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RICHARD A. ALLEN

208919

September 15, 2003

BY HAND

ENTERED
Office of Proceedings

SEP 15 2003

Part of
Public Record

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423

Re: *Kansas City Southern—The Kansas City Southern Ry. Co., Gateway Eastern Ry. Co., and The Texas Mexican Ry. Co., Finance Docket No. 34342*

Dear Secretary Williams:

I am writing on behalf of TFM, S.A. de C.V. ("TFM") pursuant to Decision No. 8 (served September 11, 2003) to comment briefly on the other comments filed on this matter to date, which have been filed by E.I. du Pont de Nemours and Company ("DuPont"), Kansas City Southern ("KCS"), Union Pacific Railroad Company ("UP"), Burlington Northern Santa Fe Railway Company ("BNSF"), Bartlett Grain Company, and the National Industrial Transportation League ("NITL").

The most noteworthy fact about these comments is that none of them oppose the retransfer of the 51% of Mexrail stock held in the voting trust back to TFM pursuant to TFM's exercise of its repurchase right, and none of them provide any reason for the Board not to inform the Trustee that he may transfer the shares.

BNSF, however, appears to ask the Board to impose a condition on the retransfer of the shares to TFM, namely that the Texas Mexican Railway Company ("Tex Mex") be required to maintain existing "rates and charges and services for BNSF's interline traffic across Tex Mex and to the International Bridge on an undiminished basis." Although the meaning of this request is not entirely clear, BNSF appears to seek an order freezing Tex Mex's rates on interline traffic and other commercial relationships with BNSF indefinitely, along the lines of the long-discredited *DT&I* conditions. Tex Mex and TFM value greatly their relationship with BNSF and have every reason to hope and expect that they will continue to maintain excellent relations with BNSF and their other interline connections. But there is no basis in law or fact for imposing any condition on a transaction that will merely restore the *status quo ante* (and thus, by definition, will not create any new competitive harm), much less for imposing

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conditions that would freeze existing rates and preclude Tex Mex from responding to changing market and economic conditions in the same way as every other railroad can, including BNSF.

NITL says that it takes no position on whether the Mexrail shares should be transferred to TFM, but urges the Board carefully to consider whether Mexrail's condition is at least as sound as it was before 51% of its stock was placed in the voting trust. In that regard, TFM believes there has been no material change in Mexrail's financial condition in the brief period it has been in the voting trust, and nothing has been presented to suggest otherwise. Furthermore, the Board and the ICC have recognized that the long-term health of railroads is generally promoted better when they are controlled by their owners than when they are controlled by voting trustees. *See, e.g., Santa Fe Southern Pac. Corp.—Control—Southern Pac. Transp. Co.*, 2 I.C.C.2d 709, 834-835 (1986). For that reason, consideration of Mexrail's financial condition should militate in favor of the return of Mexrail shares from the voting trust to TFM as soon as possible.

Bartlett Grain Company asks the Board to "develop a record that will allow you to evaluate" whether to permit the repurchase. TFM submits that the comment period established by the Board, which ends today, is fully sufficient for that purpose, and no further hearing or other action is needed in view of the fact that no party, including Bartlett Grain Company, opposes the repurchase or has provided any reason for further inquiry.

For the foregoing reasons and those stated in my letter of September 11, 2003, TFM respectfully requests that the Board inform the Trustee that there is no reason for the Trustee not to promptly transfer the Trust Stock to TFM, as KCS has irrevocably directed him to do.

Sincerely,



Richard A. Allen

cc:

William C. Sippel, Esq.

William A. Mullins, Esq.

All parties of record in Finance Docket 34342

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