To the best of my knowledge and belief, those contents are true as stated.


JOHN T. GRAY

Sworn to and subscribed before
me this 2d day of September, 2003.




Notary Public

My commission expires October 15, 2004

EXHIBITS

1



News

[print](#)[back](#)**GRUPO TMM, S.A. STOCKHOLDERS DO NOT APPROVE GRUPO TFM SALE**

Mexico City, August 18, 2003 - Grupo TMM, S.A. (NYSE: TMM and BMV: TMM A) ("Grupo TMM" or the "Company") announces that at the Company's General Ordinary Shareholders' meeting held today, the shareholders, unanimously, did not approve the sale of TMM's interests in Grupo Transportacion Ferroviaria Mexicana, S.A. de C.V. (Grupo TFM) to Kansas City Southern (KCS). As was made public, approval of the Company's stockholders was required under the terms of the Acquisition Agreement for the sale to proceed.

As a result of the stockholder vote, the Board of Directors of the Company intends to meet as soon as possible to review the Company's options.

The company is proceeding to inform the shareholders' decision to the authorities at the Ministry of Communications and Transportation, the Ministry of Finance, other relevant authorities and stakeholders at TMM and subsidiaries.

Headquartered in Mexico City, Grupo TMM is Latin America's largest multimodal transportation company. Through its branch offices and network of subsidiary companies, Grupo TMM provides a dynamic combination of ocean and land transportation services. Grupo TMM also has a significant interest in TFM, which operates Mexico's Northeast railway and carries over 40 percent of the country's rail cargo. Grupo TMM's web site address is www.grupotmm.com and TFM's web site is www.tfm.com.mx. Grupo TMM is listed on the New York Stock Exchange under the symbol TMM and Mexico's Bolsa Mexicana de Valores under the symbol TMM A.

Included in this press release are certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements are based on the beliefs of the Company's management as well as on assumptions made. Actual results could differ materially from those included in such forward-looking statements. Readers are cautioned that all forward-looking statements involve risks and uncertainty. The following factors could cause actual results to differ materially from such forward-looking statements: global, US and Mexican economic and social conditions; the effect of the North American Free Trade Agreement on the level of US-Mexico trade; the condition of the world shipping market; the success of the Company's investment in TFM and other new businesses; risks associated with the Company's reorganization and asset sale programs; the ability of the company to complete the sale of its interest in the ports division and its interest in Grupo TFM; the ability of the Company to reduce corporate overhead costs; the ability of management to manage growth and successfully compete in new businesses, and the ability of the Company to repay or refinance its indebtedness. These risk factors and additional information are included in the Company's reports on Form 6-K and 20-F on file with the Securities and Exchange Commission.

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Grupo TMM's Board of Directors Terminates Transaction for Sale of Its Interest in Grupo TFM

MEXICO CITY--Aug. 25, 2003--Grupo TMM, S.A. (NYSE: TMM) ("TMM" or the "company") announced that, as a result of the unanimous vote by its shareholders at the company's General Ordinary Shareholders' Meeting on August 18 to not approve the sale of TMM's interests in Grupo Transportacion Ferroviaria Mexicana, S.A. de C.V. (Grupo TFM) to Kansas City Southern ("KCS"), TMM's Board of Directors have formally notified KCS of the termination of the proposed sale.

Subsequently, the Mexican Foreign Investment Commission has also been formally notified by Grupo TFM of the termination ("desistimiento") of the application that Grupo TFM had submitted before the Commission to permit KCS's participation in more than 49 percent of Grupo TFM's equity. The application, therefore, is now without substance.

The termination of the transaction formalizes Grupo TMM's shareholders' decision to exercise the full extent of their rights. The company's Board of Directors has also directed management to pursue all reasonable alternatives to restructure Grupo TMM's outstanding indebtedness and improve the company's financial profile.

Headquartered in Mexico City, Grupo TMM is Latin America's largest multimodal transportation company. Through its branch offices and network of subsidiary companies, Grupo TMM provides a dynamic combination of ocean and land transportation services. Grupo TMM also has a significant interest in TFM, which operates Mexico's Northeast railway and carries over 40 percent of the country's rail cargo. Grupo TMM's web site address is www.grupotmm.com and TFM's web site is www.tfm.com.mx. Grupo TMM is listed on the New York Stock Exchange under the symbol TMM and Mexico's Bolsa Mexicana de Valores under the symbol TMM A.

Included in this press release are certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements are based on the beliefs of the Company's management as well as on assumptions made. Actual results could differ materially from those included in such forward-looking statements. Readers are cautioned that all forward-looking statements involve risks and uncertainty. The following factors could cause actual results to differ materially from such forward-looking statements: global, US and Mexican economic and social conditions; the effect of the North American Free Trade Agreement on the level of US-Mexico trade; the condition of the world shipping market; the success of the Company's investment in TFM and other new businesses; risks associated with the Company's reorganization and asset sale programs; the ability of the company to complete the sale of its interest in the ports division and its interest in Grupo TFM; the ability of the Company to reduce corporate overhead costs; the ability of management to manage growth and successfully compete in new businesses, and the ability of the Company to repay or refinance its indebtedness. These risk factors and additional information are included in the Company's reports on Form 6-K and 20-F on file with the Securities and Exchange Commission.

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Mexican Foreign Investment Commission Closes Administrative Process of Investment Authorization

(Mexico City, August 28, 2003) – Grupo TMM, S.A. (NYSE: TMM and BMV: TMM A; “TMM”); announced that as a result of the unanimous vote by its shareholders at company’s General Ordinary Shareholders’ Meeting on August 18, 2003, to not approve the sale of Grupo Transportación Ferroviaria Mexicana S.A. de C.V. (“GTFM”) to Kansas City Southern, and the notice of such decision to the Mexican Foreign Investment Commission including the termination (“desistimiento”) of the requested approval of foreign investment, the Mexican Foreign Investment Commission has notified GTFM its resolution to close the administrative process that had been initiated before such Commission.

Headquartered in Mexico City, Grupo TMM is Latin America's largest multimodal transportation company. Through its branch offices and network of subsidiary companies, Grupo TMM provides a dynamic combination of ocean and land transportation services. Grupo TMM also has a significant interest in TFM, which operates Mexico's Northeast railway and carries over 40 percent of the country's rail cargo. Grupo TMM's web site address is www.grupotmm.com and TFM's web site is www.tfm.com.mx.

Included in this press release are certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements are based on the beliefs of the Company's management as well as on assumptions made. Actual results could differ materially from those included in such forward-looking statements. Readers are cautioned that all forward-looking statements involve risks and uncertainty. The following factors could cause actual results to differ materially from such forward-looking statements: global, US and Mexican economic and social conditions; the effect of the North American Free Trade Agreement on the level of US-Mexico trade; the condition of the world shipping market; the success of the Company's investment in TFM and other new businesses; risks associated with the Company's reorganization and asset sale programs; the ability of the company to complete the sale of its interest in the ports division and its interest in Grupo TFM; the ability of the Company to reduce corporate overhead costs; the ability of management to manage growth and successfully compete in new businesses, and the ability of the Company to repay or refinance its indebtedness. These risk factors and additional information are included in the Company's reports on Form 6-K and 20-F on file with the Securities and Exchange Commission.

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News

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GRUPO TMM ANNOUNCES REPURCHASE BY TFM OF STAKE IN MEXRAIL

Exercise of Repurchase Right Returns 100 percent Mexrail's Interest to TFM

(Mexico City, August 28, 2003) – Grupo TMM, S.A. (NYSE: TMM and BMV: TMM A; "TMM"); announced today that on August 27, 2003, its subsidiary, TFM, S.A. de C.V. (TFM), has given notice to Kansas City Southern (KCS) of exercise of its right to repurchase shares representing an aggregate 51 percent interest in Mexrail, Inc. ("Mexrail") that were sold to KCS in May 2003. The shares are currently held in a voting trust pending the receipt of approval of the United States Surface Transportation Board of KCS's application to assume control of Mexrail.

Under the terms of the Stock Purchase Agreement entered into on April 15 2003, TFM, acting through its Chairman, has the unilateral right to repurchase the shares of Mexrail. The purchase price for the shares is \$32,680,000 which is the same amount received by TFM in May 2003 upon closing of the sale of the shares to KCS, and will be funded out of TFM's existing cash balances.

Upon completion of the repurchase, which the agreement provides is to occur on September 4, 2003, the fifth business day after exercise of the repurchase right, TFM will again own 100 percent of Mexrail.

Headquartered in Mexico City, Grupo TMM is Latin America's largest multimodal transportation company. Through its branch offices and network of subsidiary companies, Grupo TMM provides a dynamic combination of ocean and land transportation services. Grupo TMM also has a significant interest in TFM, which operates Mexico's Northeast railway and carries over 40 percent of the country's rail cargo. Grupo TMM's web site address is www.grupotmm.com and TFM's web site is www.tfm.com.mx.

Included in this press release are certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements are based on the beliefs of the Company's management as well as on assumptions made. Actual results could differ materially from those included in such forward-looking statements. Readers are cautioned that all forward-looking statements involve risks and uncertainty. The following factors could cause actual results to differ materially from such forward-looking statements: global, US and Mexican economic and social conditions; the effect of the North American Free Trade Agreement on the level of US-Mexico trade; the condition of the world shipping market; the success of the Company's investment in TFM and other new businesses; risks associated with the Company's reorganization and asset sale programs; the ability of the company to complete the sale of its interest in the ports division and its interest in Grupo TFM; the ability of the Company to reduce corporate overhead costs; the ability of management to manage growth and successfully compete in new businesses, and the ability of the Company to repay or refinance its indebtedness. These risk factors and additional information are included in the Company's reports on Form 6-K and 20-F on file with the Securities and Exchange Commission.

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For Immediate release:

August 29, 2003

For additional information contact:

William Galligan - 816-983-1551

Kansas City Southern Reviews Mexrail Repurchase Notice

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U.S.

Warren K. Erdman

Phone: 816/983-1454

warren.k.erdman@kcsr.com

Investors Contact:

William H. Galligan

Phone: 816/983-1551

william.h.galligan@kcsr.com

Kansas City Southern (KCS) (NYSE:KSU) today acknowledged receipt of a letter from Jose Serrano Segovia, Chairman of Grupo TMM, S.A. (TMM) and of TFM, S.A. de C.V. (TFM), the joint-venture subsidiary between KCS and TMM, of a demand for TFM to repurchase from KCS shares of Mexrail, Inc. (Mexrail) sold to KCS in May 2003. KCS is reviewing the notice and will respond appropriately within the time frame provided by the agreement under which the repurchase option was granted.

"We have received the notice and our legal team is reviewing it," said Warren Erdman, KCS Vice President - Corporate Affairs. "Kansas City Southern is a company that honors its contractual obligations. We will respond to this notice within the required time frame, but this does not change our position that we have a valid agreement in place to acquire TFM. As previously announced, we plan to assert our legal rights to enforce that agreement."

As part of the transactions agreed to by both KCS and TMM and publicly announced by both parties on April 21, 2003, TFM sold to KCS Mexrail shares representing an aggregate 51 percent ownership of Mexrail for \$32,680,000 (U.S.) in May 2003. Mexrail, Inc. wholly owns the Texas-Mexican Railway, Inc. (Tex-Mex). These shares were placed in trust pending regulatory approval in the United States of KCS' common control of Tex-Mex by the Surface Transportation Board. Repurchase of Mexrail, Inc. by TFM would return 100 percent ownership of Mexrail to KCS' joint-venture subsidiary, TFM. If it occurs, the repurchase would be at the price KCS paid TFM in May.

KCS also acknowledges receipt from TMM of a notice to terminate a joint-venture agreement between the parties entered into in 1995. "We have had problems in the past with TMM's compliance with this agreement. We will deal with these issues at the appropriate time as part of our effort to compel TMM to honor its contractual obligations," stated Mr. Erdman.

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427 W. 12TH ST. / KANSAS CITY, MO 64105 / P.O. Box 219335 / KANSAS CITY, MO 64121-9335 / 816-983-1303

<http://notes.kcsi.com/WebApps/kcspress.nsf/626e6035eadbb4cd85256499006b15a6/ad6244b4458ed228...> 8/29/2003

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For Immediate release:

August 18, 2003

For additional information contact:

William Galligan - 816-983-1551

Kansas City Southern Issues Statement in Reaction to TMM Announcement

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In reaction to today's announcement by Grupo TMM, S.A. ("TMM") regarding its shareholders' decision not to approve the sale of TMM's interests in Grupo Transportacion Ferroviaria Mexicana, S.A., de C.V. to Kansas City Southern ("KCS"), KCS issued the following statement:

KCS is concerned by today's announcement about the TMM shareholder action and is exploring its rights under the agreements between the parties, and its legal options under U.S. and Mexican law. Jose Serrano, chairman of Grupo TMM, who signed and obligated TMM to the transaction agreements with KCS and who, in his capacity as a director of TMM, recommended approval of the transaction to TMM shareholders, is the controlling stockholder of Grupo TMM. KCS intends to pursue all appropriate legal or administrative action against any persons or entities involved in interfering with KCS and its agreements with TMM. KCS remains committed to completing the transaction.

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For Immediate release:
August 27, 2003

For additional information contact:
William Galligan - 816-983-1551

Kansas City Southern Receives Notice of Mexican Foreign Investment Commission Decision on KCS Control of TFM

Previous Release / Next Release / Press Release Menu

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U.S.
Warren K. Erdman
Phone: 816/983-1454
warren.k.erdman@kcsr.com

Investors Contact:

William H. Galligan
Phone: 816/983-1551
william.h.galligan@kcsr.com

Kansas City Southern (KCS) (NYSE:KSU) announced today that it received notice from the Mexican Foreign Investment Commission (FIC) of the FIC's decision to defer KCS' application to acquire control of Grupo TFM (GTFM) and, thus, TFM, until after the dispute is resolved between KCS and Grupo TMM, S.A. (TMM) over whether the Acquisition Agreement remains in effect.

Michael R. Haverty, Chairman, President, and Chief Executive Officer of KCS commented, "We believe the FIC decision would allow the transaction to move forward once the dispute between the parties is resolved. The FIC decision reaffirms the Mexican government's commitment to the rule of law. We believe that once the transaction is completed, NAFTA Rail should provide a major boost to the Mexican railroad sector."

As previously announced, KCS believes the Acquisition Agreement between KCS and TMM is still valid and effective, and that both parties are still bound by that agreement. KCS is continuing its efforts to make NAFTA a reality and, in furtherance of that goal, KCS will deliver a notice of dispute to TMM in accordance with the dispute resolution provisions of the Acquisition Agreement. This written notice of dispute will initiate a 60-day negotiation period between KCS and TMM. If the parties are unable to resolve the disputes within that period of time, KCS intends to initiate a binding arbitration in accordance with the terms of the Agreement. KCS is committed to pursuing good faith negotiations with TMM to resolve the outstanding disputes between the parties.

Vicente Corta, a partner at White & Case and legal advisor for KCS in Mexico, added, "After consulting with U.S. counsel, we have concluded that the contract between KCS and TMM to acquire the Grupo TFM shares remains valid. We will pursue all legal means to protect KCS' rights under that contract. The FIC decision leaves the door open for us to complete this transaction."

KCS believes that TMM's recent actions, first defaulting on its obligation to its bondholders and other creditors, then trying to block its bondholders from exercising their legal rights in Mexico, and now trying to disregard an agreement negotiated in good faith over a 14-month period, has caused concern among foreign lenders and investors in Mexico, both current and prospective.

In addition to the Acquisition Agreement, which remains valid through December 31, 2004, KCS has, under the <http://notes.kcsi.com/WebApps/kcspress.nsf/626e6035eadbb4cd85256499006b15a6/1658b36211901a918625...> 8/29/2003

GTfM bylaws, a right of first refusal regarding the sale of TMM's interest in GTfM. As KCS has noted previously, it will enforce its rights and will pursue all appropriate legal or administrative actions against any person or entities involved in interfering with KCS and its agreements with TMM.

KCS also reaffirms its commitment to continue working in good faith with the appropriate Mexican authorities and other relevant parties to resolve all outstanding issues. KCS remains committed to the creation of NAFTA Rail and is convinced that NAFTA Rail will be a strong competitor in the rail sector by providing a seamless, efficient and competitive rail service to shippers in North America.

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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)

<PAGE>
 Item 7. Financial Statements And Exhibits

(c) Exhibits

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

Item 9. Regulation FD Disclosure

<http://www.sec.gov/Archives/edgar/data/54480/000101381603000205/form8k-821.txt>

8/29/2003

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

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

</TEXT>
</DOCUMENT>

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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

<http://www.sec.gov/Archives/edgar/data/54480/000101381603000205/exhibit-8k.txt>

8/29/2003

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.

<PAGE>

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

</TEXT>
</DOCUMENT>

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For Immediate release:

August 21, 2003

For additional information contact:

William Galligan - 816-983-1551

Kansas City Southern Reactions to TMM Shareholder Vote Appear in Letter Filed with SEC

Previous Release / Next Release / Press Release Menu

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Gabriel Guerra

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Kansas City Southern (NYSE:KSU) has reacted further to the unexpected Grupo TMM, S.A. ("TMM") shareholder vote on Monday, August 18, 2003, which did not approve the transaction to sell TMM's interests in Grupo Transportacion Ferroviaria Mexicana, S.A. de C.V. to Kansas City Southern. These reactions were contained in a letter from its counsel to TMM's counsel, which has been filed with the U.S. Securities and Exchange Commission ("SEC") and is available through the SEC website at www.sec.gov.

Information about this and other matters related to the proposed NAFTA Rail transaction can be found at the Kansas City Southern website at www.kcsi.com.

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August 28, 2003

Special Employee Update

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In an effort to keep employees informed of the steps being taken to resolve the present dispute with TMM, the KCS News will keep you advised when significant events take place.

Yesterday, KCS announced it will deliver a notice of dispute to TMM in accordance with the dispute resolution provisions of the Acquisition Agreement. This written notice of dispute will initiate a 60-day negotiation period between KCS and TMM. If the parties are unable to resolve the disputes within that period of time, KCS intends to initiate a binding arbitration in accordance with the terms of the Agreement. KCS is committed to pursuing good faith negotiations with TMM to resolve the outstanding disputes between the parties.

Also, KCS announced yesterday that it received notice from the Mexican Foreign Investment Commission (FIC) of the FIC's decision to defer KCS' application to acquire control of Grupo TFM (GTFM) and, thus, TFM, until after the dispute is resolved between KCS and Grupo TMM, S.A. (TMM) over whether the Acquisition Agreement remains in effect.

Michael R. Haverty, Chairman, President, and Chief Executive Officer of KCS commented, "We believe the FIC decision would allow the transaction to move forward once the dispute between the parties is resolved. The FIC decision reaffirms the Mexican government's commitment to the rule of law. We believe that once the transaction is completed, NAFTA Rail should provide a major boost to the Mexican railroad sector."

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**NITL-4
KCS-17**

August 18, 2003

By Messenger

David L. Meyer, Esquire
Covington & Burling
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401

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

Dear David:

This letter is on behalf The National Industrial Transportation League and the Applicant in the above proceeding in response to your letter of August 8, 2003, on behalf of Union Pacific Railroad Company ("UP"). Your letter made several inquiries regarding the NITL-KCS Agreement dated August 1, 2003, which was filed with the Board on August 4, 2003 as Attachment 1 to the League's Comments. Set out below are responses to each of the numbered paragraphs in the UP letter.

1. UP's understanding is correct. The 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.

2. Section 2(a) of the NITL-KCS Agreement, under certain circumstances, does apply to all NAFTA Rail affiliates, including TFM. In the example described in this UP inquiry, NAFTA Rail would be required to use its control of TFM to cause TFM to establish and maintain commercially reasonable rates and charges for its portion of through movements between Mexico and the U.S. that are interchanged between Tex Mex and Burlington Northern and Santa Fe Ry. Co. ("BNSF") at Robstown, TX, or elsewhere. It should also be pointed out that the same provision would apply to and the same result would occur with respect to through movements between Mexico and the U.S. that are interchanged between Tex Mex or KCS, on the one hand, and UP, on the other.

The dispute resolution provisions of Section 6 of the NITL-KCS Agreement are designed to provide for prompt resolution of disputes under the Agreement, while recognizing the interests of the Government of Mexico. A through rate that is established or sought to be established under Section 2(a) for traffic moving between the U.S. and Mexico is required to be commercially reasonable as a whole. Under Section 2(c) of the Agreement, such arbitration procedures apply to disputes "regarding rates and charges applicable in whole or in part within the U.S." An arbitrator considering the issue in relation to a through rate would consider all of

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the facts and circumstances involved in making such a determination but any decision reached would relate either to the through rate as a whole or to the portion of the through rate in the U.S. The arbitrator would not have the authority to rule upon that portion of the rate in Mexico. Pursuant to Section 6, "disputes involving rates or rate factors in Mexico," would be resolved in accordance with the requirements of the Government of Mexico. In Mexico, the Secretary of Communication and Transportation is responsible for reviewing rates and service factors.

3. UP's understanding is correct, in the sense that, any time a connecting rail line requires a division or rate factor from another railroad in order to complete the movement of traffic to or from a point it does not serve, it must make certain disclosures to that carrier, even when that other railroad may also be a competitor for the traffic involved. It is not our understanding that this requires complete disclosure of the "competitive opportunity" as suggested by UP's inquiry. It would be customary and appropriate in such situations for the connecting railroad to disclose to KCS or Tex Mex the minimum information necessary to obtain the appropriate rate division or rate factor and other terms of carriage necessary to offer a commercially reasonable rate or charge for the through movement.

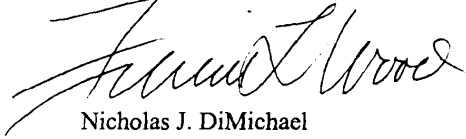
4. The meaning of the term "commercially reasonable" in Section 2(a) of the NITL-KCS Agreement would be determined by the parties to the process of establishing and maintaining the rates and charges to the shipper as a whole (not to individual railroad divisions or rate factors). In the event of a dispute involving a rate in whole or in part in the U.S., an arbitrator would make the determination in light of all the facts and circumstances deemed relevant by the parties and the arbitrator.

5. Section 3 of the NITL-KCS Agreement, by its terms, would allow NAFTA Rail to share with KCS and Tex Mex confidential information about a shipper's move acquired by TFM as a result of a participation in UP-TFM movements. However, other agreements entered into by TFM and/or other provisions of law may prohibit sharing of such information.

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Section 3 would prevent NAFTA Rail from disclosing the information specified to other U.S. railroads not within the NAFTA Rail corporate family. Section 3 will not prevent TFM from discussing with UP shipper needs for joint moves as long as information about shipper needs does not include "confidential commercial information about a shipper's move, including transportation services and rates."

Sincerely yours,



Nicholas J. DiMichael
Frederic L. Wood
Attorneys for The National Industrial
Transportation League



William A. Mullins
Attorney for Kansas City Southern

cc: Hon. Vernon A. Williams
All Parties of Record
