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September 5, 2003

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Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20006

FD 34342



Re: **Disposition of Voting Trust Stock**

Dear Secretary Williams:

We represent Thomas F. Power, Jr., the trustee ("Trustee") of the voting trust in which the shares of Mexrail, Inc. ("Mexrail") purchased by Kansas City Southern ("KCS") from TFM S.A. de C.V. ("TFM") last May are currently held pending authorization from the Board for KCS to control Mexrail's wholly-owned subsidiary The Texas Mexican Railway Company ("Tex Mex"). The Trustee herein respectfully requests the Board's guidance with respect to a proposed "repurchase" of the trust shares by TFM.

On May 9, 2003, Mr. Power and KCS entered into a voting trust agreement (the "Voting Trust Agreement") creating a voting trust (the "Mexrail Trust") into which were placed the 51% of the shares of the common stock of Mexrail purchased by KCS from TFM on that date. The shares were placed in the Mexrail Trust pending authorization from the Board for KCS to control Tex Mex, a Class II rail carrier. KCS' application for authority to control Tex Mex is pending before the Board in Finance Docket No. 34342, Kansas City Southern – Control – The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company ("the control case"). A copy of the Voting Trust Agreement is attached hereto as Exhibit A. We understand that a copy of the Voting Trust Agreement was also filed with the Board as Exhibit 2A to the Application in the control case.

In Paragraph 8 of the Voting Trust Agreement, KCS reserved the right at any time to sell or make any other disposition of the whole or any part of the Trust Stock (the Mexrail shares held by the Trustee in trust) whether or not control, or a merger or other business combination, of KCS and Tex Mex is authorized or exempted by the STB. In such event, the Trustee is required by Paragraph 8 to "take all actions reasonably requested by KCS, including, without limitation, exercising all voting rights in respect of Trust Stock in favor of any proposal or action necessary or desirable to effect, or consistent with the effectuation of, or with respect to, any proposal sale or other disposition of the whole or any part of the Trust Stock by KCS that is otherwise permitted pursuant to this Paragraph 8 or the Stock Purchase Agreement." Paragraph 8 also provides that "it is the intention of this Paragraph that no violation of 49 U.S.C. § 11323 will result from a termination of this Trust." Paragraph 16 of the Voting Trust

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Agreement provides that an order of the Board finding that compliance with law requires action by the Trustee other than as provided in the Voting Trust Agreement, overrides the provisions of the Voting Trust Agreement.

On August 27, 2003, the Trustee received a letter from Mr. Jose F. Seranno Segovia ("Mr. Seranno"), Chairman of TFM, advising the Trustee that TFM had exercised its right to repurchase the shares held in the Mexrail Trust. Attached to Mr. Seranno's letter was a copy of a letter of the same date from Mr. Seranno to Mr. Michael Haverty of KCS advising KCS that TFM was exercising its right to repurchase from KCS the 51% of the stock of Mexrail TFM had sold to KCS on May 9, 2003, and directing KCS to deliver the stock certificates to TFM or a certificate certifying that KCS had given the Trustee "irrevocable instructions" to deliver to TFM stock certificates representing the shares to be transferred to TFM. Mr. Seranno's letter indicated that the repurchase of the shares would take place on September 4, 2003. A copy of Mr. Seranno's letter to the Trustee and the accompanying letter from Mr. Seranno to Mr. Haverty is attached hereto as Exhibit B.

On August 29, 2003, the Trustee wrote to Mr. Seranno acknowledging receipt of his letter and advising him that the Trustee was prepared to take all actions as are required of the Trustee under Paragraph 8 of the Voting Trust Agreement and permitted by law, but that the Trustee had not received any request from KCS pursuant to Paragraph 8 to take any action. The Trustee also advised Mr. Seranno that, on advice of counsel, he would take no action to facilitate any disposition of Trust Stock until the STB had issued such authority, direction or guidance as the Board deemed appropriate pursuant to the Board's oversight authority over dispositions of trust stock. A copy of Mr. Power's letter is attached hereto as Exhibit C.

On September 3, 2003, the Trustee received a letter from Mr. Ronald G. Russ, Executive Vice President and Chief Financial Officer of KCS, "directing" the Trustee, following receipt of any appropriate guidance from the Board and receipt of payment for the shares, to deliver to TFM the stock certificates representing the shares held in the Mexrail Trust. Mr. Russ indicated that KCS' instructions to the Trustee to transfer the shares to TFM are "irrevocable." A copy of Mr. Russ' letter to the Trustee is attached hereto as Exhibit D.

Where the parties to a proposed rail consolidation transaction have chosen to use a voting trust pending receipt of STB approval of the transaction, the Board and its predecessor, the Interstate Commerce Commission, have consistently asserted that it has authority to oversee any divestiture or disposition of stock out of the voting trust, whenever such disposition may occur and whether or not the person acquiring the stock would otherwise require authority under 49 U.S.C. § 11323 to consummate such acquisition. Such power has been held to be inherently within the agency's authority to approve consolidations and acquisitions of control. The terms of

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the voting trust do not override the agency's jurisdiction to oversee the divestiture of stock from the trust. Santa Fe Southern Pacific Corp – Control – SPT Co., 2 I.C.C.2d 709, 834 (1986).

In ruling on certain issues relating to a voting trust arrangement proposed by the Union Pacific Railroad Company ("UP") in connection with UP's efforts to acquire control of The Atchison, Topeka & Santa Fe Railway Company, the ICC stated:

We will require Union Pacific to specify in the voting trust agreement that the Commission will have authority to approve both a plan of divestiture and the sale (or other disposition) of the trust stock, whether or not the purchaser requires section 11343 authority from us to acquire that stock and whenever such divestiture and sale take place.

Union Pacific Corporation, et al. – Request for Informal Opinion – Voting Trust Agreement, Finance Docket No. 32619 (STB served December 20, 1994) at 6.

Similarly, in connection with voting trust arrangements proposed by Norfolk Southern Corporation ("NS") and CSX Corporation ("CSX") in connection with their respective competing plans to acquire control of Consolidated Rail Corporation, the Secretary of the Board, in reviewing the proposed voting trust agreements proposed by NS and CSX, interpreted provisions of the agreements making any disposition of stock from the trust subject to the jurisdiction of the Board as "an acknowledgement" by the parties that "if the Tender Offer succeeds but the . . . transaction ultimately collapses, the Board will have the authority to approve both a plan of divestiture and the sale (or other disposition) of the Trust Stock, whenever such divestiture and disposition take place, and whether or not the person acquiring the Trust Stock requires section 11323 authority to consummate such acquisition." Norfolk Southern Corporation and Norfolk Southern Railway – Control and Merger – Conrail, Inc. and Consolidated Rail Corporation, Finance Docket No. 33286 (letter dated November 1, 1996); see also CSX Corporation and CSX Transportation, Inc. – Control and Merger – Conrail, Inc. and Consolidated Rail Corporation, Finance Docket No. 33220 (letter dated November 1, 1996). The Voting Trust Agreement for the Mexrail Trust contains provisions similar to those contained in the voting trust agreements in the Conrail case.

In reviewing the proposed voting trust agreement in connection with the proposed acquisition of control of Iowa, Chicago & Eastern Railroad Corporation by the Dakota, Minnesota & Eastern Railroad Corporation, the Secretary of the Board stated:

If, for whatever reason, the IC&E control transaction should ultimately collapse, the Board would have the authority to review

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both a plan of divestiture and the sale (or other disposition) of the IC&E stock, whenever such divestiture and disposition take place, and whether or not the person acquiring the IC&E stock would otherwise require authority under 49 U.S.C. 11323 to consummate such acquisition. See Santa Fe Southern Pacific Corp. – Control – SPT Co., 2 I.C.C.2d 709, 834 (1986) (the jurisdiction of the Interstate Commerce Commission "to oversee the orderly divestiture" of the trust stock is "inherently within [its] authority to approve consolidations and acquisitions of control.").

Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. – Control – Iowa, Chicago & Eastern Railroad Corporation, Finance Docket No. 34178 (letter dated July 22, 2002).

Pursuant to the Board's asserted oversight authority over the disposition of stock from a voting trust, the Trustee respectfully requests that the Board provide such authority, direction or guidance as the Board deems appropriate with respect to the proposed repurchase of Trust Stock by TFM described above.

Respectfully submitted,



William C. Sippel
Attorney for Thomas F. Power, Jr., Trustee

WCS/pj

Enclosures

Cc: Richard A. Allen, Esq.
William A. Mullins, Esq.

VOTING TRUST AGREEMENT

THIS VOTING TRUST AGREEMENT, dated as of May 9th, 2003, by and between Kansas City Southern ("KCS"), a Delaware corporation and non-carrier holding company, and Thomas F. Power, Jr. (the "Trustee").

WITNESSETH:

WHEREAS, KCS intends to purchase 51 percent of the shares of the common stock and has an option to purchase the remaining 49 percent of the common stock of Mexrail, Inc., a Delaware corporation (the "Company") from TFM, S.A. de C.V., a Mexican corporation ("TFM") as set forth in a Stock Purchase Agreement by and among Grupo TMM, S.A., a Mexican corporation ("TMM"), TFM, and KCS dated April 20, 2003 ("Stock Purchase Agreement") (the common stock of the Company will be known as the "Shares"); and

WHEREAS, TFM acquired 100 percent of the Shares pursuant to an agreement dated February 27, 2002 entered into by and among TFM, TMM Multimodal, S.A. de C.V., a Mexican corporation ("Multimodal"), TMM, KCS, and its wholly-owned subsidiary, The Kansas City Southern Railway Company, a Missouri corporation ("KCSR"); and

WHEREAS, the Texas Mexican Railway Company, a Texas corporation, ("Tex Mex") is a Class II rail carrier as defined by the rules of the Surface Transportation Board (the "STB") and is a wholly owned subsidiary of the Company; and

WHEREAS, acquisition of 51 percent of the Shares by KCS would enable KCS to control three rail carriers subject to the jurisdiction of the STB (Tex Mex, KCSR, and Gateway Eastern Railway Company) and KCS therefore intends to file an application with the STB (the "Application") seeking approval of the STB for the acquisition of control of Tex Mex by KCS and entities affiliated with KCS; and

EXHIBIT A

WHEREAS, KCS wishes to deposit any acquired Shares in an independent, irrevocable voting trust, pursuant to the rules of the STB in order to avoid any allegation or assertion that KCS is controlling or has the power to control Tex Mex prior to the receipt of any required STB approval; and

WHEREAS, the Trustee is not an officer or board member of KCS or any of its affiliates, and does not have any direct or indirect business arrangements or dealings (as described in Paragraph 9 hereof) with KCS or any of its affiliates; and

WHEREAS, the Trustee is willing to act as voting trustee pursuant to the terms of this Voting Trust Agreement and the rules of the STB;

NOW THEREFORE, the parties hereto agree as follows:

1. **Creation of Trust.** KCS hereby appoints Thomas F. Power, Jr. as Trustee hereunder, and Thomas F. Power, Jr. hereby accepts said appointment and agrees to act as Trustee under this Voting Trust Agreement as provided herein.
2. **Trust Is Irrevocable.** This Voting Trust Agreement and the nomination of the Trustee during the term of the Trust shall be irrevocable by KCS and its affiliates and shall terminate only in accordance with the provisions of Paragraphs 8 and 14 hereof.
3. **Deposit of Trust Stock.** KCS agrees that immediately upon acquiring any Shares, KCS will transfer all its right, title and interest in those Shares to the Trustee along with all certificates representing such Shares. All such certificates shall be duly endorsed or accompanied by proper instruments duly executed for transfer thereof to the Trustee or otherwise validly and properly transferred, and shall be exchanged for one or more Voting Trust Certificates substantially in the form attached hereto as Exhibit A (the "Trust Certificates"), with the blanks therein appropriately filled in. All Shares delivered to the Trustee hereunder are called the "Trust Stock."

4. **Powers of Trustee.** The Trustee shall be present, in person or represented by proxy, at all annual and special meetings of shareholders of the Company so that all Trust Stock may be counted for the purposes of determining the presence of a quorum at such meetings. The Trustee shall be entitled and it shall be the Trustee's duty to exercise any and all voting rights in respect of the Trust Stock either in person or by proxy or consent, as hereinafter provided, unless otherwise directed by an order of the STB or a court of competent jurisdiction. The Trustee acknowledges that the Trustee shall not participate in or interfere with the management of the Company except in accordance with the terms hereof, the terms of the Stock Purchase Agreement, or any precedents or orders of the STB. The Trustee shall exercise all voting rights in respect of the Trust Stock in favor of any proposal or action necessary or desirable to effect, or consistent with the effectuation of, KCS's acquisition of control of the Company, including its wholly owned subsidiary, Tex Mex. In addition, the Trustee shall exercise all voting rights in respect of the Trust Stock in favor of any proposal or action necessary or desirable to dispose of Trust Stock in accordance with Paragraph 8 hereof. In exercising the Trustee's voting rights in respect to the Trust Stock, the Trustee shall vote in accordance with, and to maintain in effect, the terms of the Stock Purchase Agreement, including, but not limited to, the following: The Trustee shall not sell, lease, assign, transfer, alienate, pledge, encumber or hypothecate the stock or major assets of either or both of the Company and Tex Mex or any right or interest therein, whether voluntarily or by operation of law or by gift or otherwise, nor cause the Company or Tex Mex to merge or consolidate with or into any other entity, without the prior written authorization of KCS. The Trustee shall vote the Trust Stock in the Trustee's sole discretion, having due regard for the Stock Purchase Agreement, the interests of the holders of the Trust Certificates, and the interests of the minority shareholders in the Company as investors in the Company, determined without reference to such holders' interests in railroads other than the Company or its

subsidiaries. The Trustee shall not, without the prior approval of the STB, vote the Trust Stock to elect any current officer or director of TMM, TFM, KCS, or any of their affiliates as a director of the Company or Tex Mex.

5. **Further Provisions Concerning Voting of Trust Stock.** The Trustee shall be entitled and it shall be the Trustee's duty to exercise any and all voting rights in respect of the Trust Stock either in person or by proxy or consent, as hereinafter provided, unless otherwise directed by an order of the STB or a court of competent jurisdiction. The Trustee shall not be liable for any mistakes of fact or law or any error of judgment, or for any act or omission, except as a result of the Trustee's willful misconduct or gross negligence.

6. **Transfer of Trust Certificates.** All Trust Certificates shall be transferable on the books of the Trustee by the registered holder upon the surrender thereof properly assigned, in accordance with rules from time to time established for the purpose by the Trustee. Until so transferred, the Trustee may treat the registered holder as owner for all purposes. Each transferee of a Trust Certificate issued hereunder shall, by his acceptance thereof, assent to and become parties to this Voting Trust Agreement, and shall assume all attendant rights and obligations.

7. **Dividends and Distributions.** Pending the termination of this Trust as hereinafter provided, the Trustee shall, immediately following the receipt of each cash dividend or cash distribution as may be declared and paid upon the Trust Stock, pay the same over to or as otherwise directed by the registered holders of the Trust Certificates in proportion to their respective interests. The Trustee shall receive and hold dividends and distributions other than cash upon the same terms and conditions as the Trust Stock and shall issue Trust Certificates representing any new or additional securities that may be paid as dividends or otherwise

distributed upon the Trust Stock to the registered holders of Trust Certificates in proportion to their respective interests.

8. **Disposition of Trust Stock; Termination of Trust.** (a) This Trust is accepted by the Trustee subject to the right hereby reserved in KCS at any time to sell or make any other disposition of the whole or any part of the Trust Stock, whether or not an event described in subparagraph (b) below has occurred. The Trustee shall take all actions reasonably requested by KCS, including, without limitation, exercising all voting rights in respect of Trust Stock in favor of any proposal or action necessary or desirable to effect, or consistent with the effectuation of, or with respect to, any proposed sale or other disposition of the whole or any part of the Trust Stock by KCS that is otherwise permitted pursuant to this Paragraph 8 or the Stock Purchase Agreement. This Voting Trust Agreement is not intended to alter the terms of any other agreement that may restrict or condition the right of KCS to sell its interests in the Company or Tex Mex. In the event of a permitted sale of Trust Stock by KCS, the Trustee shall, to the extent the consideration therefor is payable to or controllable by the Trustee, promptly pay, or cause to be paid, upon the order of KCS the net proceeds of such sale to the registered holders of the Trust Certificates in proportion to their respective interests. It is the intention of this Paragraph that no violation of 49 U.S.C. Section 11323 will result from a termination of this Trust.

(b) In the event the STB by final order shall (i) approve or exempt the acquisition of control of Tex Mex by KCS or any of its affiliates; or (ii) approve or exempt a merger or similar business combination between Tex Mex and KCS or any of its affiliates, then immediately upon the direction of KCS and the delivery to the Trustee of a certified copy of such order of the STB or other governmental authority with respect thereof, (or, in the event that Subtitle IV of Title 49 of the United States Code or other controlling law is amended to allow KCS or any of its affiliates to acquire control of Tex Mex without obtaining STB or other governmental approval,

upon delivery of an opinion of independent counsel selected by the Trustee that no order of the STB or other governmental authority is required), the Trustee shall either (x) transfer upon the order of KCS to the registered holders of the Trust Certificates in proportion to their respective interests, the Trustee's right, title and interest in and to all of the Trust Stock then held by the Trustee in accordance with the terms, conditions and agreements of this Voting Trust Agreement and not theretofore transferred by the Trustee as provided in subparagraph (a) hereof, or (y) if shareholder approval has not previously been obtained, vote the Trust Stock with respect to any such merger or similar business combination between Tex Mex and KCS or any of its affiliates as directed by the holder or holders of a majority in interest of the Trust Certificates, and upon any such transfer, merger or similar business combination this Trust shall cease and come to an end.

(c) In the event that the STB issues an order denying, or approving subject to conditions unacceptable to KCS, any application or petition by KCS or its affiliates to acquire, merge with or otherwise exercise control over Tex Mex or the surviving corporation in a merger, and such order becomes final after judicial review or failure to appeal, KCS shall use its best efforts to sell, distribute or otherwise dispose of the Trust Stock's interest in Tex Mex to one or more eligible purchasers, during a period of two years after such order becomes final after judicial review or failure to appeal, and subject to any jurisdiction of the STB to oversee KCS's divestiture of the Trust Stock's interest in Tex Mex, and then the Trustee shall transfer the Trust Stock to KCS for subsequent disposition to one or more eligible purchasers. At all times, the Trustee shall continue to perform the Trustee's duties under this Voting Trust Agreement and, should KCS be unsuccessful in its efforts to sell or distribute the Trust Stock's interest in Tex Mex during the period referred to, the Trustee shall then as soon as practicable sell the Trust Stock's interest in Tex Mex for cash or other consideration to eligible purchasers in such manner

and for such price as the Trustee in the Trustee's discretion shall deem reasonable after consultation with KCS or its affiliates. (An "eligible purchaser" hereunder shall be a person or entity that is not affiliated with KCS or its affiliates and which has all necessary regulatory authority, if any, to purchase the Trust Stock's interest in Tex Mex.) After disposition of the Trust Stock's interest in Tex Mex, the Trustee shall then transfer the Trust Stock to KCS. KCS agrees to cooperate with the Trustee in effecting such disposition and the Trustee agrees to act in accordance with any direction made by KCS or its affiliates as to any specific terms or method of disposition, to the extent not inconsistent with any of the terms of this Voting Trust Agreement or of any STB or court order. The proceeds of the sale shall be distributed upon the order of KCS to the registered holders of the Trust Certificates in proportion to their respective interests. The Trustee may, in the Trustee's reasonable discretion, require the surrender to the Trustee of the Trust Certificates hereunder before paying to the holder his share of the proceeds. Upon disposition of all the Trust Stock pursuant to this paragraph 8(c), this Trust shall cease and come to an end.

(d) Unless sooner terminated pursuant to any other provision of this Voting Trust Agreement or by order or direction of the STB, this Voting Trust Agreement shall terminate on December 31, 2005, but may be extended by the parties hereto, so long as no violation of 49 U.S.C. Section 11323 will result from such termination or extension. All Trust Stock and any other property held by the Trustee hereunder upon such termination shall be distributed upon the order of KCS to the registered holders of the Trust Certificates in proportion to their respective interests. The Trustee may, in the Trustee's reasonable discretion, require the surrender to the Trustee of the Trust Certificates hereunder before the release or transfer of the stock interests evidenced thereby.

(e) The Trustee shall promptly inform the STB of any transfer or disposition of Trust Stock pursuant to this Paragraph 8.

(f) Except as expressly provided in this Paragraph 8, the Trustee shall not dispose of, or in any way encumber, the Trust Stock, and any transfer, sale or encumbrance in violation of the foregoing shall be null and void.

9. **Independence of the Trustee.** The Trustee shall not (i) serve as an officer or member of the board of directors of KCS or any affiliate of KCS, or (ii) have any direct or indirect business arrangements or dealings, financial or otherwise with KCS or any affiliate of KCS, other than dealings pertaining to the establishment and carrying out of this Trust. Mere investment in the stock or securities of KCS or any affiliate of KCS by the Trustee, short of obtaining a controlling interest, will not be considered a proscribed business arrangement or dealing, but in no event shall any such investment by the Trustee in voting securities of KCS or its affiliates exceed five percent of their outstanding voting securities and in no event shall the Trustee hold a proportion of such voting securities so substantial as to permit the Trustee in any way to control or direct the affairs of KCS or its affiliates.

10. **Compensation of the Trustee.** The Trustee shall be entitled to receive reasonable and customary compensation for all services rendered hereunder as Trustee and said compensation to the Trustee, together with all counsel fees, taxes, or other expenses reasonably incurred hereunder, shall be promptly paid by KCS.

11. **Trustee May Act Through Agents.** The Trustee may at any time or from time to time appoint an agent or agents and may delegate to such agent or agents the performance of any administrative duty of the Trustee.

12. **Concerning the Responsibilities and Indemnification of the Trustee.** The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed

by it in pursuance hereof if such agent or attorney has been selected with reasonable care. The duties and responsibilities of the Trustee shall be limited to those expressly set forth in this Voting Trust Agreement. The Trustee shall not be responsible for the sufficiency or the accuracy of the form, execution, validity or genuineness of the Trust Stock, or of any documents relating thereto, or for any endorsement thereon or lack of any endorsement thereon, or for any description therein, nor shall the Trustee be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such Trust Stock or document or endorsement or this Voting Trust Agreement, except for the execution and delivery of this Voting Trust Agreement by this Trustee. KCS agrees that it will at all times protect, indemnify and save harmless the Trustee from any loss, cost or expense of any kind or character whatsoever incurred by the Trustee in connection with this Trust except those, if any, growing out of the gross negligence or willful misconduct of the Trustee, and will at all times itself undertake, assume full responsibility for, and pay all costs and expense of, any suit or litigation of any character, including any proceedings before the STB, with respect to the Trust Stock or this Voting Trust Agreement, and if the Trustee shall be made a party thereto, KCS will pay all costs and expenses, including reasonable counsel fees, to which the Trustee may be subject by reason thereof; provided, however, that KCS shall not be responsible for the cost and expense of any suit that the Trustee shall settle without first obtaining KCS's written consent. The indemnification obligations of KCS shall survive any termination of this Voting Trust Agreement or the removal, resignation, or other replacement of the Trustee. The Trustee may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted or suffered by the Trustee hereunder in good faith and in accordance with such opinion.

13. **Trustee to Give Account to Holders.** To the extent requested to do so by KCS or any registered holder of a Trust Certificate, the Trustee shall furnish to the party making such request full information with respect to (i) all property theretofore delivered to the Trustee, (ii) all property then held by the Trustee, and (iii) all actions theretofore taken by the Trustee.

14. **Resignation, Succession, Disqualification of Trustee.** The Trustee, or any trustee hereafter appointed, may at any time resign by giving sixty days' written notice of resignation to KCS and the STB. KCS shall, at least fifteen days prior to the effective date of such notice, appoint a successor trustee which shall (i) satisfy the requirements of Paragraph 9 hereof and (ii) be an individual or a corporation organized and doing business under the laws of the United States or of any State thereof and authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal or state authority. If no successor trustee shall have been appointed and shall have accepted appointment at least fifteen days prior to the effective date of such notice of resignation, the resigning Trustee may petition any competent authority or court of competent jurisdiction for the appointment of a successor trustee. Upon written assumption by the successor trustee of the Trustee's powers and duties hereunder, a copy of the instrument of assumption shall be delivered by the Trustee to KCS, the STB, and all registered holders of Trust Certificates, whereupon the Trustee shall be discharged of the powers and duties of the Trustee hereunder and the successor trustee shall become vested with such powers and duties. In the event of any material violation by the Trustee of the terms and conditions of this Voting Trust Agreement, the Trustee shall become disqualified from acting as trustee hereunder as soon as a successor trustee shall have been selected in the manner provided by this paragraph.

15. **Amendment.** Subject to the requirements of the Stock Purchase Agreement, this Voting Trust Agreement may from time to time be modified or amended by agreement executed

by the Trustee, KCS and all registered holders of the Trust Certificates (i) pursuant to an order of the STB, (ii) with the prior approval of the STB, (iii) in order to comply with any order of the STB or (iv) upon receipt of an opinion of counsel satisfactory to the Trustee and the registered holders of Trust Certificates that an order of the STB approving such modification or amendment is not required and that the amendment is consistent with the STB's regulations regarding voting trusts.

16. **Governing Law; Powers of the STB.** The provisions of this Voting Trust Agreement and of the rights and obligations of the parties hereunder shall be governed by the laws of the State of Missouri, except that to the extent any provision hereof may be found inconsistent with Subtitle IV, Title 49, United States Code or regulations promulgated thereunder, such statute and regulations shall control and such provision hereof shall be given effect only to the extent permitted by such statute and regulations. In the event that the STB shall, at any time hereafter by final order, find that compliance with law requires any other or different action by the Trustee than is provided herein, the Trustee shall act in accordance with such final order instead of the provisions of this Voting Trust Agreement.

17. **Counterparts.** This Voting Trust Agreement may be executed in counterparts, each of which shall constitute an original, and one of which shall be held by KCS and two shall be held by the Trustee, one of which shall be subject to inspection by holders of Trust Certificates on reasonable notice during business hours.

18. **Filing With the STB.** A copy of this Voting Trust Agreement and any amendments or modifications thereto shall be filed with the STB by KCS or its affiliates.

19. **Successors and Assigns.** This Voting Trust Agreement shall be binding upon the successors and assigns to the parties hereto, including without limitation successors to KCS by merger, consolidation or otherwise.

20. **Succession of Functions.** The term "STB" includes any successor agency or governmental department that is authorized to carry out the responsibilities now carried out by the STB with respect to the consideration of the consistency with the public interest of rail mergers and combinations, the regulation of voting trusts in respect of the acquisition of securities of rail carriers or companies controlling them, and the exemption of approved rail mergers and combinations from the antitrust laws.

21. **Notices.** Any notice which any party hereto may give to the other hereunder shall be in writing and shall be given by hand delivery, or by first class registered mail, or by overnight courier service, or by facsimile transmission confirmed by one of the aforesaid methods, sent,

If to KCS, to

Ronald G. Russ
Chief Financial Officer
Kansas City Southern
427 West 12th Street
Kansas City, MO 64105
Mail: P.O. Box 219335
Kansas City, MO 64121-9335
(816) 983-1702 (Phone)
(816) 983-1297 (Fax)

If to the Trustee, to

Thomas F. Power, Jr.
1340 Greenbrier Road
Green Oaks, IL 60048
847-549-9175 (Phone)
847-549-9178 (Fax)
and

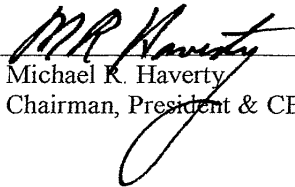
Thomas F. Power, Jr.
P.O. Box 211
3190 Kentuck Lake Road
Phelps, WI 54554
715-545-3807 (Phone)
715-545-3355 (Fax)

And if to the holders of Trust Certificates, to them at their addresses as shown on the records maintained by the Trustee. The date on which such notice is mailed shall be the date such notice is deemed given for all purposes.

22. **Remedies.** Each of the parties hereto acknowledges and agrees that in the event of any breach of this Voting Trust Agreement, each non-breaching party would be irreparably and immediately harmed and could not be made whole by monetary damages. It is accordingly agreed that the parties hereto (a) will waive, in any action for specific performance, the defense of adequacy of a remedy at law and (b) shall be entitled, in addition to any other remedy to which they may be entitled at law or in equity, to an order compelling specific performance of this Voting Trust Agreement in any action instituted in any state or federal court sitting in Kansas City, Missouri. Each party hereto consents to personal jurisdiction in any such action brought in any state or federal court sitting in Kansas City, Missouri.

IN WITNESS WHEREOF, KCS has caused this Voting Trust Agreement to be executed by its authorized officer, and the Trustee has executed this Voting Trust Agreement, all as of the day and year first above written.

KANSAS CITY SOUTHERN

By. 
Michael R. Haverty
Chairman, President & CEO

TRUSTEE

By. _____

Name: Thomas F. Power, Jr.

IN WITNESS WHEREOF, KCS has caused this Voting Trust Agreement to be executed by its authorized officer, and the Trustee has executed this Voting Trust Agreement, all as of the day and year first above written.

KANSAS CITY SOUTHERN

By. _____

Title: _____

TRUSTEE

By. Thomas F. Power, Jr.

Name: Thomas F. Power, Jr.

EXHIBIT A

No. 1

5100 Shares

VOTING TRUST CERTIFICATE

FOR

COMMON STOCK OF

MEXRAIL, INC

THIS IS TO CERTIFY that Kansas City Southern will be entitled, on the surrender of this Certificate, to receive on the termination of the Voting Trust Agreement ("Voting Trust") hereinafter referred to, or otherwise as provided in Paragraph 8 of the Voting Trust, all right, title and interest in a certificate or certificates for 5100 shares of the Common Stock, no par value, of Mexrail, Inc., a Delaware corporation (the "Company"). This certificate is issued pursuant to a Voting Trust dated as of May 9th, 2003, by and between KCS, a Delaware corporation, and Thomas F. Power, Jr. (the "Trustee"). A copy of the Voting Trust is on file in the office of the Trustee at 1340 Greenbrier Road, Green Oaks, Illinois 60048, and open to inspection by the holder hereof on reasonable notice during normal business hours. The Voting Trust, unless earlier terminated pursuant to the terms thereof, will terminate on December 31, 2005, so long as no violation of 49 U.S.C. § 11323 will result from such termination.

The holder of this Certificate shall be entitled to the benefits of the Voting Trust, including the right to receive payment equal to the cash dividends, if any, paid by the Company with respect to the number of shares represented by this Certificate.

This Certificate shall be transferable only on the books of the undersigned Trustee or any successor, to be kept by such Trustee or successor, upon surrender hereof by the registered holder in person or by an attorney duly authorized in accordance with the provisions of the Voting Trust, and until so transferred, the Trustee may treat the registered holder as the owner of

this Voting Trust Certificate for all purposes whatsoever, unaffected by any notice to the contrary.

By accepting this Certificate, the holder hereof assents to all the provisions of, and becomes a party to, the Voting Trust.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by its officer duly authorized.

Signature: _____

Printed Name: Thomas F. Power, Jr.

Dated: May 9, 2003



TRANSPORTACION
FERROVIARIA
MEXICANA

August 27, 2003

VIA TELEFAX

Thomas F. Power, Jr.
1340 Greenbrier Road
Green Oaks, IL 60048

Thomas F. Power, Jr.
P.O. Box 211
3190 Kentuck Lake Road
Phelps, WI 54554

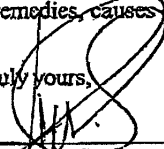
Re: *Your Duties as Trustee in Connection with TFM's Exercise of the Mexrail Repurchase Right*

Dear Mr. Power:

Reference is made to that certain Voting Trust Agreement (the "Voting Trust Agreement"), dated as of May 9, 2003, between you and Kansas City Southern ("KCS"). You serve as trustee ("Trustee") under the Voting Trust Agreement. Reference is further made to that certain Stock Purchase Agreement (the "Stock Purchase Agreement"), dated as of April 15, 2003, by and among KCS, Grupo TMM, S.A., and TFM, S.A. de C.V. ("TFM"). You have assumed certain duties in connection with your role as Trustee under the Voting Trust Agreement and the Stock Purchase Agreement. Among these duties is your obligation to, upon learning that TFM intends to repurchase the shares of Mexrail, Inc. that you presently hold in trust (the "Shares"), facilitate such repurchase. Please be advised that TFM exercised its right to repurchase the Share. Kindly consult the enclosed letter from TFM to KCS, dated August 27, 2003, for further information concerning this impending transaction and your duties, as Trustee, in relation to it.

Other than as explicitly provided, nothing contained herein shall constitute a waiver or relinquishment of any of TFM's rights, remedies, causes of action and/or defenses in connection with the foregoing. On the contrary, TFM expressly reserves all rights, remedies, causes of action and defenses.

Very truly yours,


Name: José R. Serrano Segovia
Title: Chairman

cc: Michael Haverly
Ronald G. Russ
John Marvin
Thomas C. Janson
Michael Diamond
Romualdo Segovia

TFM, S.A. DE C.V.

Av. Periférico Sur 4829, 4° Piso, Col. Parques del Pedregal C.P. 14010,
Delegación Tlalpan, México, D.F., Tel.: (5) 447 5836 Fax: (5) 447 5830

Av. Manuel L. Barragán 4850 Norte, Col. Hidalgo C.P. 64281 Monterrey, N.L.
Tel. Conmutador (8) 305 7900, 305 7836

EXHIBIT B



**TRANSPORTACION
FERROVIARIA
MEXICANA**

August 27, 2003

VIA TELEFAX

Michael Haverty
Kansas City Southern
P.O. Box 219335
Kansas City, Missouri 64105

Re: Exercise of the Mexrail Repurchase Right

Dear Mr. Haverty:

Reference is made to that certain Stock Purchase Agreement (the "Stock Purchase Agreement"), dated as of April 15, 2003, by and among Kansas City Southern ("KCS"), a Delaware corporation, on the one hand, and Grupo TMM, S.A. ("TMM"), a *sociedad anónima* organized under the laws of the United Mexican States ("UMS"), and TFM, S.A. de C.V. ("TFM"), a *sociedad anónima de capital variable* organized under the laws of the UMS, on the other hand. This letter will serve to notify you that, as of the date hereof, TFM hereby exercises its right to repurchase from KCS (the "Repurchase") 51% of the capital stock (the "Transferred Shares") of Mexrail, Inc. ("Mexrail"), a Delaware corporation, pursuant to Article VII of the Stock Purchase Agreement.

Pursuant to Section 7.1 (a) of the Stock Purchase Agreement, please be advised that the Repurchase shall close (the "Repurchase Closing") on Thursday September 4, 2003, the fifth business day following your receipt of this notice. The Repurchase Closing shall take place at 12:00 P.M. at the offices of Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York, 10005, if KCS so agrees in writing. TFM shall pay to KCS \$32,680,000 in consideration of the Repurchase. Unless otherwise instructed by KCS, TFM shall make such payment by wire transfer as follows:

Bank: UMB Bank NA (Formerly: United Missouri Bank)
Beneficiary: Kansas City Southern Railway
Account: 980 104 9135
ABA: 101 000 695

At the Repurchase Closing, in addition to such other requirements as are set out in the Stock Purchase Agreement, KCS shall deliver to TFM stock certificates representing the Transferred Shares endorsed in blank or accompanied by duly executed assignment documents or, if the Transferred Shares are being held by Thomas F. Power Jr. (the

TFM, S.A. de C.V.

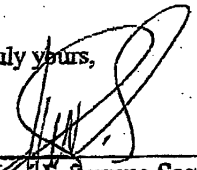
Av. Periférico Sur 4829, 4° Piso, Col. Parques del Pedregal C.P. 14010,
Delegación Tlalpan, México, D.F., Tel. (55) 5447 5836 Fax (55) 5447 5830

Av. Manuel Barragán 4850 Norte, Col. Hidalgo C.P. 64290 Monterrey, N.L.
Tel. Conmutador (81) 8305 7900, 8305 7836

"Trustee") pursuant to that certain Voting Trust Agreement, dated as of May 9, 2003, between KCS and Trustee, KCS shall deliver to TFM a certificate certifying that KCS has given Trustee irrevocable instructions to deliver to TFM stock certificates representing the Transferred Shares endorsed in blank or accompanied by duly executed assignment documents. Upon the occurrence of the Repurchase, the Stock Purchase Agreement shall automatically terminate and be of no further force or effect, as specified in Section 7.1 (c) of the Stock Purchase Agreement.

Other than as explicitly provided, nothing contained herein shall constitute a waiver or relinquishment of any of TFM's rights, remedies, causes of action and/or defenses in connection with the foregoing. On the contrary, TFM expressly reserves all rights, remedies, causes of action and defenses.

Very truly yours,



Name: Jose F. Serrano Segovia
Title: Chairman

cc: John Marvin
Ronald G. Russ
Thomas C. Janson
Michael Diamond
Romualdo Segovia

Thomas F. Power, Jr.
1340 Greenbrier Road
Green Oaks, Illinois 60048
847/549-9175

August 29, 2003

VIA FACSIMILE

Mr. Jose F. Serrano Segovia
Chairman
Transportacion Ferroviaria Mexicana
Av, Periferico Sur 4829
4° Piso, Col. Parques del Pedregal C.P. 14010
Delegacion Tlalpan, Mexico, D.F.

Re: **Proposed Disposition of Trust Stock**

Dear Mr. Serrano:

I am in receipt of your letter dated August 27, 2003 in which you advised me that TFM, S.A. de C.V. ("TFM") has notified Kansas City Southern ("KCS") that TFM intends to "repurchase" the shares of Mexrail, Inc. ("Mexrail") it sold to KCS last May. As you know, those shares ("the Trust Stock") are currently held by me as Trustee under an independent voting trust, pending receipt of authority from the Surface Transportation Board ("STB") for KCS to control, through Mexrail, Mexrail's subsidiary The Texas Mexican Railway Company ("Tex Mex").

Dispositions of Trust Stock during the pendency of the trust are governed by the terms of the Voting Trust Agreement dated May 9, 2003 ("the Trust Agreement") under which the Trust Stock is held. Paragraph 8(a) of the Trust Agreement governs dispositions of Trust Stock other than in connection with the common control, merger or other business combination of Tex Mex and KCS. That Paragraph requires that the Trustee "take all actions reasonably requested by KCS, including, without limitation, exercising all voting rights in respect of Trust Stock in favor of any proposal or action necessary or desirable to effect, or consistent with the effectuation, or with respect to, any proposed sale or other disposition of the whole or any part of the Trust Stock by KCS that is otherwise permitted pursuant to this Paragraph 8 or the Stock Purchase Agreement." Please be advised that I am prepared to take all such actions as are required of the Trustee under this Paragraph and permitted by law. However, to date, I have not received any request from KCS to take any action.

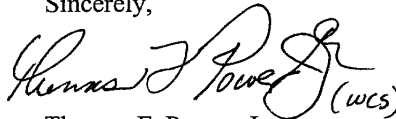
EXHIBIT C

Mr. Jose F. Serrano Segovia
August 29, 2003
Page 2 of 2

Moreover, my counsel has advised me that the STB has consistently stated both formally and informally that any divestiture or disposition of stock held in a voting trust is subject to the oversight of the STB whenever such divestiture or disposition takes place, and whether or not the person acquiring the trust stock would otherwise require authority from the STB under 49 U.S.C. § 11323 to consummate such acquisition. Thus, it would appear that any divestiture or disposition of the Trust Stock here could only be carried out under the oversight of the STB. Accordingly, whether or not I receive a request from KCS pursuant to Paragraph 8(a) of the Trust Agreement, I would take no action to facilitate any such divestiture or disposition of Trust Stock until TFM or KCS obtained from the STB such authority, direction or guidance as the STB deems appropriate pursuant to its asserted oversight authority.

If you have any questions regarding my obligations in this regard, please have your counsel contact my counsel, Mr. William C. Sippel, at 312/252-1505.

Sincerely,



Thomas F. Power, Jr.
Trustee

TFP/pj

cc: Mr. Michael R. Haverty
William C. Sippel, Esq.

KANSAS CITY SOUTHERN

CATHEDRAL SQUARE • 427 WEST 12TH STREET • KANSAS CITY, MISSOURI 64105

RONALD G. RUSS
EXECUTIVE VICE PRESIDENT
AND CHIEF FINANCIAL OFFICER



September 3, 2003

Mr. Thomas F. Power, Jr.
1340 Greenbrier Road
Green Oaks, Illinois 60048

RE: Mexrail Shares Held in Independent Voting Trust

Dear Tom:

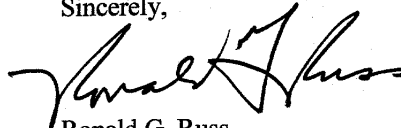
As you know, on August 27, 2003, Mr. Jose F. Serrano Segovia, acting in his capacity as Chairman of TFM S.A. de C.V. ("TFM"), sent a letter to both Mr. Haverty and you, as Trustee of 51% of the Mexrail shares currently deposited in the Mexrail voting trust. In his letters, Mr. Serrano invoked Article VII of the April 15, 2003 Mexrail Stock Purchase Agreement and requested that the Mexrail shares currently held in trust be returned to TFM at the Repurchase Closing consistent with provisions of Article VII. In the letter to Mr. Haverty, TFM requests that the repurchase of those shares take place on Thursday, September 4, 2003 at 12:00 p.m. at the offices of Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York, 10005. The time and place was subject to written agreement between KCS and TFM and cannot be mandated solely by TFM. KCS has not consented to the time and place suggested by Mr. Serrano. Nonetheless, this is to advise you that KCS intends to fully comply with the terms of the Mexrail Stock Purchase Agreement.

Having reviewed your August 29, 2003 letter to Mr. Serrano, KCS understands that is your position, as advised by your counsel, that you do not believe that you may sell the Transferred Shares (as that term is defined in the Mexrail Stock Purchase Agreement) back to TFM without proper oversight and/or approval of the Surface Transportation Board ("STB"). Pursuant to KCS's obligations under Article VII of the Mexrail Stock Purchase Agreement and consistent with Paragraph 8 of the Voting Trust Agreement dated May 9, 2003, KCS hereby directs you, following receipt of an appropriate STB order (if required) and receipt of funds called for under the Mexrail Stock Purchase Agreement (the repurchase price shall be for the sum of US\$32,680,000.00) to deliver to TFM at the Repurchase Closing stock certificates

EXHIBIT D

representing the Transferred Shares endorsed in blank or accompanied by duly executed assignment documents. These instructions are irrevocable. KCS will seek your guidance as to the appropriate time and place for the Repurchase Closing.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald G. Russ", written in a cursive style.

Ronald G. Russ
Executive Vice President and
Chief Financial Officer
Kansas City Southern

cc: Mr. Michael R. Haverty
Mr. Jose F. Serrano Segovia
Mr. Romualdo Segovia
John R. Marvin, Esq.
Thomas C. Janson, Esq.
William C. Sippel, Esq.
William A. Mullins, Esq.
Richard A. Allen, Esq.