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October 30, 2006

VIA E-FILING

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

Re: STB Ex Parte No. 665
Rail Transportation Of Grain

Dear Secretary Williams:

Pursuant to the Surface Transportation Board's decision served on October 11, 2006 in the above captioned proceeding, enclosed, via e-filing, are the Comments Of The Kansas City Southern Railway Company ("KCSR") to be filed in the above captioned matter. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 665

RAIL TRANSPORTATION OF GRAIN

**COMMENTS OF
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

**Michael R. Bilovesky
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THE KANSAS CITY SOUTHERN
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Telephone: (816) 983-1290**

Dated: October 30, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 665

RAIL TRANSPORTATION OF GRAIN

**COMMENTS OF
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

On October 11, 2006, the Surface Transportation Board ("STB" or "Board") announced that it would hold a hearing on November 2, 2006 to examine issues related to the transportation of grain by rail. Parties were given the option to participate via oral and written testimony or simply by filing written comments. While The Kansas City Southern Railway Company ("KCSR") will not be testifying at the Board's oral hearing, it will be sending its Vice President Sales & Marketing Ag and Minerals Business Unit to listen to any concerns expressed by shippers and to be available to answer any questions the Board may have of KCSR. KCSR is pleased that it has been given an opportunity to provide these brief written comments regarding its relationship with its grain shippers and the Board's general policies toward the transportation of grain by rail.

KCSR believes it has excellent relationships with its grain shippers and believes the Board's policies have helped this relationship by requiring grain shippers and the railroad to work things out through communication and privately negotiated dispute resolution mechanisms rather than through Board imposed litigation. It would be unfortunate if the complaints of a few would lead to industrywide regulatory changes that would undermine the beneficial structures and processes that have developed over the years.

KCSR serves many separate and distinct markets where grain rates are published.

KCSR's core business involves transporting various grain stocks to feed mills. KCSR serves, either directly or through short-line connections, thirty-one feed mills in the states of Arkansas, Oklahoma, Louisiana, Texas, Mississippi, and Alabama. KCSR also accesses the Gulf of Mexico in Louisiana through reciprocal switching and the Texas Gulf Coast where KCSR has the ability to export grain that originates in the central portion of the United States to various export markets throughout the world. Lastly, KCSR is also able to directly access the Mexican market through its rail network.

As a result of this network, most of KCSR's domestic grain volume is tied directly to the poultry business. If the poultry industry is experiencing growth, then KCSR has the opportunity to expand with it. If the poultry business is cutting back, its volumes will reflect that on KCSR. On the export side of its business, KCSR competes head to head with other rail carriers and with other modes of transportation, whether that transportation is to the Gulf of Mexico or to Mexico itself. Historically, about 95% of the grain exported out of the United States through the Louisiana Gulf Coast moves to the Gulf Coast ports via barge. That same barge traffic often finds its way to the ports of Altamira, Tampico, Veracruz or other eastern Mexico port facilities in direct competition to KCSR's all rail moves. Despite this competition for Mexico traffic, KCSR has been able to grow its agricultural product shipments to Mexico from 25 cars in 1991 to over 20,000 cars year to date through September 30th. Most of this growth and the ability to expand would not have been possible without the passage of the Staggers Rail Act of 1980, the Board's implementation of that Act, the Board's approval of Kansas City Southern's acquisition of control of The Texas Mexican Railway Company, and the approval of KCS's acquisition of TFM (now "KCSM").

Because of the above cited factors, KCSR has been able to react to world competition and price its movements to the market accordingly. This is no different than the grain industry, as commodities are traded on the open market every day requiring companies to react to these changes, just as the railroads must be free to react accordingly. For example, the United States Department of Agriculture's website shows elevator prices for various agricultural commodities throughout the country which represent generic prices for a certain commodity delivered to a grain elevator in a certain region. On 1/5/06, corn in Nebraska was being priced at \$1.84 per bushel. The price for corn in Nebraska was \$2.81 per bushel for the week of 10/19/06. This is an increase of \$0.97 per bushel in nine months. That amounted to a 53% increase in the price of corn while wheat increased 46%, and soybeans decreased almost 7% during the same period. From a strict dollar per railcar standpoint, the price of wheat in Nebraska increased \$5,214, while the price of corn increased \$3,395, and the price of soybeans decreased \$1,254. All of this was based upon supply and demand in an open market. Rail rates did not dictate these price changes. The market dictated the ultimate prices of the commodities. KCSR, its producers, receivers, and users all had to adjust accordingly and they did.

Indeed, KCSR, like the grain industry, has raised and reduced rates consistent with these changes in the marketplace and this occurs every year. However, over the long run, KCSR's grain rates have risen very little as the Board's policies have allowed KCSR to improve productivity and shed costs in order to compete against barges and other railroads in responding to the constantly changing grain market. In the poultry market, for example, despite increased demand and strained capacity, KCSR's domestic grain rates have only gone up approximately 4% per annum in non-inflation adjusted dollars since 1991.¹ This has barely kept pace with

¹ KCSR uses 1991 as the benchmark because this is as far back as KCSR's historic data goes in order to allow a comparison with today's rates.

inflation. For export grain, KCSR's rates have increased slightly over 5% over the same 15 year period. As recognized in the Board's comments included in the October 16, 2006 GAO report on the rail industry that in part led to this hearing, "The reported 9% increase in rates for grain shipments (from 1985 to 2004) has not kept pace with inflation over that same time period. And the modest increase in rates from 2000 to 2004 is not surprising, given the escalation in costs during that time period." These are not the type of rate changes that one would expect if railroads like KCSR had monopoly power or were taking advantage of grain shippers.

KCSR understands the concerns of some grain shippers and of this agency in ensuring that such shippers are protected from market abuse. The Board is right to continually monitor and assess the situation, but the Board should not take precipitous regulatory action based upon the political environment of the moment. The Board's policies since Staggers have worked well and they should continue to be allowed to work.

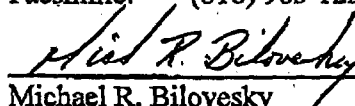
Indeed, before deregulation there were no real forums for dispute resolution other than litigation or a contentious proceeding at the ICC. Today, the Surface Transportation Board offers various options for railroads and their customers to interact. They have implemented the Railroad-Shipper Transportation Advisory Council, The National Grain Car Council, and The Rail Consumer Assistance Program. The theme is to try to operate in an environment of productive dialogue with the spirit of cooperation. This has promoted greater openness and increased reliance on mediation and technical conferences. In addition, with the Board's support and encouragement, the railroad industry also voluntarily entered into a binding arbitration agreement with the National Grain and Feed Association in an attempt to provide a private forum

for resolution of conflict.² KCSR is fully supportive of this agreement and of the other programs that have been established since Staggers and continues to believe these programs are and will remain more effective in resolving disputes than wholesale changes in regulation.

In conclusion, KCSR believes the Board's continual oversight of the rail/grain relationship is important to maintaining dialogue and cooperation, but KCSR believes that the Board's existing regulations and rulemaking processes are adequate to resolve any problems that may occur outside of these cooperative programs. KCSR does not see any need for substantive changes in the programs or the Board's regulations but looks forward to hearing and reviewing the testimony in order to determine if KCSR's opinion needs to be adjusted.

Respectfully submitted

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Dated: October 30, 2006

² While the system does not allow for rate cases to be arbitrated, it allows the railroads and their customers to use a third party arbitration system to resolve numerous other issues that prior to the implementation of this process would have had to have been resolved through litigation. The system also offers the railroads and their customers the ability to solve the issues privately prior to the case being sent to arbitration.