

branch lines in 10 midwestern and southern states (Kansas, Missouri, Illinois, Oklahoma, Arkansas, Tennessee, Texas, Louisiana, Mississippi, and Alabama). KCSR's principal routes extend from Kansas City, MO, via Shreveport, LA, to Beaumont/Port Arthur, TX, Lake Charles, LA, and New Orleans, LA. KCSR also has a route extending from Dallas, TX, via Shreveport, LA, to Meridian, MS, and a branch line route extending north out of Alexandria, LA, to Hope, AR. KCSR's major terminals are: Kansas City and St. Louis, MO; Shreveport, Lake Charles, Baton Rouge, and New Orleans, LA; Beaumont, Port Arthur, and Dallas, TX; and Vicksburg, Jackson, Meridian, and Gulfport, MS. KCSR also provides service, via haulage rights, over 1,200 miles of lines of other railroads, most prominently over lines of Union Pacific Railroad Company (UP) between Springfield and Chicago, IL, between Omaha, NE/Council Bluffs, IA, Lincoln, NE, Topeka and Atchison, KS, and Kansas City, MO, and between Beaumont and Houston/Galveston, TX, and over lines of The Burlington Northern and Santa Fe Railway Company (BNSF) between Kansas City, MO, and Council Bluffs, IA. KCSR also owns a non-controlling 16.6% interest in the Kansas City Terminal Railway Company and a non-controlling 50% interest in the Kansas City Joint Agency, both of which are located in Kansas City, MO.

*Gateway Eastern Railway Company.* GWER, a Class III railroad, is a wholly owned direct subsidiary of KCSR. GWER owns and operates approximately 17 miles of rail lines between East Alton, IL, and East St. Louis, IL. GWER also operates via trackage rights over 5 miles of Terminal Railroad Association of St. Louis track between WR Tower and Willows Tower, IL, and over 11.07 miles of The Alton and Southern Railway Company track between Lenox Tower and Rose Lake, IL. See KCS-3 at 217. GWER is primarily engaged in industrial switching in the Alton and Wood River, IL areas.

*The Texas Mexican Railway Company.* Tex Mex, a Class II railroad, is a wholly owned direct subsidiary of Mexrail. Tex Mex owns and operates 157 miles of rail line between Laredo and Corpus Christi, TX. Pursuant to a 1996 Board order, see *Union Pacific/Southern Pacific Merger*, 1 S.T.B. at 421-26, Tex Mex also operates via trackage rights over approximately 379 miles of UP lines between Robstown and Beaumont, TX, via Placedo, Victoria, Flatonia, Rosenberg, and Houston, TX. Tex Mex interchanges

with KCSR at Beaumont, TX; with The Houston Belt & Terminal Railway Company and The Port Terminal Railway Association at Houston, TX; with BNSF at Corpus Christi, Houston, and Robstown, TX; with UP at Corpus Christi, Houston, Laredo, Robstown, and Victoria, TX; and with TFM, S.A. de C.V. (TFM), on the International Rail Bridge that spans the Rio Grande River between Laredo, TX, and Nuevo Laredo, Tamaulipas, Mexico.<sup>4</sup>

*Mexrail.* Prior to May 9, 2003, Mexrail, a noncarrier, was a wholly owned direct subsidiary of TFM. Mexrail owns two assets: (1) 100% of the shares of Tex Mex; and (2) 100% of the U.S. portion of the bridge structure (but not the track, which is owned by Tex Mex, see KCS-3 at 220) of the International Rail Bridge that runs between Laredo (on the U.S. side of the border) and Nuevo Laredo (on the Mexican side of the border).<sup>5</sup>

*TFM.* TFM, a railroad located entirely in Mexico, operates from Nuevo Laredo south to Monterrey, San Luis Potosi, Querataro, and Mexico City, and, from the Querataro-Mexico City area, west to Lazero Cardenas and east to Veracruz. TFM owns no U.S. property and does not operate in the U.S.<sup>6</sup> (1) TFM, which (prior to May 9, 2003) held a 100% ownership interest in Mexrail, is owned by Grupo Transportación Ferroviaria Mexicana, S.A. de C.V. (Grupo TFM, which owns an 80% interest in TFM) and the Mexican Federal Government (which owns a 20% interest in TFM).<sup>7</sup> (2) Grupo TFM is owned by NAFTA Rail, S.A. de C.V. ("NAFTA Rail #1," which owns a 36.9% interest in Grupo

TFM), TMM Multimodal (which owns a 38.5% interest in Grupo TFM), and TFM (which holds a 24.6% interest, with limited voting rights, in Grupo TFM, its 80% parent). (3) NAFTA Rail #1 is a wholly owned indirect subsidiary of KCS.<sup>8</sup> (4) TMM Multimodal is a 96.3%-owned direct subsidiary of TMM Holdings, S.A. de C.V., which is itself a wholly owned direct subsidiary of Grupo TMM, S.A. (Grupo TMM, a noncarrier).<sup>9</sup>

*Two Transactions: KCS/TM and KCS/TFM.* On April 21, 2003, KCS and Grupo TMM announced a series of agreements that contemplate two "separate" transactions, which are referred to as the KCS/TM transaction (this transaction contemplates the acquisition, by KCS, of control of Tex Mex) and the KCS/TFM transaction (this transaction contemplates the acquisition, by KCS, of control of TFM). Neither of these two transactions is contingent upon the other. The KCS/TM transaction has been submitted to the Board for regulatory approval, and is the subject of this decision. The KCS/TFM transaction has not been, and will not be, submitted to the Board for regulatory approval. If these two transactions are consummated, KCS—which, as part of the KCS/TFM transaction, will change its name to "NAFTA Rail" (referred to

<sup>8</sup> Two points respecting the indirect interest that KCS holds in Grupo TFM are addressed in this footnote. (1) Applicants have indicated that NAFTA Rail #1 is a wholly owned indirect subsidiary not only of KCS but also of KCSR, which (as has already been noted) is itself a wholly owned direct subsidiary of KCS. See KCS-3 at 13. If NAFTA Rail #1 were owned by KCS in a single corporate chain that ran through KCSR, NAFTA Rail #1 would indeed be a wholly owned indirect subsidiary of both KCS and KCSR. Applicants have also indicated, however, that NAFTA Rail #1 is owned by KCS via two corporate chains, only one of which runs through KCSR. See KCS-3 at 13. The two claims (the claim that NAFTA Rail #1 is a wholly owned indirect subsidiary of KCSR, and the claim that NAFTA Rail #1 is owned by KCS via two corporate chains, only one of which runs through KCSR) cannot both be true. (2) Applicants have indicated that KCS currently owns "an approximate 47% stake" in Grupo TFM. See KCS-3 at 12. See also KCS-3 at 55 n.1 (applicants indicate that Grupo TFM is "effectively owned" 46.5% by KCS) and KCS-3 at 73 (applicants indicate that KCS has "an economic interest" in Grupo TFM of approximately 46.5%). It is not clear how this calculation was derived. It may, perhaps, have been derived by dividing 36.9% (the interest in Grupo TFM held by KCS through intermediaries) by the sum of 36.9% and 38.5% (the interests in Grupo TFM not held by Grupo TFM's 80%-owned subsidiary), which would yield approximately 48.9%.

<sup>9</sup> Although applicants generally refer to Grupo TMM, S.A., as "TMM," see KCS-3 at 8, this decision refers to Grupo TMM, S.A., as "Grupo TMM," to avoid confusion (by using a consistent naming practice that reflects the fact that each "Grupo" entity sits at the top of its respective corporate chain, see KCS-3 at 13).

<sup>4</sup> Over 50% of all rail freight interchanged between the U.S. and Mexico passes over the International Rail Bridge at Laredo.

<sup>5</sup> Applicants advise that Mexrail has been treated as a noncarrier since its creation, and that they are aware of only one instance in which there has ever been even so much as a suggestion that Mexrail is a carrier. The one instance they cite, see KCS-3 at 19 n.12, was a "passing statement" by the Board that "Mexrail is a carrier." See *Mexrail, Inc. v. Union Pacific Railroad Company and Missouri Pacific Railroad Company*, STB Finance Docket No. 32980 (*Mexrail*) (STB served July 13, 2000), slip op. at 5 n.9 (whereas Tex Mex owns the track on the U.S. half of the bridge, Mexrail owns the underlying "superstructure" of the bridge). Under these circumstances, applicants are justified in treating Mexrail as a noncarrier (and they are therefore justified in not seeking authority for KCS to control Mexrail).

<sup>6</sup> TFM connects, on the International Rail Bridge that runs between Laredo and Nuevo Laredo, with two U.S. railroads: Tex Mex and UP. Traffic is interchanged, at the middle of the Bridge, between TFM, on the Mexican side, and Tex Mex and UP, on the U.S. side. See KCS-3 at 221.

<sup>7</sup> Applicants have advised that Grupo TFM's owners are under an obligation to acquire the Mexican Government's 20% interest in TFM in 2003 unless the Mexican Government "prior to that date sells shares in a public offering." KCS-3 at 12 n.4.