

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

WASHINGTON
NEW YORK
SAN FRANCISCO
LONDON
BRUSSELS

DAVID L. MEYER
TEL 202.662.5582
FAX 202.778.5582
DMEYER@COV.COM



August 24, 2004

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

AUG 24 2004

Re: Finance Docket No. 34342, *Kansas City Southern – Control – The Kansas City Southern Ry., Gateway Eastern Ry. & The Texas Mexican Ry.*

Dear Secretary Williams:

Union Pacific Railroad Company ("UP") submits this letter in response to the Status Report filed on August 16, 2004, by Kansas City Southern ("KCS") in the above-captioned matter.

In its Status Report, KCS announces that it has entered into a new agreement to acquire control of The Texas Mexican Railway Company ("Tex Mex") from TFM, S.A. de C.V. ("TFM") through the purchase of 51% of the shares of Mexrail, Inc. ("Mexrail"). The Status Report reveals that KCS has already acquired the Mexrail shares and placed them into a voting trust.

The Status Report also reveals that KCS continues to pursue control of TFM. KCS had previously reported that the parties to KCS's agreement to acquire TFM had stipulated that they would "discharge in good faith all of the obligations" of that agreement and were in fact "acting in accordance with that statement." KCS Status Report, May 3, 2004.

KCS now asks the Board "to reinstitute the procedural schedule" in this matter and "to expeditiously move toward the issuance of a final decision." However, KCS also recognizes that the new developments may lead the Board to conclude that "the existing record does not warrant issuance of a final decision at this time." KCS states that it "does not object to a short time period for parties to file comments and replies."

UP requests that the Board allow interested parties 60 days to file comments addressing the implications, if any, of developments over the past year for the Board's treatment

COVINGTON & BURLING

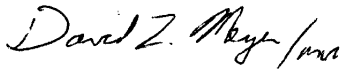
The Honorable Vernon A. Williams
August 24, 2004
Page 2

of the Application in this case. Although some circumstances are quite clear – including the fact that KCS's proposed acquisition of Tex Mex remains one part of a cohesive strategy to acquire *both* Tex Mex and TFM – almost a year has passed since the Board suspended the schedule in this case. UP submits that, under these circumstances, the Board should allow interested parties sufficient time to review the new agreement between KCS and TFM, conduct limited discovery regarding that agreement and its implications, and probe the status of KCS's ongoing efforts to acquire control of TFM.¹ A 60-day comment period would allow sufficient time to accomplish these objectives.²

KCS has already stated that it does not object to a short time period for additional comments, and there is no reason for the Board to proceed with undue haste. KCS has already completed its acquisition of a controlling stake in Mexrail and placed those shares in a voting trust. In addition, KCS has already implemented the few operational benefits it anticipated achieving through control of Tex Mex, such as the implementation of KCS's Management Control System on Tex Mex. Under a 2002 agreement between TFM and KCS, moreover, KCS already has operational and dispatching control over Tex Mex (but, importantly, not over Laredo Bridge dispatching). At this point, the only aspects of Tex Mex's activities that appear likely to be affected by a change in control are those that raise the most serious competitive concerns – especially the transfer of control of the north half of the Laredo Bridge to KCS and away from TFM.

Thank you for your attention.

Sincerely,


David L. Meyer

cc: William A. Mullins, Esq. (by hand)
All Parties of Record (by first-class mail)

¹ UP has already served Applicants with a set of narrow discovery requests designed to address these issues.

² If the Board were to allow interested parties 60 days to submit comments, Applicants should be allowed a reasonable time to submit a reply.