BEFORE THE
SURFACE TRANSPORTATION BOARD

235075
ENTERED
Office of Proceedings
November 13, 2013
Part of
Public Record

Finance Docket No. 35781

BRAZOS RIVER BOTTOM ALLIANCE
--PETITION FOR DECLARATORY ORDER--
IN ROBERTSON COUNTY, TX

UNION PACIFIC RAILROAD COMPANY'S REPLY TO BRAZOS RIVER BOTTOM ALLIANCE'S PETITION FOR DECLARATORY ORDER

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November 13, 2013

Contains color images

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Union Pacific Railroad Company ("UP") hereby replies to the Petition for Declaratory Order filed on October 24, 2013 ("Petition") by Brazos River Bottom Alliance ("BRBA"). BRBA asks the Board to institute a declaratory proceeding to examine whether UP must obtain Board approval pursuant 49 U.S.C. § 10901(a) to construct a proposed classification yard in Robertson County, Texas. BRBA also requests discovery and ultimately injunctive relief.

The Petition should be denied outright because the Board has never regulated the construction of classification yards since yards fall within the 49 U.S.C. § 10906 exception. BRBA's Petition offers no justification for the Board to reverse nearly a century of precedent. Instituting a declaratory order proceeding would create uncertainty where now there is certainty.

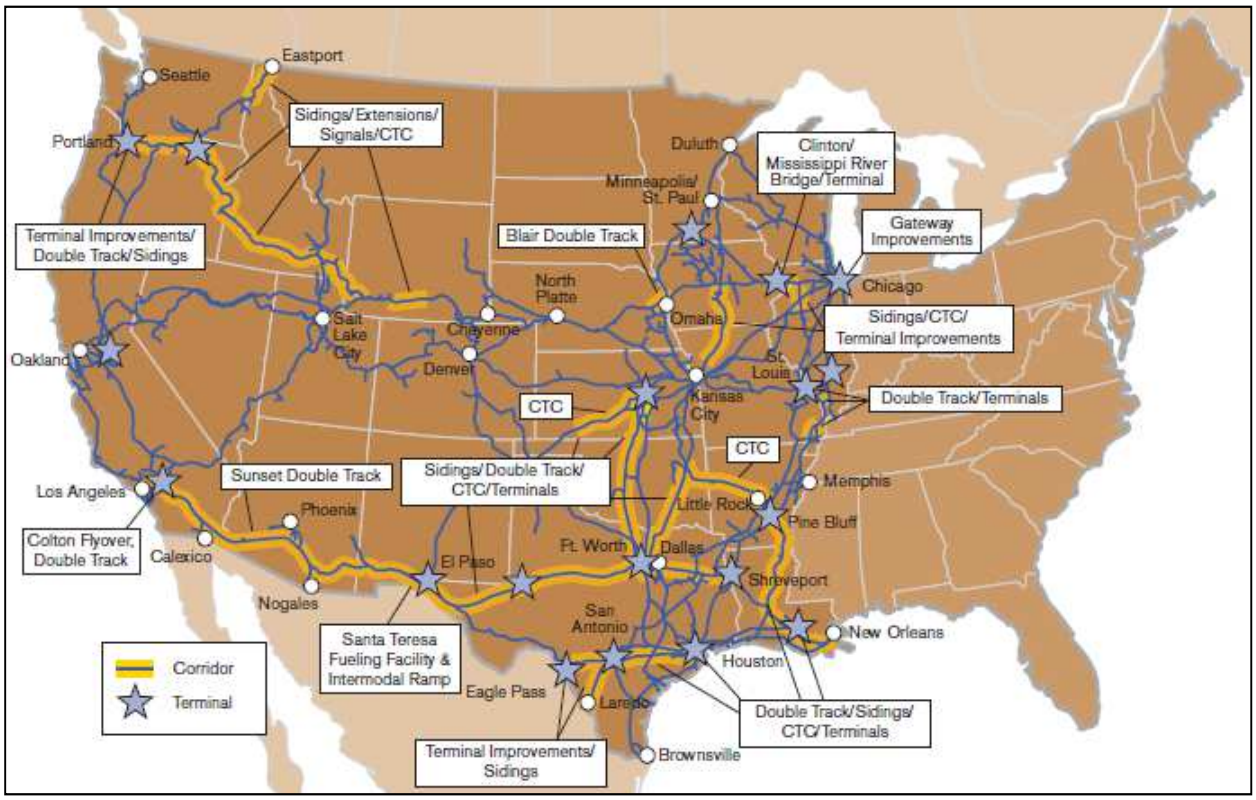
I. BACKGROUND

UP's network has experienced tremendous growth in traffic in its Southern Region, which includes Texas.[1] UP monitors traffic trends to ensure that capacity is in place to keep up with such growth and to continue delivering reliable service to its customers. As part of UP's capacity planning process, we have identified and begun several terminal and line capacity projects in Texas to accommodate this traffic growth while improving service. See Figure 1.

[1] Union Pacific Corporation 2012 Analyst Fact Book ("UP 2012 Fact Book") at 30-31. The UP 2012 Fact Book is publicly available at http://www.up.com/investors/factbooks/index.shtml.

None of these capacity projects have been presented to the STB for construction approval under § 10901(a)(1) or (2).

Figure 1: UP Corridor and Terminal Projects (2012) [2]

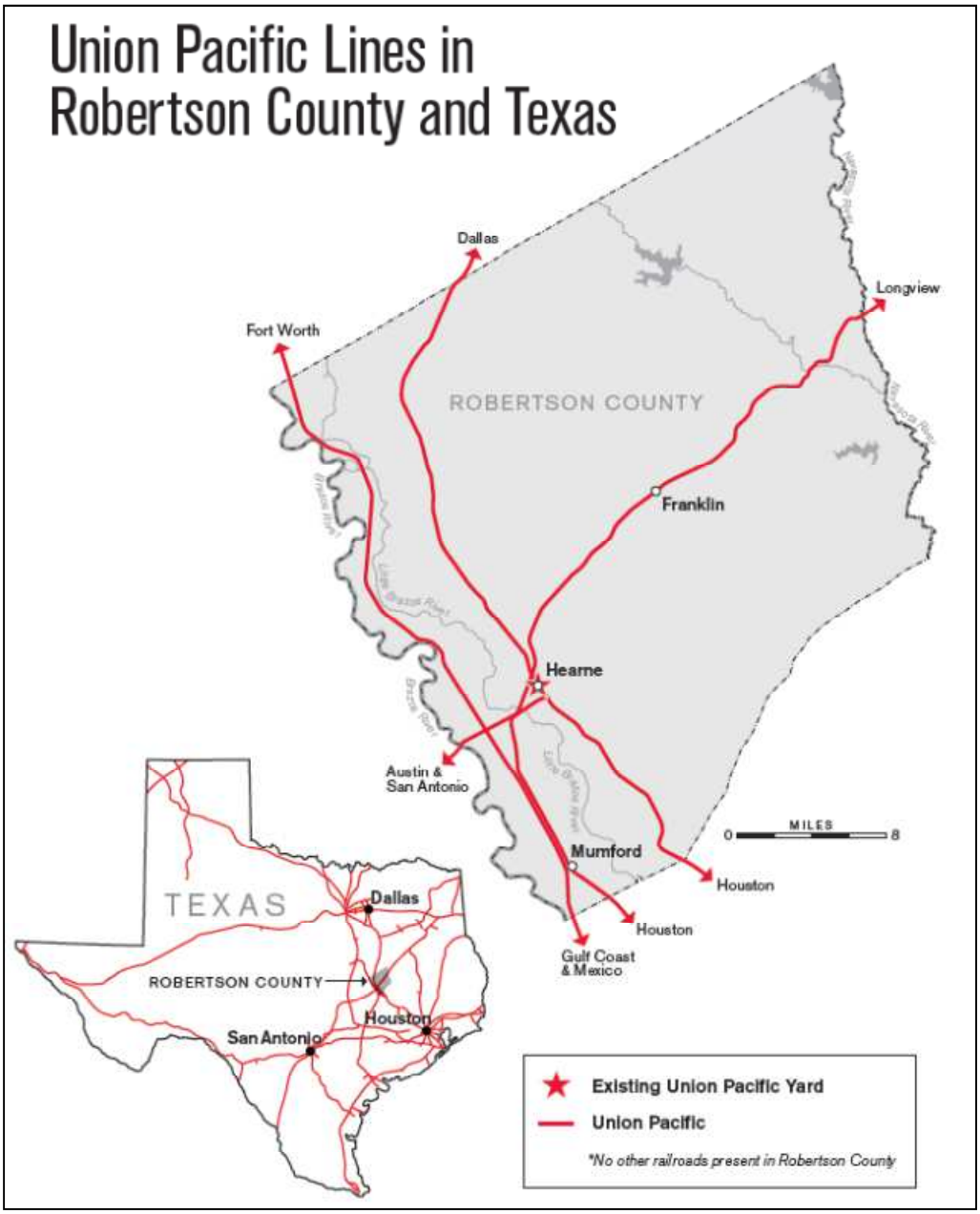


In addition, our continuing analysis has determined that there is also a critical need to construct a new classification yard for manifest traffic in Robertson County, Texas ("Hearne Classification Yard"). Accordingly, we are developing a design and proposal to submit to the Union Pacific Corporation Board of Directors for approval. Robertson County is being considered for the proposed yard because of the area's strategic location near several existing UP lines and terminals that face capacity constraints. UP's rail lines in Robertson County form a crossroads for traffic flowing north-south and east-west through the triangle formed by Dallas/Ft.

[2] Source: UP 2012 Fact Book at 33. Because the Union Pacific Corporation Board of Directors has not approved the Hearne Classification Yard project yet, it was not included on this map.

Worth, Houston and San Antonio. See Figure 2. Notably, no other railroads operate in Robertson County. With growing traffic in Texas, the Hearne Classification Yard will relieve congestion at other UP terminals, allowing those yards either to better serve local traffic or to support fluid interchange with connecting carriers.

Figure 2: UP Lines in Robertson County and Texas



The proposed manifest classification yard will be used primarily for breaking up incoming trains, switching and sorting cars into blocks, and building and launching outbound trains.[3] The Hearne Classification Yard may also be used for classification support including car inspection, car repair, locomotive servicing and locomotive repair. While the yard is not intended to support intermodal container operations or other unit train operations, crew changes on these trains will continue to occur in Robertson County and could move to the new yard. The existing mainline tracks in Robertson County will continue to carry through trains on existing routes. The Hearne Classification Yard will not alter these operations except to the extent that some trains will originate or terminate at the new yard and bypass handling at other congested yards in UP's Southern Region.

II. ARGUMENT

A. The Hearne Classification Yard Does Not Require STB Construction Authority

Board authorization is required before a railroad may "construct an extension to any of its railroad lines" or "construct an additional railroad line" under 49 U.S.C. § 10901(a)(1) or (2). However, "the Board does not have authority under [chapter 109] over construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks" under 49 U.S.C. § 10906. The only issue for the Board to decide is whether UP's proposed Hearne Classification Yard falls within the excepted category of track under § 10906.[4]

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[3] See Press Release, Hearne Mayor Ruben Gomez, Union Pacific Hopes to Build Major New Local Yard (June 2012), available at www.hearnetexas.info/MayorReportJune2012.doc (last visited Nov. 13, 2013).

[4] For the sake of clarity, a brief review of the relevant terms may be helpful. The Petition invokes the Board's "jurisdiction" over construction of the yard. There is no dispute that the yard will be within the Board's jurisdiction under § 10501 once it is built and UP is operating the new yard. The dispute is whether the yard requires STB construction authorization under § 10901(a) and is therefore subject to the Board's environmental review under the National Environmental Policy Act. Under 49 U.S.C. § 10906, construction of spur, switching and side tracks is excepted from the Board's authority meaning no authorization is required for construction. BRBA refers to this as an ICCTA "exemption". Petition at 16.

If so, the Petition should be dismissed. The law is crystal clear on this point: a classification yard is neither an extension of railroad line nor an additional line of railroad, but incidental track whose construction does not require Board authority. As the facts plainly show, the Hearne Classification Yard comes within §10906 and is not an extension of a rail line subject to § 10901(a).

1. Construction Authority Is Required Only for Track that Falls Within § 10901(a) and Not for Track that Is Excepted Under § 10906

Whether a track is an extension of rail line under § 10901(a) or excepted track under § 10906 depends on whether the *track* "extends into territory not theretofore served by the carrier." Texas & P. Ry. Co. v. Gulf, C. & S.F. Ry. Co., 270 U.S. 266, 278 (1926) ("Texas & Pacific"). Track segments that are intended to carry through trains to new territory generally require Board approval under § 10901(a). Nicholson v. I.C.C., 711 F.2d 364, 368 (D.C. Cir. 1983). Essentially, § 10901(a) authorization is required before a rail carrier may construct track to do something *new*, i.e. physically reach new customers or new territory.

In contrast, tracks that are incidental to the movement of through trains do not require Board approval under § 10906. Id. A track segment is incidental to the movement of through trains if it is designed and used for "storage, switching, and classification of railroad cars." Id. Track is excepted under § 10906 if it merely allows a rail carrier to do what it currently does, only in a safer, faster, more reliable or more efficient way even if it allows the rail carrier to handle more traffic. With the statute in mind, it is easy to see why the Board has never asserted authority over classification yards.

The holding in the virtually identical Nicholson case compels the same result here: the Hearne Classification Yard does not require § 10901(a) construction authority. Missouri Pacific

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However, the statutory caption for §10906 is "Exception" and exemption from ICCTA has a different meaning under § 10502. Accordingly, this Reply refers to tracks covered by §10906 as "excepted".

planned to build a classification yard adjacent to its mainline track but did not seek construction authority. Nicholson v. Missouri Pacific R.R., 366 I.C.C. 69, 69-70 (1982). A neighboring landowner asked the Board's predecessor, the Interstate Commerce Commission, to find that Commission authority was required for construction of the yard under § 10901. Id. at 72. The Commission's analysis began by stating:

> there are a large number of classification yards in this country, and many have been built since 1920 (when [the Commission] obtained authority over the construction of railroad lines). *Yet complainants have cited, and we have found, no instance in which the Commission has found that the construction of a classification yard—or of any other yard—to require Commission approval under section 10901 or its predecessor, section 1(18) of the Interstate Commerce Act.*

Id. at 73-74 (emphasis added).

The Commission ultimately decided that no authorization was required because the yard merely allowed Missouri Pacific to improve its existing service, not expand its service into new areas, even though the yard could also permit the railroad to capture additional traffic. Id. at 74. The Commission also found the absence of other carriers near the yard significant as it meant the yard would not be used to penetrate another railroad's territory. Id.

The D.C. Circuit affirmed the Commission's decision, agreeing that construction authority is not required for a classification yard. Nicholson v. I.C.C., 711 F.2d 364, 365-366 (D.C. Cir. 1983). The D.C. Circuit found that construction of the classification yard did not require authority because it was located adjacent to the existing mainline track and would function as a classification yard, i.e. for storage, switching, and sorting of railroad cars. Id. at 368. The court reached this finding even though the classification yard was expected to increase the railroad's efficiency in handling freight traffic. Id. Through trains would continue to move

over existing main-line track to their prior destinations and the yard was incidental to the operation of the mainline. Id.

UP is aware of no instance where the Board or Commission has claimed authority over the construction of classification yards, but there are several cases finding no authority over yard construction.[5] As the Commission recognized in its Nicholson decision, prior to that point the agency and courts consistently found classification yards were excepted track. Nicholson v. MP, 366 I.C.C. at 73-74. Likewise, the Fifth Circuit has held that construction authority is not required for a classification yard even if it would be used by two railroad companies. Georgia S. & F. Ry. Co. v. Duval Connecting R. Co., 324 F.2d 801 (5th Cir. 1963). The other cases UP is aware of that discuss yard construction all reached the same conclusion: classification yards are not extensions of rail lines and construction authority is not required. Oregon-Washington R.R. & Navigation Co. Construction, 275 I.C.C. 591, 598 (1950) ("construction of a new yard and the consolidation of terminal facilities are not within themselves subject to the jurisdiction of this Commission and may be accomplished without its authority."); Terminal Ry. Ala. State Docks-Operation, Mobile, Ala., 354 I.C.C. 747 (1978); and Boston Terminal Co. Reorganization, 312 I.C.C. 373 (1960).

The lack of cases since Nicholson addressing whether a classification yard (or yard) comes within § 10901 is not surprising and underscores the weight of Nicholson. The status of classification yards (or yards) as excepted § 10906 tracks is so well-established there has been no need for Board action. Thus, the Board should not hesitate to deny BRBA's Petition on the pleadings.

[5] This inaction by the Board is entitled to the same precedential weight as Board action and should not be overturned without a compelling reason. United States v. Chicago, N.S. & M.R. Co., 288 U.S. 1, 13 (1933).

2. The Hearne Classification Yard Comes Within the § 10906 Exception

The Hearne Classification Yard will not extend UP's rail lines. It will be adjacent to UP's existing mainline track in Robertson County, at the convergence of seven subdivisions of UP's rail network. Petition at 8. The map in Figure 2 illustrates that:

- The yard will lay at the crossroads of UP's Southern Region network;
- UP rail lines already run east-west and north-south through Robertson County;
- No other railroads operate track in Robertson County; and
- A new yard in Robertson County will not extend UP's reach into new territory.

Moreover, all operations on the tracks of the proposed yard will be incidental to the movement of through trains over existing, adjacent UP mainlines. See supra, § I, pp. 6-7. The Hearne Classification Yard will replace many functions of a smaller yard currently located in downtown Hearne including breaking up incoming trains, switching and sorting cars into blocks and building and launching outbound trains. The location and operations of the Hearne Classification Yard will add capacity, allowing UP to improve service to our current customers and enabling UP to handle increased volume across the Southern Region. UP's existing lines in and beyond Robertson County will continue to handle through transportation. See Figure 2. In short, the tracks to be built will merely allow UP to improve the efficiency of its operations and comes squarely within § 10906.

B. The Hearne Classification Yard Will Not Penetrate New Markets or Expand into Current Markets

Perhaps recognizing that the closest precedent squarely places the proposed yard beyond the reach of § 10901, BRBA's Petition attempts to stretch cases beyond their actual holdings and mischaracterizes UP's existing participation in transportation markets in its attempt to expand the reach of §10901 and override § 10906.

1. The Applicable Law Requires Track to Physically Reach a New Customer or New Territory to Come Within § 10901(a)(1) or (2)

Board construction approval is required only for a rail carrier's construction of "an extension to any or its railroad lines" or "an additional railroad line". 49 U.S.C. § 10901(a)(1)-(2). A track is an extension of rail line if it constitutes an "invasion through new construction" of territory adequately served by another carrier or "invades" a market not previously served by the carrier. Texas & Pacific, 270 U.S. at 278. *Every* case that BRBA relies on is readily distinguishable from the current matter because *every* case where construction authority was required dealt with a *physical* extension of a track into new territory or to a new customer.

First, BRBA's argument does not address recent Board interpretations of § 10901 that track construction falls within § 10901 only if *the track itself* allows the rail carrier to enter a new service area or territory. In the context of rehabilitation of an abandoned track, the Board ruled that reconstructing a line of railroad is not a § 10901 extension that penetrates a new market when the line merely allowed a carrier to better handle its traffic by adding a second mainline to improve capacity and service even when portions of the second line were not adjacent to the active track. Union Pac. R.R. Co.--Petition for Declaratory Order--Rehab. of Missouri-Kansas-Texas R.R. Between Jude & Ogden Junction, Tx, 3 S.T.B. 646, Finance Docket No. 33611 at *4 (STB served August 21, 1998) ("Jude"). Instead of addressing this precedent, BRBA attempts to confuse the issue by ignoring the Hearne Classification Yard's proximity to existing UP rail lines and the absence of any other rail carriers in Robertson County.

BRBA sidesteps the physical location and intended use of the Hearne Classification Yard by trying to direct the Board's attention at the supposed "larger purpose and effect" of the yard. BRBA then argues that Board construction authority is needed because the yard will extend UP's "business" into new markets. Petition at 27. This is not the correct application of the Supreme

Court's purpose and effect test. In Texas & Pacific, the Court ruled that "[i]f the purpose and effect of the new trackage is to extend substantially the *line* of a carrier into new territory, the proposed trackage constitutes an extension of the railroad." Id. at 278 (emphasis added). Nicholson applied the same "purpose and effect" test when it determined that the purpose of a classification yard was not to extend *track* into new territory or reach a new customer, but to support and improve existing operations including additional traffic. The Board has authority over construction of physical rail lines to reach new markets, not over potential business opportunities.

Second, the purpose and effect test is generally relied on to find that track is subject to § 10901 in cases where track that may otherwise be deemed excepted spur or switch track, because the track in question constitutes the entire operation of a railroad.[6] See United Transp. Union-Illinois Legislative Bd. v. S.T.B., 169 F.3d 474, 477-78 (7th Cir. 1999); (Riverview Trenton Railroad Company--Petition for an Exemption from 49 U.S.C. 10901, Finance Docket No. 34040, 2003 WL 21108179, *6 (STB served May 15, 2003); Great Salt Lake and Southern Railroad, L.L.C.--Construction and Operation--In Tooele County, UT, STB Finance Docket No. 33824 (STB served Dec. 15, 2000); Effingham Railroad Company--Petition for Decl. Order--Construction at Effingham, IL, Docket No. 41986, 2 S.T.B. 606, *3 (STB served Sept. 12, 1997). This is the proper result because anytime a track constitutes the entire operation of a rail carrier then such track extends the carrier's line into new territory and any customers on the track are new customers. Consequently, it cannot "enhance" non-existent current operations. In contrast, the Hearne Classification Yard obviously will not constitute UP's entire operation. See Figure 2.

[6] While the purpose and effect test is cited often, UP is aware of no cases where the purpose and effect test was used to find that construction authority was required when a track did not physically extend into new territory or to a new customer and did not constitute the entirety of a carrier's operations.

As previously shown, the excepted tracks will be used for purposes incidental to line-haul movements thereby enhancing UP's existing operations.

Finally, BRBA argues that the scope of § 10901(a) should be interpreted broadly because the Transportation Act of 1920 was "remedial legislation." Petition at 18, 28. This claim ignores how subsequent Congressional actions have transformed the governing national transportation policy. The current § 10901 was enacted in 1980 as part of the Staggers Act and reenacted as part of the ICC Termination Act of 1995. "The primary goal of the [Staggers] Act was to revitalize the railroad industry by reducing or eliminating regulatory burdens." Midtec Paper Corp. v. United States, 857 F.2d 1487, 1506 (D.C. Cir. 1988) see also Detroit/Wayne Cnty. Port Auth. v. I.C.C., 59 F.3d 1314, 1317 (D.C. Cir. 1995) (It is "contrary to Congressional intent, to assert jurisdiction over any improvement …").

One of the purposes of ICCTA was "to minimize the need for Federal regulatory control over the rail transportation system." 49 U.S.C. § 10101(2). Taking that directive to heart, the Commission and Board have limited the circumstances where parties are required to file applications for § 10901 certificates by adopting a class exemption for many transactions (49 CFR 1150.31 et seq.) and granting petitions for exemption for construction projects. See e.g. San Jacinto Rail Limited Construction Exemption, Finance Docket No. 34079 (STB served August 28, 2002). All of the cases cited by BRBA were decided before the Staggers Act. There is no current authority for the broad interpretation of § 10901 sought by BRBA.

2. UP Already Serves the "New Markets" that BRBA Claims Will be Reached

Should the Board determine, against the weight of authority, that a track can invade a new market without *physically* extending into that market, the Hearne Classification Yard remains outside the purview of § 10901 because UP already reaches the allegedly new markets.

BRBA claims that the Hearne Classification Yard will allow UP to allegedly penetrate "new markets" for: (a) hydraulic fracturing and oil-by-rail shipments, (b) coal exports, (c) Panama Canal containers, and (d) Mexico traffic. Petition at 4; 20-26. Yet the very evidence relied on by BRBA shows that UP already reaches these markets.

(a) Hydraulic Fracturing and Oil-by-Rail Shipments

Hydraulic fracturing and oil-by-rail traffic do not represent either new markets or new territories for UP. UP's network already serves these markets. According to BRBA's own Petition:

- Union Pacific moved 2,000-5,000 carloads of crude oil in 2011 and approached 50,000 units in 2012. (Report by RL Banks & Associates ("RL Banks Report"), Exhibit A to the Petition, p. 2)[7]

- Last fall, UP was moving 125 unit-trains of crude oil a month and expected this volume to grow. (RL Banks Report, p. 2)

- UP moved about 4,400 carloads of crude oil out of Bakken Shale in 2010 and expected to move more than 16,000 carloads in 2011. (RL Banks Report, p. 2)

- UP's volumes are up more than 400 percent in oil and gas. (RL Banks Report, p. 3)

- UP recently reopened a rail yard in San Antonio to handle increasing shipments into and out of the Eagle Ford Shale. (Sanford Nowlin, San Antonio is emerging as vital rail junction for Eagle Ford Shale, The San Antonio Business Journal, April 27, 2012. RL Banks Addendum, pp. 59-61)

- UP added six new tracks to its Odessa rail yard to handle regional growth and increased traffic. The Odessa rail yard receives traffic from around the country and sorts the traffic for delivery to businesses throughout the Permian Basin. (John Carrales, Union Pacific adds six tracks to Odessa rail yard, Standard-Times GO San Angelo, May 27, 2012. RL Banks Addendum, pp. 65-66)

- UP is "perfectly suited to support" traffic to and from drilling locations in the Eagle Ford Shale because UP's "rail lines are already there." (Jon Vanderlaan, Union

[7] Page number references to the text of the RL Banks Report refer to the page number of the Report itself (9 pages total). The Report also included addenda consisting of newspaper articles and other material. Page number references to materials in the addenda refer to the page number of the PDF file of the Petition and its exhibits (205 pages total).

Pacific expanding operations in Permian Basin, Odessa American, February 22, 2012. RL Banks Addendum, pp. 68-69)

Thus, hydraulic fracturing and oil-by-rail are clearly markets that UP already serves.

BRBA confuses the concept of growing this existing business with entering a new market.[8] Figure 3 illustrates that UP already serves hydraulic fracturing and oil-by-rail customers. UP lines reach the Permian, Eagle Ford and Niobrara basins, extend to numerous destination refineries and terminals in Texas, Louisiana and Oklahoma, and connect to interchanges with BNSF and CP. Hearne is located between production areas that UP already serves and destinations along the Gulf Coast. The Hearne Classification Yard will not extend UP's reach but facilitate movement of traffic between points UP already serves.

[8] While UP personnel are quoted using the phrase "new business," when read in context it is clear "new business" refers to moving more traffic for existing customers or additional customers in existing lanes. Contrary to suggesting that "new business" in this context refers to "invading" a market or territory, the materials attached to the RL Banks Report explicitly states that UP's lines already reach these markets and UP has been transporting these commodities for several years. RL Banks Report, pp. 2-4. RL Banks Addendum, pp. 55-56, 64, 65-66, 67, 68-69, 72, 74.

Figure 3: Hydraulic Fracturing and Oil-by-Rail Network[9]

BRBA then asks the Board to conclude that construction of the Hearne Classification Yard will somehow "penetrate" or "invade" the Bakken formation in North Dakota to the Gulf Coast market because UP "may be trying to compete in this market place." Petition at 21.[10] However, such a claim also fails to prove that UP is penetrating new markets or territories. UP already serves Gulf Coast destinations. See Figure 3. It also overlooks that UP already has a

[9] Source: presentation given at UP Analyst Conference on October 30, 2012; http://www.up.com/investors/attachments/presentations/2012/investors-day/whited.pdf

[10] We assume that BRBA is not claiming that a yard in Robertson County, Texas would allow UP to penetrate the Bakken formation in North Dakota but that its allegation is focused on the deliveries to the Gulf Coast refineries and terminals.

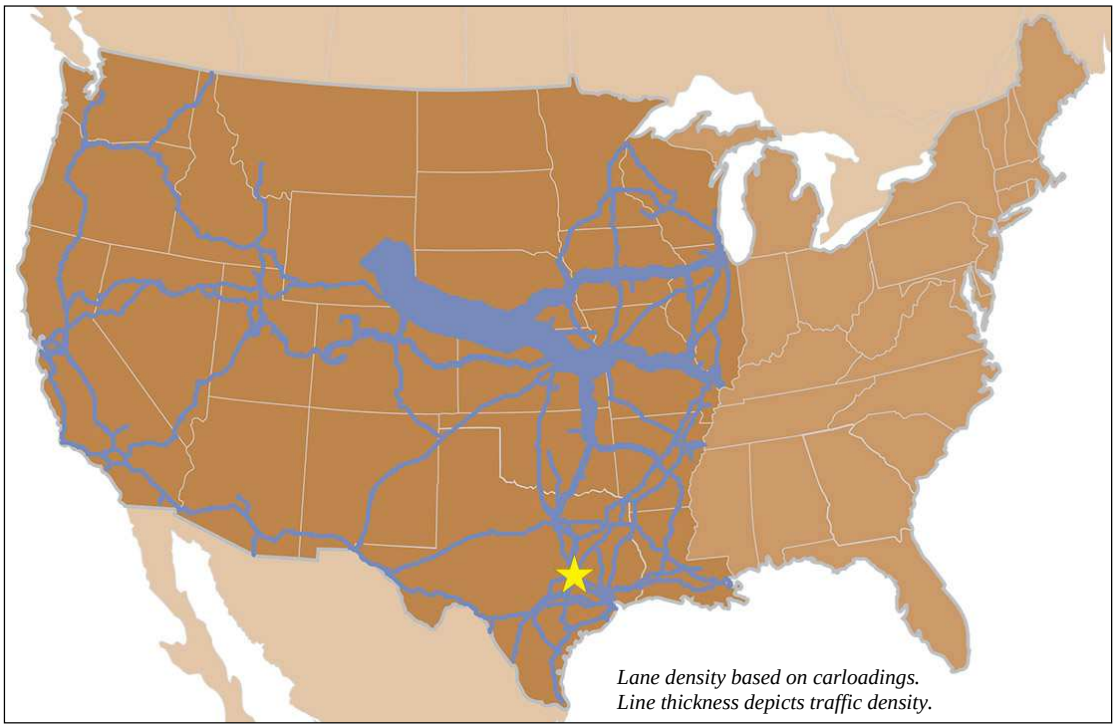
common carrier obligation to transport crude oil whether in single-line or interline service when requested and regardless of whether the shipper is a new or existing customer. See 49 U.S.C. §§ 11101(a) and 10703. Moreover, BRBA recognizes that UP is already handling this traffic and that UP built six new tracks in Odessa, Texas to more efficiently move this traffic. Petition at 21. BRBA acknowledges that this work has already been completed, again proving that UP already reaches this market.[11]

(b) Coal Exports

UP already moves export coal into Mexico and through Gulf Coast ports. See Figure 4. BRBA's evidence that UP will "invade" the export coal market is that UP *has entered* into contracts with Peabody Energy Corporation to transport coal from Colorado to Houston. Petition at 23. Yet, R.L. Banks reports that in 2011, Peabody shipped 6.6 million tons of coal through export terminals on the Atlantic, Pacific and Gulf coasts, and it has projected total exports of 10 million tons for this year with much of the coal being shipped from Texas and Louisiana. (RL Banks Report, p. 7) It is hard to see how UP can "invade" a new market when it already has at least one contract to serve that market and the coal is currently being exported.

[11] The Odessa Yard tracks perform the same incidental functions that will be performed at the Hearne Classification Yard. No Board authority was sought or required for the Odessa tracks.

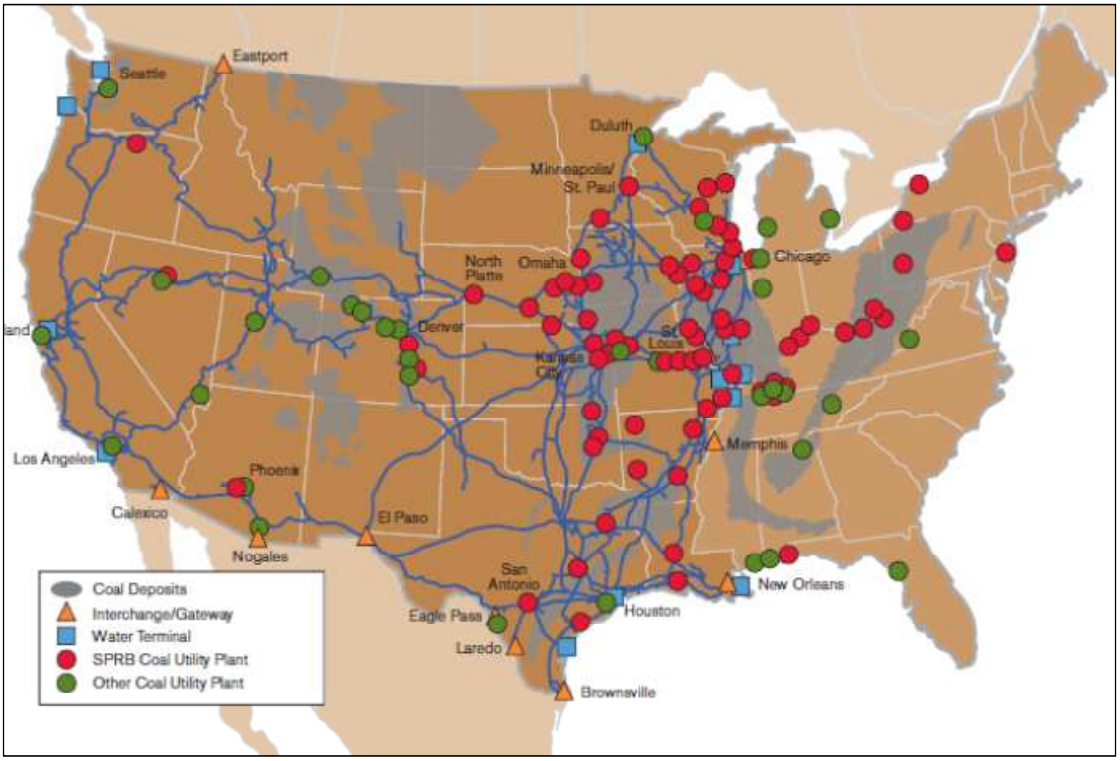
Figure 4: Coal Traffic Density[12]



UP currently moves coal from the Powder River Basin and Colorado to Gulf ports and Mexican gateways with much of this traffic moving through Robertson County. See Figure 4. UP's existing water terminals and Mexican gateways that handle export coal are shown in Figure 5. While the Hearne Classification Yard may allow UP to handle its export coal shipments to Mexico or through the Gulf more efficiently, it will not allow UP to "invade" the export coal markets that UP already serves.

[12] Source: UP 2012 Fact Book at 19. Robertson County is marked with a star for reference.

Figure 5: Coal Facilities[13]



(c) Panama Canal Containers

BRBA argues that the Panama Canal expansion will result in a shift of container ships from West Coast ports (Long Beach and Los Angeles) to Gulf ports. Petition at 24. UP serves the Ports of Long Beach and Los Angeles as well as numerous Gulf Ports in Texas and Louisiana. A shift in this traffic from the West Coast to the Gulf does not change the fact that UP handles such containers today and will likely transport them in the future. UP already moves intermodal traffic from these ports to points throughout its network. See Figure 6. As with coal, intermodal containers move in unit trains and will thus not be classified at the proposed yard. If they were recrewed or refueled at the Hearne Classification Yard, that is incidental use and not market extension.

[13] Source: UP 2012 Fact Book at 21.

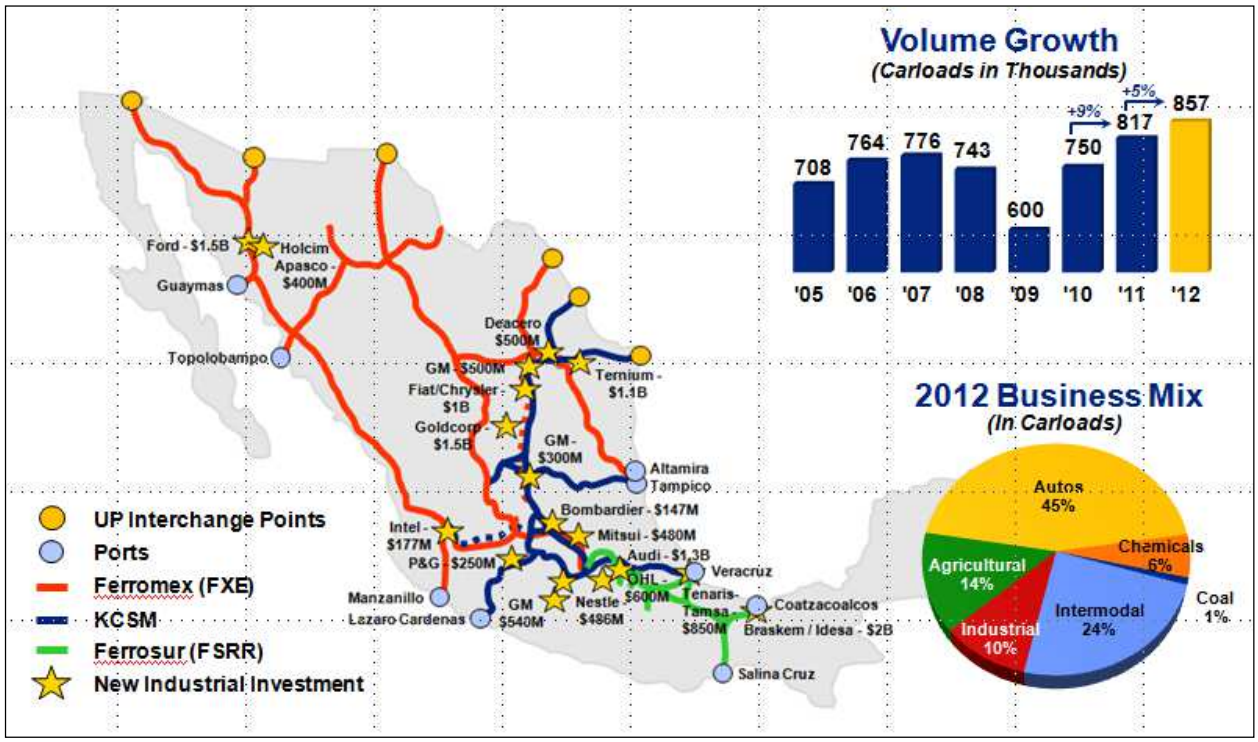
Figure 6: Intermodal Traffic Density[14]

(d) Mexico Traffic

UP has served all six rail gateways to Mexico since it acquired the Southern Pacific in 1996. Thus, it already has more rail access to the Mexican market than any other rail carrier. As BRBA recognized, "any new commodity … made in Mexico and shipped to the U.S. via train, likely will travel over UPR rails." (RL Banks Report, p. 7). UP already reaches Mexico and handles these commodities. A new yard in Robertson County will not provide any greater access to Mexico although it will likely improve UP's ability to provide reliable service to increased volume. UP already has an extensive customer base in Mexico. See Figure 7.

[14] Source: UP 2012 Fact Book at 24. Robertson County is marked with a star for reference.

Figure 7: Mexico Traffic[15]



C. The Hearne Classification Yard's Effect on UP's Competitive Position Does Not Bring It within § 10901

BRBA makes a final argument that construction authority is required for the yard because the yard will allow UP to compete with other railroads. Petition at 29. However, "Congress did not intend for [the Board] to assert jurisdiction whenever there will be an increase in efficiency or an improvement in a carrier's competitive position." Bhd. of Locomotive Engineers v. UP, Finance Docket No. 32394, 1995 WL 646763, *4 (ICC served Nov. 6, 1995). Where a new track will not physically extend into new territory, a change in the competitive balance between carriers is irrelevant to the Board's analysis. Detroit/Wayne Cnty, 59 F.3d at 1317. Construction by Canadian National of a mainline tunnel located 90 feet away from an existing mainline tunnel was not an extension of a rail line or an additional rail line because the tunnel would neither

[15] Source: presentation given at Citi 2013 US and European Industrials Conference on September 18, 2013; http://www.up.com/investors/attachments/presentations/2013/citi_slides.pdf

extend nor *add to* the CN's existing system and did not extend into new territory. Id. The court ruled that it is "contrary to Congressional intent, to assert jurisdiction over any improvement—like double-tracking or electrification—that strengthened a carrier's competitive position." Id. Further, "Congress did not give any indication that it intended to erect regulatory hurdles to a carrier investing its capital to improve its own plant." City of Detroit, 9 I.C.C.2d 1208, 1216 (1993). See also, Nicholson, 711 F.2d at 368 ("Although the classification yard is expected to increase Missouri Pacific's efficiency in handling freight traffic, the yard will not extend Missouri Pacific's service into any new territory."); and Jude, 1998 WL 525587 at *4 ("The line does not penetrate or invade a new market, but simply augments the capacity of existing main line operations … The line will not reach into new territory or serve new shippers; it will simply improve service to UP's existing shippers.").

In other words, Congress did not intend to give the Board construction authority over projects that merely improve a carrier's existing operations. Like the construction projects at issue in Detroit/Wayne Cnty, Nicholson and Jude, the Hearne Classification Yard will not extend or add to UP's rail lines. The yard will only allow UP to provide safer, faster and more reliable service to customers on its existing lines.

Once again, BRBA selects self-serving quotations plucked out of context to create the illusion of cases supporting its efforts to expand the reach of § 10901. None of the cases BRBA relies on found that construction approval was necessary merely because a new track would "alter the competitive balance." Two cases involved clear examples of penetration of another rail carrier's territory. In Marion & E.R. Co. v. Missouri Pac. R. Co., a railroad sought to build a track to physically connect an existing rail line to a newly constructed coal shaft. 149 N.E. 492, 495 (Ill. 1925). The railroad did not previously serve the territory near the coal shaft and the

track would enter territory served by a competing railroad. Id. Similarly, the rail line at issue in Texas & Pacific would have physically connected the constructing railroad with an industrial district already served by a competitor railroad – and the rail line was to run alongside the competitor's rail line. 270 U.S. at 274-275.

The third case, Riverview Trenton, did not address construction under § 10901(a)(1) or (2). The Board held that § 10901(a)(4) operating authority was needed because the track in question would constitute the railroad's entire operation. 2003 WL 21108179 at *6. Accordingly, it does not support a finding that construction authority under § 10901(a) (1) or (2) is required merely because a rail carrier's ability to compete would improve.

D. The Hearne Classification Yard's Importance to Interstate Commerce Does Not Bring It within § 10901

Perhaps the most creative attempt to stretch § 10901 to encompass the Hearne Classification Yard is BRBA's contention that construction authority is required for Hearne Classification Yard because of the yard's "importance in interstate commerce." Petition at 30. Petitioner relies on a single case for this proposition, Piedmont & N. Ry. Co. v. Interstate Commerce Comm'n, 286 U.S. 299 (1932). Not only are the facts in Piedmont distinguishable but the Court in Piedmont interpreted a different provision and applied a different standard from § 10901.

In Piedmont, an electric railway operated two separate lines, one in North Carolina and one in South Carolina, and sought to construct two extensions, a fifty-three mile extension to connect the two separate lines and a seventy-file mile extension from its northern terminus. Id. at 303. The railway argued that construction authority was not needed under a statutory exemption for "street, suburban, *interurban electric railways*, which are *not operated as a part of parts of a*

general steam railroad system of transportation." Id. at 305-306 (emphasis added).[16] The court focused on two issues: whether the railroad was an interurban electric railway and whether it operated as part of the general railroad system. Id. at 306.

The Court had little trouble with this analysis. The railroad operated only 2.9 miles of track within a city, out of approximately 180 miles total, and while the railroad did operate electric locomotives, they were used only to move freight and interchange traffic with steam railroads. Id. Thus, the statutory exemption for interurban electric railways did not apply. The Court's statement that the track was "of such importance in interstate commerce and renders a service so predominantly devoted to the handling of interstate freight" was made in the context of determining that the railroad was part of the general railroad system. Id. at 311. Under the applicable statute, this meant that construction authority was required because the railroad was not an "essentially local" interurban railway. Id. at 311.

Were the Board to adopt the standard suggested by BRBA it would nullify the entire exception under § 10906. It is doubtful whether any capacity construction project undertaken by a Class I railroad would be deemed not important to interstate commerce. Such pervasive regulation of track construction is not what Congress intended. See Detroit/Wayne Cnty, 59 F.3d at 1317

E. The Hearne Classification Yard's Proposed Size and Cost Do Not Bring It within § 10901

The Petition further attempts to confuse the issues by placing significance on the proposed cost and size of the Hearne Classification Yard. Petition at 8-10. It is not the cost or the

[16] This exemption is found today in § 10501(a)(1), which provides that the Board's jurisdiction extends only to transportation by rail carrier. Under § 10102(5), the definition of "rail carrier" does not include "street, suburban, or interurban electric railways not operated as part of the general system of rail transportation."

size of the track that matters, it is whether the track will extend a railroad's reach into new territory or to new customers or merely be used for incidental purposes. Nicholson, 711 F.2d at 368. The yard at issue in Nicholson, which today is UP's Livonia Yard near Baton Rouge, Louisiana, was to be approximately 3.5 miles long and 0.5 miles wide covering approximately 550 acres with over 100 miles of track at an estimated price tag of $75 million, in 1983 dollars. Id. at fn. 3. The Fifth Circuit likewise disregarded the cost and size of a proposed yard that was five miles long costing $20 million (in 1963 dollars) to find that no authority is required for construction of classification yards. Georgia S. & F. Ry. Co., 324 F.2d at 802. The proposed cost and size of the Hearne Classification Yard have no bearing on whether construction authority is required.

F. Environmental and Safety Concerns do not Factor into the Board's Analysis

BRBA urges the Board to assert its authority because of alleged environmental and safety issues. Petition at 12-14. These issues are not relevant to deciding the question of whether construction of the Hearne Classification Yard requires § 10901 authority. "The extent of, or intensity of debate over, a project's environmental and safety issues, however, does not, by itself, confer jurisdiction on the Board." Jude, 1998 WL 525587, *5 citing Nicholson, 711 F.2d at 366; Friends of the Aquifer, City of Hauser, Id, Hauser Lake Water Dist., Cheryl L. Rodgers, Clay Larkin, Kootenai Envtl. Alliance, R.R. & Clearcuts Campaign, Finance Docket No. 33966, 2001 WL 928949, *5 (STB served Aug. 15, 2001)

Moreover, the environmental and safety allegations raised by BRBA are also inaccurate. UP acknowledges that environmental concerns and safety are important to UP and its stakeholders. UP is committed to maintaining best environmental practices and the Hearne Classification Yard will comply with all applicable environmental requirements. The plans for

the yard are not sufficiently developed to determine exactly what environmental requirements may apply. The yard will likely be subject to the Clean Water Act and require storm water permits and storm water pollution prevention plans to address storm water runoff from the yard. The Clean Air Act is likely to apply meaning UP will comply its regulations concerning air pollution. UP routinely conducts audits to ensure its facilities are in compliance with environmental requirements. The Hearne Classification Yard will be subject to these same rigorous standards.

UP's commitment to safety is evident from its record and statistics. BRBA cites dubious safety statistics claiming that UP has a significantly higher accident rate than the rail industry as a whole. Petition at 12-13. The source of these statistics is not clear but FRA safety statistics confirm that UP's performance compares favorably to the industry as a whole. UP's accident/incident rate per million train miles was 10.3 for the year 2012, which was lower than the rate for the industry as a whole which was 14.9. See Exhibit 1. This exhibit also shows that UP's accident/incident rate has improved by nearly 25% since 2003.

As plans for the Hearne Classification Yard move forward, UP will continue to work with the community to address safety and environmental concerns related to construction and operation of the yard.

G. BRBA's Request for Discovery Should be Denied

The Board generally does not allow discovery in declaratory order proceedings where the dispute involves a legal issue and the record is sufficient to resolve the dispute. Maryland Transit Administration--Petition for Declaratory Order, Finance Docket No. 34975, 2008 WL 4281987, *5 (STB served September 19, 2008); Norfolk Southern Railway Co.--Petition for Declaratory Order, Docket No. FD 35701, 2012 WL 6200264, n. 1 (STB served December 12, 2012); Town

of Babylon and Pinelawn Cemetery--Petition for Declaratory Order, Finance Docket No. 35057, 2008 WL 275697, n. 4 (STB served February 1, 2008). The overwhelming legal authority that classification yards are subject to the § 10906 exception together with the undisputed facts negate any need for discovery in this matter.[17]

There is no dispute as to the legal standard to apply. Nicholson is clear that construction authority is not required for classification yards. To the extent they are relevant, cases addressing § 10901 in other contexts are also clear that construction of a yard is excepted under § 10906. Likewise, the relevant facts are undisputed. BRBA does not dispute that the yard will be located next to UP's existing rail lines in Robertson County and does not argue that the yard will physically connect to a new customer. Therefore, the yard will not enter new territory. Moreover, BRBA's Petition confirms that UP already serves the markets and customers it claims are new. See supra § II.B.2, pp. 13-20. Even under BRBA's incorrect interpretation of "market invasion", there can be no dispute that UP already serves the "new" markets that BRBA claims will be reached using the yard track.

Even if there were a factual dispute, the information sought by BRBA's unduly burdensome and overbroad discovery requests have no bearing on the legal issue. Documents relating to UP's "plans or desire" for a new yard or new rail lines in Robertson County (Discovery Requests 1-2, Petition Ex. C) will not provide the Board with relevant information because UP's presence in Robertson County is not in dispute thus Robertson County is not new territory. See Figure 2. Information about the current traffic and congestion in Robertson County (Discovery Requests 3-4) is also irrelevant because the classification yard will be located at crossroads of UP lines in Robertson County and will relieve pressure on terminals and lines

[17] All evidence offered by UP in this Reply was taken from BRBA's Petition, Petition exhibits or a publicly available source. This information was available to BRBA prior to filing the Petition.

beyond, allowing UP to move traffic more efficiently. See supra § I, pp. 3-7. BRBA submitted ample evidence with its Petition showing that UP already carries hydraulic fracturing, oil-by-rail, and export coal traffic and handles shipments from Mexico and the Panama Canal. Additional information as to the development of these markets (Discovery Requests 5-8) will not change the outcome of this matter, particularly where the track to be built in Robertson County will not physically reach any new customers. Even if Board authority were required prior to construction of the yard, that authority does not extend to acquisition of land for the construction under state law making BRBA's request for information related to condemnation actions (Discovery Request 9) wholly irrelevant to the issues before the Board. Similarly, the case law is clear that the economic impact of construction on agriculture and/or oil and gas activity (Discovery Request 10) is not a factor to be considered by the Board.

The law is settled and the facts are not in dispute. Discovery will serve no purpose other than to delay a prompt resolution of this matter. BRBA's burdensome and overbroad request for irrelevant discovery should be denied.

III. CONCLUSION

For all of the foregoing reasons, the Board should deny BRBA's request for discovery, deny BRBA's request for an injunction and find that construction authority under 49 U.S.C. § 10901(a) is not required for construction of UP's proposed classification yard in Robertson County, Texas.

Respectfully submitted,

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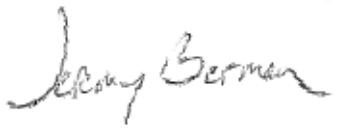
November 13, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November 2013, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery, on:

James B. Blackburn
Mary B. Conner
Blackburn & Carter
4709 Austin Street
Houston, Texas 77004



Jeremy M. Berman

EXHIBIT 1

1.06 - Ten Year Accident/Incident Overview by Railroad

UNION PACIFIC RR CO. [UP]
SUMMARY BY CALENDAR YEAR, (JAN - DEC)
Run date: Wed, Nov 6, 2013

Category	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	% Change From Last Year	% Change From 2003
TOTAL ACCIDENTS/INCIDENTS	2,562.0	2,708.0	2,747.0	2,749.0	2,597.0	2,287.0	1,696.0	1,708.0	1,738.0	1,717.0	-1.2	-33.0
Total a/i rate (events per million train miles)	13.5	14.0	13.8	13.5	13.4	12.6	11.4	10.7	10.5	10.3	-1.4	-23.5
---Total fatalities	207.0	203.0	167.0	226.0	172.0	133.0	103.0	113.0	109.0	133.0	22.0	-35.7
---Total nonfatal conditions	1,381.0	1,466.0	1,525.0	1,479.0	1,582.0	1,365.0	1,068.0	1,049.0	998.0	992.0	-0.6	-28.2
Employee on duty deaths	3.0	5.0	8.0	5.0	3.0	7.0	3.0	2.0	3.0	5.0	66.7	66.7
Nonfatal EOD injuries	962.0	960.0	1,004.0	940.0	1,030.0	873.0	662.0	603.0	561.0	512.0	-8.7	-46.8
Nonfatal EOD illnesses	25.0	26.0	36.0	37.0	34.0	25.0	19.0	25.0	18.0	18.0	0.0	-28.0
Total employee on duty cases	990.0	991.0	1,048.0	982.0	1,067.0	905.0	684.0	630.0	582.0	535.0	-8.1	-46.0
Employee on duty rate per 200K hours	2.2	2.1	2.1	2.0	2.1	1.9	1.6	1.5	1.3	1.1	-9.7	-48.6
Cases with days absent from work	719.0	674.0	687.0	630.0	674.0	526.0	408.0	366.0	325.0	301.0	-7.4	-58.1
Trespasser deaths, not at HRC	133.0	115.0	95.0	122.0	89.0	77.0	52.0	59.0	59.0	73.0	23.7	-45.1
Trespasser injuries, not at HRC	144.0	124.0	124.0	148.0	117.0	128.0	91.0	83.0	74.0	97.0	31.1	-32.6
TRAIN ACCIDENTS	801.0	960.0	955.0	891.0	723.0	637.0	444.0	447.0	547.0	501.0	-8.4	-37.5
Train accidents per million train miles	4.2	5.0	4.8	4.4	3.7	3.2	3.0	2.8	3.2	3.0	-8.6	-28.6
--- Train accident deaths	2.0	8.0	3.0	3.0	4.0	.	.	.	2.0	5.0	150.0	150.0
--- Train accident injuries	30.0	118.0	79.0	67.0	49.0	19.0	11.0	16.0	12.0	8.0	-33.3	-73.3
> Human factor caused	306.0	367.0	353.0	300.0	263.0	212.0	136.0	122.0	175.0	163.0	-6.9	-46.7
> Track caused	262.0	307.0	343.0	312.0	254.0	229.0	153.0	163.0	194.0	164.0	-15.5	-37.4
> Motive power/equipment caused	96.0	104.0	94.0	105.0	82.0	82.0	61.0	51.0	48.0	59.0	22.9	-38.5
> Signal caused, all track types	26.0	28.0	22.0	23.0	18.0	22.0	13.0	16.0	13.0	14.0	7.7	-46.2
> Signal caused, main line track	1.0	1.0	.	1.0	4.0	.	1.0	1.0	1.0	.	.	.
> Miscellaneous caused	111.0	154.0	143.0	151.0	106.0	92.0	81.0	85.0	117.0	101.0	-13.7	-9.0
> Collisions	55.0	61.0	71.0	49.0	38.0	30.0	29.0	21.0	38.0	39.0	2.6	-29.1
> *** Collisions on main line track	8.0	17.0	26.0	15.0	11.0	10.0	3.0	3.0	7.0	10.0	42.9	25.0
> Derailments	615.0	724.0	730.0	666.0	544.0	486.0	316.0	336.0	420.0	384.0	-8.6	-37.6
> Other types, e.g., obstructions	131.0	175.0	154.0	176.0	141.0	121.0	99.0	90.0	89.0	78.0	-12.4	-40.5
Accidents with reportable damage > $100K	188.0	176.0	187.0	180.0	153.0	131.0	106.0	98.0	107.0	109.0	1.9	-42.0
*** Percent of total	23.5	18.3	19.6	20.2	21.2	20.6	23.9	21.9	19.6	21.8	11.2	-7.3
> $500K	52.0	52.0	56.0	44.0	44.0	38.0	36.0	32.0	29.0	28.0	-3.4	-46.2
*** Percent of total	6.5	5.4	5.9	4.9	6.1	6.0	8.1	7.2	5.3	5.6	5.4	-13.9
> $1,000,000	23.0	24.0	23.0	16.0	24.0	16.0	21.0	18.0	15.0	18.0	20.0	-21.7
*** Percent of total	2.9	2.5	2.4	1.8	3.3	2.5	4.7	4.0	2.7	3.6	31.0	25.1
Train accidents on main line	245.0	240.0	257.0	244.0	181.0	183.0	132.0	122.0	152.0	136.0	-10.5	-44.5
Rate per million train miles 1/	1.4	1.4	1.4	1.3	1.1	1.2	1.0	0.9	1.0	0.9	-10.6	-33.1
Accidents on yard track	477.0	614.0	556.0	503.0	414.0	374.0	241.0	262.0	330.0	303.0	-8.2	-36.5
Rate per million yard switching train miles	32.3	39.2	35.0	31.9	15.7	15.9	13.1	14.3	16.0	14.4	-9.5	-55.3
HAZMAT RELEASES	8.0	7.0	12.0	5.0	6.0	5.0	3.0	4.0	4.0	6.0	50.0	-25.0
--- Cars carrying hazmat	1,753.0	1,783.0	2,280.0	1,990.0	1,930.0	1,898.0	1,142.0	1,553.0	1,947.0	2,257.0	15.9	28.8
--- Hazmat cars damaged/derailed	285.0	207.0	254.0	217.0	229.0	181.0	112.0	135.0	154.0	196.0	27.3	-31.2
--- Cars releasing	9.0	8.0	17.0	7.0	6.0	10.0	6.0	5.0	6.0	9.0	50.0	0.0
HIGHWAY-RAIL INCIDENTS	495.0	536.0	559.0	586.0	543.0	439.0	319.0	369.0	349.0	396.0	13.5	-20.0
Rate per million train miles	2.6	2.8	2.8	2.9	2.8	2.4	2.1	2.3	2.1	2.4	13.2	-8.6
--- Highway-rail incidents deaths	70.0	77.0	63.0	96.0	77.0	46.0	43.0	51.0	40.0	50.0	25.0	-28.6
--- Highway-rail incidents injuries	172.0	198.0	234.0	225.0	223.0	167.0	141.0	155.0	163.0	208.0	27.6	20.9
Incidents at public xings	437.0	453.0	481.0	501.0	459.0	375.0	263.0	319.0	298.0	318.0	6.7	-27.2
*** Percent of total	88.3	84.5	86.0	85.5	84.5	85.4	82.4	86.4	85.4	80.3	-6.0	-9.0
OTHER ACCIDENTS/INCIDENTS 2/	1,266.0	1,212.0	1,233.0	1,272.0	1,331.0	1,211.0	933.0	892.0	842.0	820.0	-2.6	-35.2
--- Other incidents deaths	135.0	118.0	101.0	127.0	91.0	87.0	60.0	62.0	67.0	78.0	16.4	-42.2
--- Other incidents injuries	1,179.0	1,150.0	1,212.0	1,187.0	1,310.0	1,179.0	916.0	878.0	823.0	776.0	-5.7	-34.2
Employee hours worked	89,623,306.0	94,511,265.0	97,340,553.0	100,702,269.0	101,040,810.0	97,348,004.0	84,181,080.0	83,381,352.0	92,486,498.0	94,146,743.0	1.8	5.0
Total train miles	190,164,939.0	193,130,457.0	199,103,551.0	203,283,356.0	194,228,915.0	182,047,889.0	148,651,734.0	159,349,004.0	166,153,774.0	166,512,607.0	0.2	-12.4
Yard switching miles	14,765,910.0	15,672,510.0	15,902,358.0	15,789,241.0	26,434,733.0	23,505,804.0	18,331,356.0	18,261,972.0	20,679,492.0	20,980,398.0	1.5	42.1
Passengers transported	.	.	.	.	.	.	.	.	.	.	.	.
Passengers kld in train accs or crossing incs	.	.	.	.	.	.	.	.	.	.	.	.
Passengers inj in train accs or crossing incs	.	.	.	.	.	.	.	.	.	.	.	.
Passengers kld in other incidents	.	.	.	.	.	.	.	.	.	.	.	.
Passengers inj in other incidents	.	.	.	.	.	.	.	.	.	.	.	.

1/ Rate of accidents on mainline divided by total train miles - yard switching miles
2/ Other accidents/incidents are events other than train accidents or crossing incidents that cause physical harm to persons
TOTAL ACCIDENTS IS THE SUM OF TRAIN ACCIDENTS, CROSSING INCIDENTS, AND OTHER ACCIDENTS/INCIDENTS
Other accidents/incidents are events other than train accidents or crossing incidents that cause physical harm to persons

1.06 - Ten Year Accident/Incident Overview by Railroad

ALL RAILROADS
SUMMARY BY CALENDAR YEAR, (JAN - DEC)
Run date:Wed, Nov 6, 2013

Category	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	% Change From Last Year	% Change From 2003
Number of railroads included	707.0	718.0	729.0	749.0	749.0	769.0	786.0	793.0	803.0	815.0	1.5	15.3
TOTAL ACCIDENTS/INCIDENTS	14,371.0	14,523.0	14,311.0	13,803.0	13,936.0	12,959.0	11,244.0	11,645.0	11,476.0	10,906.0	-5.0	-24.1
Total a/i rate (events per million train miles)	19.3	18.9	18.1	17.0	17.6	16.7	16.8	16.5	16.0	14.9	-6.8	-22.9
---Total fatalities	865.0	891.0	884.0	903.0	851.0	804.0	694.0	736.0	697.0	697.0	0.0	-19.4
---Total nonfatal conditions	9,264.0	9,194.0	9,550.0	8,797.0	9,669.0	9,064.0	8,021.0	8,390.0	8,385.0	8,264.0	-1.4	-10.8
Employee on duty deaths	19.0	25.0	25.0	16.0	17.0	26.0	16.0	20.0	21.0	16.0	-23.8	-15.8
Nonfatal EOD injuries	6,076.0	5,769.0	5,535.0	5,000.0	5,226.0	4,726.0	4,266.0	4,234.0	4,041.0	3,751.0	-7.2	-38.3
Nonfatal EOD illnesses	182.0	253.0	287.0	275.0	236.0	274.0	237.0	192.0	190.0	192.0	1.1	5.5
Total employee on duty cases	6,277.0	6,047.0	5,847.0	5,291.0	5,479.0	5,026.0	4,519.0	4,446.0	4,252.0	3,959.0	-6.9	-36.9
Employee on duty rate per 200K hours	2.8	2.6	2.4	2.2	2.3	2.1	2.1	2.0	1.8	1.7	-6.8	-38.6
Cases with days absent from work	4,401.0	4,071.0	3,967.0	3,496.0	3,726.0	3,323.0	3,019.0	3,030.0	2,872.0	2,580.0	-10.2	-41.4
Trespasser deaths, not at HRC	498.0	472.0	458.0	511.0	470.0	457.0	415.0	440.0	412.0	430.0	4.4	-13.7
Trespasser injuries, not at HRC	398.0	406.0	420.0	481.0	407.0	432.0	344.0	391.0	367.0	411.0	12.0	3.3
TRAIN ACCIDENTS	3,019.0	3,385.0	3,266.0	2,998.0	2,693.0	2,482.0	1,911.0	1,904.0	2,023.0	1,742.0	-13.9	-42.3
Train accidents per million train miles	4.1	4.4	4.1	3.7	3.4	3.2	2.9	2.7	2.8	2.4	-15.5	-41.4
--- Train accident deaths	4.0	13.0	33.0	6.0	9.0	27.0	4.0	8.0	6.0	9.0	50.0	125.0
--- Train accident injuries	232.0	346.0	787.0	220.0	389.0	323.0	127.0	110.0	212.0	458.0	116.0	97.4
> Human factor caused	1,230.0	1,353.0	1,270.0	1,068.0	1,047.0	911.0	655.0	650.0	746.0	655.0	-12.2	-46.7
> Track caused	974.0	1,055.0	1,082.0	1,075.0	932.0	858.0	669.0	671.0	689.0	577.0	-16.3	-40.8
> Motive power/equipment caused	361.0	429.0	369.0	351.0	326.0	320.0	267.0	251.0	236.0	205.0	-13.1	-43.2
> Signal caused, all track types	58.0	70.0	64.0	50.0	49.0	52.0	51.0	67.0	33.0	47.0	42.4	-19.0
> Signal caused, main line track	4.0	5.0	6.0	6.0	9.0	1.0	2.0	2.0	3.0	1.0	-66.7	-75.0
> Miscellaneous caused	396.0	478.0	481.0	454.0	339.0	341.0	269.0	265.0	319.0	258.0	-19.1	-34.8
> Collisions	198.0	237.0	274.0	201.0	208.0	192.0	134.0	129.0	160.0	154.0	-3.8	-22.2
> *** Collisions on main line track	40.0	54.0	70.0	44.0	49.0	36.0	25.0	23.0	29.0	36.0	24.1	-10.0
> Derailments	2,133.0	2,435.0	2,305.0	2,197.0	1,934.0	1,790.0	1,370.0	1,336.0	1,470.0	1,283.0	-12.7	-39.8
> Other types, e.g., obstructions	688.0	713.0	687.0	600.0	551.0	500.0	407.0	439.0	393.0	305.0	-22.4	-55.7
Accidents with reportable damage > $100K	535.0	536.0	526.0	571.0	540.0	481.0	385.0	423.0	407.0	342.0	-16.0	-36.1
*** Percent of total	17.7	15.8	16.1	19.0	20.1	19.4	20.1	22.2	20.1	19.6	-2.4	10.8
> $500K	136.0	136.0	147.0	137.0	141.0	126.0	102.0	111.0	112.0	82.0	-26.8	-39.7
*** Percent of total	4.5	4.0	4.5	4.6	5.2	5.1	5.3	5.8	5.5	4.7	-15.0	4.5
> $1,000,000	55.0	57.0	57.0	59.0	69.0	52.0	52.0	57.0	53.0	43.0	-18.9	-21.8
*** Percent of total	1.8	1.7	1.7	2.0	2.6	2.1	2.7	3.0	2.6	2.5	-5.8	35.5
Train accidents on main line	976.0	1,033.0	1,021.0	981.0	854.0	767.0	618.0	617.0	620.0	500.0	-19.4	-48.8
Rate per million train miles 1/	1.5	1.5	1.5	1.4	1.2	1.1	1.1	1.0	1.0	0.8	-21.0	-47.5
Accidents on yard track	1,676.0	1,928.0	1,816.0	1,582.0	1,402.0	1,384.0	1,012.0	1,027.0	1,123.0	988.0	-12.0	-41.1
Rate per million yard switching train miles	20.5	23.0	20.6	17.8	13.5	13.6	12.4	11.7	13.3	11.5	-13.3	-43.9
HAZMAT RELEASES	30.0	31.0	39.0	30.0	46.0	22.0	22.0	21.0	21.0	25.0	19.0	-16.7
--- Cars carrying hazmat	7,790.0	8,185.0	8,034.0	9,000.0	8,562.0	8,451.0	6,440.0	7,567.0	7,582.0	6,832.0	-9.9	-12.3
--- Hazmat cars damaged/derailed	1,072.0	998.0	915.0	1,047.0	1,056.0	751.0	749.0	722.0	666.0	668.0	0.3	-37.7
--- Cars releasing	41.0	49.0	52.0	71.0	76.0	38.0	44.0	40.0	66.0	45.0	-31.8	9.8
HIGHWAY-RAIL INCIDENTS	2,977.0	3,085.0	3,066.0	2,942.0	2,778.0	2,429.0	1,934.0	2,051.0	2,060.0	1,967.0	-4.5	-33.9
Rate per million train miles	4.0	4.0	3.9	3.6	3.5	3.1	2.9	2.9	2.9	2.7	-6.3	-32.9
--- Highway-rail incidents deaths	334.0	371.0	359.0	369.0	339.0	290.0	248.0	261.0	250.0	233.0	-6.8	-30.2
--- Highway-rail incidents injuries	1,035.0	1,094.0	1,053.0	1,070.0	1,059.0	990.0	743.0	887.0	1,039.0	939.0	-9.6	-9.3
Incidents at public xings	2,606.0	2,663.0	2,643.0	2,517.0	2,354.0	2,082.0	1,644.0	1,773.0	1,784.0	1,693.0	-5.1	-35.0
*** Percent of total	87.5	86.3	86.2	85.6	84.7	85.7	85.0	86.4	86.6	86.1	-0.6	-1.7
OTHER ACCIDENTS/INCIDENTS 2/	8,375.0	8,053.0	7,979.0	7,863.0	8,465.0	8,048.0	7,399.0	7,690.0	7,393.0	7,197.0	-2.7	-14.1
--- Other incidents deaths	527.0	507.0	492.0	528.0	503.0	487.0	442.0	467.0	441.0	455.0	3.2	-13.7
--- Other incidents injuries	7,997.0	7,754.0	7,710.0	7,507.0	8,301.0	7,751.0	7,151.0	7,393.0	7,134.0	6,867.0	-3.7	-14.1
Employee hours worked	451,148,478.0	458,399,199.0	478,470,772.0	485,854,723.0	483,645,077.0	478,351,185.0	430,049,121.0	437,552,887.0	463,492,121.0	463,163,622.0	-0.1	2.7
Total train miles	743,330,718.0	770,152,268.0	789,033,596.0	813,583,252.0	793,617,148.0	774,059,688.0	667,973,049.0	704,840,558.0	717,611,706.0	731,644,354.0	2.0	-1.6
Yard switching miles	81,630,441.0	83,934,984.0	88,094,334.0	89,050,436.0	104,046,556.0	101,990,237.0	81,457,951.0	87,695,904.0	84,627,717.0	85,845,260.0	1.4	5.2
Passengers transported	494,264,116.0	513,293,246.0	523,434,052.0	602,280,892.0	644,612,753.0	664,831,835.0	640,886,063.0	637,806,148.0	654,155,951.0	663,137,414.0	1.4	34.2
Passengers kld in train accs or crossing incs	1.0	1.0	12.0			24.0			4.0			
Passengers inj in train accs or crossing incs	152.0	117.0	336.0	157.0	253.0	327.0	101.0	154.0	351.0	168.0	-52.1	10.5
Passengers kld in other incidents	2.0	2.0	4.0	2.0	5.0		3.0	3.0	2.0	5.0	150.0	150.0
Passengers inj in other incidents	575.0	586.0	621.0	779.0	1,263.0	1,007.0	1,090.0	1,212.0	1,197.0	1,334.0	11.4	132.0

1/ Rate of accidents on mainline divided by total train miles - yard switching miles
2/ Other accidents/incidents are events other than train accidents or crossing incidents that cause physical harm to persons
TOTAL ACCIDENTS IS THE SUM OF TRAIN ACCIDENTS, CROSSING INCIDENTS, AND OTHER ACCIDENTS/INCIDENTS
Other accidents/incidents are events other than train accidents or crossing incidents that cause physical harm to persons