STB FD 32760 3-29-96 SUB No. 13 1/8 A

0101022004

REDACTED – To be filed on the public record TM-23

Item No.
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORP., UNION PACIFIC RR. CO. AND
MISSOURI PACIFIC RR. CO.
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORP., SOUTHERN PACIFIC
TRANS. CO., ST. LOUIS SOUTHWESTERN RW. CO.,
SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN CORP.

Finance Docket No. 32760, Sub No. 13

THE TEXAS MEXICAN RAILWAY CO.
-- TRACKAGE RIGHTS OVER LINES OF
THE UNION PACIFIC RR. CO. AND SOUTHERN PACIFIC TRANS. CO.

Finance Docket No. 32760, Sub No. 14

THE TEXAS MEXICAN RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS OVER LINES OF
THE HOUSTON BELT & TERMINAL RAILWAY CO.

FILED
MAR 29 1996
INTERSTATE COMMERCE COMMISSION

RESPONSIVE APPLICATION OF
THE TEXAS MEXICAN RAILWAY COMPANY

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RECEIVED MAR 29 1996 I.C.C. BUILDING GUARD DESK

ENTERED Office of the Secretary MAR 29 1996 8 Public Record

March 29, 1996

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RESPONSIVE APPLICATION OF THE TEXAS MEXICAN RAILWAY COMPANY

The Texas Mexican Railway Company ("Tex Mex"), hereby applies under 49 U.S.C. §§ 11343-45[1] and the Board's Railroad Consolidation Procedures, 49 C.F.R. part 1180, for the grant of conditions upon the merger transaction proposed by the Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company,

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[1] The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the "Act"), enacted on December 29, 1995 and effective January 1, 1996, abolished the Interstate Commerce Commission ("ICC") and transferred certain functions and proceedings to the Surface Transportation Board ("Board"). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This responsive application relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to the Board's jurisdiction pursuant to Sections 11323 through 11325 of the Act. Therefore, this responsive application is submitted pursuant to the law as it was in effect prior to the Act, and citations are to the former sections of the statute and regulations, unless otherwise indicated.

Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and The Denver and Rio Grande Western Railroad Company ("Applicants") in the Applicants' Railroad Merger Application (UP/SP-22 through UP/SP-28, as supplemented by UP/SP-36) to address competitive concerns associated with the Applicants' proposed merger. In support of this, Tex Mex states as follows:[2]

SECTION 1180.6(a)(1)
DESCRIPTION OF THE PROPOSED CONDITIONS

In this responsive application, Tex Mex requests that the Board condition any approval of the Applicants' Merger Application and the BN/Santa Fe Agreement[3] with Applicants' granting trackage rights to Tex Mex over certain lines described below from Robstown and Corpus Christi, Texas, to Houston, Texas, and from Houston to a connection

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[2] In Decision No. 14 issued in this proceeding, the Board found that "The responsive application which Tex Mex anticipates . . . will be a minor transaction rather than a significant transaction." Union Pacific Corp., Union Pacific Railroad Co., and Missouri Pacific Railroad Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transp. Co., St. Louis Southwestern Railway Co., SPCSL Corp., and The Denver and Rio Grande Western Railroad Co., Finance Docket No. 32760 ("UP/SP"), Decision No. 14, served February 15, 1996, slip op. at 5. Nevertheless, to the extent the information would aid the Board determine that a grant of this responsive application is justified, Tex Mex will provide much of the information which would normally be required of a responsive application proposing a significant transaction, as that term is defined by the Railroad Consolidation Procedures.

[3] The "BN/Santa Fe Agreement" refers to that agreement entered into by the Applicants and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (collectively, "BN/Santa Fe") dated September 25, 1995 as supplemented by the Supplemental Agreement between the Applicants and BN/Santa Fe dated November 18, 1995, both appearing in Volume I of the Applicants' Railroad Merger Application, UP/SP-22.

with the Kansas City Southern Railway Company ("KCS") at Beaumont, Texas. (These rights are shown on the maps appearing as Exhibit 1.) Tex Mex seeks rights over those lines to permit it to carry overhead traffic and to serve all local shippers currently capable of receiving service from both the Union Pacific Railroad ("UP") and the Southern Pacific Transportation Company ("SP"), directly or through reciprocal switching, with full rights to interchange traffic with UP, SP and any other railroad at any interchange point on such lines. The specific rights requested are as follows:

I. **Main Line Trackage Rights.**

A. The UP line between Robstown, TX and Placedo, TX.

B. The UP line between Corpus Christi, TX and Odem, TX via Savage Lane to Viola Yard on the UP.

C. The SP line from Placedo, TX to Victoria, TX.[4]

D. The SP line between Victoria, TX and Flatonia, TX.

E. The SP line between Flatonia, TX and West Junction, TX.

F. In the alternative:[5] (a) The UP line from Gulf Coast Junction, TX, through Settegast Junction, TX to Amelia, TX ("UP Mainline Option"); or (b) The SP line from Tower 87 to Amelia, TX ("SP Mainline Option").

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[4] In the event that UP/SP chooses to divest this segment in favor of UP's Bloomington to Victoria line, Tex Mex seeks to purchase this line, contingent upon the grant by the Board of the other trackage rights requested herein.

[5] Tex Mex can operate efficiently over either the UP Mainline Option or the SP Mainline Option. Tex Mex asks the Board to require Applicants to elect which option they prefer Tex Mex to operate.

G. The joint UP/SP line from Amelia to Beaumont, TX and the connection with KCS at the Neches River Draw Bridge in Beaumont.

II. **Trackage Rights in Houston Over SP Lines.**

A. The SP line from West Junction through Bellaire Junction to Eureka at SP Milepost 5.37 (Chaney Junction, TX).

B. The SP line from SP Milepost 5.37 (Chaney Junction, TX) to SP Milepost 360.7 near Tower 26 via the Houston Passenger station.

C. The SP line from SP Milepost 5.37 (Chaney Junction, TX) to SP Milepost 360.7 near Tower 26 via the Hardy Street yard.

D. If the UP Mainline Option is utilized: The SP line from Milepost 360.7 near Tower 26 to the connection with the Houston Belt & Terminal Railway Company ("HB&T") at Quitman Street near SP Milepost 1.5.

E. If the SP Mainline Option is utilized: The SP line from Tower 26 through Tower 87 to the SP mainline to Amelia.

F. The SP line from West Junction to the connection with the Port Terminal Railway Association ("PTRA") at Katy Neck (GH&H Junction), TX, by way of Pierce Junction.

III. <u>Terminal Trackage Rights In Houston Over HB&T</u>.

Terminal trackage rights pursuant to 49 U.S.C. § 11103 over the following terminal tracks of HB&T:[6]

A. If the UP Mainline Option is utilized: The HB&T line from Quitman Street to the HB&T's connection with UP at Gulf Coast Junction.

B. The HB&T line from its connection with the SP line at T. & N.O. Junction, TX (Tower 81) to HB&T's connection with UP at Settegast Junction.

IV. <u>Terminal Facilities in the Houston Terminal Area</u>.

The right to use the following yards and other terminal facilities of SP, UP and HB&T:

A. SP's Glidden (TX) Yard.[7]

B. Interchanges with PTRA at the North Yard, Manchester Yard and Pasadena Yard in Houston, TX.

C. Interchanges with HB&T at HB&T's New South Yard.

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[6] Section 1180.4(c)(6) requires that all "directly related applications" be filed concurrently with the responsive application. The directly related Application for Terminal Trackage Rights pursuant to Section 11103 is submitted with this Responsive Application.

[7] Tex Mex is willing to purchase or lease this yard, at UP/SP's option. The yard is presently inactive.

V. Other Capital Improvements.

Tex Mex can provide service over the lines described above in their current condition and without any capital improvements. Nevertheless, Tex Mex will seek the right to construct two improved connections, at Robstown, TX, and Flatonia, TX, that will improve its service over those lines.[8]

VI. Trackage Rights Compensation.

As provided in the proposed trackage rights agreement attached hereto, Tex Mex requests the Board to condition any approval of the merger on granting Tex Mex the foregoing trackage rights at the same compensation provided for in the BN/Santa Fe Agreement with one important exception. The BN/Santa Fe Agreement provides for no adjustment based on railroad productivity improvements as periodically determined by the Board. As Tex Mex witness Joseph Ellebracht points out, over time that could well result in BN/Santa Fe paying a level of compensation having no reasonable relation to the costs of its operations to the owning railroad, UPSP, which would be a further obstacle to its ability to provide competitive service. Tex Mex, therefore, requests that the compensation level for its trackage rights operations be subject to quarterly adjustments for changes in railroad productivity.

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[8] In UP/SP, Decision No. 14, the Board approved Tex Mex's request to submit the instant application without complying with the additional requirements set forth in 49 C.F.R. part 1150, subpart A, and environmental review of these improvements. Pursuant to that decision, Tex Mex is submitting this responsive application with an operating plan, marketing analyses, and other information based on the assumption that the anticipated connections will be constructed. If the Board grants this responsive application, Tex Mex will then file the necessary construction application and perform and submit the required environmental review.

SECTION 1180.6(a)(1)(I)
APPLICANT

The name, business address and telephone number of the responsive applicant is:[9]

The Texas Mexican Railway Company
1200 Washington Street
Post Office Box 419
Laredo, Texas 78042
(210) 728-6700

Questions regarding this application should be addressed to the counsel shown below:

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SECTION 1180.6(a)(1)(ii)
PROPOSED TIME SCHEDULE

Tex Mex proposes to begin operations over the rights requested herein as soon as possible after the effective date of a final order of the Board authorizing those operations. Tex Mex will seek the right to construct two improved connections, at Robstown, TX and Flatonia, TX, that will enhance its service over those lines. As discussed in note 8 above, Tex Mex will submit an application for construction authority, with the required environmental review documentation, for this construction as soon as possible following Board approval of the conditions sought herein.

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[9] In UP/SP, Decision No. 14, the Board granted the waiver or clarification sought by Tex Mex to provide that Tex Mex's noncarrier parent, Mexrail, Inc. ("Mexrail"), and the shareholders of Mexrail are not to be considered "applicants" under 49 C.F.R. § 1180.3(a).

SECTION 1180.6(a)(1)(iii)
PURPOSE

On November 30, 1995, the Applicants filed an application for the merger of the Union Pacific and the Southern Pacific railroad systems. Tex Mex has analyzed the Applicants' Railroad Merger Application in light of the Board's Railroad Consolidation Procedures and General Policy Statement (49 C.F.R. § 1180.1). As set forth in more detail below and in the verified statements of its witnesses, Tex Mex has determined that both potential harms to the public identified in the Board's regulations at 49 C.F.R. § 1180.1(c)(2) (reduction in competition and harm to essential services) will result from the proposed railroad consolidation.

Applicants entered into an agreement with the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company which the Applicants claim addresses these competitive concerns. Analysis of the effects of the agreement conducted by Tex Mex witnesses Larry Fields, Brad Skinner, Curtis Grimm, and Joseph Ellebracht indicate, however, that the BN/Santa Fe Agreement falls far short of remedying the serious anticompetitive effects and threat to essential services of the merger, particularly as to U.S.-Mexico rail traffic moving through the Laredo rail gateway. The purpose of this responsive application is to address the competitive problems and loss of essential services that will result from the proposed merger and that are not remedied by the BN/Santa Fe Agreement.

The Southern Texas-Mexico Railroads and the Laredo Gateway:

Laredo is the principal gateway for rail traffic between the United States and Mexico. A majority of all rail traffic moving between the United States and Mexico moves over this gateway. Of all the U.S.-Mexico rail border crossings, it is supported by the strongest infrastructure of customs brokers and provides an effective routing in Mexico to the major Mexican destinations.

Laredo is served by two railroads: Tex Mex and the UP. Tex Mex is a Class II railroad that has been providing rail service since 1875 over its 157-mile line of railroad from Laredo, Texas on the U.S.-Mexico border to Robstown, Texas, where it meets up with UP, and on to Corpus Christi, Texas on the Gulf of Mexico where it meets up with a branch line of UP.

UP is a Class I railroad that stretches the length and breadth of the Western United States. In South Texas, UP has a line that runs from San Antonio, Texas to Laredo. UP also has a line that runs along the Gulf of Mexico from Algoa, Texas (located just south of Houston) to Brownsville, Texas on the U.S.-Mexico border (the "Brownsville Line"). Tex Mex connects with UP's Brownsville Line at Robstown. Tex Mex also connects with UP at Corpus Christi which is on a branch off the Brownsville Line.

The Southern Pacific Transportation Company ("SP") has trackage rights over portions of UP's Brownsville Line and its Corpus Christi branch line that permit it to interchange traffic there with Tex Mex. Although Tex Mex meets both UP and SP in Corpus Christi, nearly all of traffic that it has interchanged at Corpus Christi has been with SP. For many years Tex Mex and SP have provided the competitive alternative to the UP's San Antonio-Laredo service for U.S.-Mexican rail traffic through the Laredo U.S.-Mexico gateway.

The Concerns Addressed by this Application:

The merger of UP and SP will eliminate the competitive alternative the SP-Tex Mex route offered U.S.-Mexican rail traffic moving through Laredo. Larry Fields, Curtis Grimm, Brad Skinner, and Joseph Ellebracht, witnesses for Tex Mex, explain how the BN/Santa Fe Agreement falls significantly short of preserving the competition that now exists for rail transportation between the United States and Mexico. They explain why BN/Santa Fe will not be nearly as effective a competitor for that traffic as SP is today, and why, even if it were, there would still be an unacceptable reduction in competition for that traffic by the elimination of an independent competitor of one of the three Class I railroads providing rail service to Mexican gateways.

Additionally, Patrick Krick, building on the traffic diversion study conducted by Joseph Ellebracht, examines issues of primary importance to shippers local to Tex Mex. The rights Tex Mex requests are necessary not only to address the competitive problem not remedied by the BN/Santa Fe Agreement but also to permit Tex Mex to survive and provide shippers on its line access to the essential services that would otherwise be lost without the grant.

The Specific Purpose of this Application:

This responsive application seeks trackage rights over the lines described above from Robstown and Corpus Christi to Houston and from Houston to a connection with KCS at Beaumont, Texas in order to preserve the level of competition that now exists and to ensure that Tex Mex survives to continue to provide the essential services it now provides.

SECTION 1180.6(a)(1)(iv)
NATURE AND AMOUNT OF NEW SECURITIES
OR OTHER FINANCIAL ARRANGEMENTS

Tex Mex will not issue any new securities to conduct the operations proposed in this responsive application.

SECTION 1180.6(a)(2)
PUBLIC INTEREST JUSTIFICATIONS

The rights requested are clearly in the public interest because they would ameliorate the anticompetitive effects of the proposed merger not otherwise ameliorated by the BN/Santa Fe Agreement. Further, they would address the merger-related harm likely to result to the essential services provided by Tex Mex to its local customers, permitting those shippers to continue to receive adequate service. The conditions would not impose unreasonable operating or other problems for the consolidating carriers and would not frustrate the ability of the consolidating carriers to obtain the public benefits that they state will arise from the proposed transaction.

The rights requested in this responsive application are supported by numerous shippers, shipper groups, transportation intermediaries, short line railroads and trucking companies. These letters and verified statements are incorporated into this responsive application. Tex Mex understands that the Texas Railroad Commission, Texas Department of Transportation and the Texas Attorney General believe that the anticompetitive effects of the merger with the BN/Santa Fe Agreement are so extensive that the merger should not be approved unless Applicants divest the lines in question as well as others in Texas. Tex Mex also understands that the Texas Railroad Commission, on behalf of the State of Texas, will urge the Surface Transportation Board to condition any approval of the merger at least upon granting the rights that Tex Mex seeks in this responsive application.

SECTION 1180.6(a)(2)(i)
EFFECTS ON COMPETITION

Each of the witnesses who present verified statements for Tex Mex addresses the effects of the proposed merger, as conditioned by the BN/Santa Fe Agreement, and as further conditioned by the rights requested herein. This section summarizes the more detailed analysis presented in those statements.

1. Effects On Competition of the Proposed Merger and the BN/Santa Fe Agreement Without the Rights Sought Here.

The general conclusion of Tex Mex's witnesses is that the proposed merger would reduce competition in the markets served by Tex Mex -- especially the market for the transportation of goods between the United States and Mexico -- to a serious and unacceptable degree. They also conclude that the BN/Santa Fe Agreement would do little to restore the competition that would otherwise be lost, for two principal reasons.

First, even if the agreement enabled BN/Santa Fe to function as a perfect competitive substitute for an independent SP, the merger would still result in an unacceptable loss of competition in the markets served by Tex Mex because it would eliminate one of the three major U.S. railroads serving U.S.-Mexican gateways and would thus leave many shippers throughout the United States with only two railroads competing for their business where now they have three. Curtis M. Grimm, Professor of Transportation, Business and Public Policy at the College of Business and Management, University of Maryland, explains in his verified statement how this loss of one of the three competitors in the market for transportation of goods between the United States and Mexico will cause a very substantial loss of competition. Professor Grimm's conclusions about the general anticompetitive effects of reducing the competitors in a market from three to two are supported by empirical studies and are reflected in the Department of Justice's merger guidelines. Larry Fields, Tex Mex's president, and transportation consultant Joseph Ellebracht, also testify on the basis of their many years experience in the railroad industry, including Mr. Ellebracht's 14 years marketing rail services for SP, that shippers benefit significantly in rates and service from having three railroads rather than two competing for their business.

Furthermore, BN/Santa Fe's probable share of the market for U.S.-Mexico traffic is likely to be too small compared to a merged UP/SP's share to induce it to devote the resources needed to compete effectively for the traffic. Consequently, a merged UP/SP will dominate the market so substantially, that BN/Santa Fe's capacity to constrain UP/SP's pricing for most shippers will be minimal. For most shippers, therefore, the reduction in carriers will effectively be from two to one.

Second, the agreement will not enable BN/Santa Fe to function as a perfect, or even acceptable, competitive substitute for an independent SP -- certainly not in the markets served by Tex Mex, in any event. As both Mr. Ellebracht and Allen Haley explain, in place of SP's current operations over its own tracks, the agreement proffers as a substitute BN/Santa Fe operations via trackage or haulage rights, subject to UP/SP's traffic control, over a UP line that is substantially more congested and, for much of the traffic, more circuitous than SP's lines. Mr. Fields and Brad Skinner, a director of Tex Mex, and

Director of Multimodal Operations for Tex Mex's ultimate parent, Transportacion Maritima Mexicana ("TMM"), also describe a number of specific reasons to believe that BN/Santa Fe will have little interest in devoting the resources and efforts necessary to be an effective competitor to a merged UP/SP for this traffic, and that is why the Applicants gave BN/Santa Fe these rights and refused to give Tex Mex the rights it seeks.

Accordingly, if the proposed merger with the BN/Santa Fe agreement were approved, it would very likely cause a substantial lessening of competition for rail transportation of goods between the United States and Mexico. Professor Grimm and Mr. Ellebracht show that this is not traffic that can feasibly move by other modes. More than 80 shippers who depend on Tex Mex have also submitted statements expressing their concerns about the expected loss of competitive alternatives and their support for the rights Tex Mex seeks.

As Brad Skinner discusses, the result of this lessening of competition will seriously undermine the benefits that the United States, Mexico and Canada expect to derive from the North American Free Trade Agreement. It is also likely to undermine Mexico's present efforts to bring new efficiency and competition to the Mexican rail system through privatization. It will also frustrate the efforts that TMM is making, in partnership with Kansas City Southern Industries, Inc. ("KCSI"), to create a rail network between central Mexico and the central United States that will provide a strong competitive alternative to a merged UPSP system for rail transportation between Mexico and the United States and between Mexico and Canada.

2. The Effects on Competition of <u>Granting this Responsive Application</u>.

This application seeks trackage rights over UP and SP lines that would enable Tex Mex itself to connect with other railroads in Houston, Texas and Beaumont, Texas besides BN/Santa Fe. The other railroads in Houston are the Houston Belt & Terminal Railroad ("HB&T") and the Port Terminal Railroad Association ("PTRA") and the other railroad in Beaumont is the Kansas City Southern Railroad ("KCS"). These rights would free Tex Mex from complete dependence on a very doubtful connection with BN/Santa Fe, and they would enable Tex Mex, in conjunction particularly with KCS, to offer shippers served by KCS as well as shippers served by KCS's eastern railroad connections, Conrail, CSXT and Norfolk Southern, a strong third alternative for traffic to and from Mexico and points in southeastern Texas. Granting these rights would go a long way toward preserving the level of competition that presently exists for that traffic.

Tex Mex understands that a number of parties believe that the overall impacts of the merger with the BN/Santa Fe Agreement will be so anticompetitive that it should be denied altogether or should be approved only on condition that the Applicants divest a number of SP lines. These parties include the National Industrial Transportation League ("NITL"), the Society of the Plastics Industry, Inc., Western Coal Traffic League, the Kansas-Colorado Shippers Association, the Texas Railroad Commission, the Texas Department of Transportation, the Texas Attorney General, the Kansas City Southern Railroad ("KCS") and Consolidated Rail Corporation ("Conrail").

Tex Mex shares the concerns of these parties and would not dispute their conclusions. Tex Mex, however, has not analyzed the effects of the merger on markets other than those which it serves. As to Tex Mex's markets, Tex Mex believes that the merger would not have an unacceptable effect on competition if the Board grants this responsive application, thereby enabling Tex Mex to connect with KCS and other railroads in Houston and Beaumont and thus preserving an effective third competitive rail alternative to U.S. shippers of goods moving between the United States and Mexico.

It is important to understand that Tex Mex is not contending that the BN/Santa Fe Agreement is positively anticompetitive or that it will have no effect in restoring some of the competition that would be lost by the merger without the agreement. Tex Mex therefore does not object to the agreement, which the Applicants are free to make with BN/Santa Fe in any event. Tex Mex's submission is simply that the agreement does not go nearly far enough to preserve competition in a market that is critical to the United States and Mexico. Applicants, obviously, want their only competition for U.S.-Mexico traffic after the merger to be BN/Santa Fe operating under trackage or haulage rights. To allow Applicants' competition for that traffic -- and Tex Mex -- to depend entirely on those BN/Santa Fe operations would be a serious disservice to the public interest. In order to ensure that something approaching the current level of competition is preserved, it is essential that Tex Mex be able to connect directly with other carriers in Houston and Beaumont.

SECTION 1180.6(a)(2)(ii)
FINANCIAL CONSIDERATION; TRAFFIC, REVENUE AND EARNINGS INCREASES; OPERATING ECONOMIES

Joseph Ellebracht has performed a traffic study which is described in Part III of his verified statement. In this study, he estimated the effects on Tex Mex's traffic and revenues of (1) the merger with the BN/Santa Fe Agreement but without the rights sought by Tex Mex in this responsive application, and (2) the merger with the BN/Santa Fe Agreement and with the rights sought by Tex Mex in this responsive application.

In making the first estimate, Mr. Ellebracht, consistent with the methodology used by UP's Richard Peterson in his traffic study, first adjusted Tex Mex's actual 1994 waybill sample, to reflect traffic gains and losses expected to result from several events since 1994, including particularly the recent mergers of UP and CNW and of BN and ATSF. With these adjustments, Mr. Ellebracht developed a 1994 adjusted gross revenue for Tex Mex of $19.92 million. His traffic study concludes that the merger with the BN/Santa Fe Agreement would result in a $6.68 million reduction in Tex Mex's revenues to $13.24 million, a decline of 34% from the adjusted base.

Although Mr. Peterson's traffic study concluded that Tex Mex would actually gain traffic and revenue from the merger with the BN/Santa Fe agreement, Mr. Ellebracht explains several areas where his study disagrees with Mr. Peterson and why he believes some of the key assumptions underlying Mr. Peterson's study are not reasonable or supported by the evidence. The most significant is Mr. Peterson's assumption that, after the merger, Tex Mex will continue to receive a substantial amount of the traffic from UPSP at Corpus Christi that Tex Mex now receives from SP, even though UPSP will have its own competing route to Laredo -- i.e., UP's current route to Laredo. Since UP today interchanges very little Laredo-bound traffic with Tex Mex at Corpus Christi, Mr. Ellebracht points out that there is no reasonable basis for assuming that a merged UPSP would interchange any more with Tex Mex after the merger.

As to the second portion of his study, Mr. Ellebracht concludes that the merger with the BN/Santa Fe Agreement and the rights sought by Tex Mex in this application would bring Tex Mex's total revenues back up to $20.47 million, or 3% more than the adjusted base, and 55% more revenue than the study found for Tex Mex without the requested conditions.

Mr. Ellebracht also concluded that granting the rights requested by Tex Mex would have relatively small impacts on the Applicants and other rail carriers.

Based on Mr. Ellebracht's traffic study, Patrick Krick developed financial pro formas showing what the effects of the merger with and without the conditions sought by Tex Mex would be on Tex Mex's net income and on the service it would be able to continue to provide to its shippers. The second part of Mr. Krick's analysis is based on Tex Mex's proposed operations over the lines which are described in the Tex Mex operating and labor plan described in R. J. Spear's statement. Mr. Krick's analysis also assumes that Tex Mex would pay the same compensation for its trackage rights that BN/Santa Fe would pay under its agreement.

Mr. Krick's analysis shows that, without the conditions it seeks, a post-merger Tex Mex would immediately go from profitability to unacceptably heavy losses. He concludes that Tex Mex "would not survive the UP/SP merger if it is not conditioned by the rights [Tex Mex] requests in its responsive application." He finds that Tex Mex currently is operating at close to maximum efficiency and that further revenue losses could not be absorbed without significant service reductions. His analysis concludes that Tex Mex could not survive as a short line railroad solely on the basis of the traffic of its local shippers. On the other hand, if the conditions sought by Tex Mex are granted, Mr. Krick concludes that Tex Mex's net revenues will recover to be in the same general range as would be the case if no merger took place, thereby allowing Tex Mex to sustain viability as a railroad.

SECTION 1180.6(a)(iii)
EFFECT OF INCREASE IN TOTAL ON FIXED CHARGES

There is no anticipated increase in the total fixed charges resulting from the operations proposed in this responsive application.

SECTION 1180.6(a)(2)(iv)
EFFECT ON ADEQUACY OF TRANSPORTATION

Tex Mex believes that granting the rights sought in this responsive application is necessary to preserve adequate rail transportation services to the public in two respects:

First, it is necessary to prevent an unacceptable loss of competition in the markets served by Tex Mex for the reasons previously summarized in Section 1180.6(a)(2)(i).

Second, in light of Mr. Krick's conclusion that the merger without these rights is likely to result in Tex Mex's going out of business, granting the requested rights is necessary to prevent a loss of all Tex Mex's rail service. As shown by their supporting statements, a number of Tex Mex shippers are very dependent on Tex Mex for their transportation needs and cannot practically use other modes of transport. Corpus Christi Grain Company, for example, depends entirely on Tex Mex to transport its grain to Mexican customers; neither trucks nor any other railroad is a feasible alternative for that traffic. Indeed one shipper, Barr Iron and Metal Company in Alice, Texas states that it "would probably have to close our operations down" if Tex Mex went out of business. Accordingly, without the requested conditions, the merger will cause the loss of essential rail services as well as an unacceptable reduction in competition.

SECTION 1180.6(a)(2)(v)
EFFECT ON EMPLOYEES

Imposing the conditions Tex Mex requests will not result in the abolition or transfer of any Tex Mex employee position. On the contrary, Tex Mex anticipates that it will need to hire between 30 and 40 employees to operate the traffic anticipated from the rights Tex

Mex seeks in this responsive application. The labor pools which Tex Mex anticipates (crew base and responsibilities) are described in the verified statement of R.J. Spear.

SECTION 1180.6(a)(vi)
EFFECT OF INCLUSION OF OTHER RAILROADS

Tex Mex should be the railroad to address the competitive problems with the proposed merger that Tex Mex's witnesses have identified. Tex Mex is aware that the Applicants have provided the Illinois Central Railroad Company ("IC") with a "right of first refusal" and with a right of first negotiation on the conditions the Board imposes on the proposed consolidation.[10] Neither IC, nor any other railroad for that matter, could address as well as Tex Mex the competitive problems identified in the verified statements of Larry Fields, Curtis Grimm and Joseph Ellebracht.

IC does not reach Beaumont, Houston, Corpus Christi or Robstown. If the Applicants granted IC the rights contemplated in this responsive application, they would also

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[10] The IC Agreement, dated January 30, 1996, is attached as Exhibit B to UP/SP-74. The agreement provides in relevant part that:

> UP/SP agree that (i) if conditions in addition to or in lieu of the BN/Santa Fe Agreement are required as a condition of the merger, and (ii) UP/SP decide to go forward with the merger as so conditioned, then to the extent UP/SP have any choice in negotiating with other carriers to satisfy such additional conditions, they will first negotiate with IC; provided, however, that UP/SP shall not be obligated to first negotiate with IC if the additional condition or conditions are addressed via tracks or at points covered by the BN/Santa Fe Agreement and can be satisfied by negotiating with BN/Santa Fe. UP/SP will not negotiate with any other party until they have been unable to reach agreement with IC.

IC Agreement, Section 14(b) (redacted (public) version).

have to grant IC substantially more rights than minimally necessary to address the competitive concerns. The competitive problems identified by Tex Mex can and will be solved by Tex Mex, and the Board should specify that no other carrier should be granted these rights.

SECTION 1180.6(a)(3)
OTHER SUPPORTING STATEMENTS

Tex Mex includes in this responsive application 16 verified statements from shippers throughout the country that explain how the proposed merger will adversely impact them unless the rights Tex Mex requests are imposed as a condition of the merger. (These verified statements are found in Exhibit 24.) These are not the only ones who have voiced their support for the rights Tex Mex seeks, however The Texas Railroad Commission, the Texas Department of Transportation and the Texas Attorney General support at least the imposition of the conditions sought by Tex Mex. Over 80 companies have told the Board that the rights Tex Mex seeks are necessary in light of the competitive problems that would arise if the Board approves the proposed merger. (Letters from companies that support the Tex Mex conditions are found in Exhibit 25.)

Some of these shippers also submitted supporting statements for the Applicants. For example, the James River Corporation, Volkswagen of America, Noranda Aluminum, Inc.,[11] The Stroh Brewery Company, L.B. Foster Company and Aurora Cooperative

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[11] On October 16, 1995, Noranda Aluminum, Inc. submitted a verified statement supporting the UP/SP merger, but asking that the merger be conditioned by the grant to BN/Santa Fe of trackage rights to its plant to ensure competitive access. The Applicants did not include this conditional support verified statement in their application.

Elevator Company[12] submitted letters of support for the Applicants' merger. Some realize that mergers such as the one proposed can combine efficiencies with potential harms. Others, such as J.D. Robbins, Traffic Manager for Noranda Aluminum, have found that "On further and more considerable reflection, it is clear that the SP/UP merger as currently proposed will seriously reduce, if not eliminate, our competitive alternatives via the Laredo gateway."

SECTION 1180.6(a)(4)
OPINION OF COUNSEL

The opinion of Tex Mex's counsel that the conditions suggested in this responsive application satisfy the requirements of law and will be legally authorized and valid if approved by the Board appear as Exhibit 23 to this responsive application.

SECTION 1180.6(a)(6)
LIST OF STATES

The lines of Tex Mex and the Applicants' lines over which rights are sought lie entirely within the State of Texas.

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[12] The Applicants submitted for the Board's consideration Aurora Co-op's letter in UP/SP-188 (Comments of Governors, Shippers and Others in Support of the Primary Application), filed March 26, 1996. Aurora Co-op does express support for the main application, but further explains that it "understand[s] that several railroads have requested trackage rights as a result of this merger activity. Aurora Co-op urges the commissioners to seriously consider these requests to maintain competition within the United States and Mexico by conditioning the UP/SP merger. Economical access to domestic and international trade routes should not be jeopardized."

SECTION 1180.6(a)(6)
MAP - EXHIBIT 1

Tex Mex submits as Exhibit 1 railroad maps of the State of Texas indicating the lines of the applicant carriers in their true relationship to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region. These maps show the BN/Santa Fe trackage rights routes, and the two alternative Tex Mex trackage rights routes. An additional map, showing the alternative routes requested through the Houston terminal area, appear as an attachment to the verified statement of R.J. Spear. Pursuant to the Board's regulations, 20 unbound copies of each map are today being filed with the Board.

SECTION 1180.6(a)(7)(i)
NATURE AND TERMS OF THE PROPOSED CONDITIONS

The nature and terms of the proposed conditions are set forth in detail in the sections above entitled "Description of the Proposed Transaction" (complying with Section 1180.6(a)(1)).

SECTION 1180.6(a)(7)(ii)
AGREEMENTS - EXHIBIT 2

As provided in Section 1180.6(a)(7)(ii), note 3, a proposed trackage rights agreement containing the significant terms proposed appears as Exhibit 2 to this responsive application

SECTION 1180.6(a)(7)(iii)
CONSOLIDATED COMPANY INFORMATION

This responsive application does not propose a consolidation or merger; therefore, Section 1180.6(a)(7)(iii) does not apply.

SECTION 1180.6(a)(7)(iv)
COURT ORDER - EXHIBIT 3

The applicant is the real party in interest; therefore Section 1180.6(a)(7)(iv) does not apply.

SECTION 1180.6(a)(7)(v)
PROPERTY INCLUDED IN THE PROPOSED CONDITIONS

The conditions requested by Tex Mex in this responsive application involve rights over the property of UP, SP and HB&T,[13] to the extent set forth in the section entitled "Description of the Proposed Transaction" (complying with Section 1180.6(a)(1)) and the maps that appear as Exhibit 1.

SECTION 1180.6(a)(7)(vi)
DESCRIPTION OF LINES

Tex Mex is a Class II railroad providing rail service over its 157-mile line of railroad from Laredo, Texas on the Mexican border to Robstown, Texas where it meets up with UP and on to Corpus Christi, Texas on the Gulf of Mexico where it meets up with a branch line

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[13] In UP/SP, Decision No. 14, the Board granted the waiver or clarification sought by Tex Mex so as to define "applicant carriers" under 49 C.F.R. § 1180.3(b) to include only Tex Mex and not to include the Applicants, KCSR or HBT.

of UP. If the Board approves the proposed merger with Tex Mex's requested conditions, Tex Mex will have rights over the merged UP/SP system from its connections with the merged UP/SP system at Corpus Christi and Robstown to Placedo, involving 83.1 and 82.9 miles of trackage rights, respectively. From Placedo, the Tex Mex will have 86.5 miles of trackage rights over the merged UP/SP system to Flatonia by way of Victoria and another 107.4 miles from Flatonia to West Junction in Houston. Tex Mex will meet up with KCS in Beaumont by way of 80.4 or 73.3 miles of trackage rights from Tower 26 in Houston, depending upon whether Applicants elect to have Tex Mex operate over the SP mainline or over the UP mainline between Houston and Amelia. In Houston, Tex Mex will also have trackage rights over the merged UP/SP system and over the HB&T. The alternate routes for the proposed trackage rights discussed are shown on the maps that appear as Exhibit 1.

SECTION 1180.6(a)(7)(vii)
GOVERNMENTAL ASSISTANCE

No governmental financial assistance is contemplated or required.

SECTION 1180.6(a)(8)
ENVIRONMENTAL DATA - EXHIBIT 4

As R.J. Spear discusses in his verified statement concerning the environmental impact of the responsive application, the operations proposed over the rights requested do not involve significant operational changes, as defined in 49 C.F.R. § 1105.6(b).[14] Consistent

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[14] Although Tex Mex can provide service over the lines described above in their current condition and without any capital improvements, Tex Mex seeks the right to construct two improved connections, at Robstown, TX and Flatonia, TX, that will improve its service over

with Decision No. 12 (served February 15, 1996) and the guidance issued by the Board's Section of Environmental Analysis in January, 1996, Tex Mex certifies that the operations (not including the improvements discussed in the text accompanying note 8) will meet the exemption criteria set forth in 49 C.F.R. § 1105.6(c)(2).

SECTION 1180.6(b)(3)
CHANGE IN CONTROL - EXHIBIT 8

As a Class II railroad, Tex Mex is not required to file an annual report Form R-1. Nevertheless, Tex Mex states that there has been a change in officers since January 1, 1995. Exhibit 8 sets forth current relevant information.

SECTION 1180.6(b)(5)
RELEVANT ISSUES - EXHIBIT 10

The issues relevant to the Board's determination to grant the requested conditions are discussed through this application and the accompanying verified statements. They will be further developed in the brief Tex Mex anticipates filing on June 3, 1996, pursuant to the current procedural schedule in this case. These issues include:

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those lines. In UP/SP, Decision No. 14, the Board approved Tex Mex's request to submit the instant responsive application without complying with the additional requirements set forth in 49 C.F.R. part 1150, subpart A, and environmental review set forth in 49 C.F.R. part 1105 with reference to this proposed construction. If the Board grants this responsive application, Tex Mex will then file the necessary construction application and perform and submit the required environmental review.

1. Whether the proposed UP/SP merger, and the reduction of the number of Class I railroads in the Western United States from three to two, will have a detrimental effect on the levels of competition in the transportation markets served by Tex Mex.

2. Whether the agreement between the Applicants and the BN/Santa Fe will remedy the loss in competition in the markets served by Tex Mex caused by the merger.

3. Whether the conditions Tex Mex requests will remedy the remedy the loss in competition in the markets served by Tex Mex caused by the merger as conditioned on the BN/Santa Fe Agreement; and

4. Whether, without imposition of the requested conditions, Tex Mex can continue to provide essential services to shippers on its line.

SECTION 1180.6(b)(6)
CORPORATE CHART - EXHIBIT 11

Attached as Exhibit 11 is a corporate chart setting forth the information required by Section 1180.6(b)(6).

SECTION 1180.6(b)(7)
INFORMATION ON NON-CARRIER APPLICANTS

Tex Mex is the sole applicant to this responsive application pursuant to Decision No. 14, served February 15, 1996. As Tex Mex is a carrier applicant, this section is not applicable.

SECTION 1180.6(b)(8)
STATEMENT OF DIRECT OR INDIRECT
INTERCORPORATE FINANCIAL RELATIONSHIPS

There are no direct or indirect intercorporate or financial relationships at this time, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, between (i) the applicant carrier and any carrier or person affiliated with any carrier or (ii) a person affiliated with applicant carrier and any other carrier.

SECTION 1180.7
MARKET ANALYSIS - EXHIBIT 12

Pursuant to Section 1180.7, Tex Mex analyzed the impacts of the proposed merger with and without the rights requested in this responsive application on intermodal and intramodal competition for freight surface transportation in markets served by Tex Mex and on the provision of essential services by Tex Mex and other carriers in the affected region. This analysis is described in detail in the verified statement of Joseph Ellebracht, Curtis Grimm, Brad Skinner, and summarized above in the section entitled "Effects on Competition - Section 1180.6(a)(2)(i)."

In addition, Mr. Ellebracht conducted a traffic study analyzing the effects of the proposed merger, with and without the rights sought here, on Tex Mex's traffic and revenues, and Mr. Krick analyzed those effects on Tex Mex's ability to continue to provide rail services. Those studies are summarized in Section 1180.6(a)(2)(ii).

SECTION 1180.8(a)(1) - (4)
OPERATING PLAN - EXHIBIT 13

The operating plan, set forth in the verified statement of R.J. Spear, provides a realistic picture of the Tex Mex operations assuming the Board approves the proposed UP/SP merger, conditioned both on the BN/Santa Fe Agreement and the rights requested herein. Operations could begin almost immediately upon the effective date of the order approving the proposed merger and conditions.

Under the plan, Tex Mex plans to operate one scheduled manifest and one scheduled intermodal train per day each way[15] between Houston and Laredo via Corpus Christi or Robstown.[16] Between Houston and Beaumont, Tex Mex will operate one scheduled mixed intermodal and manifest train per day. Tex Mex will operate unit grain trains three or four days per week, as required, between Houston or Beaumont and Laredo. From its connection with KCS at Beaumont, Tex Mex will operate unit grain trains through Houston and on to Laredo, as required.

As described in Mr. Spear's verified statement, minimal impact is expected on the operations UP/SP and BN/Santa Fe proposed in their respective operating plans. Further,

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[15] Tex Mex anticipates that, upon full realization of the benefits of NAFTA, separate manifest and intermodal trains will be required. In order to demonstrate to the Board that the rights requested herein may be exercised without adverse affect to UP/SP, BN/Santa Fe, Amtrak or the environment, Tex Mex has assumed that these separate trains will be run. Initially, the manifest and intermodal trains may be consolidated.

[16] Tex Mex requests rights from both Robstown to Odem and from Corpus Christi to Odem. The Corpus Christi-Odem route will be used in the event of congestion on the Brownsville line between Robstown and Odem.

the Tex Mex train schedules set forth in his plan, will not adversely affect Amtrak operations over the routes Tex Mex anticipates using.

Tex Mex anticipates using HB&T as its primary switching carrier in Houston, and the switching operations will take place at the HB&T New South Yard. KCS will handle all switching, blocking and interchange with Tex Mex in its Chaison Yard in Beaumont.

Tex Mex intermodal traffic bound for Mexico will be ramped at PTRA's Barbours Cut and moved by PTRA to Tex Mex at of the following interchange points: Pasadena, Manchester or North Yard. Other Tex Mex intermodal traffic will be moved by PTRA from the designated interchange points to Barbours Cut by PTRA where it will be discharged for loading onto ships or for movement by truck.

Tex Mex seeks to use the SP yard located at Glidden, TX for field blocking traffic received in interchange at Houston or which operated from KCS's Chaison yard in Beaumont. This yard is presently inactive,[17] and Tex Mex would be willing to either lease or purchase this yard, at UP/SP's election. Total traffic in the area of the Glidden Yard is not expected to increase over 20%, and no other yards Tex Mex anticipates using will experience a 20% or more increase in traffic.

Tex Mex will not require any extra equipment to conduct the operations anticipated in the operating plan. Tex Mex is not planning any deferred maintenance or delayed capital improvements for the lines over which it seeks rights.

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[17] The yard is adjacent to an active SP siding.

SECTION 1180.9(e)
BALANCE SHEETS - EXHIBIT 20

Balance sheets are submitted as attachments to the verified statement of Patrick Krick.

SECTION 1180.9(e)
INCOME STATEMENTS - EXHIBIT 21

Income statements are submitted as attachments to the verified statement of Patrick Krick.

SIGNATURES, OATHS, AND CERTIFICATIONS OF APPLICANT'S EXECUTIVE OFFICERS SECTION 1180.4(c)(2)(i)[25]

STATE OF TEXAS)
)
COUNTY OF WEBB)

Larry Fields, being duly sworn, deposes and says that he is President of the Texas Mexican Railway Company, applicant herein, that he is one of the executive officers duly authorized to sign, to verify and to file this Responsive Application on behalf of The Texas Mexican Railway Company, that he has knowledge of the matters contained in this Responsive Application, and that his statements made in this Responsive Application are true and correct to the best of his knowledge and belief.

LARRY FIELDS

Subscribed and sworn to before me this 26th day of March 1996.

Notary Public, State of Texas
My Commission Expires 08-14-1997

NOTARY PUBLIC

My commission expires as of 8-14-97.

I, Walter L. Winters, II, hereby certify that I am Secretary of The Texas Mexican Railway Company, the applicant herein, and that Larry Fields, President of The Texas Mexican Railway Company, is duly authorized to sign, to verify, and to file this Responsive Application on behalf of The Texas Mexican Railway Company.

Secretary

Dated this 26 day of March, 1996, at Laredo, Texas.

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[25] In UP/SP, Decision No. 14 the Board waived compliance with 49 C.F.R. § 1180.4(c)(2)(i) requiring that "[a]ny person controlling an applicant shall also sign the application" as that requirement relates to Transportacion Maritima Mexicana S.A. de C.V. ("TMM") and Mexrail. Slip op. at 4.

Respectfully submitted,

Richard A. Allen

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Attorneys for Texas Mexican Railway Company

Dated: March 29, 1996

VERIFIED STATEMENT

OF

LARRY FIELDS

My name is Larry Fields. I am the President of the Texas Mexican Railway Company ("Tex Mex"), headquartered at 1200 Washington St, Laredo, Texas 78042. I am submitting this statement in support of the responsive application being filed by Tex Mex in Finance Docket 32760 seeking trackage rights over UP and SP lines between Robstown, TX and Beaumont, TX.

I have worked in the railroad industry since going to work for the Kansas City Southern Railroad's ("KCS") maintenance of way department in 1965. I worked for KCS in various capacities between 1965 and 1991; my last position was Vice President Operations. From 1991 to 1993 I consulted on rail operations and privatization of lines in Africa and Russia. In 1993 and 1994 I was general manager of a short line railroad. I became president of the Tex Mex on December 1, 1994. I have a bachelor of science degree from Kansas State Teachers College and a masters of business administration degree from Rockhurst College.

INTRODUCTION AND SUMMARY

Currently, the Southern Pacific ("SP"), in conjunction with Tex Mex, provides the only effective competition to the Union Pacific Railroad ("UP") over a vital rail corridor that accounts for a majority of the railroad traffic between the United States and Mexico. In my opinion, it is absolutely critical to this country's interests that the Surface Transportation Board ensure the preservation of the strongest possible rail competition in this corridor. Preserving that competition is especially critical now, for two reasons: first, to avoid undermining the public benefits from the increased trade with Mexico that NAFTA was adopted to promote, and second, to avoid defeating the expected gains in efficiency and competitive rail service that Mexico hopes to achieve from the privatization of its rail system later this year.

The merger of UP and SP will eliminate SP as a competitor to UP in this corridor. Contrary to their claims, the Applicants' agreement with the Burlington Northern Santa Fe Railroad ("BNSF") will not make up for the competition that the merger will eliminate in this corridor. As UP knows, BNSF does not and will not have the same incentives to compete as aggressively for traffic over this corridor as SP and Tex Mex now have. On the other hand, granting the relatively limited trackage rights sought by Tex Mex, which will permit Tex Mex to connect with other railroads in Houston and Beaumont, will preserve the current level of competition because the traffic over this corridor is vital to Tex Mex; it is the mainstay of Tex Mex's business.

The reasons why BNSF would not be an adequate substitute for SP in this corridor and why Tex Mex would be are explained in detail in the accompanying verified statements of Professor Curtis Grimm, Joseph F. Ellebracht and Brad Skinner, as well as in the statements of more than 80 shippers supporting Tex Mex's application. In addition, the verified statement of R. J. Spear sets forth Tex Mex's operating and labor plan for operating over the lines sought by Tex Mex. Allen Haley discusses the operating problems that BNSF would encounter over the route that the Applicants have given to BNSF and that would make it very difficult for BNSF to meet its proposed schedules. Finally, Patrick Krick's verified statement sets forth and explains the pro forma financial statements which show and compare the financial impacts on Tex Mex of the merger with the BNSF agreement and of the merger with the conditions requested by Tex Mex. My statement will provide an overview of these statements as well as a general description of the Tex Mex and its operations.

I. BACKGROUND AND DESCRIPTION OF THE TEX MEX

Tex Mex is a Class II railroad that owns and operates 157 miles of railroad between Laredo, TX on the Mexican border and Corpus Christi, TX on the Gulf of Mexico. Tex Mex was chartered in 1875. Tex Mex has 159 very dedicated and highly skilled employees, most of whom have worked more than 20 years for Tex Mex. Tex Mex owns 20 locomotives and 950 rail cars. It has rail yards and repair shops in Laredo and Corpus Christi.

Laredo is the principal gateway for rail traffic between the United States and Mexico. It is served by two railroads: Tex Mex and UP. UP has a line to Laredo from San Antonio, Texas.

UP also has a line along the Gulf of Mexico between Algoa, Texas, just south of Houston, and Brownsville, Texas, on the Mexican border (the "Brownsville Line"). The Southern Pacific Transportation Company ("SP") has trackage rights over portions of that line which permit it to serve Corpus Christi and to interchange traffic there with Tex Mex.

The Tex Mex line running eastward from Laredo crosses and connects with the UP's Brownsville Line at Robstown, Texas and proceeds to Corpus Christi, where it connects with a UP branch line and is able to interchange traffic with UP and SP. A map showing Tex Mex's line and the lines connecting to it is contained in Exhibit 1 to Tex Mex's responsive application.

In 1994, Tex Mex transported 36,774 carloads of traffic, for which it received $ 17.9 million in revenue. Tex Mex serves more than 30 shippers located on its line, and about a fourth of the carloads handled in 1994 -- 10,354 -- originated or terminated on its line. Many of those shippers are dependent on Tex Mex to transport their products or supplies and some would have to close their plants if Tex Mex went out of business. For example, Barr Iron & Metal Company, which is located in Alice, Texas and employs 32 persons, expects that it would probably have to close down its operations, if the Tex Mex were to cease operations. Barr depends solely on Tex Mex for transporting scrap steel and other salvage products to Mexico, and Barr's president states that "[t]here is no way to truck our salvage to and from various points with Tex Mex not being here." Other shipper statements, some of which I discuss below, similarly describe the dependence of various shippers on the rail services being provided by Tex Mex.

Almost three quarters of Tex Mex's traffic in 1994 -- 26,420 carloads -- was bridge traffic between points in Mexico and points in the United States north of Corpus Christi. Tex Mex interchanged this traffic at the International Bridge at Laredo with the Mexican railroad, Ferrocarriles Nacionale de Mexico ("FNM") and at Robstown and Corpus Christi with SP and UP. Since UP has its own route to Laredo through San Antonio, only a small portion of the traffic interchanged by Tex Mex at Corpus Christi and Robstown has been interchanged with UP -- cars in 1994. Almost all of the traffic that Tex Mex has interchanged at Corpus Christi has been with SP. For many years Tex Mex and SP have provided the competitive alternative to the UP's service for U.S.-Mexican rail traffic through Laredo.

Tex Mex has been working very hard in recent years to improve its efficiency, its service to customers and its traffic. I became President of Tex Mex on December 1, 1994. Since that time, we have worked with UP to make substantial changes and improvements in operating procedures over the International Bridge. These changes and improvements have resulted in a 35 percent increase in the average number of cars moved over the bridge each day and a significant reduction in transit times. Mainly by attrition and working with our unions, we have also streamlined our workforce, going from 230 employees in 1993 to

159 employees today, while continuing to operate the same number of trains and schedules. This increase in efficiency has been matched by a remarkable increase in our safety record. We have gone from 66 FRA reportable incidents in 1994 to 8 in 1995 and none so far in 1996. The reduction in the amount of employee time lost as a result of work-related injuries has been even more dramatic. We went from losing 3000 man-days in 1994 from work-related injuries to exactly one lost man-day in 1995. In my opinion we are currently near an optimum level of efficiency at which further reductions in employees could not be made without having to reduce service.

Our success in increasing traffic has been more mixed. We have significantly increased our local traffic. Local traffic has increased from 8691 carloads in 1993 to 9373 in 1995 and 2838 for the first two months of 1996. I believe these increases are attributable to our improved service and greater marketing efforts and price flexibility.

Because of those efforts, I believe Tex Mex has and will play a vital part in the economic development of southeastern Texas. This has been a region sorely in need of development. It has long experienced income levels far lower and unemployment rates far higher than the national average. The region is predominately Hispanic. Ninety seven percent of Tex Mex's 159 employees are Hispanic. Tex Mex's local customers employ approximately 3,500 more employees.

Our interline traffic, however, has fluctuated considerably for reasons beyond our control and despite our best efforts. In 1995 we began experiencing significant delays in the cars received from SP at Corpus Christi and a sporadic but significant dropoff in the number of cars received from SP. I do not know the reasons for this, but the problems became progressively worse after March, 1995, when I understand UP and SP began merger discussions. A particularly disappointing episode concerned a regular weekly intermodal train service between Chicago and Mexico City which we named the Aztec Wind. Since early 1995 we had worked very hard with SP to establish and market this service to customers in the hopes of establishing a competitive intermodal service to UP's virtual monopoly over intermodal service between the United States and Mexico. Although SP had initially indicated great enthusiasm and had promised to provide full support for this train, our very first train, in September, 1995, reached Corpus Christi 12 days after leaving Chicago, even though our agreement with SP called for a total transit time of eight days between Chicago and Mexico City. After that dismal performance, the service could not be sold and was not repeated.

In addition, in 1995 we lost a significant amount of grain traffic as a result of actions by the Atchison, Topeka and Santa Fe Railroad ("Santa Fe") and the Burlington Northern Railroad ("BN").[1] Historically, we had received significant numbers of

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[1] I understand that, although the ICC had approved it earlier, BN and Santa Fe consummated their merger on September 22, 1995.
(continued...)

grain cars from SP at Corpus Christi which had originated on the Santa Fe or the BN and which the Santa Fe interchanged to SP at Caldwell, TX. In 1994, for example, we handled such cars. In April, 1995, however, Santa Fe suddenly, and without consulting Tex Mex, raised its tariff rates on grain destined to the Laredo gateway so substantially as to effectively put itself and BN out of the market for that traffic. It kept its rates at those non-market levels until November, 1995. As a consequence, from April until November Tex Mex handled no grain cars with Santa Fe or BN origins. In November, BNSF temporarily reduced the rates to market levels, and we immediately began receiving grain cars with BNSF origins at Corpus Christi. That flow proved very temporary, however. In late January, 1996, BNSF again raised its rates on grain to the Laredo gateway, and since then we have received no grain cars with BNSF origins. I understand that BNSF attributes these actions to its frustrations with SP's poor service. In my opinion, however, these actions also indicate that BNSF has neither the interest nor the incentive to compete as aggressively with UP for traffic to Mexico as SP had, at least before it began discussing merger with UP.

Tex Mex also has connections with Mexico that have enabled it to be an effective competitor to UP for Mexican traffic

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[1](...continued)
Before that date, they apparently operated as independent, competing railroads and will be referred to separately. After that date I will refer to them collectively as "BNSF", even though they have continued to operate administratively as separate railroads.

despite UP's far greater size and market power. As described more fully in the verified statement of Brad Skinner, for most of this century Tex Mex was a wholly owned subsidiary of FNM. In 1982, Tex Mex's capital stock was purchased by Mexrail, Inc., a Delaware corporation that was then a wholly owned subsidiary of Transportacion Maritima Mexicana, C. de V., S. A. ("TMM"), a private transportation company headquartered in Mexico City. As acknowledged by UP's witness Richard Peterson, its Mexican ownership provides Tex Mex some marketing advantages with Mexican customers.

As Mr. Skinner also explains, TMM intends to participate actively in the Mexican rail privatization process and hopes to acquire rights to operate over one or more of the lines being sold, including the lines between central Mexico and Laredo, which handle more than 65 percent of the annual rail tonnage moving between the United States and Mexico. UP has also indicated its intention to bid aggressively for those lines. TMM, unlike UP, is urging the Mexican government to ensure competitive service over those lines by requiring the purchaser to grant trackage rights to other entities

TMM recently formed a joint venture with Kansas City Southern Industries, Inc. ("KCSI"), which controls the Kansas City Southern Railroad (""KCS"), to bid on the lines being sold in Mexico and, if successful, to operate those lines. In addition, in November, 1995 KCSI purchased 49 percent of the common stock of Mexrail, Inc., the parent of Tex Mex. If successful, those efforts will enable TMM, KCS and Tex Mex together to provide rail service in both Mexico and the United States that could, in the right circumstances, compete very effectively with a merged UPSP for rail traffic between the United States and Mexico. They will not be able to provide truly competitive service, however, unless Tex Mex connects directly with KCS at Beaumont, TX. In my opinion, UP and SP know this to be true, and that is why they refused KCS's and Tex Mex's request for trackage rights that would provide such a connection and instead granted the rights to BNSF.

II. IMPACT OF THE UP/SP MERGER ON COMPETITION IN MARKETS SERVED BY TEX MEX

As discussed in greater detail in the verified statements of Professor Grimm and Mr. Ellebracht, unless it is properly conditioned, merger of the UP and SP would effectively eliminate rail competition in transportation markets served by Tex Mex. The most important such market is for the transportation of goods between the United States and Mexico. Without conditions, the merger would give the merged UPSP complete control over the all-important Laredo gateway. In 1994 that gateway handled 57% of the rail traffic between the two countries.

An unconditioned merger would also give the merged UPSP compete control of the Brownsville gateway and substantial control of the gateway at Eagle Pass, TX which is currently served by SP's line and access to which BNSF has only via haulage rights. Laredo, Brownsville and Eagle Pass together accounted for 80% of the rail traffic between the U.S. and Mexico and virtually all of the traffic between the U.S. and Mexico's industrial centers in central and eastern Mexico. Ellebracht V.S. at 17.

That loss of rail competition will have an extremely adverse affect on rail shippers, who have no feasible transportation alternatives. Although most of the transportation of freight between the U.S. and Mexico is carried by truck, truck and water transportation are not practical alternatives for almost all of the shipments now transported by rail. Ellebracht V.S. at 31-34; Professor Grimm concurs in this conclusion and cites supporting evidence provided by many of Tex Mex's shippers.

UP and SP are well aware that an unconditioned merger would eliminate rail competition in the market for U.S.-Mexico rail transportation. That is why they have proposed to give trackage rights and haulage rights to BNSF over the UP line from Algoa, just south of Houston, to Robstown (where BNSF may connect with Tex Mex) and continuing to Brownsville (where BNSF may connect with Ferrocarriles Nacionale de Mexico ("FNM")), and also to give BNSF trackage rights over SP's line to Eagle Pass (to replace BNSF's current haulage rights.) UP and SP claim that those rights will preserve the competition that would otherwise be lost, and they would certainly never have granted such rights unless they recognized that an unconditioned merger would result in an unacceptable loss of competition in this market.

The problem with the solution that UP and SP have proposed is that there is a very high likelihood that BNSF will not be an adequate substitute for an independent SP in this market, for many reasons which are summarized below. It is, of course, not possible to predict the impact of future events and future competitive behavior with absolute certainty, but that is a risk that the United States and Mexico cannot afford to take.[2]

III. WHY BNSF WILL NOT BE AN ADEQUATE COMPETITIVE SUBSTITUTE FOR AN INDEPENDENT SP.

Professor Grimm, Mr. Ellebracht and Mr. Haley discuss in detail the reasons why BNSF will not be an adequate competitive substitute for an independent SP for U.S.-Mexican traffic under the terms of BNSF's agreement with UP and SP. The first, and perhaps most important, is the simple fact that today there are three major Class I railroads with access to Mexican gateways. After the merger, even as conditioned on the BNSF settlement agreement, there will be only two major railroads with access to Mexican gateways -- UPSP and BNSF. As Professor Grimm explains, the evidence is compelling that the reduction of the number of railroads serving a market from three to two will cause a significant loss of competition that is likely to result in substantial increases in rates.

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[2] If I am correct that BNSF will not be as effective a competitor for traffic between the U.S. and Mexico, particularly through Laredo, the result would not only be an unacceptable loss of competition for that traffic but would also probably put Tex Mex out of business, as shown by the traffic study performed by Mr. Ellebracht and the financial pro formas developed by Patrick Krick. That event would cause a number of shippers that are now dependent on Tex Mex for transportation to lose essential rail services, as I discuss below.

Professor Grimm also shows that the adverse effect on competition will be particularly severe with respect to the Laredo gateway because, even under BNSF's implausible projections, BNSF's share of Mexican traffic is likely to be a small fraction of UPSP's share. BNSF's likely share of the market is not likely to be enough to induce it to invest the resources necessary to be a significant competitor with UPSP for the traffic when BNSF can invest those resources far more profitably and safely in other markets.

In addition, as discussed by Mr. Skinner, there are several indications that BNSF, contrary to its protestations, has little interest in competing aggressively for Mexican traffic, at least through the Laredo gateway. Also, as I stated earlier, BNSF has recently increased its rates on grain destined for the Laredo gateway so substantially as to effectively shut off what used to be a substantial flow of grain traffic from BNSF origins to that gateway, and has been moving whatever traffic it has for Mexican destinations via Eagle Pass pursuant to its SP haulage rights. Although I understand that BNSF has attributed its rate actions on Laredo traffic to SP's supposed operating inefficiencies, the fact that BNSF is using SP to carry its traffic to Eagle Pass makes that claim highly questionable.

Also, I understand that Carl Ice, the principal negotiator for BNSF of the BNSF settlement agreement with UP and SP, testified in this case that he informed UP and SP during the negotiations that BNSF would prefer <u>not</u> to expand its operations south of Houston and would, instead, prefer to use an agent for operations south of Houston, but that UP and SP rejected that suggestion out of hand for competitive reasons.

Another reason that BNSF would not be nearly as effective a competitor as SP in this corridor is the fact that it will not be operating over its own tracks, but will be operating over UP's tracks from Algoa to Robstown and thus subject to UP's dispatching and traffic control. On the basis of my 31 years experience in the railroad business, I and every other experienced railroad person know full well that a railroad cannot provide nearly as effective and competitive service over a competing railroad's tracks and subject to that competitor's traffic control as it can over its own tracks. I am not saying that a railroad cannot provide competitive service over trackage rights, and I know that the Interstate Commerce Commission has found that trackage rights can be an acceptable remedy for the anticompetitive effects of a consolidation. The indisputable fact remains, however, that trackage rights are substantially inferior to ownership as a competitive alternative, and that fact must be recognized in order for the Surface Transportation Board to assess accurately the competitive effects of a merger and a proposed trackage rights remedy.[3]

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[3] In the case of SP's current operations between Houston and Corpus Christi, 70% of the mileage is on the SP's own lines from Houston to Flatonia to Placedo. By contrast, all of the BNSF's proposed operations between Algoa and the connection with Tex Mex at Robstown would be over trackage rights.

Furthermore, John Rebensdorf, UP's principal negotiator on the BNSF agreement, acknowledged in his deposition that the route between Algoa and Brownsville over which BNSF would operate is a heavily congested route, "particularly on the line from Angleton into Houston", because "Angleton is the point where . . . all of the chemical business that comes out of the Freeport area funnels into." Rebensdorf Dep. Tr. 244, 245 (Jan. 22, 1996). Mr. Haley has analyzed UP train sheets for representative months in 1995, and his analysis confirms that the extraordinary amount of traffic currently using and projected to use that line will make it very difficult for BNSF to perform the operations that it states it intends to perform over this route. The SP's lines via Flatonia, in contrast (over which Tex Mex is seeking rights), are not congested at all.

The combination of all of these factors indicate that BNSF will not be an adequate competitive substitute for an independent SP in the markets served by Tex Mex. Furthermore, with respect to the transportation of goods between the United States and Mexico, even if we were wrong about BNSF's intentions about competing aggressively for that transportation and about the difficulties of its using trackage rights from Algoa to Brownsville to compete effectively, there would still be an unacceptable loss of competition in that market. That loss would result from the simple fact that the merger will eliminate one of the three major U.S. railroads with direct access to Mexican gateways. Economists can argue about what their studies and statistics show, but any shipper with common sense will tell you that he would much rather have three railroads fighting for his business than two. And I can tell you from my 31 years in the railroad business that I would much rather have one than two other railroads bidding against me for a shipper's business.

These are not abstract propositions. Today shippers in Denver, Dallas, St. Louis, Kansas City, Chicago and many other places can ask three railroads to offer them rates directly to one or more Mexican gateways: UP, SP and BNSF. After the merger, those shippers will have only two.

IV. CONFIRMING STATEMENTS BY TEX MEX SHIPPERS

The shipper statements that are being filed by Tex Mex and that have been previously filed with the STB confirm that shippers have very real concerns about the impact of reduced rail competition. Examples of general concerns about the loss of rail competition include the following statements from, respectively, Idaho Timber Corporation, The Stroh Brewery Company, and Darling International, Inc.:

> In our experience, more rail competition produces lower freight rates.
>
> Competition between railroads inevitably would produce lower rates, which would help us with our export expansion plans.
>
> Our rail costs will continue to rise as a result of the combined UP/SP. Since the acquisition of the CNW by the UP, we have had many problems. Our accessorial charges have doubled and in some cases risen by 400%. In addition, we have seen cost increases in crossings, easement and general freight shipment. We are very concerned that this trend will continue.

More particularly, a number of shippers have described their concerns about the loss of competition to Laredo, the principal rail gateway between the U.S. and Mexico. The following are just a few examples:

Wilbur-Ellis Company, a retailer of fertilizers and agricultural chemicals in Texas and Mexico, ships an average of 150,000 tons of fertilizers annually through Texas and about 20,000 tons into Mexico (primarily through the Laredo gateway). Shipments to Laredo originate from some plants on UP and some on SP and other lines. In a verified statement, Wilbur-Ellis, through its manager of fertilizer purchasing, Jim Hoffman, explains that in the past, Wilbur-Ellis was able to obtain competitive rates to Laredo from UP and the SP/Tex Mex. However, Hoffman is not certain that BNSF, which has not been as aggressive for Wilbur-Ellis business as SP, will be a competitive option after a UP/SP merger. Hoffman states in his verified statement that "[w]ith the loss of the SP route to Laredo, prices will certainly go up."

In a similar vein, Noranda Aluminum, Inc. states that "we feel that in the long terms, the market watchdog of a strong competitor (such as the Tex Mex) would keep the UP honest on rates and service." Noranda currently moves almost all of its Mexican business via SP/Tex Mex through Corpus Christi, and believes that it would be forced to use UP single line service after a UP/SP merger.

Faremount Minerals, Ltd., which favors the Laredo gateway for shipments moving into Mexico, says that if the merger is approved, "the UP essentially will have no competitors in south Texas." Faremount Minerals explains that "the SP's willingness to bid on our business has kept the UP honest" and expresses "fear that the lack of a rail competitor biding against the UP in south Texas will result in higher rates and lower standard of service."

Rapid Industrial Plastics Co., Inc. is a major user of rail service between the U.S. and Mexico, primarily through the Laredo gateway. According to Rapid Plastics' Export Manager, Steve Fine, UP and SP have competed for the company's traffic via Laredo for many years, "resulting in substantial cost savings and a number of service innovations." He writes that the UPSP merger will "seriously reduce, if not eliminate" these competitive alternatives. Moreover, he states that Rapid Plastics "do[es] not believe that BNSF, as the only other major rail system remaining in the Western United States, will be an effective competitive replacement for an independent Southern Pacific on this important route."

V. ANALYSES OF THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE TEXAS ATTORNEY GENERAL

The Texas Department of Transportation ("TxDOT") and the Texas Attorney General have both carefully reviewed the proposed merger and have both concluded that the merger would seriously impact rail competition in Texas.

TxDOT wrote to the Texas Railroad Commission on March 20, 1996, expressing its concern about the potential for adverse impacts to Texas and its transportation network and recommending that the merger be approved by the STB only if the merger is conditioned on a stringent set of divestiture requirements. TxDOT noted that "Texas . . . will be impacted by a UP/SP merger more than any other state" and asserted: "Competition is critical to a healthy rail industry and competitive alternatives must be maintained in order to address the diverse needs of Texas shippers."

TxDOT concluded that after a UPSP merger, Texas' rail system "would be dominated by two major carriers," UPSP and BNSF, and that it is "questionable" whether the state's smaller railroads, including Tex Mex, could effectively compete in such an environment. At the same time, TxDOT concluded that the UPSP package of trackage rights and sales to BNSF "appears to be seriously deficient."

Among the recommendations for divestiture made by TxDOT is the following:

> Divestiture of SP line from Hearne to Flatonia, Victoria, Placedo and Coleto Creek. This combination of SP branch line and secondary main line should be sold to another carrier so as to maintain access to the important coal-fired power plant at Coleto Creek and to provide access for a carrier other than UP/SP to the lower Rio Grande Valley via Placedo. At Robstown, the Texas Mexican Railroad should be given access as a potential purchaser and as a valuable connecting road to the Laredo gateway. The trackage rights now held by SP from Placedo southerly to Corpus Christi and Brownsville should be passed to the new purchaser as well. . . .

On March 21, 1996, the Texas Attorney General wrote to Governor George W. Bush of Texas, advising the Governor that his office "ha[s] concluded that the Union Pacific-Southern Pacific merger would seriously reduce competition for a significant volume of rail traffic involving origins and destinations in Texas." The Texas Attorney General accordingly announced his intention to oppose the merger before the STB on behalf of the State of Texas.

I also understand that the Texas Railroad Commission, acting on behalf of the entire state of Texas, will be urging the Surface Transportation Board to disapprove the merger as too anticompetitive or, if the merger is approved, to grant the rights that Tex Mex is seeking in this application.

VI. IMPACT OF THE MERGER AND THE BNSF SETTLEMENT ON TEX MEX'S ABILITY TO PROVIDE RAIL SERVICE TO LOCAL SHIPPERS WHO HAVE NO OTHER PRACTICAL TRANSPORTATION ALTERNATIVES.

Tex Mex's experts have concluded that Tex Mex cannot survive the UPSP merger, even as conditioned by the Applicants' settlement agreement with BNSF. The traffic diversion study performed by Joseph Ellebracht shows that the UPSP merger, as conditioned by the settlement with BNSF, would result in a 34% decline in Tex Mex's revenues. Patrick Krick's economic and financial analysis shows that a post-merger Tex Mex would immediately go from profitability to unacceptably heavy losses, and he quite simply concludes that Tex Mex "would not survive the UP/SP merger if it is not conditioned by the rights [Tex Mex] requests in its responsive application." At the same time, Tex Mex's experts have determined that if Tex Mex is granted the trackage rights it is seeking in this proceeding, Tex Mex's net revenues will recover to be in the same general range as would be the case if no merger took place, thereby allowing Tex Mex to sustain viability as a railroad.

If the Tex Mex were unable to continue operating as a result of the merger, a number of shippers would be significantly harmed. For example, Barr Iron & Metal Company of Alice, Texas has submitted a shipper statement in this proceeding, asserting "There is no way to truck our salvage to and from various points with Tex Mex not being here." Barr "depend[s] solely on Tex Mex as our only ways of transportation into Mexico for scrap steel and other salvage products." Barr's President, Dempsey Barr, states that the loss of the Tex Mex as a result of the merger "would probably close our operations down." Mr. Barr also notes that there are eleven other companies in Alice, TX that similarly depend on Tex Mex.

Similarly, Corpus Christi Grain Co. expects to lose its Mexican markets if the merger is approved as proposed by UPSP. Its President, William E. Bailey, explains in a statement that his company's "success as a grain elevator is reliant on the Tex Mex Railway being a strong and viable railroad." According to Mr. Bailey:

> If the Tex Mex is not a viable railroad, we will not be able to compete with rail grain to Mexico because the UP is not an alternative for us. The UP has proven over the past 18 years that they are more interested in

a $2400 dollar long haul to Laredo (approximately 900 miles) than a $700 dollar short haul to Laredo (150 miles).

UP will not offer Corpus Christi Grain Co. a competitive alternative route to Mexico in the absence of the Tex Mex Railway.

VII. <u>DESCRIPTION OF TEX MEX'S RESPONSIVE APPLICATION, AND OPERATING PLAN AND LABOR PLAN.</u>

Tex Mex is filing this Responsive Application in order to gain the ability to operate from Laredo to Houston and Beaumont. Briefly stated, Tex Mex is seeking trackage rights from Robstown and Corpus Christi to Houston, through Houston, and on to Beaumont. Tex Mex is requesting trackage rights from Robstown and Corpus Christi to Houston over the UP and SP, trackage rights within the Houston Terminal area over SP and the Houston Belt & Terminal Railroad Co. ("HB&T"), and trackage rights from Houston to Beaumont over either the UP or the SP.

Tex Mex seeks rights over those lines to permit it to carry overhead traffic and to serve all local shippers currently capable of receiving service from both UP and SP, directly or through reciprocal switching, with full rights to interchange traffic with UP, SP and any other railroad at any interchange point on such lines.

Tex Mex's operating and labor plans are described in detail in the verified statement of R. J. Spear, Tex Mex's Vice President of Operations and General Manager. We believe that we have developed an efficient and economical competitive alternative to UPSP for shippers who utilize the Laredo gateway to Mexico. The trackage rights being sought by Tex Mex will provide an alternative between Houston and Laredo that is superior to the BNSF trackage rights. BNSF would be operating over UP's already-congested Brownsville Line between Algoa and Robstown. Tex Mex would, by contrast, operate from Placedo to Houston over relatively lightly-used SP lines. The trackage rights sought by Tex Mex will also allow Tex Mex to reach a friendly connection at Beaumont with the KCS, thereby furthering the efforts of Tex Mex, KCS, and their corporate parents, to develop a strong competitive alternative to UPSP for rail traffic between the U.S. and Mexico.

Tex Mex's trackage rights operations have been designed in such manner as to result in minimal impact to other rail freight operations and to Amtrak. The conditions would not impose unreasonable operating or other problems for the consolidating carriers, and would not frustrate the ability of the consolidating carriers to obtain the public benefits that they state will arise from the proposed transaction.

We have requested trackage rights over two routes through Houston, in part to provide competitive alternatives for shippers, and in part to afford route flexibility and thereby avoid congestion in the Houston Terminal area. We have requested trackage rights between Houston and Beaumont, but we have specified that such rights could be granted on either the UP line or the SP line, depending on the line that could better accommodate Tex Mex operations under the UPSP operating plan. We have requested trackage rights between Corpus Christi and Odem in order to provide an alternative in the event of congestion on the Robstown to Odem segment of the UP's Brownsville line. We have indicated our desire to lease or purchase the SP yard at Glidden, in part so as to provide a point where Tex Mex trains could clear the UPSP main track when necessary in order to block cars or to avoid congestion.

As explained in Mr. Spear's verified statement, Tex Mex expects to hire 30-40 employees in order to operate over the trackage rights that we are seeking. We would look first to hire former SP personnel familiar with these routes, and we understand that SP will be reducing its workforce in connection with the merger.

VIII. WHY THE STB SHOULD GRANT TEX MEX'S RESPONSIVE APPLICATION

Tex Mex's witnesses have shown that the proposed merger would reduce competition in the markets served by Tex Mex--especially the market for the transportation of goods between the United States and Mexico--to a serious and unacceptable degree. They also conclude that the BN/Santa Fe Agreement would do little to restore the competition that would otherwise be lost. As to the markets served by Tex Mex, Tex Mex believes that the merger would not have an unacceptable effect on competition if the Board grants this responsive application, giving Tex Mex the ability to connect with other railroads in Houston and with KCS and other railroads in Beaumont. The grant of that application would preserve an effective third competitive rail alternative for thousands of shippers in both the United States and Mexico for the transportation of their goods between those two countries.

VERIFICATION

I, **Larry D. Fields**, certify under penalty of perjury the foregoing is true and correct. Executed on March 25, 1996.

LARRY D. FIELDS

§TB FD 32760 3-29-96 SUB No. 13 2/8 A

VERIFIED STATEMENT

OF

JOSEPH F. ELLEBRACHT

My name is Joseph F. Ellebracht. I am an independent railroad transportation consultant. My office is at 1015 Jackson Avenue, River Forest, Illinois 60305.

Qualifications and Experience

Before establishing my consulting practice in March of 1993, I was employed for nineteen years in the railroad industry in a variety of marketing positions. My most recent railroad employer was the Southern Pacific Transportation Company, where I worked for fourteen years, and before that I worked for the Chicago, Rock Island and Pacific Railroad. I hold a B.A. degree from Washington University and a M.B.A. from the University of Missouri.

During my railroad employment I worked with dozens of railroads, hundreds of railroad customers and thousands of railroad marketing and operating personnel. This experience provided me with knowledge of what buyers and sellers of rail transportation want, and also of the means employed to achieve those wants. During my employment at SP, and after, as a consultant, I participated in a number of railroad acquisition cases as well as other proceedings before the Interstate Commerce

Commission. As part of this participation I prepared or reviewed several traffic diversion studies.

Through my work with the railroad industry I have developed a knowledge of the rail network in the United States, Canada and Mexico, but particularly in the Western United States, including the physical infrastructure, the service characteristics, the markets served and an understanding of how railroads operate in those markets.

Introduction and Summary of Conclusions

I am providing this statement at the request of the Texas Mexican Railway Company (hereafter "Tex Mex" or "TM") to provide an analysis of the impact of the proposed merger of the Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Company ("SP")(collectively "UP/SP" or "Applicants") on competition in the markets served by Tex Mex and upon Tex Mex's traffic. This statement is divided into three principal parts. Part I explains why the UP/SP merger, even as conditioned on the Applicants' settlement agreement with the Burlington Northern Santa Fe system ("BNSF"), will sharply reduce competition in the markets served by Tex Mex and will have a very detrimental and possibly fatal effect on Tex Mex itself. Part II discusses why the responsive application being filed by Tex Mex would help to preserve the competition that presently exists in those markets and to preserve Tex Mex's ability to provide rail service to its customers. Part III describes the Traffic Study I have performed to estimate the merger's traffic diversion.

My principal findings and conclusions are as follows:

- Tex Mex and SP, operating together, have been effective and aggressive competitors to UP for rail traffic between the United States and Mexico.
- Tex Mex has also been an important provider of essential rail services to local industries on its line.
- The SP has been essential to Tex Mex and its ability to serve its international and local markets.
- The impact of the recent BNSF merger will likely be positive for SP-Tex Mex service, absent a UP/SP merger.
- The UP/SP merger as conditioned on the BNSF settlement will result in a substantial loss of competition in the markets Tex Mex serves.
- Reducing the number of major U.S. railroads serving Mexican gateways from three to two will significantly lessen competition for U.S.-Mexican traffic.
- The market concentration impacts of the merger will be particularly strong at the key Laredo gateway.
- Under the BNSF settlement, BNSF will not be nearly as effective a competitor to UP as an independent SP has been for U.S.-Mexican rail traffic generally and through the Laredo gateway in particular.
- The Mexican government's efforts to promote competition and efficiency in the Mexican rail system through privatization will also be undermined by the UP/SP merger.

- The trackage rights sought by Tex Mex will help restore competition to something closer to the level that exists now.
- The UP/SP merger, as conditioned on the BNSF settlement, will result in Tex Mex losing approximately 37% of its interline traffic (in terms of 1994 carloads adjusted for the effects of recent mergers) and 34% of its total revenues (based on 1994 adjusted revenue figures.)
- The UP/SP merger, as conditioned on the BNSF settlement and the conditions sought by Tex Mex will increase Tex Mex's total revenues over the adjusted base by 3%.

I. THE IMPACT OF THE UP/SP MERGER ON THE MARKETS SERVED BY TEX MEX.

1. An Overview of the Tex Mex and the Markets it Serves

A. Markets Served by Tex Mex in Combination with Southern Pacific

Tex Mex operates entirely within the state of Texas, from Corpus Christi west to Laredo. Tex Mex is one of two railroads serving the international gateway of Laredo, TX. The other is UP, whose line runs south to Laredo from San Antonio.[1] In addition to serving customers along its line, Tex Mex connects with UP and SP. The main connections are at the eastern end of the Tex Mex, at Corpus Christi and Robstown. Because UP reaches Laredo independently from San Antonio, the major interchange at the east end of Tex Mex is with SP at Corpus Christi. SP and Tex

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[1] The UP line is actually owned and operated by the Missouri Pacific Railroad, a UP subsidiary, but will simply be referred to here as UP.

Mex together comprise the major competition to UP for traffic to Mexico via Laredo.

From Corpus Christi, SP's tracks go east to Houston, New Orleans and Memphis, northeast to St. Louis and Chicago, north to Dallas, Wichita, Kansas City and Denver and west to Phoenix, Los Angeles, San Francisco and Portland. SP connects all of the major U. S. western railroads, including BNSF, Illinois Central (IC), Kansas City Southern (KCS) and Wisconsin Central (WC) with Tex Mex and thus with the Laredo gateway to Mexico. SP also connects with CSX, Conrail and Norfolk Southern at Chicago and the Mississippi River gateways, and thereby connects these railroads with Tex Mex and thus with the Laredo gateway to Mexico. It is important to note that Tex Mex also connects with UP at Corpus Christi and nearby Robstown, Texas, but that because UP also serves Laredo from San Antonio, the UP - Tex Mex route to Laredo from Robstown and Corpus Christi is seldom used.

Carload Traffic:

For shippers wishing to reach Laredo by rail, the two major choices are a UP route or SP-Tex Mex route. During recent years, shippers served solely by SP are unlikely to be offered a viable UP route to Laredo and shippers served solely by UP are unlikely to be given a viable SP-Tex Mex or a UP-Tex Mex route option to reach Laredo. Most other shippers of carload freight (intermodal is an altogether different situation) are able to choose between these two options, UP or SP-Tex Mex, for shipment to Laredo. The table following shows the market shares of the three routes to

Laredo for 1994 carload traffic originating on each of UP and SP, each of which can be expected to strongly favor its own competing route. The table also shows the share of the three routes for carload traffic originating on ATSF, BN and KCS, whose shippers could be expected to have a choice of routes.

SP and UP have both spent a significant portion of their management time and efforts on increasing their Mexican business. Both have sales people in Mexico and Mexico development groups aimed at eliminating obstacles to rail transport. Both carriers have fostered close relationships with the management of Ferrocarriles Nacionales de Mexico (FNM) and have made substantial investments in Mexico to improve business opportunities. Until recently, both planned to bid aggressively on the privatization of the Mexican railway system.

UP has traditionally handled the most freight over the Laredo gateway, as UP has the best route from most origins. SP and Tex Mex, though, compete vigorously for the freight traffic they can handle, bidding together. (The pendency of this proceeding, however, appears to have diminished the SP's business with Tex Mex somewhat). Historically, for many competitive origins, the SP-Tex Mex route has a respectable market share.

Here are the 1994 market shares for the UP, the SP-Tex Mex and the UP-Tex Mex routes for shipments to Laredo for the five largest flows from BEA's which are not served directly by UP or SP, and which are therefore highly competitive as between UP and SP-Tex Mex.[2] The table further illustrates the point that the UP-Tex Mex route was not a competitive factor.

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[2] These flows are all of the flows greater than 50,000 tons per the 1994 waybill sample between offline BEA's and Laredo. The tonnage reflects both intermodal and carload service.

At Houston and Beaumont, SP and UP compete directly for business. Not all of the shippers at those locations are competitive, but a substantial competition exists for the traffic that is competitive. Rates charged for competitive traffic help hold down rates for non-competitive traffic. Service established to gain competitive traffic is also available for non-competitive shippers. Looking at carload traffic in the 1994 waybill sample from the SPLC used by the Houston station and that for the Beaumont station to Laredo shows the following market shares on carload traffic:

Intermodal Traffic:

Until recently Tex Mex was not a competitor for intermodal traffic. In 1995 Tex Mex and SP established an intermodal service between Chicago and Mexico City called the Aztec Wind, to compete with UP offerings in the same corridor. SP has lost interest in this new service, possibly because the SP managers do not wish to offend their proposed merger partner. Traffic attracted to the Aztec Wind is not reflected in the 1994 waybill sample. Intermodal service to Laredo, aside from the Aztec Wind, is provided by UP directly and by SP via a paper ramp[5] operating over San Antonio.

B. **Local markets served by Tex Mex.**

In addition to serving the Laredo gateway, Tex Mex also serves local industry along its line between Corpus Christi and Laredo. Traffic to and from these customers amounted to 10,534 carloads, or 28% of Tex Mex's annual carload volume in 1994. Of this volume, over 4,000 carloads were local to the Tex Mex's 157

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[5] A paper ramp is a TOFC origin and termination point treated as a regular terminal for service and rate quotations, but served by a truck line ferrying trailers or containers between an actual intermodal terminal and the paper ramp location. Often there is a trailer storage point at the paper ramp city allowing customers to pick up and deliver their loads to a central location. With the extra handling, service to and from paper ramp points is usually not first class.

mile long line, with many shipments being handled fewer than 100 miles.

Tex Mex's local traffic has increased substantially in the past two years under Tex Mex's new management, as discussed in the verified statement of Tex Mex's president, Larry Fields. This increase in this very short haul traffic, which at these distances is invariably very truck-competitive, is an indication of the attention to service provided by the Tex Mex management.

2. SP is Essential To Tex Mex and Its Ability to Serve Its Markets

In 1994, Tex Mex handled 36,774 carloads of traffic. 32,613 carloads (or 89%) were interchanged with other railroads; these originated or terminated or both off Tex Mex. The rest, 4,161 carloads, were entirely local, originating and terminating on Tex Mex.

It is obvious from these figures, as well as from a cursory look at the map, that SP is essential to the ability of Tex Mex to serve its off-line customers and to compete with UP for traffic moving between the United States and Mexico. Furthermore, as I discuss later, SP is also essential to Tex Mex's ability to serve its local customers, because Tex Mex could probably not subsist solely on its local traffic.

Several UP's witnesses attempted to depict SP as an ineffective competitor. On the basis of my 14 years experience in SP's marketing department, which I left in 1993, and my familiarity with developments since then, I can categorically state that that is not true. In fact, it seems clear to me one of the reasons that UP is acquiring SP is because SP is too effective a competitor. SP's competitive strategy is more price-oriented than UP's in some areas. While competitors do not like price-oriented service providers, shippers are particularly fond of this type of competition. It is true that in some cases SP's service is less reliable than some of its competitors, which of course is related to a price-oriented strategy. SP has several strengths, though, that make it a strong competitor. SP has a very good fleet of recently rebuilt freight cars and has invested in new freight cars too. SP has also invested heavily in intermodal trailers and containers, something UP is just beginning to do. Through SP Logistics, SP carefully manages its domestic container fleet to maximize utilization. SP has very well-located intermodal terminals in several locations, allowing shippers to save on drayage. SP has a substantial sales force in Mexico, far surpassing BNSF's efforts, and rivaling UP's. SP has an excellent geography, able to offer shippers service to most major corridors. SP, like UP, has disposed of many light density lines to short line operators, and SP has made a strong effort to support those short lines. As a result, many of the short lines have grown their traffic considerably, which of course helps SP.

Many shippers choose to ship via SP when they have a choice of ATSF, BNF or UP. SP's market share has been strong in recent years, particularly in intermodal traffic, possibly the most service sensitive of any major category of rail freight. One of SP's recent successes was securing the high volume Geneva Steel ore train business in a very clever way in direct competition with UP. The data presented earlier showing market shares of traffic to Laredo show that SP can attract a significant amount of competitive traffic.

As pointed out by the SP and UP witnesses, SP has recently had a period of particularly bad service. ATSF, BN and UP have also experienced periods of particularly bad service. An example is UP's much publicized period of particularly bad service during its consolidation of CNW. SP has been implementing an investment and service improvement plan that is starting to work. According to the publication Value Line[6] "SP's loadings are on an upswing, counter to the industry's trend. Indeed, through the first eight weeks of the year, the company's total loadings are up 4.6% on a year-over-year basis, while traffic for the industry as a whole is *down* [italic in the original] 3.6% during this same period." The same publication has this to say about UP's traffic: "Indeed, through the first eight weeks of the year, coal loadings were down about 14% on a year-to-year basis, while total car loadings were down 8% during this same period." Regarding BNSF, the publication says "Through the first nine weeks of the first quarter, traffic has been sluggish."

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[6] The Value Line Investment Survey, Value Line Publishing Inc., New York, NY, March 22, 1996 pp. 295 - 293.

Tex Mex has historically worked closely with SP to develop business to and from Mexico. SP and Tex Mex have endeavored to remain competitive with UP services on Mexico traffic, including a despacho previo service, a car hire reclaim service, and intermodal service.

SP-Tex Mex intermodal service is a recent innovation. A new Tex Mex management has realized that intermodal service is an important component of longhaul rail service, and has decided to play a part in providing it. Few railroads of less than 160 miles in length are in a position to be a factor in intermodal service, but Tex Mex, as an extension of the SP, is in a better position than most. SP provides intermodal service to its Laredo paper ramp primarily by trucking 152 miles from the SP San Antonio intermodal facility. In 1995 Tex Mex and SP began to sell through intermodal service to and from Mexico via SP-Corpus Christi-Tex Mex-Laredo-FNM. This service offers significant potential, as the Mexican railway system, like Tex Mex, has begun to gear up for an intermodal future. Intermodal transport makes even more sense in Mexico than in the U.S. because it reduces the need for both local investment capital and public infrastructure repair, both of which commodities are currently in scarcer supply in Mexico than in the U.S. While SP managers are currently downplaying the intermodal partnership with Tex Mex, the service would very likely be expanded if the UP/SP merger is not approved.

3. The Impact of the BNSF Merger on SP-Tex Mex Service Would be Positive Absent the U/SP Merger

BN and ATSF in the past have both relied on the SP-Tex Mex route to reach the Laredo gateway. With the BNSF merger, ATSF's alternative gateway at El Paso, TX becomes available to shippers on the former BN and remains available to shippers on the former ATSF. The El Paso gateway, however, is at the western edge of Texas, and does not compete strongly with Laredo. With the BNSF merger, BNSF traffic from former BN points destined to Laredo can be interchanged with SP at Caldwell, TX, where much ATSF traffic has historically been interchanged. This will provide BNSF with a longer haul for some of its traffic, and SP with a single point of interchange providing the opportunity for better coordination with BNSF. This development should strengthen the competition provided by the SP-Tex Mex route to Laredo versus the UP route.

The BNSF merger greatly expands SP's access to traffic destined to Mexico. As part of the merger proceedings, BNSF and SP exchanged rights to use track on each others railroads. This exchange provided SP with an improved route between Kansas and Corpus Christi, which, absent the UP/SP merger, would greatly increase the competitiveness of the SP-Tex Mex route to Laredo compared to the UP route. With the improvement in the SP route to Kansas City, SP will also become a much better connection for shippers at Kansas City and for shippers on SOO line.

As part of the BNSF merger settlement, SP granted BNSF haulage rights to Eagle Pass, TX, a Mexican gateway which competes somewhat more directly with Laredo than does El Paso. The haulage rights to Eagle Pass, however, are quite expensive, and do not greatly increase the attractiveness of this gateway to BNSF versus Laredo.

SP's deep commitment to the Mexican market benefits BNSF as well as Tex Mex. Neither BN nor ATSF have exhibited as deep a commitment to Mexico as has SP. SP has a large sales force in Mexico, a U. S. group in Houston aimed solely at increasing traffic with Mexico, a Mexican subsidiary, and has worked closely with FNM and other Mexican corporations to advance the development of freight transportation in Mexico. BN has a history of switching its attention to the markets most profitable at the moment, and abandoning markets that are less profitable. BN introduced a rail - barge service between Houston and the Mexican east coast port of Coatzacoalcos several years ago, but ended it when projected profits did not emerge. Mr. Bredenberg, a BNSF executive, in his March 8th deposition, testified that BNSF recently decided to discourage traffic to Mexico via Laredo because "we weren't getting turn times on our cars compared to the turn times to the other Gulf destinations." In my opinion, this is a very characteristic BN short term profit maximization decision. The Mexican market is not as stable as markets in the U. S. and requires a different approach, one exhibiting more patience. SP has shown that it has that patience. Whether BNSF would have this patience is doubtful.

4. **<u>The UP/SP Merger with the BNSF Settlement Will Sharply Reduce Competition in the Markets Served By Tex Mex.</u>**

The

proposed combination of UP and SP will increase the UPSP hold on the Mexico-U.S. gateways. BNSF may make minor gains at Eagle Pass, Brownsville and Laredo from the trackage rights granted, but in every case BNSF has been given an inferior route to these gateways compared to that of SP, and an even more inferior route compared to that of UPSP. If the merger is approved as proposed, UPSP will handle nearly all of the traffic to and from Mexico.

The elimination of SP as an independent competitor for U.S-Mexican traffic and the resulting control that UPSP will have over virtually all of that traffic will cause a very substantial loss of competition and will create the climate for a significant increase in rail rates.

While it is true that there is currently only one railroad in Mexico, FNM, the state-owned railroad, that fact has not diminished the benefits shippers have enjoyed to date from the competition among U.S. railroads for that traffic. For a number of reasons, including FNM's ratemaking practices, the different currencies used by the two countries, the unpredictable fluctuations in the exchange rates and the normal transition of ownership of the freight at the border, nearly all U.S. rail rates for traffic to or from Mexico are established only for the U.S. portion of the move. Similarly, FNM rates cover only the Mexican portion. Few rates are established with FNM on a through or joint-rate basis. In my years of marketing for SP, I was directly involved in a few efforts to establish through rates for selected traffic. Such rates, however, have not generally been encouraged by FNM, entail significant administrative and potential tax burdens, and are requested by very few customers. The vast majority of international rates are made by combining the rate within Mexico and the rate within the United States.

Furthermore, FNM's rates are generally set on a distance basis and, in my experience, have rarely been set in consideration of the rates charged by U.S. railroads for the U.S. portion. As a recent study of U.S.-Mexico traffic by the University of Texas states: "FNM continues to set its rates using the old fixed-rate system. Under this fixed rate system, prices are set according to a distance-based tariff. FNM gives each commodity a class number. Prices are then determined by cross-referencing the class number with the distance to be travelled. The distance factor is set independent of any other variables such as geography and accessibility."[7]

Because FNM sets its rates for the Mexican portion of international traffic without regard to the rates for the U.S. portion, the vigorous competition that now exists between U.S. railroads for that traffic directly benefits the shippers, and any reduction in that competition will harm them. UP, SP and their witnesses have not disputed this fact. Indeed, the Applicants' settlement agreement with BNSF, which Applicants argue will preserve that competition, clearly reflects their recognition of the serious anticompetitive effect that an

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[7] Lyndon Johnson, School of Public Affairs, the University of Texas at Austin, U.S.-Mexico Trade and Transportation: Corridors, Logistics Practices and Multimedia Partnerships, Policy Research Project Report Number 113 (Austin, Texas: 1995).

unconditioned merger would have on competition for U.S.-Mexico rail transportation. Unfortunately, as I discuss later, Applicants are wrong that the settlement agreement will preserve the competition that now exists for that traffic.[8]

B. The Elimination of SP As An Independent Competitor For U.S.-Mexico Traffic Will Cause A Substantial Reduction in Competition.

Contrary to Applicants' claims, BNSF trackage rights or, more likely, haulage rights operations between Houston, Corpus Christi and Brownsville will provide a significantly inferior level of competition to UP for traffic through Laredo than UP now faces from SP in conjunction with Tex Mex or than UPSP would face from Tex Mex if Tex Mex could connect directly in Houston and Beaumont with railroads serving those points. This is true for several reasons that I discuss more fully in the following Section 4.C.

A more fundamental, threshold problem with the proposed UP/SP merger and the BNSF settlement, however, is that, even if one assumed that BNSF would be just as effective a competitor using its trackage and haulage rights as SP is now operating over its own lines, the fact remains that today there are three major

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[8] As I have discussed, because FNM sets its rates without regard to the rates charged by U.S. railroad's, FNM's monopoly over the Mexican portion of international moves has not prevented the benefits of competition among U.S. railroads from flowing through to the shippers. As I discuss in Section 4.E, below, the converse situation cannot be expected to hold true. If Mexico establishes a significant degree of competition in its rail system, as is expected, the benefits of that competition would not be likely to flow through to shippers if the U.S. portion of the transportation becomes noncompetitive.

U.S. railroads serving Mexican gateways, and if the Applicants' proposal is approved, there will only be two. I can testify from my own long experience in marketing rail services to shippers, that fact alone translates into a major loss of competition. Any competent transportation buyer would much rather have three railroads bidding for its business than two. And any experienced railroad marketing person trying to get that business would much rather have to bid against only one other railroad than two.

Professor Grimm addresses the subject of the competitive impacts of changing from three to two competitors in the rail industry in his verified statement. I would like to address the issue from two other points of view. First, the everyday experience of life as a consumer. Anyone who has hired even a painting contractor knows that, within reason, the more bids that are solicited, the better the price and service offerings that will be received. In our society competition in everything from hamburgers to phone service drives innovation and price reductions.

The second point of view is that of a person marketing railroad service. An experienced railroad marketer knows that for each situation there is likely to be a range of prices for rail service that *can* be charged, given the product and geographic competition, and intermodal competition from trucks, water and rail-truck services. Within this the price that *will* be charged is a function of the amount of rail competition faced.[9] Every experienced rail marketer is acutely attuned to the amount of intramodal competition faced on each significant traffic flow for which a price is offered. The best situation from the marketer's perspective is when there are no rail competitors, or they are weak. Prices at the high end of the possible range can be offered and will be accepted. In situations where there are only two effective rail competitors, many rail marketers systematically analyze lost and won bids to pinpoint the bidding strategy of their competitor. When a competitor's bidding strategy is understood, bids need not be so as aggressive. The introduction of a third bidder makes the bidding process much less predictable. With a third bidder, strategic bidding is much less likely to be successful, and bids must be more aggressive.

I worked for many years in railroad marketing, and, in my experience, at least for major bids, bidding against a single competitor is treated as a strategic game, while bidding against multiple competitors involves a far larger commitment to honing service and eliminating costs from the system to make the bid as competitive as possible. Railroad services are not so much different from the services of a painting contractor--the more bidders, the better the winning bid for the customer.

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[9] Anyone who has participated in a multi-railroad bidding process for a major customer's business can attest that geographic and intermodal competition alone are not the sole determinants of railroad prices when there is effective rail-to-rail competition.

The UPSP merger also raises the real possibility of price coordination between UPSP and BNSF. Price signaling is the method by which UPSP and BNSF could coordinate pricing. Price signaling is fairly common in the rail industry, although to date not very effective. Most of the traffic each railroad will handle this year was handled last year too, as production patterns, consumption patterns and logistics flows are fairly stable from year to year. Some of the prices for rail transportation are in tariffs,[10] as for many grains, and others are in contracts. As part of planning the next year, it is common for each railroad commodity marketing group within a particular railroad to decide how much of a price change to try to make, on average, for shipments that were handled last year and will be handled this year. This is usually a percentage. When tariff adjustment time comes, or contract negotiation time comes, the marketing people know how much they are going to try to get in rate changes for the tariff or contract. This number is not a big secret, as a lot of people need to know it to make it come about, and is easily available to competitors in the marketplace through their regular contacts with knowledgeable customers or consultants. Occasionally the trade press will pass along some of the numbers.

Price signaling gets easier as the number of participants in the industry declines. With only two major players, price

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[10] Tariffs were historically required to be available for public inspection so all might know the prices charged to each. Thus they are a time-tested price signaling device.

signaling in the rail industry becomes very easy indeed. For example, BNSF, in its newsletter to its grain customers need only announce that it is giving notice in September of a general 3% price increase on soybeans to take effect in January 15, and is providing the information early to allow customers to plan accordingly. UPSP receives the information a few days later, from a customer or a consultant. UPSP can then choose to follow the price increase or not. If UPSP does not follow, BNSF would probably withdraw its increase. With three independent railroads, each with a different corporate agenda, the chance of two railroads following an announced increase is far less than the probability of a single railroad doing so.

Successful price signaling does not completely eliminate competition, because there are always periodic bids for the business of the customers with direct competition. Price signaling, however, significantly reduces competition and causes rates to rise faster than they otherwise would.

C. The Market Concentration Resulting from the UP/SP Merger Will Be Particularly Extreme at the Laredo Gateway

The UP/SP merger will eliminate the SP-Tex Mex route as a viable competitive restraint. Since UP serves Laredo directly, the merger of SP into UP will mean that Tex Mex and SP will no longer be able to provide a viable alternative to UP for traffic between the U. S. and Mexico via Laredo. The UPSP-BNSF settlement agreement contemplates that BNSF will replace SP as the railroad that will connect with Tex Mex to provide competition to UP at Laredo.

BNSF will not be an adequate replacement for SP for four reasons (listed here and discussed below):

- BNSF has inferior access to many 2-to-1 shippers, including shippers at Houston, KCS shippers and shippers in the eastern United States
- BNSF has an inferior route to Corpus Christi
- BNSF has the option of not operating to Corpus Christi
- BNSF's competitiveness will decline even further over time

First, BNSF has inferior access to many 2-to-1 shippers. At Houston BNSF serves relatively few customers directly. In addition, access to most 2-to-1 customers will be through switching service provided by UPSP (although direct service is a theoretical possibility with the UPSP-BNSF settlement agreement, it is highly unlikely except for a few very large shippers.). Routes to Mexico, via BNSF, will be UPSP-Houston (switch)-BNSF-Corpus Christi-Tex Mex. SP, on the other hand, served many customers directly. Before the UPSP merger, service was offered via SP-Corpus Christi-Tex Mex. Reciprocal switching service adds another carrier to the route, slowing down the service and making it less reliable.

KCS shippers previously had available the route KCS-Shreveport-SP-Tex Mex or alternatively the route KCS-Shreveport-UP to Laredo. With the BNSF-UPSP settlement agreement, BNSF cannot interchange with KCS at Shreveport, and so the route choices for KCS shippers to Laredo are KCS-Shreveport-UPSP or KCS-Beaumont-BNSF-Tex Mex. The KCS-Beaumont route is circuitous for much traffic. KCS shippers are deprived of a viable competitive route because of the terms of UPSP and BNSF agreement.

Also, to and from most of the eastern part of the U.S., BNSF must operate over trackage rights for almost all of its route between Memphis, St. Louis and Laredo, which will significantly reduce its ability to be competitive on shipments to and from the eastern U.S. For example, of the 1050 miles between interchange with Tex Mex at Robstown and St. Louis, 750 miles are via trackage rights. Of the 750 miles between Memphis and Robstown, all are via trackage rights. Operating over trackage rights for such a long part of the haul raises serious obstacles to maintaining service quality[11] as well as potentially significant cost constraints.

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[11] Mr. M. D. Ongerth, an SP executive, submitted long verified statements in F. D. 32133, the UP-CNW merger, about the serious problems SP had encountered in trying to provide competitive service while operating over trackage rights on UP. At that time it appeared that Mr. Ongerth was saying that these problems were UP's fault. When deposed in this case, he said that he did not retract any of his testimony in the UP-CNW case, but upon reflection thinks that the problems were SP's fault. One constant about his testimony is that SP had serious problems in providing competitive service via trackage rights on its main competitor. The problems were difficult ones, and they endured for years, as is typical of trackage rights situations. It is unreasonable to assume that BNSF will be able to operate a competitive service when its one and only competitor provides the track and dispatches the trains for nearly the entire length of the service.

BNSF also has an inferior route to Corpus Christi. While the proposed UPSP merger would provide UPSP with shorter routes to Laredo from many points the proposed BNSF settlement agreement provides for a longer route for the competitive route than existed prior to the merger, via SP-Tex Mex. Examples:

	Miles UP or SP (shortest)	New Miles UPSP	% Difference	Miles SP-TexMex	New Miles BNSF-TexMex	% Difference
Wichita, KS	653	653	None	963	998	+4%
San Antonio	154	154	None	410	589	+44%
Phoenix, AZ	1460	1204	-18%	1460	1908	+31%
Los Angeles	1841	1585	-14%	1841	2222	+21%
Ft. Worth, TX	279	279	None	584	619	+6%
Kansas City	813	813	None	1158	1163	+4%

In addition, BNSF has a single route to Corpus Christi from Houston, while SP now has two, and a single route from St. Louis to Corpus Christi while SP now has two. SP has the ability to use whichever route provided the least congestion, but BNSF cannot.

UP's witness John Rebensdorf acknowledged in his deposition that BNSF will reach Corpus Christi via a route that is very congested with local switching trains, "particularly on the line between Angleton into Houston" (Jan. 22, 1996 Dep. at 243-244), and Tex Mex witness Allen Haley has performed an analysis confirming that fact. That means that BNSF will provide slow service between Corpus Christi and Houston. Even should UPSP actually give BNSF equal dispatching priority with UPSP's own trains, the route will not be a fast one because UPSP does not operate any express trains via this route. The planned development of an extensive network of intermodal trains by SP and Tex Mex cannot happen with BNSF, because non-expedited service is all UPSP must provide under the terms of its settlement agreement with BNSF.

Perhaps the most disturbing element of the BNSF settlement is that BNSF has the option of not operating the line to Corpus Christi. BNSF may choose to exercise its right to let UPSP handle the traffic in UPSP's trains using haulage. BNSF has indicated that it plans to operate to Brownsville via haulage, and it could at any time decide to do the same to Corpus Christi. This is a likely development if BNSF feels the traffic developed over the route is not enough to support a regular trainload service, which is quite possible if the trackage rights costs become intolerable. Should BNSF choose to operate via haulage, the possibility of service competition on even non-expedited traffic to Laredo will effectively end.

D. KCS Shippers Are Particularly Disadvantaged by the UPSP Merger

Shippers on KCS who ship to points southwest of the KCS lines such as Laredo and Houston now have two good alternative routes. There are good connections with either SP or UP, at either Shreveport or Texarkana. With the combination of UP and SP, these alternatives will be reduced to a single choice, UPSP.

The UPSP-BNSF settlement dealt with this issue in a way that was injurious to competition. Even though the BNSF was granted trackage rights through Shreveport, rights were not granted to KCS to interchange with BNSF at Shreveport. Thus, no KCS-BNSF route was established to replace the route lost from the merger of UPSP. The remaining alternative, KCS-Beaumont-BNSF, is a more circuitous route and a weak competitor. The elimination of a competitive route should allow UPSP to raise its rates for its portion of the haul.

E. The Elimination of SP as an Independent Competitor for U.S.-Mexico Traffic Will Also Undermine the Competitive Benefits That Mexico Hopes to Bring About Through Privatization

As I discussed earlier, because of FNM's ratemaking practices, its control of the Mexican rail system has not prevented the competition that now exists among U.S. railroads for U.S.-Mexico traffic from benefitting international shippers. The converse situation, however, can not be expected.

In his verified statement, Mr. Brad Skinner explains that Mexico is in the process of selling its rail system to private enterprises in an effort to infuse much-needed competition and efficiency into a system that has been notoriously inefficient from its inception. The system is to be sold in three main divisions, two of which connect to U.S. gateways. The first division includes lines from central and eastern Mexico to the Brownsville and Laredo gateways. The second division includes lines that connect to Eagle Pass, Presidio, El Paso and Nogales. Tex Mex's parent, Transportacion Maritima Mexicana "TMM"), in conjunction with KCS, intends to bid for both of those divisions. UP, in conjunction with its Mexican partner, is expected to be another major bidder. TMM expects that the Mexican government will require the purchaser of the first, and perhaps the second, division to provide trackage rights to another carrier to ensure competition over those lines. The process is expected to be completed before the end of the year.

Mexico's efforts to bring competition and efficiency to its rail system, however, would be largely undermined if competition is lost on the U.S. side of the border. UP, SP and BNSF are all very sophisticated in setting rates to maximize profits. Each of them, including a merged UPSP, can be expected to set rates as high as competitive constraints will permit them. To the extent that UPSP and BNSF, both individually or together, will control gateways and routes within the U.S., they can be expected to use that control to the fullest to maximize their revenues on U.S.-Mexico traffic. If competition among Mexican carriers reduces rates for the Mexican portion of such moves, U.S. carriers with control over the U.S. portion can be expected to appropriate those reductions for their own benefit, not the shippers' benefit.

F. Intermodal Competition Alone Is Not Enough to Constrain Rail Prices on Shipments to and from Mexico via Laredo

The table below shows the major commodities handled via Laredo by rail in 1994.

The 23 commodities listed in the table above are the largest volume commodities handled by rail at Laredo. They represented in total over 6 million tons of the 9.7 million tons handled via Laredo in 1994. The average distance represents the approximate length of the U. S. haul by truck to reach the border crossing point.[12] Many of the commodities are bulk agricultural goods typically moving in multi-car lots, for which truck transportation is not an effective constraint on rail prices for shipments of much over 100 miles, or even less at times. Of the bulk agricultural commodities listed, only rough rice has an average distance of less than 600 miles, making these shipments largely immune to direct truck competition. Many other commodities are bulk chemical or mineral products or bulk shipments of low value recyclables, which are much more economical to ship in carload quantities by rail for the longer distances shown, and thus are also largely immune to direct truck competition.

Some of the commodities listed are somewhat competitive with truck at the distances shown, for example the intermodal traffic. Overall, however the table presents a picture of generally rail - oriented freight without much direct truck competition for large quantity shipments at the distances indicated.

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[12] The average distance shown is the rail short line mileage from the waybill sample data. The rail short line mileage is a reasonable surrogate for truck miles to Laredo.

Truck competition will not be an effective constraint on rail prices in the absence of effective rail-to-rail competition.

The inland location of Mexico's major industrial and population centers reduces the attractiveness of water service for the commodities listed in the above table. Generally, for the traffic handled via Laredo, a water-borne shipment would require a relatively long inland leg in both the United States and Mexico. Mexico City is 419 kilometers from the major port of Veracruz. Monterrey is approximately 160 kilometers from the coast. Guadalajara is 313 kilometers from the port of Manzanillo, which is a Pacific port, and would require a long water voyage in addition to a land leg for most of the shipments that are transported through Laredo. Water competition will not be an effective constraint on rail prices in the absence of effective rail-to-rail competition.

G. There Are Serious Risks Associated with the UP/SP-BNSF Settlement Agreement

BNSF may simply fail to exercise its trackage rights. BNSF is under no obligation to fully exercise its trackage/haulage rights to Corpus Christi. Traffic that SP found attractive, with SP's more direct route, may be unattractive to BNSF, which has been relegated to a less direct route. BNSF's bids to shippers will reflect its more circuitous route, as well as the more variable level of its payments for track and maintenance. As a result, BN's bids are likely to be higher than those made by SP, allowing UP to also raise its bids. As a result, the customers will pay more, either to BNSF or to UPSP. BNSF will pursue only that traffic on which BNSF can earn a reasonable return and will use its trackage rights only to handle traffic from which BNSF can extract sufficient profits.

Should BNSF find this a tough corridor in which to be competitive using trackage rights, which I think they will, for the reasons expressed above, then they may choose to exercise their access to Corpus Christi using their haulage rights instead. This will further degrade the quality of competition that UPSP will face, allowing them to further increase their prices.

There are other serious risks of price increases from the BNSF settlement agreement. Many of the services BNSF will have to buy to provide competitive service to Corpus Christi have not yet been priced. Among these are the switching charges to reach so called 2-to-1 customers.

We also do not know what price BNSF will pay for haulage services to Corpus Christi, should they elect to use this feature of their agreement. There is a strong possibility that the cost of this service, along with the other charges for purchased services BNSF must pay for many shipments to Corpus Christi, will exceed the revenues available to BNSF. Even high haulage or trackage rights charges can be afforded if they are a short portion of a long shipment. However, for many shipments, the trackage and haulage rights track segments represent all or the vast majority of the distance that BNSF will handle the shipments. Thus, the charges for the trackage and haulage rights can have a serious impact on the ability of BNSF to handle certain segments of the business.

Shipments from Houston to Laredo via BNSF-TexMex will require BNSF to pay for the services of the reciprocal switching carrier at Houston, the HB&T yard services at Houston, and the UPSP trackage or haulage services between Houston and Corpus Christi. BNSF personnel may never touch the car, although they will have to perform administrative work in connection with the marketing and accounting. The BNSF payments for all of these purchased services, for which each participant is entitled to earn a profit, may well exceed the current SP share of the revenues between Houston and Laredo. If so, it is likely that BNSF will forego this business or raise its prices.

Similarly, on traffic from points near Houston, such as Beaumont, BNSF will generally have to pay a reciprocal switch charge, then conduct costly gathering operations with its own crews to move the traffic to Houston, via trackage rights, then pay HBT for yard services and may then have to pay UPSP for haulage services, or at a minimum trackage rights services. Because of the high proportion of purchased services in the package, it is quite likely on some traffic that BNSF will not be able to make a contribution at the prices charged by SP. If so, BNSF will not maintain the level of prices that SP charges, but will raise the prices it charges customers. UP in many cases will follow suit.

There are also significant longer term price risks to the BNSF-UPSP settlement agreement. The inflation adjustment clause of the BNSF-UPSP settlement agreement calls for adjustment at 70% of the RCAF-U index. Since the agreement does not provide for any productivity adjustment, this is a very risky index to rely upon to maintain competition.

Productivity in the rail industry has grown strongly, and has caused unit costs to actually decline over the last five years. Prices have followed. Productivity improvements are expected to continue.[13] An independent SP could be expected to participate in productivity improvements in the industry, and so its costs *and prices* would follow roughly the same declining path of the other carriers. BNSF, stuck with an adjustment index that will cause BNSF costs on the trackage rights to rise instead of falling with the rest of the industry, would find its costs rising on the lines that serve the Mexican gateway of Laredo.[14]

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[13] Productivity improvements have actually accelerated. The productivity adjustment factor used by the STB and the former ICC is determined by a backward looking analysis of industry productivity improvement. In the fourth quarter of 1989 the ICC found a 4.4% annual productivity improvement. In the first quarter of 1994 this was increased to 5% and in the second quarter of 1995 increased again to 5.9%. 5.9% represents the average annual productivity improvement rate in the industry between 1989 and 1993.

[14] It may be appropriate to look backward over recent history for guidance. For the five year period ending with the third quarter of 1995, an escalation index at 70% of the unadjusted RCAF would produce an escalated rate about 17% higher than simply using the index adjusted for productivity. If productivity improvement continues at 5.9% for the next five years, an escalation index at 70% likely produces an escalated rate about 29% higher than using the index adjusted for productivity.

This is particularly true of the areas mentioned above (Houston, Beaumont and Memphis, for example) where BNSF relies most heavily on purchased services. Many customers served by BNSF via the BNSF - UP/SP trackage/haulage rights agreement will find themselves deprived of future rate decreases that they would have enjoyed without the merger. Instead BNSF will be forced into rate increases, and over time BNSF is likely to become a less and less effective competitor.

II. THE IMPACT OF TEX MEX'S PROPOSED TRACKAGE RIGHTS

Tex Mex proposes that it be given trackage rights between Corpus Christi and Houston, and between Houston and Beaumont. Tex Mex's Robert Spears discusses the operating aspects of the proposed trackage rights.

Tex Mex, of necessity, has a stronger commitment to competition than BNSF in this corridor. While the BNSF does not necessarily have a commitment to compete via the Laredo gateway, Tex Mex does. The Laredo gateway is the primary market served by Tex Mex. Tex Mex cannot, and so will not, offer tepid competition, offer occasional competition or offer managed competition.

The proposed Tex Mex trackage rights will restore competition in Houston. At Houston, as indicated above, BNSF will serve most shippers through switching. Shipments to Laredo will be routed Switch Road-Houston-BNSF-Corpus Christi-Tex Mex, a three line haul. Many of these same shippers previously had available the route of SP-Corpus Christi-Tex Mex, a two line haul. Adding another interchange operation will reduce the level of competition that BNSF can offer, not maintain it. With trackage rights to Houston, Tex Mex can offer the shippers the route of Switch Road-Houston-Tex Mex, a two line haul, which is the same level of competition that prevailed prior to the merger.

The proposed Tex Mex trackage rights will also reduce the negative effects of the UPSP merger on KCS shippers. As stated above, KCS shippers will lose one of their most attractive routes to Houston and Mexico. Trackage rights for Tex Mex to Beaumont will provide KCS shippers with an alternative route to Mexico and Houston. This will provide shippers with a third bid to consider, and alleviate some of the price increases sure to arise from the loss of one of the most efficient routes.

III. THE TRAFFIC STUDIES

I performed traffic studies, using 1994 data, to determine the impacts of the proposed merger upon Tex Mex, and the impacts of the proposed Tex Mex trackage rights upon Tex Mex and other rail carriers.

1. Traffic Study Assumptions

My traffic studies proceeded from the following assumptions:

A. Basic Assumptions

1. The merged railroads would operate as a single entity with a common operating, marketing, pricing and routing policies designed to promote the best interests of the merged system.

Other carriers with recent changes in their systems or affected by the transaction would similarly operate as single entities with each having operating, marketing, pricing and routing policies designed to promote the best interests of the carrier system.

2. The environment in the railroad industry should be considered to be that which existed in 1994 except for:

A. the direct effects of the merger being studied, including trackage rights and track sales proposed as conditions by the Applicants,

B. the UP/CNW merger,

C. the BN/ATSF merger and associated trackage rights and conditions, as implemented,

D. the Wisconsin Central - Algoma Central acquisition,

E. the KCS - TMM partnership,

F. the impacts of changes caused by major abandonments and short line sales post-1994 but prior to the filing date of the merger application, and

G. Changes in related transportation and trade markets.

3. The new merged system and other carriers would keep open all gateways as they existed in 1994, except as modified by the transactions identified in assumption #2, above. Preferences among gateways, routings via gateways, rates via gateways and service via gateways will be adjusted, eliminated or promoted by carriers in accordance with each carrier's interests.

4. The Surface Transportation Board's waybill sample for 1994 adequately represents the universe of existing rail traffic.

5. The merged railroads and BN/ATSF have sufficient equipment to handle any diverted traffic.

6. The merged system would have greater opportunity to influence traffic movements if the shipment moved in the merged system's equipment.

7. Any railroad has more opportunity to influence traffic (in descending order of influence):

A. if the facilities of the shipper or receiver are located on its lines or the lines of a captive short line,

B. if access to the shipper or receiver is provided by another railroad through joint facility services.

C. if access to the shipper or receiver is provided by a non-competing railroad through reciprocal switching or by a non-competing, non-captive short line,

D. If access to the shipper or receiver is provided by a competing railroad through reciprocal switching, or

E. If access to the shipper or receiver is provided by a non-competing linehaul railroad.

8. Any railroad has more opportunity to influence a joint-line route when a shipment (in descending order of influence):

A. Originates on the railroad and is delivered to another carrier at an *off-going* junction - an interline forwarded shipment.

B Is received from a carrier at an on-coming junction and terminates on the railroad - an interline received shipment.

C. Is received from a connecting carrier at an oncoming junction and is delivered to another carrier at an off-going junction - an overhead shipment.

9. The existence of a transportation contract would not preclude diversion of traffic to a different route;

10. Customer relations can to some degree influence the railroads and routes that shippers utilize. This influence varies with the type of traffic. Close relations between customers of the merged system with UP, CNW or SP could favorably impact their choice for routing.

11. Connecting carriers east of Chicago and Mississippi River junctions would remain in current routings.

12. The competitive freedoms afforded by the Staggers Rail Act will continue to be available as a legal matter; the recent changes in railroad regulation will not impose substantial reregulation. Competitive pressures, from other rail carriers and other modes, will exist in many markets for rail services.

13. Multiple plant firms, including national account firms, and firms at single locations that ship to or are supplied by multiple locations, will take into account their overall transportation and logistics requirements in choosing railroads and making routing decisions.

14. In general, more circuitous routes will be less attractive to shippers because of time sensitivity and/or cost differences.

15. The following conditions make traffic less susceptible to diversion:

A. If rates and routes do not exist via the diversion route and the establishment of new rates and routes would require the concurrence of connecting carriers who are likely to be adverse to handling additional business via the new rate and route.

B. If the new route would impose new or higher switching charges on the shipper or receiver (other economic factors being equal).

C. If the clearances on the proposed route are not adequate to allow movement of the traffic via that route.

D. If close relations exist between a railroad currently participating in the movement and a specific shipper.

E. If the routing decision is based on either assigned or pool equipment provided by Tex Mex or the availability of free running equipment supplied by Tex Mex.

F. If the present route would have no viable alternative route as a result of the proposed merger.

B. Limitations of the Traffic Study Assumptions

There are a number of general limitations to traditional traffic diversion studies. These include:

- Because of their focus on the origin and destination of a particular historic shipment, they fail to reflect the dynamics of local and regional geographic competition and the efforts of rail systems to impact geographic competition to maximize their territorial franchise.
- Traditional traffic diversion studies also fail to take into account fundamental shifts in management philosophy. Management may, for example, decide to enter a market not previously served. Tex Mex management has decided to enter the intermodal market.
- Traffic diversion studies are also confounded by major events that disrupt markets. The December 1994 devaluation of the Mexican peso was such an event.
- Traffic diversion studies, no matter how scientifically presented, reflect the opinions of the authors.

In these traffic studies I have resolved none of these problems, but tried to deal with them in a reasonable and constructive manner.

2. Traffic Study Results

A. Adjustment for Events Since 1994

Consistent with the methodology used by the Applicants in their traffic study, I adjusted Tex Mex's 1994 traffic, as represented by the 1994 waybill sample, to reflect traffic gains and losses expected to result from events as listed above since 1994. Some adjustments were positive (for example the KCS-TMM partnership), some were negative (for example the CNW/UP merger) and some had both positive and negative implications. A forward-looking adjustment was also made for Tex Mex's entry into the intermodal business. As a result of all the adjustments, I developed a theoretical 1994 Tex Mex annual revenue of $19.92 million. For reference, Tex Mex reported operating revenues in 1994 of $17.98 million.

B. Impacts of the UP/SP Merger as Conditioned By the BNSF Settlement Agreement

All of the traffic flows in the adjusted base that could be diverted from Tex Mex as a result of the merger, as well as traffic flows that could be diverted to Tex Mex as a result of a direct connection with BNSF (as proposed by the UP/SP - BNSF settlement agreement) were reviewed. The net result was a $6.68 million reduction in Tex Mex revenues to $13.24 million, a decline of 34% from the adjusted 1994 base. No reductions were made in this study to Tex Mex's local traffic. This local traffic is put at risk, though, by the reductions in service that the loss of interline traffic will likely cause.

C. Impacts of the UP/SP Merger Further Conditioned By the Requested Tex Mex Trackage Rights

Starting with the adjusted base, as affected by the UP/SP merger and the BNSF settlement agreement, each traffic flow was examined, if that traffic flow could reasonably be diverted to Tex Mex if Tex Mex served Houston and Beaumont with connections to KCS. This enlarged Tex Mex would be able to attract an additional $7.23 million in revenues, bringing total revenues to

$20.47 million, 3% more than the adjusted base traffic with no merger. This represents 55% more revenue than the study found for the Tex Mex without the requested Tex Mex conditions. About half of the revenue gain came from traffic diverted from other carriers, primarily UP and trucks, while half came from extending Tex Mex hauls to Houston and Beaumont on existing traffic.

The impacts of these traffic shifts on other rail carriers were estimated, and found to be relatively small. BNSF on net was found to lose $3.9 million, UPSP was found to lose about $2.4 million in revenue and KCS was found to gain $0.8 million. The diversions had only minor impacts on other carriers.

3. Differences Between this Traffic Study and That Conducted by UPSP

Mr. Peterson of UP conducted a large traffic study as part of the Application and concluded that with regard to Tex Mex, the UPSP merger conditioned by the BNSF settlement agreement would increase Tex Mex revenues rather than reduce them. I disagree with some elements of Mr. Peterson's study, and with his conclusion.

One area of disagreement is how much SP-Tex Mex traffic will survive the merger of SP into UP. Mr. Peterson appears to have concluded that SP and Tex Mex will still be route partners on a substantial amount of traffic for which a competing UPSP route will exist. In my opinion, that assumption is not reasonable and is clearly refuted by the present traffic data. Today there is a tiny trickle of UP-Tex Mex traffic through Robstown to Laredo for which there is a competing UP direct route through San Antonio to

Laredo. Once SP is merged into UP, the SP-Tex Mex traffic flow will obviously be reduced to a trickle as well. There is no basis for any other assumption, and it would be unreasonable.

Another area of difference is the impact of the BNSF merger. One difference relates to KCS, which was to have gotten haulage rights to serve additional points, including St. Louis, as a settlement in the BNSF merger case. It is now clear that KCS is not able to serve these points. This is apparently because BNSF believes that KCS abrogated the settlement agreement. I believe that Mr. Peterson presumed KCS service to these points.

I also disagree with the analysis of UP/SP's truck diversion analysts, Mr. Ainsworth and Mr. Roberts, in their treatment of truck traffic to and from Mexico. Each agreed in his deposition that his analysis was not appropriate for traffic to and from Mexico, yet each left the traffic to and from Mexico in his analysis. In my opinion they should have left this traffic out of their analysis, or treated it separately. An economic analysis of the likely diversion of trans - border truck traffic is indeed intractable. I relied on conversations with senior Tex Mex executives to help estimate these likely diversions.

VERIFICATION

I, Joseph F. Ellebracht, certify under penalty of perjury the foregoing is true and correct.

Executed on March 25, 1996.

Joseph F. Ellebracht

Joseph F. Ellebracht

VERIFIED STATEMENT

OF

CURTIS M. GRIMM

I. INTRODUCTION AND SUMMARY

My name is Curtis M. Grimm, and I am Professor and Chair of Transportation, Business and Public Policy, College of Business and Management, University of Maryland at College Park. I have been a member of this College since 1983. I received my B.A. in economics from the University of Wisconsin-Madison in 1975 and my Ph.D. in economics from the University of California-Berkeley in 1983. My Ph.D. dissertation investigated competitive impacts of railroad mergers.

My background includes extensive exposure to public policy issues regarding transportation, including Interstate Commerce Commission ("ICC") merger adjudication. I have previously been employed by the Wisconsin Department of Transportation, the ICC, and the Australian Bureau of Transport and Communication Economics, and I have provided consulting services to several other government agencies and private firms regarding transportation issues. I served as Assistant to the Chief of Intercity Transport Development, Planning Division, Wisconsin Department of Transportation on two separate occasions between 1975 and 1978, with a focus on rail policy issues such as abandonments and the creation of shortline railroads. I also worked on a consolidation involved competing bids from Burlington

Northern and the Soo Line/Milwaukee Road/CNW for the Green Bay and Western Railroad, decided by the ICC in 1977.

While serving as an economist at the ICC's Office of Policy Analysis from January to December 1981, my duties included analysis of competitive effects for the Union Pacific-Missouri Pacific-Western Pacific ("*UP-MP-WP*") merger. During 1982, I served as a consultant for the Commission while the *UP-MP-WP* decision was being drafted and subsequently consulted for the ICC with regard to the Ex Parte No. 347 decision.

I have previously participated in several ICC proceedings, including the Wisconsin Central rail merger. Specifically, I provided testimony evaluating the competitive consequences of that transaction. I also submitted a statement in the instant proceeding with regard to the proposed ICC schedule. Previously, I provided a similar statement in the Burlington Northern/Santa Fe merger and a latter statement regarding the cumulative competitive impacts of the BN/SF merger and the proposed instant proceeding that was filed as part of the Petition to Reopen filed by The Kansas City Southern Railway Company in the BN/SF merger, KCS-6, *BNSF* merger proceeding. Finally, I recently participated as a witness in the dispute between Amtrak and Conrail regarding trackage rights compensation, and, before the state of New York in a tax case involving Conrail. On November 8, 1995, I provided testimony regarding competition issues in rail mergers to a Joint Meeting of the U.S. Senate and House of Representatives Committees on Small Business.

My research has involved deregulation, competition policy, competitive interaction and management strategy, with a strong focus on transportation. This research has resulted in over 60 publications, including articles in leading journals such as Journal of Law and Economics, Transportation Research, Transportation Journal, Logistics and Transportation Review, Academy of Management Journal, Management Science, Strategic Management Journal, and Journal of Management. More than two dozen of my publications have dealt specifically with the railroad industry, mainly on deregulation, mergers, and competition issues. I have also co-authored four monographs. Further details may be found in my curriculum vitae attached to my statement for KCS.

In summary, I have had extensive experience conducting and evaluating research regarding the railroad industry, direct exposure to relevant areas of railroad policymaking and first-hand investigation of the facts surrounding this case upon which to base this statement. For many years I have advocated in my writings the importance of preserving and promoting railroad competition. I have long been convinced that preserving and extending the benefits of deregulation crucially hinge on adequacy of railroad competition. Accordingly, my position regarding the impacts of rail mergers that are anticompetitive, remains as stated in my 1990 Brookings co-authored monograph:

> As Alfred Kahn and others have noted of the airline industry, it is important to recognize that deregulation did not authorize the government to abdicate its antitrust

> responsibility and to fail to take actions to preserve competition. To the extent that mergers can enable railroads to improve service and reduce costs without concomitant anticompetitive effects, they should be encouraged. It is the ICC's responsibility to scrutinize carefully potential anticompetitive effects from both parallel and end-to-end mergers. In particular, a policy of continuing to discourage parallel mergers appears to be in order.

Winston, C., T. Corsi, C. Grimm and C. Evans, *The Economic Effects of Surface Freight Deregulation*, Brookings, Washington, D.C., 1990, p.54.

In formulating the analysis which follows, I have drawn from this past work and investigated the circumstances surrounding this case as follows:

- review of the relevant economic literature regarding the role of railroad competition in determining prices;
- review of testimony, data and relevant documentation produced by UP and SP;
- interviews with shippers and review of their statements;
- discussions with public officials and Tex Mex personnel; and
- review of the data compilations and analyses carried out by other Tex Mex witnesses, in particular, Mr. Joseph Ellebracht.

I am submitting this statement on behalf of the Texas Mexican Railway Company ("Tex Mex") to discuss specifically what

I believe the impact of the proposed merger of the Union Pacific Railroad ("UP") and the Southern Pacific Corporation Transportation Company ("SP") will be on competition in the transportation markets served by Tex Mex, including particularly the transportation of commodities between the United States and Mexico.

I am also submitting a verified statement in this proceeding on behalf of the Kansas City Southern Railroad ("KCS") which addresses the impacts of the proposed merger more broadly. My general conclusion in that statement is that the anticompetitive effects of the merger are unprecedented and are far greater than those of the Southern Pacific-Santa Fe merger, which the ICC denied, and that the merger as proposed by the Applicants should be denied. Many of the points I make in that statement are also relevant to the issues addressed here.

My conclusions in this statement may be summarized as follows: The merger as proposed by the Applicants will cause a substantial and unacceptable reduction in competition in the transportation markets served by Tex Mex. Tex Mex, through its connection with SP at Corpus Christi, Texas, has provided critical competition to UP for transportation of freight between the United States and Mexico through the major rail gateway between the two countries at Laredo. The competition provided by the Tex Mex/SP independent alternative will be lost or severely reduced if the merger as proposed is approved. The Applicants' proposal to give trackage and haulage rights to the Burlington

Northern Santa Fe System ("BNSF") to connect with Tex Mex at Corpus Christi will not adequately preserve the rail competition that now exists for U.S.-Mexican traffic. Preserving vigorous competition in that market is especially important, moreover, if the two countries are to realize the purpose and projected benefits of the North American Free Trade Agreement ("NAFTA").

The discussion elucidating the foregoing conclusions is organized as follows: Section II summarizes my general assessment of the competitive impact of the proposed merger in light of the current structure of U.S. rail industry, recent economic studies and the current regulatory environment (which is discussed more fully in my statement for KCS) as that assessment is relevant to the markets served by Tex Mex. Included in Section II is a review and summary of the evidence presented in my statement for KCS and in other statements as to why reduction of competition from 3-2 will constitute a serious competitive effect. Section III describes the competitive impact of the merger specifically on the current market for transportation of goods between the United States and Mexico. Section IV explains why trucks and other modes will not ameliorate the competitive impact of reduced rail competition. Section V explains why the Applicants' settlement agreement with BNSF will not make up for the loss of competition in that market caused by the loss of SP as an independent competitor. Section VI comments on the relief that Tex Mex is seeking in its responsive application.

II. THE COMPETITIVE IMPACT OF THE PROPOSED MERGER: AN OVERVIEW.

The economic deregulation that has occurred in the United States in the last 20 years has largely substituted competition for government regulation. However, the Surface Transportation Board ("STB" or "Board") is now at a critical juncture with regard to preserving rail competition.

The proposal for merger of the UP and SP not only has unprecedented parallel effects that will eliminate rail competition in many western markets, but it will also result in rail transportation in the entire west being dominated by two giant railroads, UP/SP and BNSF. In my opinion, it is essential that the Board give the closest scrutiny to this and future mergers and exercise its power to the fullest to make sure that they do not erode rail intramodal competition. If it does not, much more aggressive economic regulation of railroads will be needed in the future to protect shippers.

My statement for KCS details and quantifies the loss of competition that the merger will cause to shippers presently served by two railroads, UP and SP, who will be served only by a single railroad after the merger. I have estimated the total 1994 transportation revenue from such shippers to be

. The Applicants' settlement agreement with BNSF (hereafter "BNSF Settlement") will only partially ameliorate this harm. Only approximately the traffic of these 2-

to-1 shippers will receive access from BNSF under the settlement.[1/] Thus, contrary to the Applicants' claims, even with the BNSF settlement, many shippers will go from two railroads to one railroad with respect to their traffic. Where BNSF does receive access, serious questions have been raised with regard to the efficacy of this solution.

The merger will also cause shippers in many markets throughout the West to go from three railroads to two railroads. These 3-to-2 impacts of this merger are enormous. I have quantified those impacts in my KCS statement at $.
The BNSF Settlement Agreement provides relief to only a small fraction of these shippers.

Contrary to Applicants' arguments, reducing shippers' competitive alternatives from three railroads to two railroads will result in a very substantial loss of competition for those shippers. I discuss the evidence and literature supporting that conclusion as well as the arguments and evidence cited by Applicants' witnesses in detail in my KCS statement. Without repeating that discussion, I would note here for emphasis that the Department of Justice' Merger Guidelines, which are applied to consolidations of virtually every other industry in the country, recognize that reducing the number of firms in a market from three to two will generally result in substantial and

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1/ The BN Settlement provides access to shippers with an of revenues, based on 1994 data. However, many shippers defined as 2-1's by applicants are not 2-1's based on my market definition.

unacceptable loss of competition. Also, as part of the abundant empirical evidence supporting that proposition, I would note particularly the Department of Defense data analyzed by KCS Witness Ploth which shows in the most concrete and dramatic fashion the benefits of having three independent railroads -- UP, SP and BNSF -- competing for a shipper's traffic, and which shows exactly how much more DOD would have had to pay for rail transportation if SP had not been an independent competitor.

Although Applicants have acknowledged a problem when competitors are reduced from two to one, they argue that there will be no anticompetitive impact in 3-2 markets. This assertion rests on four main arguments. First, they assert that collusion is difficult in the railroad industry. Second, there are many instances of effective competition between two railroads. Third, while in general three railroads may compete more vigorously than two, in this instance stronger competition would be provided by BNSF and a merged UP/SP than between the current behemoth BNSF, the allegedly overmatched UP, and the allegedly weak SP. Fourth, the applicants argue that the economic evidence on 3-2 impacts has no validity. These arguments are rebutted in detail in my KCS statement, but I would also like to briefly summarize important evidence on this point from other sources.

A pertinent starting point is a quote from Applicants' own Witness Robert Willig in a 1983 article with J. Ordover:

> The view that a reduction in the number of firms facilitates coordinated use of assets among the incumbent firms is a rock upon which much of industrial

> economics has been built. Consistent with this view is the economic theory underlying the Guidelines: that the main evil of horizontal mergers is their potential of facilitating oligopolistic cooperation, leading to elevated prices and resource misallocation.

J. Ordover and R. Willig, "The 1982 Department of Justice Merger Guidelines: An Economic Assessment, 71 Cal L. Rev. 535, 552 (1983).

In a statement submitted in this case on behalf of KCS, Professor Lawrence White, former Chief Economist of the Antitrust Division of the U.S. Department of Justice, also points out that economic theory and many empirical studies demonstrate that reduction in the number of competitors in markets with few competitors will usually seriously reduce competition. His comments are directly pertinent to Tex Mex's application and warrant citing at length. He states:

> From virtually all perspectives and approaches, microeconomics theory strongly indicates that, when entry is difficult and the number of sellers is relatively small, the market place outcome will be inferior to that yielded by a competitive structure. Only for the very specialized case where all sellers in the market have uniform cost structures and identical product offerings and they focus solely on price as a strategic variable are entry conditions and the number of sellers (beyond one) irrelevant. This near-universal conclusion that numbers matter when sellers are few has an important corollary for merger analysis: <u>The decrease in the number of sellers in the market that follows from a merger will have an adverse effect on the market place outcome, and the adverse effect will be greater when the initial number of sellers is fewer.</u> As will be clear from the discussion that follows, these conclusions are strongly applicable to the proposed UP-SP merger. (Pages 11-12)

> The predictions of the previous section have been subject to extensive empirical testing. Many dozens of

studies of a large number of industries have found that seller concentration affects marketplace outcomes in the ways predicted by the basic oligopoly theories outlined above. (Seller concentration -- either the percentage of the sales in the market that are accounted for by the leading four sellers, or a more comprehensive concentration measure, such as the Herfindahl-Hirschman Index ["HHI'] -- is almost always used as a proxy for the fewness concept developed above. The rationale for using seller concentration follows the same logic as the "dominant seller" construct outlined above: If there are sellers with small market shares, who are restricted in their ability to expand their sales, then a simple count of sellers would be misleading as to the possibilities of oligopolistic coordination; a measure that focuses on the shares of the leading sellers will more likely capture the possibilities of oligopolistic coordination.)

The studies find that, holding other things constant, higher levels of seller concentration tend to be associated with higher profit rates and higher prices. These empirical findings hold true for markets where the buyers are industrial customers, as well as for markets where the buyers are final consumers. Studies also show that innovation tends to be slower where seller concentration is at high levels, that auction markets (e.g., the auctions that the U.S. Government holds with respect to natural resources, such as oil-drilling rights) where there are fewer bidders tend to yield higher prices, and where prices have been fixed by regulation, that fewer sellers in a market tend to bring lesser levels of quality-variety.

Prices (rates) in railroad markets (post 1980) have been subjected to similar empirical tests. Again, the results are consistent with the theory: Holding constant other factors, markets (routes) that have higher rail carrier concentration levels tend to have higher rates. (Pages 12-14)

These views are echoed in the report of William Tye, who was asked by the Railroad Commission of Texas to assess the consolidation. His report is included as Appendix A of the Railroad Commission's recent report. In that report, Mr. Tye states:

> The economic literature on the economics of the rail industry and U.S. industry in general has addressed the issues of competition and concentration on numerous occasions. The consensus can be readily summarized: *Concentration matters and it has an independent elevating effects on price*, apart from the "character of rivalry." (Page 10).
>
> More recently, efforts have been made to focus on the nexus between *prices* and concentration. In one of the more ambitious efforts, Leonard W. Weiss and his associates looked at the relationships in a wide variety of industries (including railroads) and concluded that concentration does indeed tend to raise price.
>
> This belief forms the basis for the Department of Justice and Federal Trade Commission approach to antitrust. The *Guidelines* specify analytic approaches for defining relevant markets, measuring concentration, and identifying mergers that might produce troubling increases in concentration. It is safe to say that the *Guidelines* focus on objective measures of market structure such as concentration, barriers to entry, etc. and not "conjectures" over behavioral phenomena such as "the character of rivalry."
>
> The economic literature does not provide any reliable bases for finding that a change in the "character of competition" could trump a reduction in numbers and an increase in concentration. (Pages 13-14)

As I now discuss, the anticompetitive impacts are particularly severe with respect to transportation markets served by Tex Mex.

III. COMPETITIVE IMPACTS ON U.S.-MEXICO TRANSPORTATION

The anticompetitive effects of the UP/SP merger will be particularly harmful in the market for transportation of goods between the United States and Mexico. In the first place, as clearly documented in my KCS statement, the facts are sharply at odds with the Applicants' characterization of UP, SP, and BNSF competition, who would have us believe that BNSF is omnipotent and omnipresent, while UP struggles to compete and SP is non-existent. On the contrary, there are many, many markets in which UP and SP are the Number One and Two competitors, and thus provide the main competition for shippers, with BNSF much less effective. Also, SP has a strong market share in many markets. Whatever its financial position, SP is clearly a significant and effective competitor in many rail markets. Therefore, there are many markets where UP and SP are clearly the most effective competitors, with BNSF relatively weak.

Moreover, the importance of SP in stimulating rivalry in the Western rail market goes well beyond its market share. Tex Mex witness Joseph Ellebracht, who worked for 14 years in marketing for SP, shows that SP has been a strong competitor in many markets, particularly with respect to price competition. Many other statements being submitted in this case show the same thing.

The market for rail transportation of goods between the United States and Mexico is a market in which SP has been a particularly strong competitor and has had a substantial market share. Mr. Ellebracht shows that SP's market share in 1994 was approximately of that market and that SP and UP together account for approximately . SP also has a large sales force in Mexico marketing its services there aggressively, in contrast to BNSF. Mr. Ellebracht also shows that in 1994, before their merger, BN and Santa Fe together had a percent share of this market and that BNSF is likely to continue to have after the UPSP merger, even with the trackage rights the Applicants propose to give it.

In the market for rail transportation between the United States and Mexico, therefore, the effects of the merger will be much closer to a 2-to-1 reduction than a 3-to-2 reduction. Although BNSF will be a theoretical competitor, it will be a very minor and ineffective one. In any market so largely dominated by one railroad -- in this case UPSP -- it is very unlikely that BNSF would invest the resources in terms of equipment, marketing personnel and infrastructure sufficient to make it a significant competitive restraint on the dominant firm.

That is particularly so in this market for several reasons. First, in this market the Laredo gateway dominates by far because of its infrastructure and other advantages described by Mr. Ellebracht, and UP and SP control virtually all of the traffic moving through this gateway. As also discussed by Mr. Ellebracht, although the BNSF Settlement would give BNSF access to this gateway via a connection with the Tex Mex at Robstown, Texas, that access is via trackage rights over a route that is significantly more congested and, for many movements, significantly more circuitous than the route that SP currently owns, controls and operates over. And while BNSF will also get access via the same route to Brownsville, which handles much less (but not an insignificant amount) of the U.S.-Mexico rail traffic than Laredo, BNSF does not even intend to operate its own trains to that gateway. Instead, it has stated its intention to have UPSP move any BNSF cars to Brownsville via the haulage rights it has under the BNSF Settlement Agreement (BNSF-1, Owen V.S. at 23). To me, that suggests that BNSF does not plan to devote much energy or resources to competing in this market.

The foregoing conclusions are strongly supported by over 80 statements from shippers that are being filed with Tex Mex's responsive application. These statements document the competitive harms that the merger will cause to them. Specifically, many shippers demonstrate the significant benefits they have received from the competition between UP on the one hand and SP-Tex Mex on the other. They also show the importance of the Laredo gateway as the best gateway for U.S.-Mexican rail traffic. The following excerpts are illustrative:

> The Laredo/Nuevo Laredo gateway is a primary route for shipments between the two countries for the majority of international traffic. This gateway possesses the strongest infrastructure of customs brokers. It often provides the shortest routing between major Mexican industrial and population centers and the Midwest and Eastern United States.

> Our Company depends on competition to keep prices down and to spur improvements in products and services. For many years, Union Pacific and Southern Pacific have competed for our traffic via Laredo, resulting in substantial cost containment opportunities and a number of service innovations. Tex Mex has been Southern Pacific's partner in reaching Laredo in competing with Union Pacific, as Southern Pacific does not reach Laredo directly. (L. B. Foster Company)

The Mexico shipments primarily go through Laredo with occasional loads going through Brownsville and El Paso. The Laredo gateway provides the shortest, most direct routing between the fertilizer production points along the U.S. Gulf Coast and the Mexican agricultural centers.

Our shipments through Laredo originate from fertilizer plants served by the Union Pacific as well as from other plants served by Southern Pacific, ATSF and other rail lines. Shipments originating on the Southern Pacific reach Laredo via the TexMex Railway segment from Corpus Christi to Laredo. In the past, freight rates over both the Union Pacific system and the Southern Pacific/TexMex system have been competitive.

Laredo is the best crossover point into Mexico for our shipments. Border delays are minimal and transit times are reasonable over this gateway. Moving the fertilizers into marketplace efficiently is an important issue for our company. Consequently, we are concerned about the loss of the SP/TexMex route to Laredo. (Wilbur-Willis Company)

Our company is a major user of domestic and international rail transportation to move our products. The Laredo/Nuevo Laredo gateway is one of the primary routes for shipments between the two countries for the majority of international traffic. This gateway possesses the strongest infrastructure of customs brokers. It also provides the shortest routing between major Mexican industrial and population centers and the Midwest and Eastern United States.

We have supported the UP/SP merger but fear that our competitive alternatives, if not eliminated, will be seriously reduced via the Laredo gateway. (Pope & Talbot, Inc.)

International Paper is very concerned that reduced competition as a result of the proposed merger of Southern Pacific (SP) and Union Pacific (UP) will have serious consequences for International Paper Company. ...A merger of Union Pacific and Southern Pacific will seriously reduce, if not effectively eliminate, our competitive alternatives via the Laredo gateway and negatively impact our ability to market our products in Mexico. (International Paper Company)

In our experience, more rail competition produces lower freight rates. As an example, the UP and the SP, who have competed for our traffic out of Arkansas, have lowered rates to maintain our business. However, if the merger is approved, we expect rates to go up and service to decline. (Idaho Timber Corporation)

Our company favors the Laredo/Nuevo Laredo gateway on rail shipments moving to and from Mexico. This gateway possesses a high concentration of customs brokers to facilitate traffic moving across the border. We believe that the SP and TexMex have moved our product over Laredo/Nuevo Laredo very effectively, and we are concerned about the loss of competition that will occur when the UP and SP are merged. Our export traffic will become captive to the combined UP-SP system. (BHP Copper Company)

We have been satisfied with the Laredo gateway. The strong concentration of brokers there serves to expedite our traffic through the border crossing. (Badger Mining Corporation)

Volkswagen of America has previously supported the UP/SP merger with a verified statement with the proviso that competition not be eliminated, especially into and out of Mexico. (Volkswagen of America)

Moreover, given the expectation that, with NAFTA, trade between the U.S. and Mexico will escalate in the future, the reduction of rail competition will have even greater impacts down the road. The impacts are likely to be particularly harmful to the movements of U.S. grain to Mexico which NAFTA is expected to stimulate. Global Grain Company, for example, is a major exporter of grain to Mexico which depends heavily on US-SP competition on the Tex Mex. Its statements specifically details its concerns about the UP/SP merger:

> Our company originates most of its grain during the harvest in South Texas and ships it to Mexico during its peak demand season. Thanks to the NAFTA treaty, demand in Mexico is growing and will continue to grow steadily in the coming years.
>
> One will think that thanks to its proximity to Mexico the South Texas grain producers and exporters will logically be the ones to benefit most from such demand. Ironically, due to its short distance or "short haul" to Mexico, the Union Pacific Railroad and the Southern Pacific Railroad refuse to service their own line elevators with rail cars during harvest and Mexican peak buying season. Instead, they give preference to the Mid West grain, "long haul" shippers over the South Texas shippers. Thus, making it difficult for the South Texas exporters to compete or service their Mexico business.
>
> The only rail alternative available for the South Texas shipper is the Tex Mex Railroad. It is totally committed in supplying cars from the Corpus Christi-Laredo grain belt area to Mexico. In addition to serving its short line customers to the Laredo export market, the Tex Mex Railroad has been able to give us access to Mid West grain rail cars (when grain is unavailable in South Texas)- through its Corpus Christi-Laredo connections with the Souther Pacific-Burlington Northern Santa Fe Railways. This gives us an opportunity to originate grain in the Mid West when the Union Pacific rail car pool or quota to Mexico has been exhausted or simply when the UP cars are not available to ship to Mexico.
>
> If the UP-SP merger goes through, it threatens to eliminate this competition and thus jeopardize the traffic service and the supply of rail cars available to the Mexican market.

A recent U.S. Department of Agriculture report also notes that adequate rail service for movement of U.S. export grain will become increasingly important as Mexico privatizes its rail system. (K.A. Klindworth and A. J. Martinsen, "Shipping U.S.

Grain to Mexico," Agricultural Marketing Service, U.S. Department of Agriculture, September, 1995). This report states:

> [F]uture patterns of U.S.-Mexico grain trade will be influenced greatly by improvements in rail service which result on the Mexican side of the border from privatization of the Mexican rail system. Overall improvement in rail service south of the border is likely to significantly increase the viability of overland delivery of U.S. grain into Mexico versus other delivery alternatives and other sources of international supply. The Mexican Government is encouraging such improvements in Mexican rail service by privatizing the Mexican rail system through the granting of long-term operating concessions to successful bidders. (p. ix)."
>
> Past pricing by the FNM has discouraged overland movement from the border relative to movements from Mexican ports, has inhibited efficiency improvements in unloading capacity within Mexico, and has subsidized the import movements of corn relative to other grains. Overall improvement in rail service south of the border is likely to significantly increase the viability of overland delivery of U.S. grain into Mexico versus other delivery alternatives and other sources of international supply. The Mexican Government is encouraging such improvements in Mexican rail service with a privatization of the Mexican rail system through the offering of operating concessions (p. 71)."

Many other Tex Mex shippers have also expressed their intentions of building their presence in this market and moving more traffic to or from Mexico in the future:

> I feel it is very important to protect economical access to international trade routes and should not be jeopardized when the future prosperity of both countries depends so strongly on international trade. (Pope & Talbot, Inc.)

> Cascade is projecting growth in shipments moving from Mexico into the United States. Currently, we move between 50 and 75 cars of wood annually from Mexico over the Laredo gateway to various U.S. destinations via TexMex-Corpus Christi, TX-SP. This route has

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provided our company with competitive rates and service. In the near future we would like to begin moving product from various points in the U.S. to Laredo for transfer from rail to truck for delivery into Mexico. This would open up the possibility of backhauling our cars from Laredo to the Eastern U.S. Obviously, we are looking for optimum utilization of our equipment and would like to continue to have several railroads competing for our business. (Cascade Warehouse Company)

Our company plans to extends its reach into Mexico. Within six to twelve months, we plan to begin moving Mexican pine from points within Mexico into the U.S. We believe that the Mexican pine can be marketed in the Midwestern and Southeastern U.S. Although we currently do not ship via rail from Mexico (we have conducted one test shipment via truck), we believe that rail could be a less expensive option versus trucks in this market. (Idaho Timber Corporation)

Much of our traffic moves from warehouse to warehouse and thus is particularly sensitive to transit times. We believe that the logical and economical way to move our business should be on the railroads. (Hudson Foods, Inc.-Turkey Division)

The Mexico market provides great potential for the expansion of Procter and Gamble's products. Again, the reduction in available carriers into and out of Mexico does not fit with this emerging opportunity. We therefore recommend the Surface Transportation Board reject the Union Pacific's acquisition request stated in Docket #32760. (Procter and Gamble)

IV. FOR THE COMMODITIES AT ISSUE HERE, TRUCK AND WATER WILL BE INEFFECTIVE ALTERNATIVES FOR MANY SHIPPERS

Although truck and water play an important role overall in transportation of goods between U.S. and Mexico, many shippers of many commodities are dependent upon rail competition for competitive transportation options. In his statement, Mr. Ellebracht shows the 23 largest commodities by volume handled by rail through Laredo and the average distance for each commodity shipped between Laredo and the U.S. origin or destination. For the types of commodities involved and the distances involved (which do not even include the Mexican portion of the moves), I fully agree with Mr. Ellebracht that neither truck nor water carriage are alternatives that would provide for most shippers an effective restraint on rail prices in the absence of rail-to-rail competition.

Grain is the most important commodity, and there is well-established evidence as to the ineffectiveness of trucks for the long-haul movements of this commodity, as indicated by the recent Klindworth and Mortinsen report for USDA, cited earlier:

> In the United States, semi-tractor trailer combinations are typically used for relatively short-distance movements of bulk grain from the first collection point to processing plants and subterminal and terminal markets. Occasionally, trucks are also used for the movement of grain from nearby producing areas to U.S. ports for export. (p. 29)
>
> Overland truck delivery is a viable alternative for the movement of U.S. grain into Mexico under two general circumstances: (1) where U.S. production areas are near the border and the Mexican demand is composed of a large number of smaller firms without rail service, and (2) where a Mexican grain demand exists immediately across the border and border rail facilities are either not present or are inadequate. (p. 30)

While water is an option for many shippers, that option also has limitations, as noted in the same USDA report:

> Between 1990 and 1994 51% of U.S. grain exports to Mexico were via water. This number varies significantly by commodity. Most of this traffic has been via Gulf Ports, although Mexico's Pacific Coast ports have superior vessel draft and natural harbors. (p. 49)

> Due to the draft limitations and to the short distances from the U.S. Gulf grain export elevators, the vessels servicing the Mexican Gulf ports tend to be small ...built in the early 1970's or before. Normally, these bulk carriers do not have the efficient discharge gear (cranes) of the later class of larger bulk carriers, and discharge rates for these vessels are low... (p. 51)

> Other than the discharge capabilities at port, inland distribution is perhaps the most critical component of moving grain into Mexico via maritime routes. While maritime vessel is generally the lowest cost mode of transporting bulk commodities, the efficiencies of maritime transportation can be lost by the slow discharge at port or by the lack of adequate inland transport capacity. ...especially ...where several ports rely entirely on truck for inland distribution and where the national rail system is capacity-constrained. (p. 56)

Two studies by James M. McDonald contain significant evidence as to the harmful impact on rail rates for agricultural commodities from reduction in rail competition.[2/] One study, using 1983 data for shipments of corn, soybeans and wheat, performs regressions to ascertain the relationship between rates and rail competition. A second study draws on data from 1981-1985 regarding grain shipments. MacDonald has provided a statement in this case thoroughly and completely rebutting the

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2/ McDonald, James M., "Competition and Rail Rates for the Shipment of Corn, Soybeans, and Wheat," *Rand Journal of Economics*, Vol. 18, 1987; and McDonald, James M., "Railroad Deregulation, Innovation, and Competition: Effects of the Staggers Act on Grain Transportation," *Journal of Law and Economics*, Vol. 32, April 1989, pp. 63-95.

criticisms of his work by Applicant's witness Willig. His statement includes the following comments:

> In his statement, Professor Willig (pp. 570-572) argues that my finding of a strong connection between the Herfindahl index of railroad concentration and railroad prices probably reflects the influence of monopoly: "Of course it might be the case that concentration does matter positively for price, but the finding of the statistical correlation would not reliably prove it, because the correlation would be in evidence just from the monopoly effect, regardless of the behavior of the three to two cases" (p. 571).
>
> However, I specifically considered Professor Willig's question in my 1991 publication (4). The late professor Leonard Weiss asked me to summarize my 1987 article, and add several new bits of information, for the well-known book that he edited, <u>Concentration and Price</u> (MIT Press, 1991). One of the things that Professor Weiss asked me to do was to reestimate my equations without observations from monopoly districts. His letter explained that he wanted to know whether the results were driven by monopoly, or also held as one moved from three to two sellers; that is, he had precisely the same question in mind as Professor Willig. In my article for that book ("Concentration and Railroad Pricing"), I summarize the distribution of estimated Herfindahl indexes and railroad numbers across districts, and report the effects of dropping observations from monopoly districts. I quote from that article (p210): "The regressions were remarkably similar to the old. Coefficient values and significance levels showed hardly any change at all. In particular the coefficients on rail competition in the corn and wheat samples each increased imperceptibly, to -.283 in corn and -.111 in wheat (or changes of 0.001 and 0.002). The degree of oligopoly appears to matter, as does the transition to monopoly." That article showed that the rail results were not driven by the monopoly results, and that the results of the analysis remain the same, even when we exclude those least competitive markets. (Pages 11-13).

In addition to grain, there are many other commodities involved in U.S.-Mexico rail traffic. My statement for KCS discusses the abundant evidence showing the limitations of truck and water in competing with rail for many of these commodities. Tex Mex's shippers transport a broad range of commodities, and their statements reflect their dependence on rail to move those commodities. For example:

> Eagle Picher is a manufacturer of Diatomaceous Earth products which are primarily used in the filtration, filler, and absorbent markets. We have been a significant railroad customer for nearly 50 years, shipping approximately 1250 cars per year and generating an annual revenue of over $6,000,000 to the SP and UP combined. (Eagle-Picher Minerals Inc.)
>
> Our company is in the business of exporting U.S. feed grain commodities by rail to Mexico. (Global Grain Co.)
>
> Skill is an advisor to the Kansas Shippers Association which is comprised of the UP-MP, SFE and SSW Shippers Groups. A total of 38 companies are involved in these groups. The individual companies are shippers/receivers of agricultural products, lumber, cement, and plastics. (Skill Transportation Consulting, Inc.)
>
> Badger Mining operates three mines in Wisconsin, which produce silica sand, a specialty sand used in the oil, gas, foundry, glass, abrasive, and water filtration industries. Badger Mining's three Wisconsin mines produce and ship by rail in excess of 600,000 tons of silica sand annually to points throughout the United States, Canada, Mexico, South America, and the Far East. Badger Mining pays more than $6,000,000 per year in rail freight charges. (Badger Mining Corporation)
>
> L. B. Foster Company manufactures, fabricates and distributes steel pipe and tabular products, railway track rails and trackwork, structural steel, and construction and highway products, with both national and international markets.(L.B. Foster)
>
> I am the Traffic Manager of Kreher Steel Co. and have held that position for the past two years,. I am responsible for the movement of 50,000 net tons of steel bars and billets annually by rail, truck, and water transport. (Kreher Steel Co.)
>
> Faremount Minerals ships via rail to south Texas and Mexico primarily from Wedron (silica sand) and Troy Grove (coated sand), IL. We move the sand to Laredo for export from Wedron via BN-Kansas City-UP and from Troy

Grove via UP direct. We also ship sand to two rail-to-truck transfer points located at Laredo and Alice, TX on the TexMex Railroad. (Fairmount Minerals, Ltd.)

The company's major products are lumber, cedar fencing, trusses, laminates, treated lumber, hardwoods, specialty boards and lumber-related products. These products ship from our ten remanufacturing facilities and from various mills to all states in the contiguous U.S. (Idaho Timber Corporation)

BHP manufactures copper rods and cathode at several facilities in Nevada and Arizona. (BHP Copper Company)

Many of these shippers provide specific details regarding the ineffectiveness of other modes for their particular shipping needs:

Trucks cannot compete with the railroads for much of our business. We ship bulk loads over a distance that the railroads can handle at a significantly lower cost. Therefore, we cannot depend on truck competition to replace the SP/TexMex on our business moving into Mexico. (Wilbur-Ellis Company)

Fundamental to maintaining and growing business, International Paper Company depends on reliable rail transportation service at competitive prices. Because the distance from many of our facilities to our customers in mexico exceeds 1,000 miles, rail transportation is the only viable mode of transportation that can be used to competitively place our products in this market. (International Paper Company)

Overall, we find rail shipments to be more cost effective than trucks, especially over long distances. Therefore, trucks are not the best option from a price standpoint for our shipments moving from the Laredo gateway into the U.S. (Cascade Warehouse Company)

V. THE BNSF TRACKAGE RIGHTS WILL NOT BE AN EFFECTIVE ALTERNATIVE FOR THIS LOST COMPETITION.

The proposed solution by the Applicants to the competitive harm with regard to U.S.-Mexico traffic is the BNSF Settlement, providing BNSF trackage and haulage rights to connect with Tex Mex at Corpus Christi. This is an entirely ineffective remedy to the competitive harm, for two reasons. First of all, since this is a 3-2 market, the fundamental harm is a reduction of competition from three independent alternatives--UP, SP, and BNSF--to two--UP/SP and BNSF. Providing additional access to BNSF does nothing to ameliorate the reduction of competitors from three to two.

Secondly, as I discussed earlier, although BNSF will be a theoretical second competitor in the market, it is likely to be a minor and ineffective one. Many of the shippers that have submitted statements support this conclusion and express serious concerns about relying on BNSF as a competitive substitute for SP in this market. These included the following:

> Although these railroads have recently agreed to give certain trackage rights to the new Burlington Northern Santa Fe Railroad, we do not believe the BNSF, as the only other major rail system remaining in the Western United States, will be an effective competitive replacement for an independent Southern Pacific on this important route. (L. B. Foster Company)

> Our experience has been that the Southern Pacific has been much more aggressive for our business than either the Burlington Northern or the ATSF. We are not certain that the BNSF route to Laredo (which will be made almost entirely on trackage rights over the Union Pacific system) will be a competitive option for our business. However, we know that the TexMex Railway is committed to the Mexico market. We want the TexMex Railway to continue to bid aggressively for our business in the future. (Wilbur-Ellis Company)

We understand that some trackage rights were given to the Burlington Northern Santa Fe Railroad, we do not believe the BNSF, as the only other major rail system remaining in the Western United States, will be an effective competitive replacement for an independent Southern Pacific on this important route. (Pope & Talbot, Inc.)

Although these railroads have recently agreed to give certain trackage rights to the new Burlington Northern Santa Fe Railroad, we do not believe the Burlington Northern Santa Fe Railroad is financially strong enough to act as a real alternative. Moreover, the Burlington Northern Santa Fe Railroad does not have the terminals, locomotives, crews, boxcars, etc. to be able to service traffic over anything but limited distances outside its own system. Unfortunately, it is therefore quite unlikely that Burlington Northern Santa Fe Railroad will be an effective competitive replacement for an independent Southern Pacific throughout the 4,000 plus miles of trackage rights/sales involved in their agreement with Union Pacific/Southern Pacific at any time in the foreseeable future and of major concern here, certainly not on this important route as well. (International Paper Company)

We are very concerned that the UP-Sp and BNSF will divide up markets in the Western U.S. instead of offering competitive rates and service. We have experienced this phenomenon in the Eastern U.S. where NS and CSXT have refused to compete for our business in several locations. The same condition could occur between the UP-Sp and BNSF. (Idaho Timber Corporation)

Finally, we have looked at the BNSF route to Corpus Christi (negotiated with the UP). In our opinion, this alternative will not provide direct routing to the border for our products. Consequently that route does not represent a viable option for us. (BHP Copper Company)

In the past the BN has not pursued our Mexico business aggressively. The BN has settled for a shorthaul on this business even though they serve our Fountain, Alabama plant. It is doubtful that the new route that the Union Pacific has negotiated with the BNSF to Laredo, Tx via BNSF-Corpus Christi, TX-TM will benefit my company. The BN route will be almost entirely on trackage rights. We fear that this route will increase transit times. That will translate into lost sales. (Alabama River Pulp Company, Inc.)

However, the BNSF has failed to show much interest in these business in the past. After many discussions with the BNSF, we still do not have a route and rate to Mexico. Our conclusion has been that they are too big to care about a small customer like us. Consequently, our company would welcome more competition in south Texas for our export business. (Hudson Foods, Inc.-Turkey Division)

We believe that the UP and the SP have been much more interested in our Mexican business than the BN and the ATSF. The UP and SP have offices in Mexico, and have been committed to developing markets there. In our experience, both the SP and SP get rate quotes from the Mexican railroad. Then the UP and SP furnish the rates to the receivers who hold the contracts and pay the freight charges for the Mexican portion of the move. This procedure has facilitated our efforts to be a player in the Mexican market. To day, the BN and the ATSF have not offered this type of service. I understand that the UP has negotiated a new route with the BNSF via BNSF-Corpus Christi, TX-TexMex. We are concerned that this route will not be competitive. It is a longer route from our origins, which translates into higher transit times and higher rates. And that would make us noncompetitive in the Mexican market. (Badger Mining Corporation)

In addition, many public officials and agencies have expressed concern about the serious anticompetitive impacts of the merger and the inadequacy of the BNSF Settlement and provide an effective remedy. Of greatest relevance to Tex Mex and the markets that it serves, I understand that the Texas Railroad Commission, the Texas Department of Transportation and the Texas Attorney General have concluded that the merger should be denied unless the Applicants divest a number of SP lines, including the lines that are the subject of Tex Mex's application. I also understand that the Texas Railroad Commission, on behalf of the State of Texas, will urge the Board, if it nevertheless approves the merger and does not require divesture of those lines, at least to grant the rights sought by Tex Mex.

VI. TRACKAGE RIGHTS CONNECTING TEX MEX WITH KCS IS AN APPROPRIATE REMEDY FOR THE COMPETITIVE HARM IN THE U.S.-MEXICO MARKET

Larry Fields, Joseph Ellebracht and other Tex Mex witnesses have described in more detail the trackage rights sought by Tex Mex to permit Tex Mex to connect with the Houston Belt Terminal Railroad and the Port Terminal Railroad Association in Houston and to connect with the KCS in Beaumont. I concur with their view that granting those rights would provide thousands of shippers in the United States and Mexico with a third alternative rail route for the shipment of their goods between those countries, and thus preserve three competitive alternatives for this very important market. Since two of those competitors, BNSF and Tex Mex, would still be serving the three principal Mexican gateways--Laredo, and Brownsville and Eagle Pass--largely via trackage rights over UPSP, it would still not be a complete substitute for the competition that exists today in that market, but it would go a long way toward ameliorating the loss of competition that would otherwise result.

Tex Mex's shippers share this view. For example:

> We understand there is an alternative that will preserve effective competition for our traffic. TexMex has indicated a willingness to connect with other carriers via trackage rights to provide efficient competitive routes. Trackage rights operating in such a way as to allow TexMex to be truly competitive are essential to maintain the competition at Laredo that would otherwise be lost in the merger. Thus I urge the

Surface Transportation Board to correct this loss of competition by conditioning this merger with a grant of trackage rights via efficient routes between Corpus Christi and these connecting railroads. (L.B. Foster Company)

We ask that the Board grant trackage rights to the TexMex Railway to Houston and Beaumont, TX as a condition of the UP-SP merger. ...We believe that the trackage rights will preserve competition in this corridor which will benefit companies and citizens on both sides of the border. (Wilbur-Ellis Company)

[W]e strongly support the Texas Mexican Railway's application for trackage rights over the Union-Pacific-Southern Pacific Railroads into the Houston switch district. Our public warehouse in Laredo, TX is served by the Texas-Mexican Railroad. With the purchase of the Southern Pacific RR by the Union Pacific, a reduction in competitive service from this southwestern market will develop. Permission to allow the Texas Mexican Railway to serve this market will preserve competitions and will enable us to more efficiently serve our Midwestern customers. (Kreher Steel Co.)

In the fateful event the Commission sees fit to approve this merger in any form, the International Paper Company urges the Commission to find it in the public interest to correct this particular loss of competition by conditioning this merger preferably with the sale of appropriate trackage and facilities to the Texas Mexican Railway Company or a grant of appropriately conditioned trackage rights (including adequate terminals and an equal voice in controlling dispatching over the affected lines) to them via efficient routes between Corpus Christi and these other connecting railroads. (International Paper Company)

The circuitous trackage rights that the Union Pacific granted the BNSF do not provide an adequate north-south alternative for our shipments. (Cascade Warehouse Company)

[W]e ask the Surface Transportation Board to grant the trackage rights to the TexMex Railroad to Houston. We believe that this will provide us with a viable rail alternative on shipments to our transfer points on the TexMex Railroad and to Laredo for rail direct shipments to Mexico. (Fairmount Minerals, Ltd.)

We support the TexMex in their effort to get trackage rights to Houston. A TexMex railroad that operate between Houston and Laredo will continue to provide our company with rail options after the UP/SP merger. (BHP Copper Company)

My company depends on competition to keep prices down. Thus, I urge the board to condition the UP/SP merger with a grant of trackage rights to the TexMex allowing service to Beaumont and Houston, TX. The TexMex is committed to the Mexico market and I believe that the trackage rights will provide a competitive routing option for my shipments moving to Laredo. (Alabama River Pulp Company, Inc.)

VERIFICATION

I, Curtis M. Grimm, certify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement on behalf of The Texas Mexican Railway Company. Executed on this 25th day of March, 1996.

Curtis M. Grimm

Curtis M. Grimm

VERIFIED STATEMENT

OF

BRAD SKINNER

My name is Brad Lee Skinner. I am Director of Multimodal Transportation of Transportacion Maritima Mexicana ("TMM"). I am also a director of the Texas Mexican Railway Company ("Tex Mex").

I became Director of Multimodal Transportation of TMM in November, 1994. My primary responsibilities in that position are to coordinate and direct TMM's strategies for multimodal integration. These responsibilities include managing TMM's trucking and rail operations, including its participation in the ongoing process by which Mexico is privatizing its railroad system.

My experience for most of my career has been in marketing transportation services. After obtaining a Bachelor of Science degree from Portland State University in 1970, I spent several years in public service, working for the United Nations and as an Assistant City Manager in Vancouver, Washington. In 1976 I went to work for IBM in marketing. From 1978 to 1983 I worked for Schneider National in several marketing positions, the last one as Director of National Accounts. From 1983 to 1988 I worked for Burlington Motor Carriers and for one of its trucking subsidiaries in various executive positions. From 1989 to 1990 I worked in marketing for American President Lines. From 1990 to

1994, when I joined TMM, I worked for Southern Pacific Transportation Company ("SP"), first as Vice President of Forest Products and later as Vice President of Intermodal.

Based particularly on my four years with SP, I am very familiar with the U.S. railroad industry, and especially with competition among the western railroads, including competition among them for traffic between the United States and Mexico.

I am submitting this statement in support of the responsive application of Tex Mex in the proceeding before the Surface Transportation Board ("STB") involving the merger of the Union Pacific Railroad ("UP") and the Southern Pacific Transportation Company ("SP")(collectively, "UP/SP" or "Applicants"). In this statement I will describe TMM and its efforts, in partnership with Kansas City Southern Industries ("KCSI"), to develop a rail network that will be a strong and effective competitor to UP (and, if UP and SP merge, to a combined UPSP system) for rail transportation services between the United States and Mexico. In that connection I will describe the Mexican privatization process and its most likely timetable and structure. Finally, I will explain the reasons for my belief that the UP/SP merger as proposed by the Applicants will have an extremely adverse effect on competition for the transportation of goods between Mexico and the United States. Among other effects, the merger will frustrate the efforts of Mexico to bring competition and efficiency into its rail system, and it will thwart the efforts of TMM and KCSI to create an effective competitive alternative to the UP system.

TRANSPORTACION MARITIMA MEXICANA

TMM is the largest private transportation company in Mexico. Its main offices are in Mexico City at Av. de la Cuspide No. 4755, Col. Parques del Pedregal C.P. 14010, Delegacion Tlalpan, D.F. TMM was founded in 1955 by a group of Mexican investors for the purpose of developing Mexico's merchant marine and external trade. It is a public company whose shares are traded on the Mexico City Stock Exchange. TMM employs approximately 2800 employees.

TMM's principal line of business is ocean shipping. It operates 73 vessels between ports in 23 countries throughout the world, including ports in the United States, Europe and Asia. TMM also has several bulk storage companies in Mexico and manages ports, port agency services and contract distribution logistics projects throughout Mexico.

In 1982 TMM established Mexrail, a Delaware corporation, as a wholly owned subsidiary for the purpose of acquiring the capital stock of Tex Mex and other related properties which were then owned by Ferrocarriles Nacionales de Mexico ("FNM"). That stock and those properties had been pledged to secure certain bonds that were in default, and the stock and properties were being sold at public auction by the trustee under the bond indenture. Mexrail purchased the Tex Mex stock and the properties at that auction.

MEXICO'S DECISION TO PRIVATIZE ITS RAIL SYSTEM

Since 1908 the Government of Mexico has owned all rail lines in Mexico through its state-owned company, FNM. As a state-owned enterprise, FNM has not been operated with a view of maximizing efficiency, quality of service, revenues, or profits. As a result, it has become notoriously inefficient. In my opinion, rail transportation in Mexico has a tremendous potential for growth, both in quantity and quality of service because of the geography of the country and the special natural advantages rail transport has here over other modes of transportation. FNM, however, has not developed that potential but instead has permitted truck transportation, which is not state-owned, to capture a far greater share of the transportation market than the inherent limitations of that mode justify.

The Government of Mexico has finally come to the same view. In 1995, after much study and debate, it announced its intention to sell its rail system to private companies.

Because of its transportation expertise, its ownership of Tex Mex and its belief in the potential for rail transportation in Mexico, TMM was immediately interested in exploring the possibilities that privatization offered. Since that time, TMM has studied the Mexican rail system and the markets it serves intensively. We have highrailed all of the lines likely to be sold and we understand the opportunities and problems associated with each. TMM has made clear its intention to participate aggressively in the bidding process.

I was asked to join TMM to direct and coordinate those efforts. I agreed enthusiastically, not only because of my belief in the untapped potential of rail transport in Mexico but also because I firmly believe that NAFTA is likely to cause a tremendous increase in trade and transportation between Mexico and the United States and also between Mexico and Canada.

<u>TMM'S PARTNERSHIP WITH KCSI</u>

In studying the issues involved, TMM came to the conclusion that it needed a strong partner, one with both proven expertise and success in the railroad business and substantial financial resources, in order to make an acceptable proposal for one or more of the concessions being offered and in order to provide the most efficient and professional rail service over any concessions it may acquire. We explored that possibility with several U.S. railroads, including SP. Because SP was the principal connection and interline partner of Tex Mex for U.S.-Mexico traffic through Laredo, Texas, SP was the most logical candidate. In initial discussions, SP indicated considerable interest.

We also explored the matter with UP and with BN/Santa Fe. UP's response made clear to us that UP was (and is) very interested in acquiring the principal line in Mexico and would be happy to accept financial support from a Mexican investor. UP also indicated, however, that it had no intention of sharing any operational or marketing control over the line with any other company. TMM is not interested in participating in any Mexican railroad enterprise solely as a passive investor. When the merger of UP and SP was announced, it also became clear to us that SP was no longer a candidate for the kind of partnership TMM was interested in.

BN/Santa Fe indicated to us that its energies and resources for the foreseeable future would be devoted primarily to implementing the recent merger of BN and SF, integrating the two railroads and paying off the substantial debt incurred as a result of the merger, and that it was not interested in participating in the Mexican privatization process. BN/Santa Fe's response clearly indicated to me that BN/Santa Fe believes it needs to focus its resources for the next few years on the surest and most profitable lines of its business, and that BN/Santa Fe will not be willing to risk substantial capital to develop new and more speculative markets and ventures, including Mexico.

KCSI, in sharp contrast, indicated great interest in participating in the Mexican privatization process and also in operating with TMM as a true partner, fully sharing operational and marketing authority and responsibilities. The more we discussed the matter, the clearer it became to us that KCSI would be an excellent partner for TMM. Based on my years of experience with SP, I knew that KCSI's railroad subsidiary, the Kansas City Southern Railroad ("KCS"), is one of the most efficient and best run railroads in the United States, as reflected in its consistently low operating ratios and satisfied customers. KCS, although one of the smallest Class I U.S. railroads, has a strong rail network in the Midwest with good connections to all the U.S. railroads, particularly the eastern roads. Most importantly, we concluded that KCS has the strongest interest and incentives of any U.S. railroad in expanding its marketing, services and connections into Mexico and in devoting substantial resources to promote U.S.-Mexican rail business.

Our discussions with KCSI eventually resulted in a formal joint venture agreement, made on December 1, 1995, which commits TMM and KCSI to work together to prepare bids for one or more of the lines and concessions being sold and to form a Mexican company to acquire and operate such lines and concessions. In addition, in November, 1995, KSCI purchased 49 percent of the capital stock of Mexrail, which gives KSCI a substantial, although not controlling, interest in Tex Mex.

THE EXPECTED PRIVATIZATION PROCESS

Mexican officials have stated that they expect to complete the sale of the lines being sold by the end of 1996. Formal bidding rules and conditions are expected to be issued by mid-June. Although they have not yet been issued, based on my almost daily discussions with the officials involved, I believe the structure of the process is very likely to be as follows:

The entire FNM system will be divided into three main systems, each of which will be sold to a different company or group. These are commonly referred to as the "Northeast Line", "Pacific-North Line" and "Southeast Line". In addition, numerous smaller lines, which are mostly branch lines, will be sold as separate short lines. A map showing these three lines and all other lines is set forth in Exhibit A of this statement.

The Northeast Line includes the lines connecting central and Eastern Mexico to the two principal U.S.-Mexican gateways: Laredo/Nuevo Laredo and Brownsville/Matamoros. The Pacific North Line includes the lines connecting central Mexico with the U.S.-Mexican gateways of Eagle Pass/Piedras Negras, El Paso/Juarez Nogales and Calexico/Mexicali. The Southeast Line consists of lines in southeastern Mexico.

The Northeast Line accounts for the large majority of rail traffic in Mexico in terms both of tonnage and revenues. We estimate that it accounts for more than 65 percent of the rail tonnage moving between the United States and Mexico.

Based on discussions with Mexican officials, I believe that Mexico will not grant exclusive access to one company with respect to the three regional lines, but will require whatever company or group that acquires each line to provide trackage rights at reasonable compensation to at least one other company in order to ensure competition over that line. TMM is strongly supporting such a requirement, especially with respect to the most important Northeast Line. If privatization is completed properly, as I believe it will be, it will result in every major city, border gateway and port in Mexico having the choice of at least two railroads, and those choices will stimulate efficiency, low cost productivity and economic development. I also firmly believe that those choices will help fulfill the promise of NAFTA by drawing capital to communities along the NAFTA corridor, improving people's lives on both sides of the border and creating a world class infrastructure at the same time.

TMM and KCS intend to bid aggressively for all three regional lines as well as other shortline opportunities. We will also bid for one or more subconcessions that may be offered.

UP has made no secret of its desire to acquire the Northeast Line. I understand that UP is strongly opposing any requirement that it grant operating rights its bid to acquire that line is successful.

I am not aware of any other company or group that intends to make a serious bid for the Northeast or Pacific North Lines.

THE ANTICOMPETITIVE EFFECTS OF THE PROPOSED UP/SP MERGER

Today Tex Mex and SP operate together to provide the principal competition to UP for rail traffic between the United States and Mexico. The main rail gateway between the U.S. and Mexico is Laredo/Nuevo Laredo. That gateway accounted for more than 80 percent of the U.S.-Mexico rail traffic in 1994. It is served by only two railroads, UP and Tex Mex. In 1994 Tex Mex handled more than 26,000 carloads moving through that gateway. Tex Mex interlined 99 percent of those cars with SP at Corpus Christi.[1/] Although UP handled a much larger number of cars through the same gateway, Tex Mex and SP provided shippers with an extremely important competitive alternative that served to

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1/ These and other figures are discussed in greater detail in the verified statements of Tex Mex witnesses Joseph Ellebracht and Curtis Grimm.

keep UP's rates and service reasonable, as many Tex Mex shippers have attested in statements strongly supporting Tex Mex's application.

The merger will eliminate the SP as an independent connection to Tex Mex for that traffic, and unless it is properly conditioned, it will give the merged UPSP complete monopoly control over traffic not only through Laredo but also through the Brownsville/Matamoros and Eagle Pass/Piedras Negras gateways as well.

In place of an independent SP competing for the traffic over its own lines, the Applicants have proposed to substitute BN/Santa Fe as the competitive replacement, offering it trackage and haulage rights on a UP line from Algoa, TX to Robstown, TX (where it can connect with Tex Mex) and down to Brownsville. In my opinion, BN/Santa Fe will be a wholly inadequate substitute for an independent SP as a competitive check on a merged UP/SP. BN/Santa Fe has shown no interest in expanding its operations south of Houston or in devoting the kind of marketing efforts and capital resources that would be necessary to compete effectively with a merged UP/SP for U.S.-Mexico traffic. On the contrary, when we explored with BN/Santa Fe the possibility of its participating in the Mexican privatization process, we were given to understand that it intended to devote its attentions and resources elsewhere for the foreseeable future.

I believe the Applicants are fully aware that BN/Santa Fe will not provide serious competition to them after the merger for

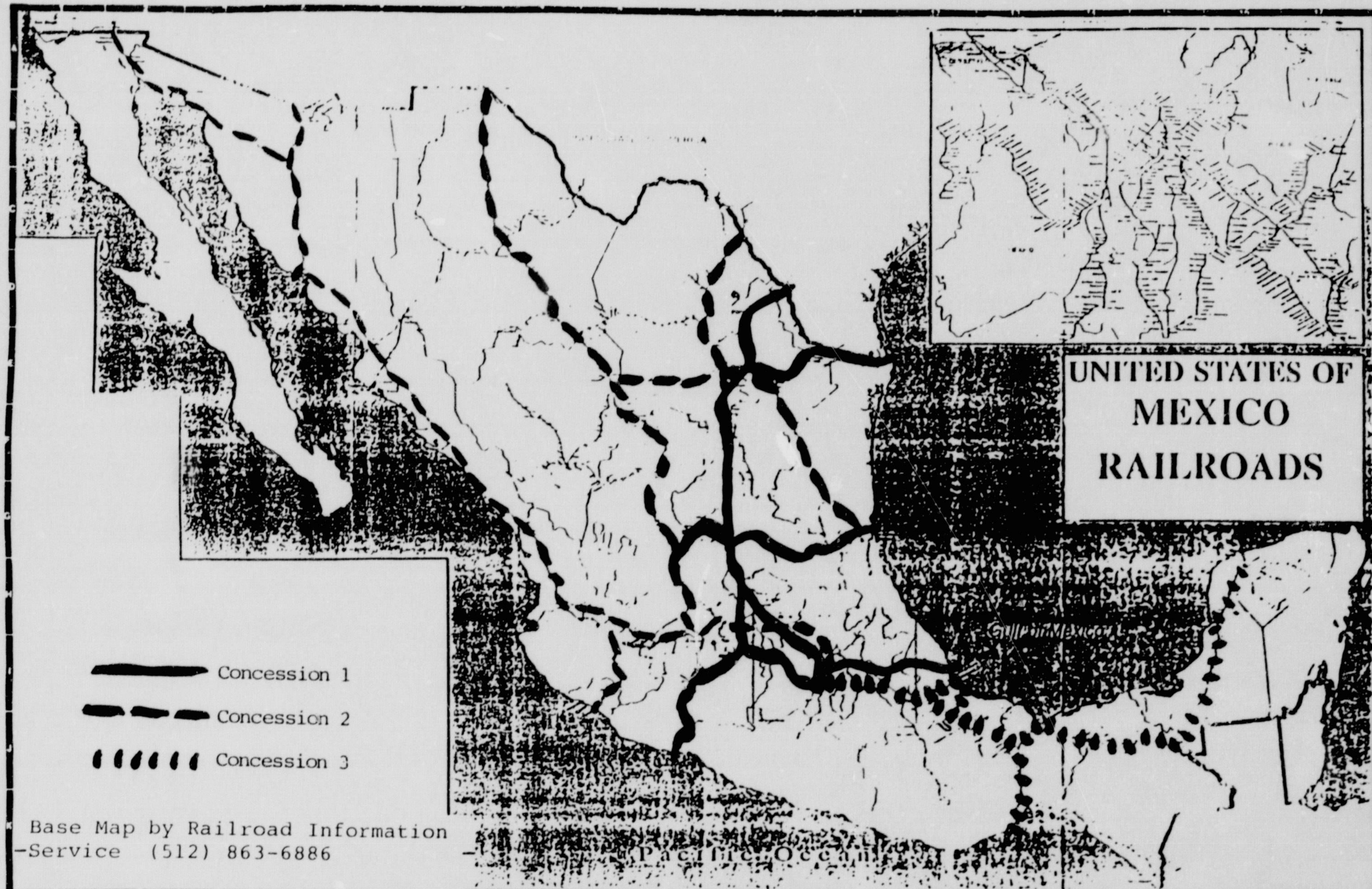
U.S Mexico traffic and that Tex Mex and KCS would do so if they could connect. My belief is supported by the deposition testimony of Carl Ice, the principal negotiator of BN/Santa Fe in the negotiations leading up to BN/Santa Fe's agreement with the Applicants. Mr. Ice testified that he told the UP/SP negotiators that BN/Santa Fe would prefer to use an agent for its operations south of Houston. The only possible agent Mr. Ice identified as having been considered by BN/Santa Fe was Tex Mex. Ice Deposition, 3/4/96 Tr. at 483, 485. UP/SP rejected that proposal. Mr. Ice said that the UP/SP negotiators indicated were "very concerned" about the proposal because they felt that it would "put them potentially at a competitive disadvantage. . . ." Id. at 583.

My belief is also supported by the deposition testimony of Mr. Rollin Bredenberg, a former colleague of mine at SP and now apparently the principal BN/Santa Fe official with responsibilities for matters involving Mexico. Mr. Bredenberg has had a great deal of experience with Mexican rail transportation and advised TMM and Tex Mex on rail issues after leaving SP and before joining BN/Santa Fe. Based on that knowledge and on specific experiences he had while at SP in the 1980's, Mr. Bredenberg testified that in his opinion, UP would never give Tex Mex access to Houston via trackage rights because such access would enable Tex Mex to compete too effectively with UP. Bredenberg Dep., 3/8 Tr. at 97. Providing Tex Mex trackage rights to Houston, he opined, would be less acceptable to UP than granting BN/Santa Fe rights to connect with Tex Mex at Robstown. Id. at 98.

Other Tex Mex witnesses, Larry Fields, Curtis Grimm and Joseph Ellebracht have also explained in their verified statements why the trackage and haulage rights that the Applicants propose to give BN/Santa Fe are insufficient to preserve the competition that exists today for rail transportation between the United States and Mexico. I agree fully with their views. The result of the merger as proposed by UP and SP would leave shippers in the United States with only two major railroads offering service to Mexican gateways, UPSP and BN/Santa Fe, and one of those, UPSP would completely dominate the key corridors with very weak competition from the other. It is easy to understand why UP and SP are striving so hard to that end.

I believe that result would seriously undermine the benefits that United States, Mexico and Canada sought to achieve with NAFTA. It will also largely negate the benefits of efficiency and competition that I believe Mexico is trying to achieve through privatization of its rail system. And it will certainly frustrate the efforts of TMM and KCS to create a rail network linking central Mexico and the central United States that can be a strong and effective competitor to both UPSP and BN/Santa Fe for rail traffic between the United States and Mexico and between Canada and Mexico.

Granting the rights sought by Tex Mex, on the other hand, would go a long way toward maintaining the competition that now exists. By giving Tex Mex a direct connection to KCS at Beaumont and to the Houston Belt Terminal Railway and the Port Terminal Railroad Association in Houston, Tex Mex would not be completely dependent on a highly dubious BN/Santa Fe connection. With KCS, HBT and PTRA, Tex Mex would be assured of the ability to provide thousands of shippers in both the United States and Mexico with a strong third alternative for the movement of their goods between the two countries. The stakes are too high not to provide that alternative.


UNITED STATES OF
MEXICO
RAILROADS
Concession 1
Concession 2
Concession 3
Gulf of Mexico
Pacific Ocean
Base Map by Railroad Information
Service (512) 863-6886

VERIFICATION

I, Brad Lee Skinner, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on March 28, 1996.

Brad Lee Skinner

VERIFIED STATEMENT

OF

R. J. SPEAR

Introduction

My name is R. J. SPEAR. I am Vice President of Operations and General Manager of the Texas Mexican Railway Company ("Tex Mex"), headquartered at 1200 Washington St, Laredo, Texas 78042. I am submitting this statement in support of the responsive application being filed by Tex Mex in Finance Docket 32760 seeking trackage rights over Union Pacific ("UP) and Southern Pacific ("SP") lines between Robstown and Corpus Christi, TX and Beaumont, TX. The purpose of this statement is to describe Tex Mex's operating plan for the trackage rights being requested in the responsive application.

I have worked in the railroad business for the Tex Mex for forty years. I was originally hired by Tex Mex as a railroad clerk. I was promoted to trainmaster in 1973 and I was promoted to my current position in 1984. I have spent the last 22 years in the operating department. My responsibilities have included train operations, developing operating plans, labor negotiations, maintaining relations with other carriers and with governmental agencies, and directing the operating and mechanical departments.

I have developed this operating plan for Tex Mex with the assistance of operating personnel and a consultant, Allen W. Haley, Jr. Based upon my experience I believe that this Tex Mex operating plan for operations following a UP/SP merger is both reasonable and realistic. The operations that we propose are both competitive with a combined UPSP and offer a level of service and competition that apparently will not be offered by the Burlington Northern-Santa Fe ("BNSF") for shippers who wish to utilize the Laredo gateway to Mexico.

Current Tex Mex Operations

Tex Mex is a Class II railroad that owns and operates 157 miles of railroad between the Mexican border at Laredo, TX and Corpus Christi on the Gulf of Mexico. Tex Mex currently has a connection with the Mexican national railroad, Ferrocariles Nacionale de Mexico ("FNM"), at the international railroad bridge ("International Bridge") between Laredo, TX and Nuevo Laredo, Mexico. At Corpus Christi, Tex Mex interchanges with the SP. The Tex Mex, in conjunction with the SP, currently provides the only competition to the UP for traffic moving by rail over the international gateway to Mexico at Laredo.

Tex Mex currently operates one daily scheduled train in each direction between Laredo and Corpus Christi. Tex Mex moves traffic from local industries located on the Tex Mex and moves traffic that it has interchanged with SP at Corpus Christi and with FNM at Laredo. Tex Mex has the capacity and experience in the past of operating with greater frequency depending on the dictates of traffic levels. For example, during most of 1994, Tex Mex operated two daily scheduled trains each way between Laredo and Corpus Christi.

In addition to the road operations just described, Tex Mex maintains yard operations at its Laredo Yard, at the International Bridge (jointly with UP), and at Corpus Christi. Yard operations at Corpus Christi and at Laredo consist of spotting and pulling cars from local industries at each location, as well as blocking and switching the over-the-road connections. At the International Bridge, yard operations consist of around-the-clock switch engines which handle interchange cuts for both the UP and Tex Mex on and off the bridge.

Proposed Operations

Tex Mex is seeking trackage rights in order to operate from Laredo to Houston, TX and on to Beaumont, TX. Generally speaking, Tex Mex is seeking overhead trackage rights (and certain terminal trackage rights in Houston) with rights to interchange with any other other railroad at any interchange point on such lines. This would included interchange at Houston with the UPSP, BNSF, Houston Belt & Terminal Railroad Co. ("HB&T") and Port Terminal Railroad Association ("PTRA"), and interchange at Beaumont with the UPSP, BNSF and Kansas City Southern Railway Co. ("KCS"). Tex Mex is also seeking rights to serve all local shippers currently capable of receiving service from both UP and SP, directly or through reciprocal switching.

The proposed Tex Mex operation between Laredo and Houston would maintain an efficient and economical competitive alternative to the UPSP for shippers who utilize the Laredo gateway to Mexico from Houston and points to the east or northeast. Competition would also be maintained for two-to-one and three-to-two shippers in the Houston area moving traffic to Laredo, to Mexico, to the Port of Corpus Christi, or to other points along the route where Tex Mex gains access to industries. Additionally, Tex Mex interchanges with BNSF, HB&T and PTRA at Houston will provide a competitive alternative for shippers located on those railroads to reach Mexico via the Laredo gateway. This competitive alternative will prove to be superior to the BNSF trackage rights south of Houston over the UPSP. For one thing, BNSF would have no facilities or infrastructure along the route to support that operation. Also, it would be very difficult for BNSF to achieve consistent transit times for traffic moving over BNSF's trackage rights south of Houston due to congestion and UPSP dispatching priorities on the Brownsville Line from Algoa to Robstown. (See A. Haley Verified Statement).

The proposed Tex Mex operation also extends from Houston to Beaumont. This would allow Tex Mex to reach a friendly connection at Beaumont with the KCS. As explained in the Verified Statements of Larry Fields, Tex Mex's President, and Brad Skinner, of Tex Mex's ultimate corporate parent, Transportacion Maritima Mexicana, C. de. V., S.A. ("TMM"), certain joint ventures between the corporate parents of Tex Mex and KCS have been designed to try to preserve strong competition with UPSP for rail traffic between the United State and Mexico.

Description of Operation with Proposed Trackage Rights

Robstown and Corpus Christi to Houston

The Tex Mex is seeking trackage rights over the UP's Brownsville Subdivision from Robstown, TX (where the Tex Mex crosses this UP line) northeast to Placedo, TX, where the UP main line connects with the SP's Port Lavaca Line.

As an alternate means of connecting to the UP's Brownsville Subdivision, Tex Mex seeks trackage rights from Tex Mex's yard in Corpus Christi via Savage Lane to Viola Yard on the UP and then north on the UP to Odem, TX. At Odem, this alternate route would connect with the UP's Brownsville line and with those trackage rights previously described from Robstown to Placedo. The alternate route would be used in the event of congestion on the Brownsville line between Robstown and Odem.

From Placedo, the Tex Mex seeks trackage rights to operate over the SP main line north through Victoria, TX and on to Flatonia, TX, and then east from Flatonia to Houston (West Junction) over the SP's Glidden Subdivision (operating via Glidden, TX, Eagle Lake, TX, and Rosenberg, TX).

(With respect to the Placedo to Victoria segment of the SP line I have just discussed, in the event that UPSP decided to divest this segment in favor of the UP's Bloomington to Victoria line, Tex Mex would seek to purchase this line segment.)

Houston Terminal Area

Within Houston, Tex Mex seeks rights over two routes within the terminal area in order to reach interchanges and eastward connections. Terminal trackage rights which provide route choices within Houston permit train operators and UPSP dispatchers controlling train movements to utilize the best and most efficient route to move Tex Mex trains through the terminal while minimizing congestion. One of the two routes is also essential to permit Tex Mex to reach interchange points in Houston with the HB&T, which is Tex Mex's proposed switching carrier in Houston, and with the PTRA. The proposed trackage rights within the Houston Terminal area are shown on the map attached hereto.

The first trackage rights route within the Houston Terminal area provides the most direct and efficient means of reaching Tex Mex's friendly connections at Beaumont. This route will follow the traditional SP east-west route from West Junction on the SP's Glidden Subdivision, through Bellaire Junction, on to Chaney Junction, and then east via either the Houston Passenger station or the Hardy Street yard on to Tower 26. (It is important to have the option of operating via either the Passenger station or Hardy Street yard because the SP lines are single track in these segments and having a choice will minimize delays.) From Tower 26, these trackage rights would continue to Englewood via the SP main line and then eastward through a point called Tower 87 onto the SP's Lafayette Subdivision main line to Beaumont.

As discussed in greater detail below, Tex Mex is willing to operate between Houston and Beaumont over trackage rights on either the SP or the UP. In the event that the trackage rights to Beaumont were granted over the UP route rather than the SP route, then there would be a difference in the route within the Houston Terminal from the point of Tower 26. In order to reach the UP's line to Beaumont east of Houston, the trackage rights would run north at Tower 26 on the SP and Tex Mex would then seek rights over the HB&T from Quitman Street to the connection with UP at Gulf Coast Junction.

The second trackage rights route within the Houston Terminal area permits the Tex Mex to reach its interchanges and switching carriers in Houston, as well as providing an alternative route through Houston in the event of congestion. These trackage rights go from West Junction on the SP to Tower 81 (T&NO Junction) and on through Tower 30 to the connection with the PTRA at Katy Neck (also known as GH&H Junction). The remainder of this second route consists of trackage rights over the HB&T from Tower 81 to Tower 87 and Settegast Junction. (If Tex Mex is given trackage rights over the SP route to Beaumont, then this route would permit Tex Mex to reconnect with the SP at HB&T's interchange with SP at Tower 87. If Tex Mex is given trackage rights over the UP route to Beaumont, Tex Mex would connect with the UP at HB&T's Settegast Junction interchange with UP.)

The second route described above permits the Tex Mex to connect to the PTRA at Katy Neck. If these trackage rights are granted, the Tex Mex will petition the PTRA to become a member carrier so that Tex Mex can enjoy the fair and equal benefits currently enjoyed by the SP, UP and BNSF. Trains moving to points on the PTRA would be handled to the designated interchange point (North Yard, Manchester Yard or Pasadena Yard) by the inbound Tex Mex crew. From the interchange point, all movements to industry, intermodal ramps or interchanges would be handled by the PTRA, as is done with trains of other PTRA member lines.

The second route also permits the Tex Mex to connect to its proposed switching carrier in Houston, the HB&T. Switching will be done at HB&T's New South Yard, which is located just north of Tower 81. HB&T will distribute inbound cars from Tex Mex trains to industries and will make up outbound trains for Tex Mex.

<u>Houston to Beaumont</u>

Tex Mex is seeking overhead trackage rights from Houston to Beaumont over either the existing SP route or UP route, depending on which route is most convenient in light of the UPSP operating plan. The Tex Mex would deliver its train to the KCS at Beaumont. Tex Mex operations in and out of Beaumont would be handled out of KCS's Chaison Yard. Tex Mex would not maintain its own yard or any local operation of its own in Beaumont. All switching, blocking and interchanges in Beaumont would be handled by the KCS on behalf of Tex Mex.

Anticipated Level of Operations

Tex Mex plans to operate one scheduled manifest and one scheduled intermodal train per day each way between Houston and Laredo via Corpus Christi or Robstown. In addition to these scheduled trains, Tex Mex would operate unit grain trains as required between interchanges at Houston or Beaumont to Laredo. We anticipate that this will require operation of grain trains over the route three or four days per week on a schedule that will not conflict with the scheduled Tex Mex manifest or intermodal operation.

(At the start-up of Tex Mex operations over these trackage rights, or at other slow periods, demand may not justify both a scheduled manifest and a scheduled intermodal train per day each way. If that is the case, Tex Mex would operate a single scheduled train per day each way, which train would be a mixed manifest and intermodal train. We have assumed for purposes of this operating plan and for environmental documentation exemption purposes that Tex Mex will operate separate intermodal and manifest trains each day, in order to demonstrate that even at their fullest, the rights sought by Tex Mex will not adversely effect other rail operations and will not result in a significant change in carrier operations.)

Tex Mex operations between Houston and Beaumont will consist of one scheduled mixed train per day, consisting of both intermodal and manifest. Tex Mex will also operate unit grain trains from connections with the KCS at Beaumont through to Houston and on to Laredo.

Train Schedules

Tex Mex will operate an eastbound intermodal train daily from Laredo to Houston on a fifteen-hour schedule, departing Laredo in the early evening and discharging in Houston mid-day the following day. The westbound intermodal service will operate from Houston to Laredo on a schedule similar to the eastbound train. This westbound service will depart Houston in the late evening hours and will operate through to discharge traffic at Laredo which is destined for the Laredo area or which is to be transferred to trucks for movement to Mexico. The remaining intermodal traffic, together with any Mexico traffic that is ramped in Laredo, will depart Laredo to Mexico before midnight on the same day.

The eastbound manifest train will depart Laredo at 11:00 p.m. with traffic received from FNM during the day. This train will operate on a eighteen-hour schedule between Laredo and Houston, arriving at connections in Houston in the early afternoon of the following day. Arrival at Houston at that hour will permit the processing of traffic during the normal inbound traffic flow at Houston. Traffic interchanged to the PTRA or HB&T in the evening can be processed during the night for spotting at industries along the PTRA or HB&T on the next morning.

The Tex Mex's westbound scheduled manifest train will depart Houston at 11:00 a.m., and will operate on a twenty-hour schedule to arrive in Laredo at about 7:30 a.m. the following morning. On arrival at Laredo, the Mexico-bound traffic will operate directly to the FNM for same-day departure to Mexico.

(At any times when Tex Mex is operating only one scheduled mixed manifest/intermodal train per day each way, such trains will operate on the manifest train schedule described herein.)

Impact on Amtrak, Commuter or Other Freight Operations

In order to determine the impact, if any, of the proposed Tex Mex operation on existing Amtrak schedules and on proposed UPSP operations, we calculated Tex Mex's schedule across the route using an average running time. From this a matrix was created to determine the effect our trains would have in the way of meeting other traffic or running against other trains such as Amtrak. This matrix also allowed us to evaluate the effectiveness of our schedules and the overall consistency of our operation.

We determined by looking at the junctions along the route (Robstown, Odem, Placedo, Victoria, Flatonia, Glidden, Rosenberg, and West Junction) that the proposed Tex Mex operation would have minimal impact on the proposed UPSP operations. The Tex Mex proposed schedules have been designed to operate with the traffic flows along the route to create minimum number of train meets when trains are on schedule. All of the Tex Mex schedules were created to avoid conflicts or meets with current Amtrak schedules between Flatonia and Houston. All Tex Mex trains enter or leave the route before any Amtrak trains are scheduled on the route.

Yard Operations

As discussed above, Tex Mex proposes to use HB&T as its primary switching carrier in Houston, and such switching operations would take place at HB&T's New South Yard. Also as discussed above, Tex Mex proposes that in Beaumont, all of its switching, blocking and interchange would be handled by KCS at KCS' Chaison Yard.

In Houston, Tex Mex would also expect to utilize the intermodal facilities of the Port of Houston Authority at Barbours Cut, which facilities are serviced by the PTRA. Tex Mex's intermodal connections would be moved by the PTRA from the interchange point at Pasadena, Manchester or North Yard to Barbours Cut, where traffic would be discharged for loading on to ship or movement by truck. Traffic moving to Mexico would be ramped at Barbours Cut and moved out by PTRA to the designated interchange point with the Tex Mex, for movement thereafter by the Tex Mex via Tower 30 to Laredo.

The Tex Mex will also seek to purchase or lease the currently-inactive SP yard at Glidden, TX. The Glidden yard is adjacent to an active SP siding at Glidden on the SP's Glidden Subdivision line. The Glidden yard is about one-mile in length, and currently consists of two and a half tracks. Until about one-year ago, SP used the Glidden yard for storage and blocking of rail cars containing plastics. When it used the yard for that purpose, SP switched cars daily in the yard. SP continues to use the adjacent siding on a daily basis for three to four trains per day.

Tex Mex would use the Glidden yard as a point to exchange blocks of traffic between trains. This use would be incidental to Tex Mex's operations over the SP's Glidden Subdivision. Field blocking or block-swapping at Glidden would allow Tex Mex to take traffic that was received in interchange at Houston or which operated from KCS's Chaison yard in Beaumont and place this traffic in the appropriate blocks for movement through to Mexico. The use of the Glidden yard would permit the Tex Mex to clear the UPSP main track and switch blocks without interfering with main line train operations.

The Glidden yard would also provide a point where Tex Mex trains could clear the UPSP main track in the event of congestion between Flatonia and Placedo on the single track route. This would assist in minimizing any impact on UPSP train operations from the proposed Tex Mex operations.

Construction Projects

It will not be necessary for the Tex Mex to construct any sidings, connections or yards in order to implement the trackage rights that it is seeking. However, we do contemplate some construction projects in order to improve the efficiency of the operation. In the event that these trackage rights are granted to the Tex Mex, Tex Mex would seek to construct (1) a turnout and connection between the Tex Mex and the UP at Robstown and (2) a turnout and connection at Flatonia between the SP's Victoria Line and Glidden Line. Depending on the levels of traffic and our experience with these operations, Tex Mex may also, at a later time, seek to construct an additional siding between Placedo and Flatonia or seek to improve the facilities at the Glidden yard. In accordance with the STB's Decision No. 14 in this proceeding, Tex Mex will, if it is granted the trackage rights it is seeking, thereafter file the necessary applications and environmental information with respect to construction projects.

Equipment

Tex Mex expects to operate between Laredo and Houston and between Houston and Beaumont with its own locomotives and crews. Based on the anticipated schedule and train volumes, and existing Tex Mex motive power, Tex Mex does not expect initially to have to purchase additional locomotives for the scheduled manifest and intermodal trains. With respect to operations of unit trains from Houston and Beaumont to Laredo, we contemplate using the locomotives of the origin railroads with a payback of horsepower hours for the time the locomotives are traveling between Houston or Beaumont and Laredo.

Labor Ramifications

Tex Mex anticipates that it will need to hire between 30-40 employees in order to operate over the trackage rights it is seeking in this proceeding. We understand that the SP will be reducing its workforce in this part of Texas due to the consolidation of functions with UP, and we would look first to hire former SP crew members familiar with the routes over which Tex Mex would now be operating.

Tex Mex will initially create three labor pools under the proposed operation:

<u>Laredo</u>: Tex Mex will maintain a crew base at Laredo for operation of trains between Laredo and Corpus Christi. These crews will handle trains to Corpus Christi or Robstown.

<u>Corpus Christi</u>: Tex Mex crews based at Corpus Christi will operate trains between Corpus Christi or Robstown and Glidden.

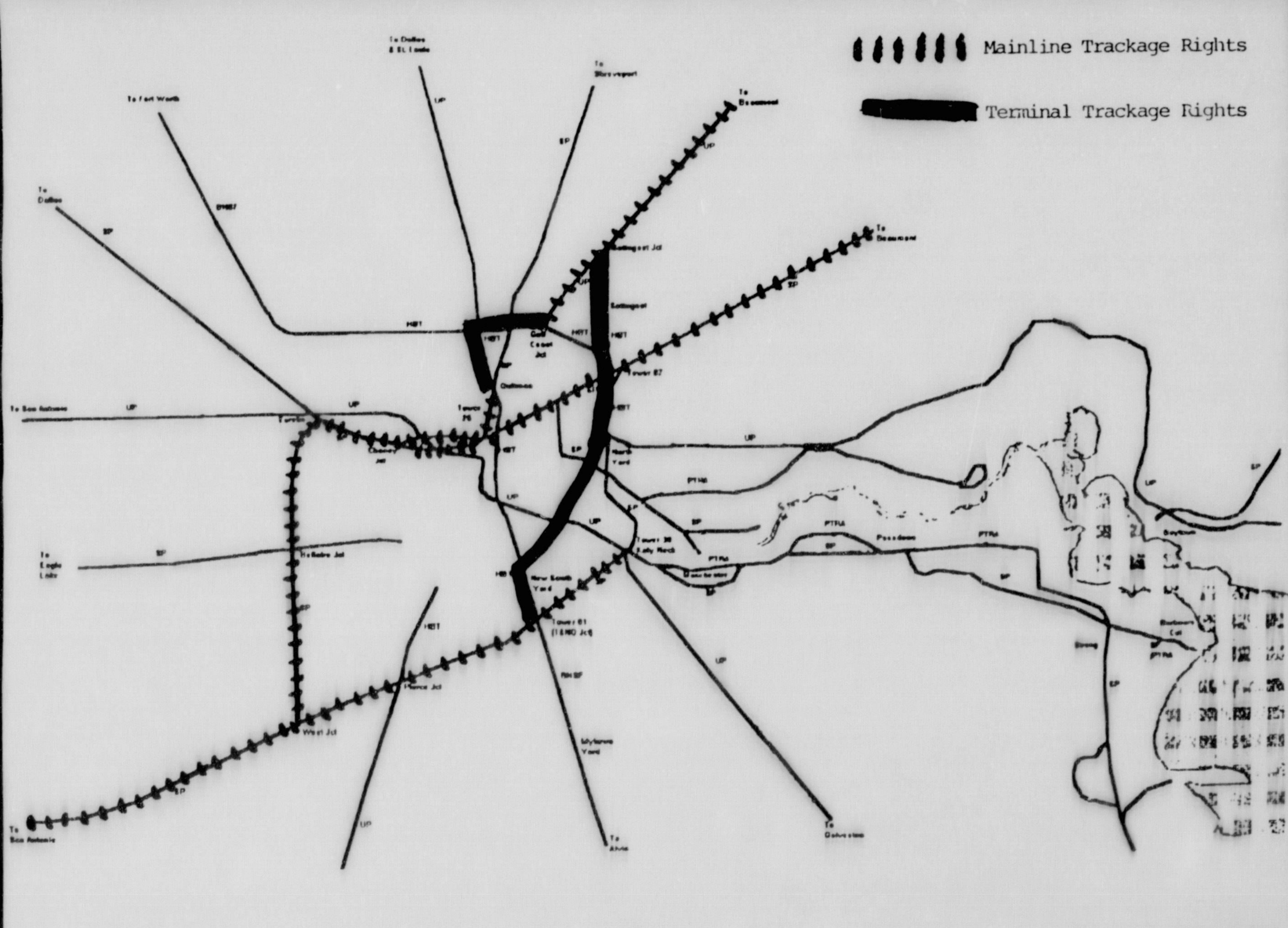
<u>Glidden</u>: Tex Mex crews based at Glidden will operate trains between Glidden and Houston or between Glidden and Beaumont. These crews will have away-from-home terminals at Houston and Beaumont for operating the westbound trains from these locations. Crews based at Glidden will rotate operating between Glidden and Houston and Glidden and Beaumont. When a crew operates to Beaumont and back, their next trip from Glidden will be to Houston and back, until all crews have made a round trip to Beaumont. This organization will permit the Tex Mex to balance the crew mileage without deadheading or penalty payments.

Tex Mex hopes to eventually operate the trackage rights with only two crew districts. We believe that until new connections are constructed at Robstown and Flatonia and UPSP shows that it will consistently provide equal dispatch of foreign line trains on its lines, it would be prudent to utilize three crew districts. Once the new connections are completed and fair and equal dispatch of Tex Mex trains along the trackage rights route has been achieved, we expect to reduce the number of crew districts from three to two.

I, R. J. SPEAR, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on March 27, 1996.

R. J. Spear

R. J. SPEAR



Railroads of Houston, Texas
And the Surrounding Area

VERIFIED STATEMENT
OF
PATRICK J. KRICK

Introduction - About the Author

My name is Patrick J. Krick, and my business address is 1901 Central Drive, Suite 333, Bedford, Texas, 76021. Since November, 1995, I have served as Consultant-in-Charge of the Dallas office of the Kingsley Group, a San Francisco-based transportation and logistics consultancy. I submit this testimony on behalf of the Texas Mexican Railway Company (TM).

Prior to my current position, I served for over seventeen years in economic and financial analytical capacities in the rail, insurance, and local governmental planning sectors. My experience in the rail industry has spanned 15 years, and two western Class I carriers. Throughout my career I have been promoted into positions of ever increasing responsibility. Immediately prior to my current position, I served as Burlington Northern Railroad's Assistant Vice President, Corporate Analysis and Development, responsible for unit cost and profitability measurement, operational economic assessment, and franchise strategy development and support. Earlier positions in the rail industry involved Senior Analyst, Manager, Senior Economist, and Director level responsibilities in areas of economic and industrial forecasting; traffic, revenue and expense budgeting; strategic planning; business process design and engineering; merger and acquisition policy development and execution; freight market and carrier competitive analysis; management information systems development and design.

Over the years I have held membership in and/or spoken authoritatively to a range of professional organizations, including the Transportation Research Forum, National Association of Business Economists, The Planning Forum, AAR Cost Analysis Organization, American Economic Association, and the Missouri Valley Economics Association, to name a few. I have taught economics at the college level early in my career. I hold a masters degree in economics from the University of Nebraska (December, 1977), and a bachelors degree with political science and economics majors from the University of Nebraska-Omaha (August, 1976).

Introduction - Purpose and Approach

My testimony in this proceeding identifies the probable economic and financial effects on TM of the proposed merger of the Union Pacific and Southern Pacific railroads (UP/SP) as conditioned by the agreement UP/SP reached with the recently-merged Burlington Northern and the Atchison, Topeka and Santa Fe railroads (BN/Santa Fe). My testimony also identifies the probable financial and economic effects on TM if the Surface Transportation Board conditions the merger with the rights TM seeks in its responsive application, namely to operate by trackage rights from Corpus Christi and Robstown to Houston and Beaumont, Texas.

My approach to this analysis employs a railroad financial and operational model I developed using TM financial, traffic and operating data from 1990 to 1995. The model establishes trends in historical relationships between traffic levels, operating statistics and cost which, when applied to projected traffic input values, result in projected operating statistics and cost. When incorporated with projected revenue, the cost and operational model can derive financial statements yielding income for TM based on given forecast scenarios, or sets of forecasted values for tonnage and carloads. Within this analytical framework, I developed a "base case" forecast of TM's income derived from my forecast of TM's traffic volume which assumes no UP/SP merger. This base case forecast is a projection of TM productivity based on: 1) trends identified in the cost modeling analysis; 2) TM's management's view of the effects current capital programs and other programs may have on key productivity factors; and 3) other probable changes in underlying operating performance, flowing from all the above.

Using this "base case" financial outlook as a comparative benchmark, I produced two sequentially additive forecast scenarios that I call "merger" and "TM rights" by adjusting the "base case" freight forecast with forecasts that are derived from and logically consistent with the traffic diversions Mr. Ellebracht, in his verified statement, estimates for these same

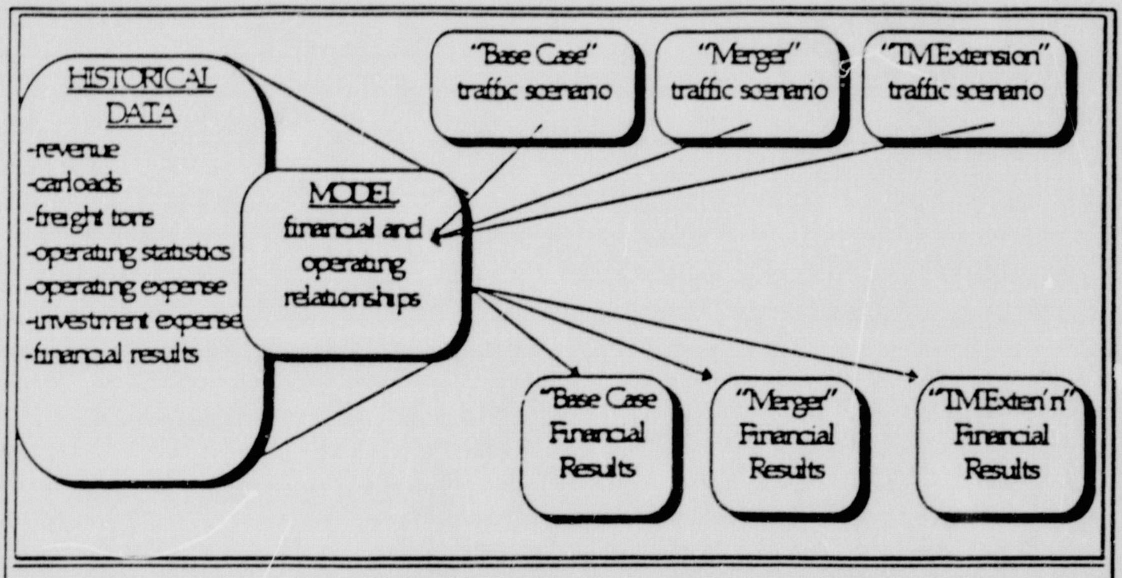


Figure 1 - Schematic of Financial Analysis Approach

scenarios. By comparing the modest financial results derived from each of the three traffic scenarios, I draw conclusions as to the effects on TM of UP/SP merger-related traffic diversions and the trackage rights TM requests in its responsive application.

TM Overview and Trends

Let me begin by briefly outlining the trends traffic characteristics, and financial and operating patterns of TM. This review will be limited to the timeframe from 1990 to 1995.

TM Overview and Trends - Traffic Summary

TM's principal source of revenue and the tonnage it hauls is the bridge or interline traffic carried between Corpus Christi, TX and Laredo, TX, the latter being the major gateway for rail traffic moving between Mexico and the United States. As Mr. Ellebracht testifies, the majority of TM's interline traffic is with the SP at Corpus Christi, and with the Ferrocarriles Nacionales de Mexico (FNM) at Laredo.

TM's interline traffic provides local shippers a level of service which has clearly aided their competitiveness in end markets. This is demonstrated by the fact that local shippers' tonnage has grown more than 5% per year during the 1990 to 1995 period, not including the coal and grain on-line traffic which tends to be more cyclical.

The most important factor in the trend in TM's traffic in the last six years, like that for many businesses so tied to Mexico-U.S. trade, appears to be the economic cycle in Mexico's economy. The Mexico economy experienced a 6% decline in GDP in 1995, triggered by the peso devaluation in December, 1994. TM's total road haul volume loosely mirrored the Mexico economic cycle: strong growth in '91 and '92, slowed growth in '93, a slight decline in '94, followed by a more severe decline in '95.

The commodity make-up of TM traffic is dominated by grain, paper, nonmetallic minerals, and waste and scrap, which together make up over 75% of the total tonnage. Growing commodity segments of significance have been pulp and paper, and nonmetallic minerals. Declining commodity segments of significance include chemicals, grain and coal. The waste, scrap, and hazardous traffic group, a proportionately important traffic group for TM, has remained somewhat stable.

TABLE 1		1994	Freight Tonnage (000					
Class	Commodity	cum%	1990	1991	1992	1993	1994	1995
b	Farm Prod	26%	436	821	953	972	743	394
b	Paper, pulp, etc	42%	204	232	287	499	448	289
f	Farm Prod	53%	462	415	309	189	314	284
l	Nonmet Min	63%	159	186	225	291	275	329
b	Food, kindrd	71%	170	218	389	316	239	162
b	Waste & scrap	79%	258	261	238	229	219	222
l	Coal	82%	174	171	151	141	108	77
f	Waste & Scrap	86%	97	63	89	90	92	104
b	Chem icals	89%	100	100	104	74	82	60
b	Stone, clay, glass	91%	116	107	70	58	57	35
r	Nonmet Min	92%	28	21	30	47	35	47
b	Petroleum Prod	93%	61	66	45	30	33	29
b	Shipper assoc.	94%	0	0	0	0	31	22
b	Primary Metals	95%	73	55	75	89	30	25

A picture emerging from this commodity tracking profile of TM is the quite different trends experienced in bridge traffic as compared to the on-line traffic. TM's interline traffic is large enough in most years to provide a sufficient revenue base to justify the daily which serves the TM territory, although this interline traffic is subject to wider swings in volume, and offers lower revenue per load than on-line traffic. In combination with the smaller (but steadily growing) on-line business, cost reductions and productivity improvements, enough revenue is provided by the interline traffic to produce reasonable returns on TM railroad assets and operational activities.

Over 70% of TM's traffic is bridged between its U.S. connecting carriers (SP being the most dominant) and the FNM, but over 10,000 carloads per year do originate or terminate locally. As mentioned above, when grain and coal traffic is excluded, this segment has been a steady source of volume growth.

An important question addressed in this analysis will be how the diversions resulting from a UP/SP merger will affect TM's interline traffic, and whether this might threaten the traffic which is either totally or in part, local to the line. While TM's interline has been subjected to wide swings brought on by currency market and macroeconomic events in Mexico, on-line traffic has grown at a quite healthy pace, given the small scale and remoteness of TM on-line shippers and receivers of rail freight.

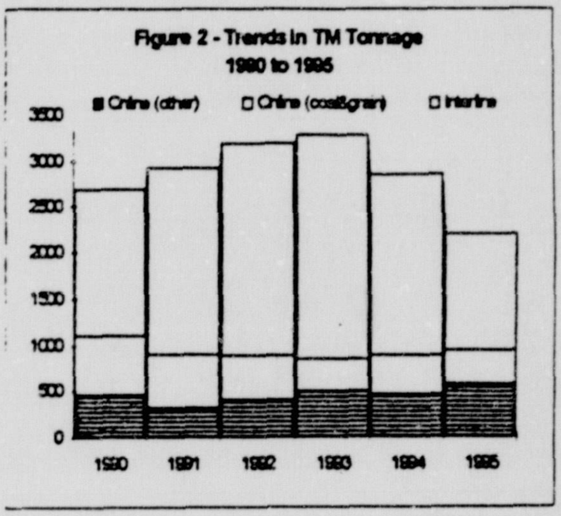
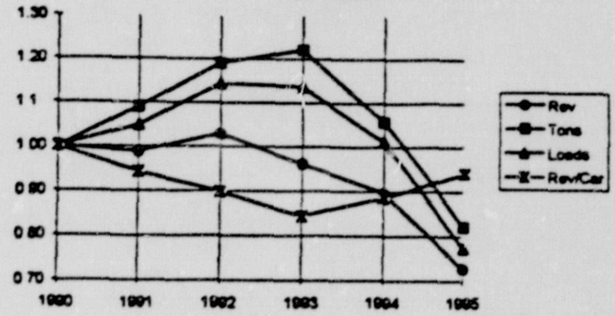


Figure 2 - Trends in TM Tonnage 1990 to 1995

TM Overview and Trends - Revenue and Revenue Quality

Revenue quality, as measured by TM's revenue per carload, has also shown a cyclical pattern, although in an opposing pattern to volume. On-line revenue per load fell from $581 in 1991 to a low of $487 in 1993, recovering at $541 most of the earlier decline in 1994. A slight fall of 3% was experienced in 1995. Interline traffic revenue per car averaged 10% to 18% less than on-line revenue per car through the historical period studied, and also fell sharply from 1991 to 1992, recovering a more modest 23% of the loss by 1995. The opposing cycles of the revenue per load and the carload volume softened the amplitude of the revenue cycle, as compared to the carload or tonnage cycle, over the 1990 to 1995 period.

Figure 3 - Index of TM's Traffic Indicators 1990=1.00



TM Overview and Trends - Operational Summary

TM's rail transportation activity falls into four fairly clear cut categories: 1) interline and on-line road haul service between Corpus Christi and Laredo; 2) Corpus Christi switching; 3) Laredo switching; and 4) bridge yard switching at Laredo. It is the interline service TM offers between the SP at Corpus Christi and the FNM at Laredo that serves as the underlying foundation for TM's overall operation.

Road haul activity, driven and supported primarily by this interline traffic, comprises two trainstarts per day. One train originates from Laredo to Corpus Christi, and another from Corpus Christi to Laredo. This, TM's only regular linehaul train service, employs eight of the 19 unit locomotive capacity of TM. Corpus Christi switching, in addition to pick-up and delivery of freight to the SP, involves the bulk of TM's industry switching.

Corpus Christi switching utilizes 2 locomotive units. Laredo yard activities, principally focused on delivering to the Bridge Yard and some industry service, utilizes 2 units.

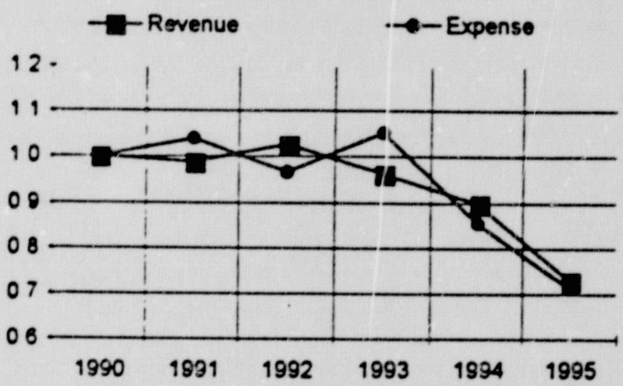
The fourth category of TM's transportation effort involves their joint facility obligations to operate the Bridge Yard at Laredo, where it shares, with UP, responsibilities for switching traffic across the International Bridge which connects FNM with UP and TM. TM provides this service for two shifts per day (14 hours), while UP serves for one shift per day. This joint facility activity utilizes 4 units of the TM locomotive fleet.

The remaining 3 units or 16% of locomotive capacity will be in the TM shops for servicing and repair at any given time. This percentage compares quite favorably to averages maintained by most US Class I carriers.

TM Overview and Trends - Financial Summary

TM's financial performance can be summarized as generally improving since a low in 1993, as significant cost reduction and productivity improvements have reduced the expense floor faster than the decline in interline business and overall revenue. Modest gains in the non-cyclical portion of on-line traffic, at a higher revenue per carload, have offset some of the fall in cyclical on-line and interline traffic over this period.

Figure 5 - Index of TM Finanacial Performance 1990=1,00



Operating productivity in terms of maintenance and transportation expense per unit of associated activity have improving trendlines over the last six years. While some of this apparent productivity might have been explained by the surge in interline volume in 1993 and 1994, the trends continued after the peak volume year of 1993, indicating sustained productivity performance. General administrative and office staff expense has also been an area of important cost reduction, falling $2.7 million from the peak in 1993 to 1995.

A one-time expense for personnel buy-out in 1994 of $1.3 million added to that year's expenses, reducing pre-tax income. Unfavorable accrual adjustments for litigation were recognized in both 1991 and 1993. These "blips" added to an otherwise steady General and Administrative expense throughout the period, affecting pre-tax income significantly.

Three Views of TM's Future - Overview

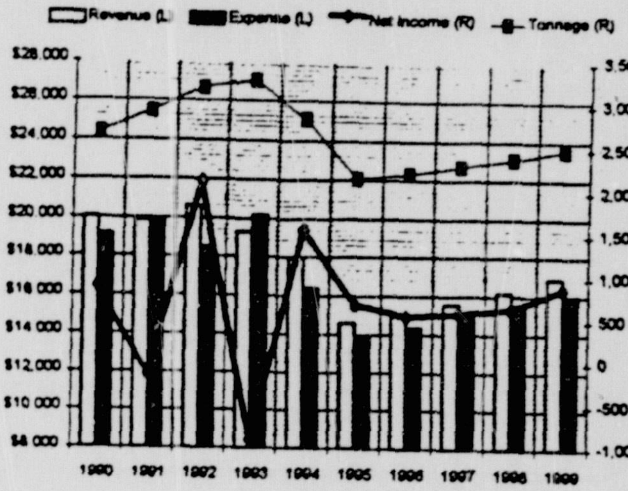
In the following three sections of this statement, I describe three probable outlooks for TM's future. Each outlook begins with a traffic volume and revenue projection for 1996 to 1999, which, when imposed on the financial and operating model, yields cost and operating income. The three specific scenarios reviewed are the "base case," "merger" and "TM rights" scenario I described above.

TM's Outlook - "Base Case"

Assuming no UP/SP merger, the "base case" outlook I have developed for TM reflects a continuation of the six-year trend in improved productivity and growing on-line business (less the cyclical on-line coal and grain). Declining traffic categories of total interline and total grain and coal traffic are expected to bottom at the 1995 level, and maintain or very slightly increase over the next four years. Total interline carloads are expected to be at 28,192 units by 1999, a modest 2.4% above the 1995 level, but over 22% below the 1990 level.

With interline traffic sustaining 1995 levels, train service for TM's local customers should remain at the current daily level now enjoyed, and as a result local customers will continue the modest improvement in service and market reach. As a result I would expect TM's on-line carload traffic (except for coal and grain) to continue its trend of growth for non-cyclical on-line carloads. To be conservative, I hold grain and coal at or near the 1995 historical low point. As a result, on-line carloads in the "base case" are expected to rise an average 3.6% per year over the 1996 to 1999 period.

Figure 6 - "Base Case" Scenario



Revenue yields, as stated in revenue per loaded car, are expected to grow minimally throughout the forecast period to 1999, assuming about 0.5% growth per year yielding about 8% below the 1991 level. Price pressures would probably continue in a "base case" scenario, both from interline partners seeking to keep the SP/TM/FNM route competitive, and from on-line shippers needing to maintain to their product competitiveness in end markets. I have assumed operational efficiency and productivity improvements will be at a fraction of the pace of improvement achieved in the 1994-1995 period. This is a conservative outlook, but I do expect these improvements to continue during the 1996 to 1999 period.

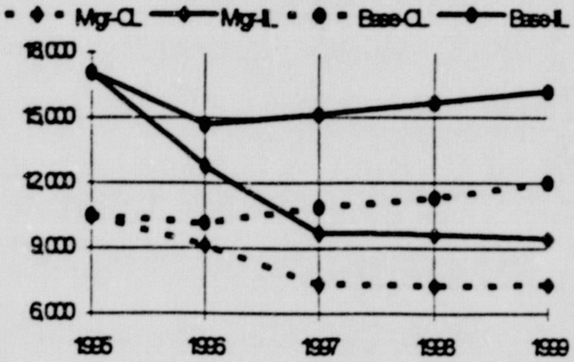
TM's Outlook - "Merger" Effects

I developed the "merger" traffic forecast by incorporating Mr. Ellebacht's diversions, which were based on a 1994 traffic base. So as not to overstate the impact of the proposed merger on the "base case," I make three adjustments to Mr. Ellebacht's traffic diversions before incorporating them into the model.

First, Mr. Ellebracht adjusted the 1994 TM traffic base for the UP/CNW merger and the BN/Santa Fe merger, the effects of which are yet to be fully realized. Part of that adjustment is the diversion to TM intermodal traffic it has carried in the past. Because my model is historically based, it does not include the intermodal traffic that Mr. Ellebracht estimates would arise in the future due to these mergers. It is important to note at this point however, that to the extent potential intermodal traffic and its contribution to higher operating income would have added to the "base case" forecast levels, the effect of the "merger" as I have defined it, is understated.

Second, Mr. Ellebacht's carload diversions are based on 1994 traffic. It would be inappropriate to apply these diversions in absolute terms to the 1996 and beyond "base case" forecast. This is evident from the sharp decline in 1995 interline traffic from 1994. To allow for this I have used a diversion factor equivalent to the proportion of the total carloads diverted from the 1994 adjusted base to the total number of carloads in that 1994 adjusted base, beginning in 1997.

Figure 7 - "Base Case" vs. "Merger" Interline(IL) & On-line(OL) Carloads



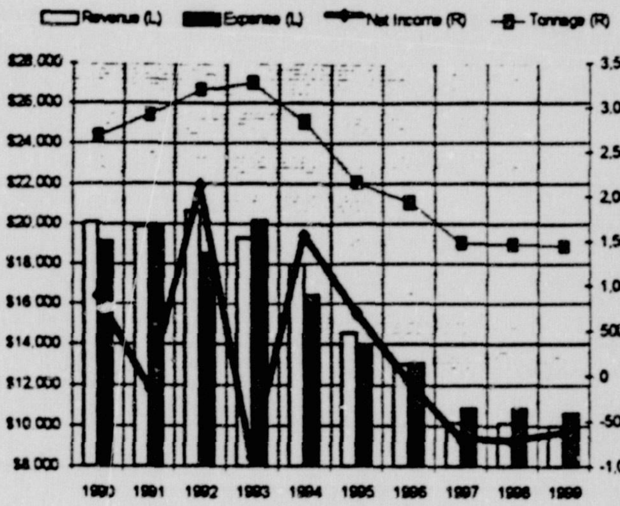
Third, since the merger could not go into effect but for part of 1996, I reflect only a partial year's prorated diversion in 1996, so that the first prorated "full-year" effect is felt in 1997.

While Mr. Ellebacht's diversion analysis provides the adjustment basis for the direct interline diversion element of the "merger" traffic outlook, indirect effects will be significant as well. With the direct one-third reduction in interline volume, and the sharp matching decline in interline revenue, TM management would be faced with a very painful operating choice. It could continue to run daily service, but doing this would cause transportation expenses to hold close to the higher "base case" level. In the face of interline revenue plummeting in excess of $6.5 million per year, the bottom line would hemorrhage.

In attempts to cut cost below this decline in revenue, line haul train service would likely be cut. This, however, will very seriously affect the on-line customers who have maintained overall volumes since 199:, and when corrected for cyclical commodities of grain and coal, have served as a growing source of revenue and value to the TM. As TM's service offering is cut, so too is the logistical competitiveness of its on-line shippers. Transit times of inbound supplies, and outbound product will be increased due to less frequent train cycles, and overall logistics cost to the on-line shipper go up. The result will be to reverse the growth in on-line traffic over the last several years. Thus, in addition to the losses from direct interline diversion, on-line traffic will turn downward as well. Remaining interline carriers will feel the same indirect effects as on-line shippers, as they witness a reduction of the service they encounter from their previously daily connecting TM partner. I assume "merger" traffic, to reflect 6,800 fewer interline carloads, and 4,700 fewer on-line carloads than that assumed in the "base case" by 1999. "Merger" scenario carloads decline about 1% per year, after the full effects of the UP/SP diversions are felt in 1997.

If the Board permits UP/SP to merge, without imposing the rights requested by TM, TM management will be forced to cut transportation and maintenance expense, leaving it the difficult task of reducing General & Administrative expense to protect it's "base case" earnings levels. After allowing for exceptional accruals in 1991 and 1993, G & A expense levels have been trending down since 1990. It is highly questionable whether TM could cut G & A by the sizable amount necessary to cover the gap remaining in expenses, and still provide a safe and financially secure operation of a railroad.

Figure 8 - "Merger" Scenario



Given the assumptions stated above, "merger" scenario income from operations would evaporate to nothing immediately in 1996, and remain at an unacceptable loss in excess of $500 thousand per year through the 1999 forecast horizon. This reflects a difference from "base case" of $1.3 million in earnings in 1996 to about $2 million per year over the 1997 to 1999 period.

Stated simply, my analysis indicates that TM would not survive the UP/SP merger if it is not conditioned by the rig' ': TM requests in its responsive application. Local shippers would lose the essential services they now receive from TM.

TM's Outlook - The "Trackage Rights" Effects

TM has petitioned the Surface Transportation Board (STB) to grant it trackage rights to Houston and Beaumont, TX to address competitive harms directly related to the proposed merger. This scenario evaluates the effects of the diversions, appropriately adjusted, that Mr. Ellebracht estimates would result from the STB's grant of those rights. I also adjusted certain costs associated with the new operations, as described in Mr. R.J. Spears testimony, as appropriate.

Should TM be granted rights it requests, its access to the Houston and Beaumont markets and rail gateways will yield by 1997 approximately 4,500 carloads per year, and extended hauls on approximately 5,000 carloads TM currently carries. This would yield an estimated $7.2 million in revenue for TM over the "merger" scenario.

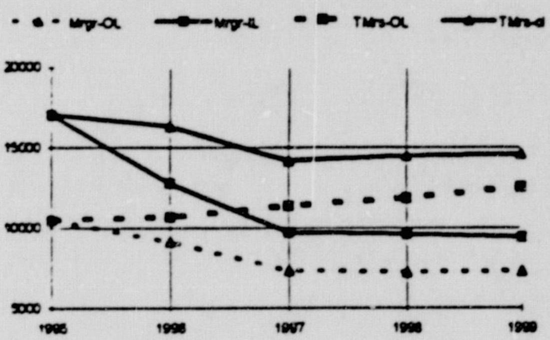


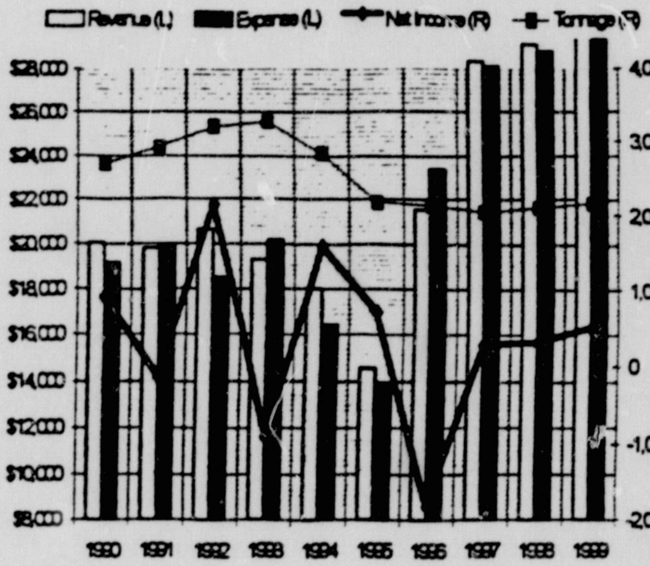
Figure 9 - "Merger" vs. "TM rights
Interline (IL) & ON-line (OL) Carloads

The operating plan Mr. R.J. Spears submits suggests four important cost impacts as a result of exploiting the trackage rights sought. First, the Laredo-Corpus Christi road haul service would extend up to Houston. Second, new road haul service would be inaugurated between Houston and Beaumont. As Mr. Spears explains, based on the anticipated schedule and train volumes, and existing TM power, Tex Mex does not expect initially to have to purchase additional locomotives for the scheduled manifest and intermodal trains described in the plan. In seeking a conservative statement of costs and revenues for my forecast, however, I have instead assumed a net increase of 5 locomotive units which I incorporate into the income statement as operating leases.

Third, I build into the 1996 maintenance of way operating expense track turnouts and connections. Fourth, the movement of traffic on the trackage right portion of the movements will push up transportation, net equipment rents and equipment maintenance costs. In addition, I assumed that TM would compensate UP/SP for operating on the trackage rights lines an amount consistent with UP/SP's agreement with BN/Santa Fe.

Given the operations outlined in Mr. Spears testimony, and Mr. Ellebracht's diversions as I have applied them, I estimate an additional operating expense of $17.2 million required in the "TM rights" scenario over the "merger" scenario by 1997, with a revenue gain $18.1 million over the same period. Tonnage levels stay about even with 1995 levels, but TM's revenue is increased even over the base case by carrying fewer tons than the "base case" more miles. While this does not result in a complete recovery of the loss in income from the direct effects of the "merger" diversions, indirect effects from reduced levels of operations are forestalled as "TM rights" traffic and revenue enables TM management to justify the continuation of essential daily train service to its on-line customers and remaining connecting carriers. As such, the total difference in revenue goes well beyond the initial freight diversion between "merger" and "TM rights", but also adds back the loss of on-line tonnage gains (i.e. the on-line volume loss in "base case" vs. "merger"), at longer lengths of haul. Combined, this results in a very significant recovery in total revenue between "merger" and "TM rights" scenarios.

Figure 10 - "TM Rights" Scenario



I do not anticipate any required capital outlay resulting in additional indebtedness and subsequent increases in TM fixed charges. It is possible, however, that should TM, rather than BN/Santa Fe, improve the connection at Robstown, TX, that improvement and the planned improvement at Flatonia may, together, require capitalization rather than expensing treatment under general accounting rules. These conditions could result in a modest addition to fixed charges.

Conclusions

TM has had success in reacting to its cyclical interline business by cutting costs significantly over the last two years and protecting the service responsible for enhancing its more stable, and higher revenue yielding, on-line business. In my view, however, an elimination of another 30% of its interline traffic would force cost cutting options which would eliminate the important daily service it now offers on-line customers. This elimination would result in a secondary cycle of reduction in traffic and operations to the point that TM would either fail financially, or devolve into a low service, light density branch line operator. I believe as the scale of operation approached this level, TM's ability to reliably serve as the primary operator of the International Bridge would also come into question.

The effects of the proposed UP/SP merger on TM without the requested conditions is clear. These effects would be sad enough based solely on the loss of rail service. But it would be wasteful to allow the UP/SP merger to wipe out the success TM has had in helping the region to develop through the maintenance of daily predictable service for its on-line customers.

With the modest trackage rights concession TM requests, I believe that TM has a reasonably good opportunity to continue the success it has enjoyed. Nothing is for certain, however. Obtaining such rights will not insure TM will recover from the diversions it still must face from the UP/SP merger. Nevertheless, the grant of the trackage rights request would improve TM's chances of continuing the important and essential rail services it provides to the South Texas area.

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From my analysis, it is clear to me that the UP/SP merger, and the resultant diversion of important interline traffic from the TM threatens the very existence of this carrier. Those diversions also pose a threat to TM's ability to maintain good daily service to its online shippers. The progress made over the last several years in this regard suggests that TM has been critical to providing improved market position for its customers, and as such has been an important support to the employment base represented by those shippers in the South Texas region.

It is in the public interest for the Board to condition the UP/SP merger, if it approves it at all, on the grant of the conditions TM requests in its responsive application.

APPENDIX I

Texas Mexican Railroad Company - Income Statement

		1990	1991	1992	1993	1994	1995E
I	Operating Revenue	$ 20,055	$ 19,820	$ 20,626	$ 19,279	$ 17,976	$ 14,587
I.A.	Freight	$ -	$ -	$ -	$ -	$ -	$ 13,339
I.B	Switching	$ -	$ -	$ -	$ -	$ -	$ 307
I.C	Demurrage	$ -	$ -	$ -	$ -	$ -	$ 604
I.D	Incidental	$ -	$ -	$ -	$ -	$ -	$ 337
II	Operating Expenses	$ 19,164	$ 19,954	$ 18,497	$ 20,185	$ 16,403	$ 13,892
II.A	Way & Structures	$ 2,860	$ 3,004	$ 3,565	$ 3,262	$ 2,760	$ 2,173
II.B	Equipment	$ 4,985	$ 4,052	$ 4,064	$ 4,480	$ 3,604	$ 3,106
II.B.1	Locomotives Mnt.	$ -	$ -	$ -	$ -	$ -	$ 354
II.B.2	Freight car, oth	$ -	$ -	$ -	$ -	$ -	$ 1,665
II.B.3	Equipment Rents, net	$ -	$ -	$ -	$ -	$ -	$ 1,087
II.C	Transportation	$ 7,823	$ 7,957	$ 7,029	$ 6,760	$ 6,162	$ 5,413
II.C.1	Road	$ -	$ -	$ -	$ -	$ -	$ 1,347
II.C.2	Yard	$ -	$ -	$ -	$ -	$ -	$ 2,392
II.C.3	Joint Fac'y Credit	$ -	$ -	$ -	$ -	$ -	$ (903)
II.C.4	Other	$ -	$ -	$ -	$ -	$ -	$ 2,577
II.D	General & Admin.	$ 3,496	$ 4,941	$ 3,839	$ 5,683	$ 3,877	$ 3,200
III.	Income (loss) from Operations	$ 891	$ (134)	$ 2,129	$ (906)	$ 1,573	$ 695
IV.	Other Income	$ 2,717	$ 2,420	$ 1,712	$ 635	$ (502)	$ 1,426
IV.A	Interest Income (loss)	$ 1,741	$ 1,489	$ 913	$ 196	$ 95	$ 132
IV.B	Rents, Other net	$ 976	$ 931	$ 799	$ 439	$ 732	$ 1,294
IV.C	Restructuring charge	$ -	$ -	$ -	$ -	$ (1,329)	$ -
V.	Income (loss) before income taxes	$ 3,608	$ 2,286	$ 3,841	$ (271)	$ 1,071	$ 2,121
VI.	Misc. deductions	$ -	$ -	$ -	$ -	$ -	$ 117
VII.	Income tax expense (benefit)	$ 1,265	$ 798	$ 1,324	$ (95)	$ 424	$ 751
VIII.	Income (loss) before cum. effect of chg in accounting	$ 2,343	$ 1,488	$ 2,517	$ (176)	$ 647	$ 1,253
IX.	Cum. effect of chg in accouting for income taxes	$ -	$ -	$ -	$ 1,748	$ -	$ -
X	Net Income	$ 2,343	$ 1,488	$ 2,517	$ (176)	$ 647	$ 1,370
XI.	Retained earnings @ BOY	$ 28,636	$ 30,979	$ 34,048	$ 36,565	$ 20,137	$ 20,784
XII.	Dividends	$ -	$ -	$ -	$ 18,000	$ -	$ -
XIII.	Retained earnings @ EOY	$ 30,979	$ 32,467	$ 36,565	$ 20,137	$ 20,784	$ 22,154

APPENDIX II

Texas Mexican Railroad Company - Balance Sheet

		1990	1991	1992	1993	1994	1995
I.	Assets Total	$47,012	$46,336	$52,584	$36,537	$37,430	$37,905
I.A.	Current Assets Total	$30,032	$26,808	$29,865	$11,918	$12,359	$9,327
I.A.1.	Cash & Cash Eqvls.	$21,717	$20,428	$18,576	$1,698	$2,619	$2,808
I.A.2.	Investments/1	$0	$0	$3,440	$2,037	$500	$5
I.A.3.	Accounts & Notes receivable/2	$6,676	$4,763	$5,602	$3,482	$5,314	$4,808
I.A.4.	Material & Supplies	$1,529	$1,226	$1,765	$2,075	$1,778	$1,654
I.A.5.	Federal Income Taxes Receivable	$0	$0	$0	$198	$0	$0
I.A.6.	Due from Parent	$0	$215	$81	$512	$708	$0
I.A.7.	Current deferred income taxes	$0	$0	$0	$1,561	$1,054	$0
I.A.8.	Other	$110	$176	$401	$355	$386	$52
I.B.	Properties Total	$16,980	$19,528	$22,719	$23,944	$24,363	$28,308
I.B.1.	Equipment	$15,706	$18,236	$18,920	$20,130	$21,947	$41,995
I.B.2.	Land, Buildings, & Impvmts.	$11,533	$12,217	$17,429	$18,931	$18,931	$2,662
I.B.3.	Less accumulated depreciation	($10,259)	($10,925)	($13,630)	($15,117)	($16,515)	($16,349)
I.C.	Other Assets	$0	$0	$0	$675	$708	$270
II.	Liabilities and Shareholder Equity	$47,012	$46,336	$52,584	$36,537	$37,430	$37,410
II.A.	Current Liabilites Total	$8,045	$5,903	$7,370	$8,185	$8,593	$7,934
II.A.1.	Accounts Payable	$4,209	$3,002	$3,267	$2,822	$3,646	$3,691
II.A.2.	Federal income taxes payable	$1,171	$1,530	$0	$0	$33	$487
II.A.3.	Due to Parent	$2,000	$0	$0	$0	$0	$0
II.A.4.	Other accrued liabilities	$665	$1,371	$4,103	$5,363	$4,914	$3,756
II.B.	Deferred income taxes	$4,507	$4,485	$5,168	$4,734	$4,572	$3,755
II.C.	Contingent liabilities	$0	$0	$0	$0	$0	
II.D.	Shareholder equity Total	$34,460	$35,948	$40,046	$23,618	$24,265	$25,721
II.D.1.	Common stock /3	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500
II.D.2.	Additional paid in capital	$981	$981	$981	$981	$981	$981
II.D.3.	Retained earnings	$30,979	$32,467	$36,565	$20,137	$20,784	$22,240

VERIFICATION

I, Patrick J. Krick, certify under penalty of perjury, that to the best of my knowledge, the foregoing is true and correct. Executed on March 25th, 1996

Patrick J. Krick

VERIFIED STATEMENT

OF

ALLEN W. HALEY, JR.

My name is Allen W. Haley, Jr. I am employed by The Kingsley Group, Inc. of San Francisco, California as a transportation consultant. My office is located at 107 North First Street in Marathon, Texas.

I am presenting this verified statement in connection with the Responsive Application of the Texas Mexican Railway Company ("Tex Mex"). This verified statement discusses the findings of my analysis of congestion on the Union Pacific's ("UP") Brownsville Subdivision, over which line the Burlington Northern/Santa Fe ("BNSF") would operate via trackage rights under the UPSP settlement agreement with BNSF. I will also discuss and compare congestion on that route with congestion on the route over which the Tex Mex seeks to operate -- via Placedo, Victoria, and Flatonia (the traditional Southern Pacific route) to reach Houston.

I began my career in 1973 with the Southern Pacific Transportation Company ("SP") as a telegrapher clerk on the San Antonio Division. I was promoted in 1975 to the position of train dispatcher working in the Houston, Texas dispatching office in various dispatching positions. In 1977 I was promoted by the SP to the position of Power Supervisor -- a position I held until 1979 when I returned to Houston as a train dispatcher.

I worked as a train dispatcher and as a chief train dispatcher on the Houston Division of the Southern Pacific until

1985 when I was promoted to Assistant Regional Transportation Manager in the Houston office. During my time with the Southern Pacific, with the exception of the two years that I was stationed in San Francisco, I worked either as a telegrapher, train dispatcher, chief dispatcher or transportation manager with jurisdiction over the Houston Division of the Southern Pacific. During the time from 1979 until I left the Southern Pacific in 1990, I was directly involved with the daily operation of the SP from Houston, Texas, to Corpus Christi, Texas, via Victoria. During that time I also worked closely with the Texas Mexican Railroad in the coordination of train operations between Houston and Laredo.

Over the years that I worked at the Southern Pacific I tracked and studied the train operations between Houston and Laredo. I was a key participant in the daily planning of operations and in the ongoing review and adjustment of company operating plans between Houston and Laredo.

After leaving the SP in 1990 I worked as an independent consultant working on various studies for the Southern Pacific, the Texas Mexican Railroad and for other rail related companies. My experience with the Tex Mex has continued through to present due to my association with The Kingsley Group working on studies for both the SP and Tex Mex in the analysis of freight operations over the Laredo gateway.

Congestion Analysis Methodology

I have based my analysis of the level of congestion over the UP route in question on the following: (a) a review of the physical characteristics of the line, (b) review and analysis of recorded Centralized Traffic Control ("CTC") data for the route for three sample months in 1995 (March, July and October), and (c) the capacity of the line as measured by the "jam capacity" analysis developed by E.R. Kraft and described in his paper entitled *"Jam Capacity of Single Track Rail Lines."* (Transportation Research Forum Proceedings, Vol. 23, No. 1, 1982). My analysis shows that the UP's Algoa to Placedo line is a congested line, which congestion will reduce BNSF's ability to compete effectively with trackage rights operations over that line. In contrast, the Houston-Flatonia-Placedo route over which Tex Mex will operate is not congested.

Physical Characteristics of UP's Brownsville Subdivision

The UP's Brownsville Subdivision, "the Brownie," extends from Houston at Tower 81 via trackage rights over the ATSF railroad through Alvin and Algoa. At Algoa, "the Brownie" turns west onto trackage of the UP (former St. Louis, Brownsville and Mexico Railway track), following the Texas coast through Angleton, Bay City, Blessing, Bloomington, Sinton, Odem and Robstown. The line continues southwest from Robstown on to Harlingen and Brownsville.

The Algoa to Bay City Segment

Any train moving along the Algoa to Placedo route (or the reverse) must move over the 59.6 mile Algoa to Bay City section, the most congested segment of the Algoa to Placedo route. Overhead trains delayed over this segment would normally be unable to make up time over the rest of the Algoa to Placedo route.

This segment does have CTC (Centralized Traffic Control). There are controlled sidings at Brownie (located on the UP side of Algoa), at Liverpool (located approximately one-half distance between Algoa and Angleton), and at Brazoria, Sweeny and Allenhurst. The siding at Brownie is capable of holding most all trains operated along the line, but the siding at Liverpool is only capable of holding trains that are 100 to 120 cars long, the sidings at Brazoria and Allenhurst can only hold trains of 100 to 110 cars, and the siding at Sweeny, which is 5637 feet long, is only capable of handling trains of less than 100 cars.

This segment of the UP route has the highest volume of trains of any other segment of the route. According to UP's Vice President for Strategic Planning, John Rebensdorf, congestion along this segment results partially from the fact that "all of the chemical business that comes out of the Freeport area funnels into" this segment. (Rebensdorf Deposition, p. 245.) This chemical business produces heavy volumes of train and road switcher operations. However, the volume of overhead UP and ATSF traffic also adds to the problem. For the sample months of

March, July and October, 1995, an average of 14 trains and nine road switchers per day traversed the 23-mile Algoa to Angleton part of this segment, with nine trains per day operating between Angleton and Bay City.

Train delays occur at both ends of the Algoa to Angleton part of this segment. At Algoa, eastbound traffic merges into either the busy north-south ATSF main line that runs from Galveston to Temple or the joint ATSF-UP route between Alvin and Tower 81 on the south side of Houston. Road switchers working in the vicinity of Chocolate Bayou and moving back and forth between Angleton and Chocolate Bayou add to the congestion.

The congestion and delays at Angleton are aggravated by the lack of a siding for the meeting and passing of trains. Trains continuing on the main line must weave their way through this busy terminal and deal with engines working in the yard at Angleton and occupying the main track on the west end of the yard. Further, there are four road switchers utilizing the main line at chemical plants, at the SIT track at Danbury, or running between Algoa, Liverpool and Angleton.

Delays between Angleton and Bay City are largely tied to siding capacity. Longer trains must skip the short Sweeny siding and instead make the run of approximately 25 minutes between the two larger sidings at Allenhurst and Brazoria. Normal meets of opposing trains in this segment can result in delays of 35 minutes for two trains to over one hour if more than two trains are involved. Another short siding at Bay City, which is unable to handle trains in excess of 80 cars, necessitates that longer freights run from Allenhurst to Buckeye (west of Bay City) to make meets. With an average running time of 30 minutes, this can create delays of 40 minutes to over one hour and 20 minutes depending on the number of trains involved.

Trains operating over the line from Algoa to Robstown or Corpus Christi that experience delays in the Algoa to Bay City segment of the line will seldom recover the lost time. Although the remainder of the route is less congested and less likely to produce delays of the magnitude experienced between Algoa and Bay City, track speeds, siding spacing and potential for delays from train meets make the recovery of lost time unlikely.

West Bay City to Bloomington

While there are some conditions likely to cause delays in the vicinity of Bloomington, this segment overall is less congested and less susceptible to delays than the Algoa to Bay City segment of the UP Brownsville Subdivision.

The UP's main track covers a total of sixty-two and one-half miles on this segment. The entire segment is CTC controlled. Speeds along the route are 50 MPH. Sidings along the route are Bay City (5655'), Buckeye (8266'), Blessing (7801') Laward (7760'), Vanderbilt (6680') and Keeran (5686'). While all of these are shown in the UP's timetable as operating sidings, only Buckeye, Blessing and Laward are of sufficient length to handle a train of 100 or more cars. The remaining sidings are of sufficient length for locals or road switchers to clear the main track, but because of their length tend to be used to handle setouts for field blocking or for distributing cars to industries along the route.

In addition to the sidings previously mentioned, there are two connections where foreign trains enter the UP's main. At Lolita (MP 297.5) trains of the Point Comfort Northern enter the UP's main line at a hand-operated switch. These trains operate north from Lolita enroute to Houston. There is an additional industrial lead which enters the UP main track in the vicinity of Lolita. This UP lead services a large SIT facility and the Formosa Plastic Plant at Point Comfort. At Placedo (MP 224.3) trains of the Southern Pacific enter the UP's main track via a power switch to run south toward Harlingen or Corpus Christi. It is here at Placedo where the proposed Tex Mex trackage rights would enter and leave the UP track enroute to Houston.

The Bay City to Bloomington segment of main track sees a total of 7 trains per day on average, with three of those trains (all belonging to SP) operating only between Placedo and Bloomington. In addition to the seven daily trains, the CTC logs show activity from 7 UP road switchers on the main along this route. These road switchers appear to operate in and out of Bloomington to service the industries along the route as well as performing switching the UP's yard at Bloomington.

The possibility for delay along the Bay City to Bloomington segment is most apparent at Bloomington. As there is no "siding" at Bloomington, any train meets must be made either prior to the

SP entering at Placedo or at Inari, which is eighteen miles away on the next route segment. If a westbound BNSF train in excess of 100 cars operating via trackage rights on the line had to meet an opposing (eastbound) train also in excess of 100 cars, the westbound train would have to take the siding at Laward, 28.4 miles east of Bloomington and 43.4 miles east of the siding at Inari. In this situation, the eastbound train could cause a one hour and ten minute delay to the westbound train, even without any other delays and without stopping to setout or pickup at Bloomington. If more than two trains were involved in the meet at Bloomington, the delays could be even greater. While such delays at Bloomington could affect Tex Mex operations over the trackage rights it is seeking, the affects would not be as significant, since a westbound Tex Mex train could wait at Placedo (which is much closer to Bloomington than the Laward siding) for the eastbound train to pass.

West Bloomington to Odem

The UP's route along this segment is partially CTC and partially Track Warrant Control (TWC). CTC extends from West Bloomington to the west end of the siding at Inari, approximately 15 miles. From the west switch at Inari, the main track is non-block system TWC limits to the control signal at Sinton Junction, approximately 44 miles. From Sinton Junction the route is under CTC controls again to Odem, approximately 7.4 miles.

Sidings along this segment are: Inari (7667' controlled siding), Greta (7252' hand-throw switches), Woodsboro (6392' hand-throw switches) and Sinton (11,004 feet controlled siding). Normally the siding at Greta is used for setting out cars and for field blocking cars. Due to its close proximity to Inari, it is seldom, if ever, used for meeting or passing trains.

Normal operations over the West Bloomington to Odem segment involve a total of seven trains per day, consisting on average of four UP trains and three SP trains. In addition, there is one SP road switcher which enters the main track from time to time to move from Sinton Junction to the yard at Sinton siding.

This segment of the UP's route from Algoa to Corpus Christi is much less congested and sees fewer over the road delays than those segments previously discussed. Although delays can and do occur on this segment, proper coordination between the railroads, including operating trains in fleets (numerous trains moving in the same direction at the same time) or with sufficient headroom between trains to permit the meets to take place, will minimize the delay impact.

Odem to Robstown

This segment of the Brownie Subdivision covers 13.2 miles of main track to reach the Tex Mex crossing and interchange in Robstown. There is one siding along the segment, a 7116 foot siding at Robstown. Train movements along this segment will consume approximately 25 minutes from the time they leave Odem until they come to a stop at the Tex Mex connection.

Odem to Corpus Christi

Trains leaving Odem routed to Corpus Christi leave the UP's Brownsville Subdivision at Odem and use the UP's Corpus Christi Subdivision route to run to MP Junction. At MP Junction trains going to the Tex Mex yard leave the UP's line and run along "Savage Lane" to reach the Tex Mex. Normal running time along this segment is approximately thirty-five minutes to reach Savage Lane after leaving Odem.

During normal train operations, there are on average 2.26 trains per day operating on the route between Odem and Corpus Christi. As trains reach the Corpus Christi yard limits, they do have to contend with delays from time to time with engines working at Viola, as well as switch engine movements between the Tex Mex yard and the CCTA yard.

Jam Capacity Along the UP's Brownsville Subdivision

In his "Jam Capacity" paper, E.R. Kraft defines "jam capacity" as:

> the maximum short-term rate at which a line is capable of moving traffic, after jam conditions have developed. It is the theoretical upper limit on the line's capacity, and is determined solely by the physical characteristics of the rail line and trains. The rate of traffic flow cannot be maintained, however, because delays would be so great that nearly all train crews would be expected to exceed their hours of service limitations. This would trigger a "domino effect", resulting in a complete shutdown of the rail line.

The formula for estimating jam capacity is $C=12/T$, where C is the line capacity in each direction in trains per day and T is the running time in hours between adjacent sidings.

As I will show, the Algoa to Placedo route (over which BNSF will operate) is substantially at jam capacity, before the addition of new BNSF traffic. Again, this argues against BNSF being able to be an effective competitor over this section. On the other hand, the Houston-Flatonia-Placedo route will not be at jam capacity, even with the projected Tex Mex traffic.

Again, the Algoa to Bay City segment proves to be the big problem on the UP Brownsville Subdivision. The part of this segment between Liverpool and Brazoria has a jam capacity of 36 total train movements per day, assuming an ideal running time of forty minutes between those two points. Sampling of the CTC logs reveals, however, that the average running time for freight trains between these two points is one hour and forty-nine minutes. If this average running time, instead of an ideal running time, is used for jam capacity analysis, we find a jam capacity between those two points of only 13.2 total train movements per day.

The Algoa to Bay City segment already averages 10.2 total through freight train movements per day across the entire segment, plus an additional 3.5 total train movements per day on the east end of the segment (between Algoa and Angleton). In addition, there are nine switch engines working at various points along this segment at Liverpool, Angleton, Sweeny and Bay City.

From these calculations using the average running times, it can be seen that the Algoa to Bay City segment as a whole is almost daily reaching its jam capacity, with the Algoa to

Angleton part of the line actually exceeding its jam capacity. Common sense and observation of the train operations along this segment confirm these calculations, and indicate that on most days (Sundays excluded) this segment of the line frequently reaches its jam capacity. These peaks in the jam capacity can cause severe delays to freight train operations and hamper the train crews in getting over the road within their hours of service.

The BNSF proposes to operate from Houston (New South Yard) to Corpus Christi or Robstown with only one crew. The frequent "jamming" of this segment, however, indicates that this simply will not work on a consistent basis.

Under ideal conditions (no delays for meets and maintaining exact track speeds across the district with no temporary slow orders), a BNSF train will consume about seven hours to move the distance from New South Yard to Robstown. Assuming a minimal thirty minutes from on-duty time to departure at New South Yard and a quick 30-minute interchange at Robstown, this crew would consume eight hours on such an "ideal" trip. Inevitable delays along the route, particularly between Algoa and Bay City, will quickly drive this running time up to reach or exceed the twelve-hour hour-of-service limit.

While the BNSF could change crews at Algoa to provide the maximum amount of crew time for this segment, it is likely that the BNSF train operation will produce inconsistent transit times across the route. Train delays for opposing traffic, maintenance-of-way windows, switcher working conflicts or bad meets will result in an operation which has no consistent scheduled arrival time at Corpus Christi or Robstown. The inconsistency of the operation along with frequent hours-of-service tie-ups will also result in crew availability problems which will, in turn, make it difficult for BNSF to operate a consistent schedule eastbound to Houston. As the train delays and tie-ups ultimately snowball, the "domino effect" that Mr. Kraft described will ultimately create additional operating problems, delays and increased costs for this operation.

I conducted a jam capacity analysis of the route between Odem and Bloomington to determine the net effect that the introduction of the Tex Mex trains would have on this route segment. Using the same formulas I described above, with a one hour fifteen minute "ideal" running time between the Inari and Sinton sidings, I determined the jam capacity of this segment to be 19.2 total train movements per day.

The average actual running time for freight trains over this segment, as determined from the CTC logs, is one hour and thirty-five minutes. Using this average running time, I calculate the jam capacity for this segment as 15.14 total train movements per day.

In a post-merger scenario, the UP/SP operating plan contemplates 4.6 UP/SP trains per day and 3.7 BNSF trains per day on this segment, for a total of 8.3 trains per day. Adding to this the four trains per day contemplated by the Tex Mex, the total number of train movements per day on this segment would now equal 12.3. This number represents only 64% of the segment's jam capacity under "ideal" running conditions and only 81% of the jam capacity under average conditions.

The Proposed Tex Mex Route from Corpus Christi to Houston

The route Tex Mex proposes to operate over to reach Houston follows the traditional SP route from Corpus Christi over the UP to Placedo and then on SP's tracks to reach Houston. The SP has operated trains from Houston to Victoria and then from Victoria to Corpus Christi for about fifteen years.

After the SP's line from Rosenberg to Victoria was allowed to deteriorate, the SP reached an agreement with its train and engine crews to operate in pool service from Houston to Victoria via Flatonia. Operating daily trains (one in each direction), the SP consistently ran with a single crew from Houston to Victoria. This service continued up until the time that I left the SP in the 1990's. To the best of my knowledge and understanding it still continues today. Problems that have been experienced by SP along this route usually stem from either avoidable delays in Houston or the SP's operation of the Victoria yard; they are not associated with the running time necessary to get from Victoria to Houston or from Victoria to Corpus Christi.

It has been my personal experience during the later years of my employment in Houston that SP could operate connections in a round trip from Victoria to Corpus Christi within twelve hours better than 80% of the time by simply coordinating the moves with UP and supervising the moves to operate within the windows of opportunity along the route. Tex Mex could do the same.

As noted earlier in this statement, some delays may be anticipated in the Bloomington area of the UP's Brownsville Subdivision. Delays in this area could affect the Tex Mex, though not as severely as they would affect BNSF (as discussed above). The possibility of such delays was taken into consideration by Tex Mex in the development of its train schedules and proposed operating plan for the trackage rights it is seeking.

Placedo to Flatonia

Capacity considerations should not present problems for the operations Tex Mex anticipates running between Corpus Christi or Robstown and Flatonia. This route utilizes the UP's Brownsville Subdivision to reach the SP line at Placedo. Since the Brownsville Subdivision has been examined above, I will describe this route segment beginning at Placedo.

The line from Placedo to Flatonia is 86.5 miles of non-block system, DTC (Direct Traffic Control) limits. A single siding is located on this route at Thomaston, 13.4 miles north of Victoria.

I calculate jam capacity for the part of this segment from Flatonia to Thomaston as 24 total train movements per day. UPSP plans to operate only 1.9 trains per day over this segment between Victoria and Flatonia. Even when Tex Mex adds its four daily trains, total train movements per day will still be well below the jam capacity of the route.

Flatonia - Glidden - West Junction

At Flatonia, the SP's Port Lavaca Branch intersects the SP's Glidden Subdivision. The connecting track between the Victoria line to the Flatonia line is in the southwest quadrant of the crossing. This will require Tex Mex to pull into the yard at Flatonia and run around the train (that is, move the locomotives from one end of the train to the other) before proceeding on to Houston. This is the process that SP currently goes through with their Houston-Victoria manifest (HOVIM) and Victoria-Houston manifest (VIHOM) trains. Tex Mex contemplates continuing this process until it has constructed the connection discussed in R.J. Spear's verified statement.

Between Flatonia and West Junction there is some CTC (from West Junction to the West Switch at the Eagle Lake siding) and some DTC. Sidings along the route are Weimer (10,779'), Glidden (16,000'), Eagle Lake (10,016'), Lissie (approximately 8,600'), East Bernard (approximately 9,000') Tower 17 (4,581'), Harlem (6,477'), Sugar Land (7,646') and Missouri City (6,236'). Siding spacing is such that running time between sidings is between ten and fifteen minutes. In addition to this siding capacity, SP also has rights to operate trains westbound over the Bellaire Line from Bellaire Junction in Houston to Eagle Lake. This single track mainline is utilized to run predominantly westbound trains to minimize meets and passes between West Junction and Eagle Lake.

To estimate the jam capacity of the Flatonia to West Junction segment, I chose as a critical section that portion between the sidings at East Bernard and Sugar Land. Based on an average running time of 40 minutes between the two points, the jam capacity is 36 total train movements per day. The UPSP operating plan contemplates 18.4 total trains per day over this segment. Tex Mex's four trains per day would bring the total to 22.4 movement per day, which is well below the jam capacity of this segment.

Conclusion

My review of the route proposed by Tex Mex for access to the Houston area shows that the route from Corpus Christi to West Junction at Houston is not congested and can readily handle the addition of the traffic Tex Mex anticipates sending over that line. On the other hand, the route BNSF will travel on the UP's Brownsville Subdivision is currently quite congested, particularly in the Algoa to Bay City segment of that route. The addition of BNSF traffic to that route will make it beyond jam capacity on that segment on an almost daily basis. BNSF's proposed trackage rights operation does not appear to have factored in the congestion and delays that are to be expected on the Brownsville Subdivision.

VERIFICATION

I, Allen W. Haley, Jr., certify under penalty of perjury the foregoing is true and correct. Excuted on March 28, 1996.

Allen W. Haley Jr.

VERIFIED STATEMENT

OF

R. J. SPEAR

REGARDING ENVIRONMENTAL DOCUMENTATION

My name is R. J. SPEAR. I am Vice President of Operations and General Manager of the Texas Mexican Railway Company ("Tex Mex"), headquartered at 1200 Washington St, Laredo, Texas 78042. I am submitting this statement in order to certify that Tex Mex's Responsive Application meets the criteria for exemption from environmental documentation set forth at 49 CFR § 1105.6(c)(2).

I am separately submitting a verified statement in which I describe in detail Tex Mex's operating plan for the trackage rights being requested in the responsive application. In sum, Tex Mex is seeking trackage rights over Union Pacific ("UP") and Southern Pacific ("SP") lines between Robstown and Corpus Christi, TX and Houston, TX and Beaumont, TX, and is seeking certain terminal trackage rights within the Houston Terminal area. The trackage rights sought by Tex Mex are limited in scope, and Tex Mex anticipates similarly modest operations over those trackage rights. Operations by Tex Mex over these trackage rights will not result in any significant changes in carrier operations, as defined by 49 CFR § 1105.6(c)(2).

Tex Mex is seeking to operate via trackage rights over the UP's Brownsville line from Robstown to Placedo (and over the UP's line from Corpus Christi to Odem), over the SP's Port Lavaca line from Placedo to Victoria and then on to Flatonia, over the SP's Glidden line from Flatonia to Houston (West Junction), over certain SP and Houston Belt & Terminal Railroad Co. ("HB&T") lines through the Houston Terminal, and over either the UP or SP line from Houston to Beaumont.

Tex Mex's anticipated operation over these lines consists of, at most, an average of two and a half trains per day in each direction: one scheduled manifest train per day each way, one scheduled intermodal train per day each way, and one unit grain train three or four days per week. As indicated in our operating plan, traffic volumes at the beginning of the anticipated operation may not support any more than one scheduled mixed manifest and intermodal train per day in each direction, plus the grain trains. Thus, this operation will not result in an increase of at least eight trains per day on any segment of rail line affected by Tex Mex's responsive application.

Based upon the diversion studies performed for Tex Mex and the scope of the intended Tex Mex operation over these trackage rights, I also certify that this operation will not result in an increase in rail traffic (measured in gross ton miles annually) of at least 100 percent on any of these segments of rail line. Over much of the proposed route (Robstown and Corpus Christi to Houston), Tex Mex will in part be stepping into the shoes of the SP, since a combined UPSP plans to reduce the number of trains over some of these line segments due to the service consolidations to be effected by a UP/SP merger.

The train and traffic density charts included by UPSP in the primary Application provide the following information about pre-merger densities on the affected line segments: Between Robstown and Odem, UP and SP have collectively operated seven trains per day carrying eight million annual gross tons. Between Corpus Christi and Odem, UP and SP have collectively operated 4 trains per day carrying six million annual gross tons. Between Odem and Placedo, UP and SP have collectively operated nine trains per day carrying 12 million annual gross tons. Between Placedo and Victoria, SP has operated four trains per day carrying five million annual gross tons. Between Victoria and Flatonia, SP has operated four trains per day carrying eight million annual gross tons. Between Flatonia and Houston, SP has operated 15 freight trains per day carrying 32 million annual gross tons. Between Houston and Beaumont, UP has operated 13 trains per day carrying 22 million annual gross tons, and SP has operated 14 trains per day carrying 30 million gross tons.

Based on the studies performed for Tex Mex, we anticipate that Tex Mex will carry no more than 1.5 million annual gross tons on any of the line segments between Corpus Christi and Robstown and Houston, and substantially less annual gross tons on the line segment between Houston and Beaumont. As can readily be seen, the anticipated Tex Mex operation does not approach the regulatory threshold of a 100 percent increase in rail traffic.

The operation sought by Tex Mex in its responsive application will, similarly, not result in an increase in any rail yard activity of at least 100 percent (measured by carload activity). In Houston and in Beaumont, the rail yard activity that will be associated with Tex Mex operations will be miniscule in comparison to existing yard operations by the incumbent carriers in those locations. At Tex Mex's Corpus Christi yard, we do not anticipate any increase in activity and, in fact, there is likely to be some decrease in activity at this yard after the UPSP merger, even if Tex Mex is granted the trackage rights it is seeking. As explained in the verified statement I am submitting with respect to the Tex Mex's operating plan, Tex Mex will seek to purchase or lease the SP's Glidden yard. Since this yard would only be used by Tex Mex for occasional block swapping of rail cars and to clear the UPSP main track when necessary, use of the yard would be incidental to Tex Mex's limited train operations on the SP's Glidden line. While the SP yard itself is currently inactive, the yard is directly adjacent to an active SP siding which is in turn adjacent to the main track. The Glidden yard was used by SP for storage and blocking of rail cars containing plastics until about a year ago, and when it was so used SP did daily switching of cars within the yard.

Tex Mex's responsive application will not cause diversions from rail to motor carriage. On the contrary, the purpose of the responsive application is to provide additional rail competition for shippers, so as to prevent diversions of traffic from rail to trucks.

It will not be necessary for the Tex Mex to construct any sidings, connections or yards in order to implement the trackage rights that it is seeking. However, we do contemplate some construction projects in order to improve the efficiency of the operation. In the event that these trackage rights are granted to the Tex Mex, Tex Mex would seek to construct (1) a turnout and connection between the Tex Mex and the UP at Robstown and (2) a turnout and connection at Flatonia between the SP's Victoria Line and Glidden Line. Depending on the levels of traffic and our experience with these operations, Tex Mex may also, at a later time, seek to construct an additional siding between Placedo and Flatonia or seek to improve the facilities at the Glidden yard. In accordance with the STB's Decision No. 14 in this proceeding, Tex Mex will, if it is granted the trackage rights it is seeking, thereafter file the necessary applications and environmental information with respect to construction projects.

For all of the reasons discussed above, I certify on behalf of the Tex Mex that Tex Mex's Responsive Application meets the criteria for exemption from environmental documentation set forth at 49 CFR § 1105.6(c)(2).

I, R. J. SPEAR, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement Regarding Environmental Documentation.

Executed on March 27, 1996.

R. J. Spear

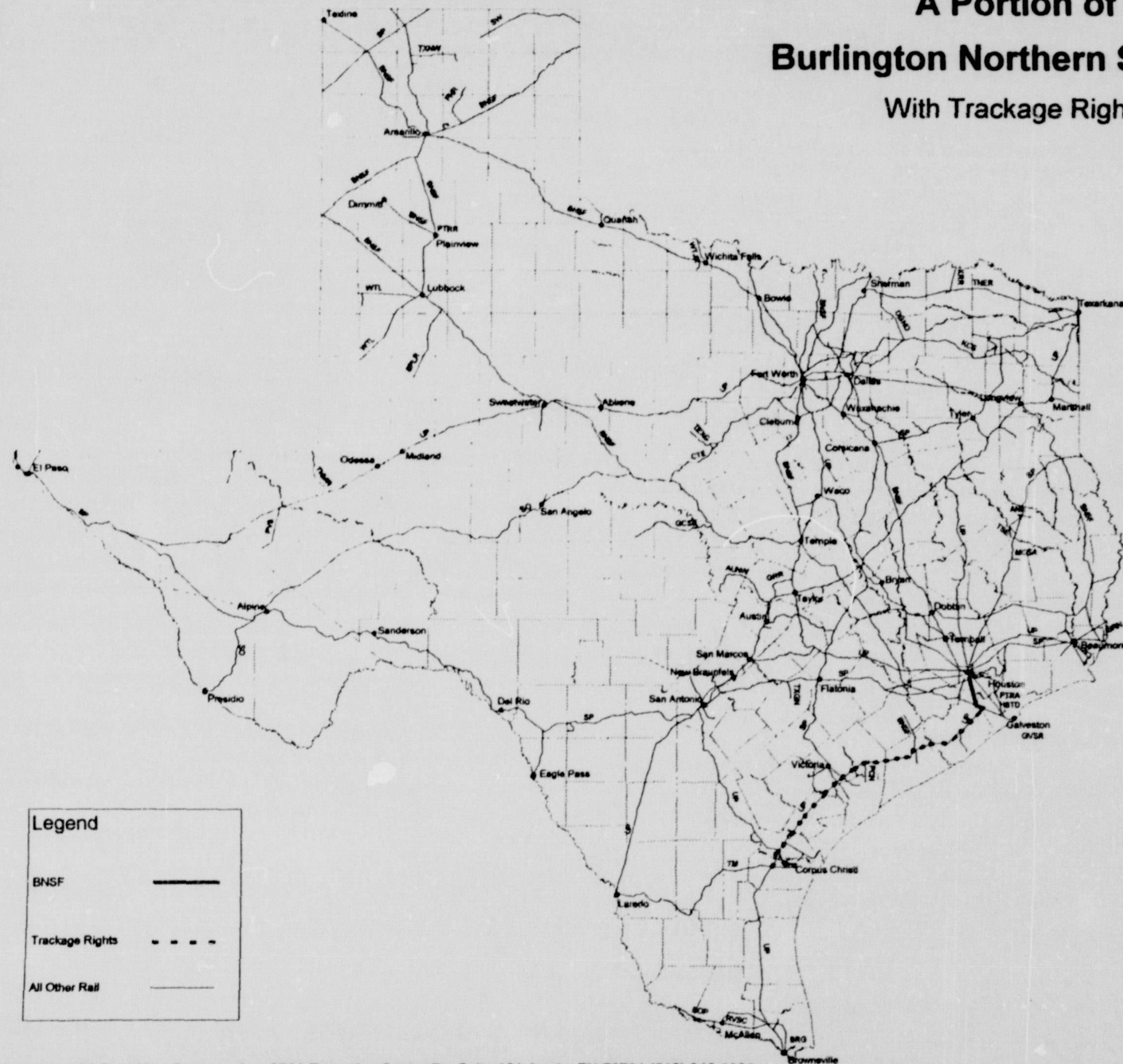
R. J. SPEAR

EXHIBIT 1

MAP

SECTION 1180.6(a)(6)

A Portion of
Burlington Northern Santa Fe
With Trackage Rights



Reporting	Name
ANR	Angelina & Neches River
AUNW	Austin & Northwestern
BNSF	Burlington Northern & Santa Fe
BOP	Border Pacific
BRG	Brownsville & Rio Grande International
CCTA	Corpus Christi Terminal Assoc
CTE	Cen-Tex
DART	Dallas Area Rapid Transit
DGNO	Dallas, Garland & Northeastern
FWDB	Fort Worth & Dallas Belt
FWDR	Fort Worth & Dallas
FWWR	Fort Worth Western
GCSR	Gulf Colorado & San Saba
GRR	Georgetown
GVSR	Galveston
HBTD	Houston Belt & Terminal
KCS	Kansas City Southern
KRR	Kiamichi
LSRR	Lone Star
MCSA	Moscow, Camden & San Augustine
PCN	Point Comfort & Northern
PNR	Panhandle Northern
PTRA	Port Terminal RR Assoc
PTRR	Plainview Terminal Railroad
PVS	Pecos Valley Southern
RSS	Rockdale, Sandow & Southern
RVSC	Rio Valley Switching Company
SO	South Orient
SP	Southern Pacific
SPLR	Southern Plains Lamesa
SRN	Sabine River & Northern
SW	Southwestern
TCT	Texas City Terminal
TM	Texas Mexican Rwy
TN	Texas Northern
TNER	Texas Northeastern
TNMR	Texas-New Mexico
TSE	Texas South-Eastern
TXEC	Texas Central
TXGN	Texas, Gonzales & Northern
TXNW	Texas North Western
TXOR	Texas & Oklahoma
TXTC	Texas Transportation
UP	Union Pacific
WRRC	Western
WTJR	Wichita, Tillman & Jackson
WTL	West Texas & Lubbock

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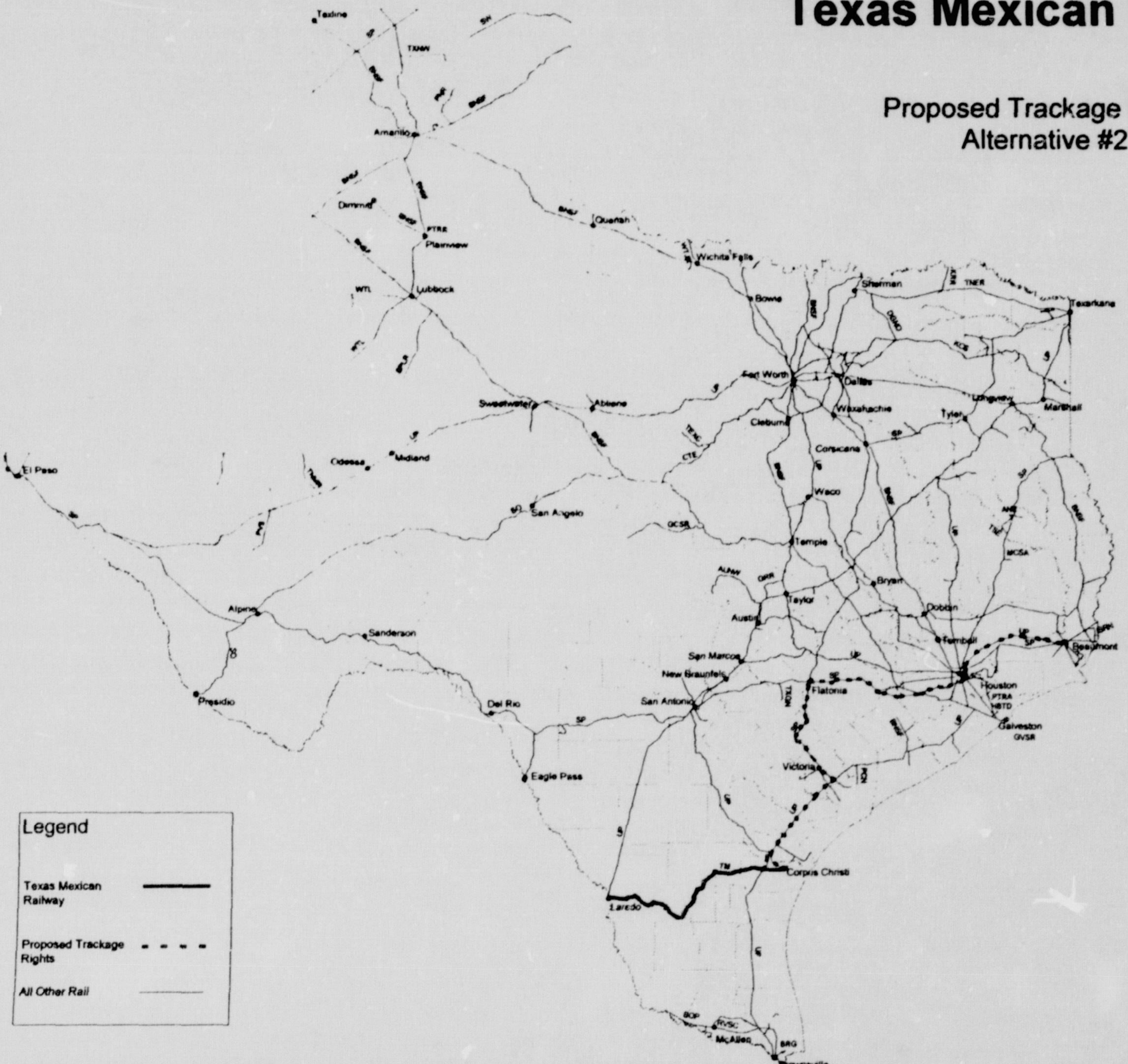
Texas Mexican Railwa,

Proposed Trackage Rights
Alternative #2



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PNR	Panhandle Northern
PTRA	Port Terminal RR Assoc
PTRR	Plainview Terminal Railroad
PVS	Pecos Valley Southern
RSS	Rockdale, Sandow & Southern
RVSC	Rio Valley Switching Company
SO	South Orient
SP	Southern Pacific
SPLR	Southern Plains Lamesa
SRN	Sabine River & Northern
SW	Southwestern
TCT	Texas City Terminal
TM	Texas Mexican Rwy
TN	Texas Northern
TNER	Texas Northeastern
TNMR	Texas-New Mexico
TSE	Texas South-Eastern
TXEC	Texas Central
TXGN	Texas, Gonzales & Northern
TXNW	Texas North Western
TXOR	Texas & Oklahoma
TXTC	Texas Transportation
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WRRC	Western
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WTL	West Texas & Lubbock

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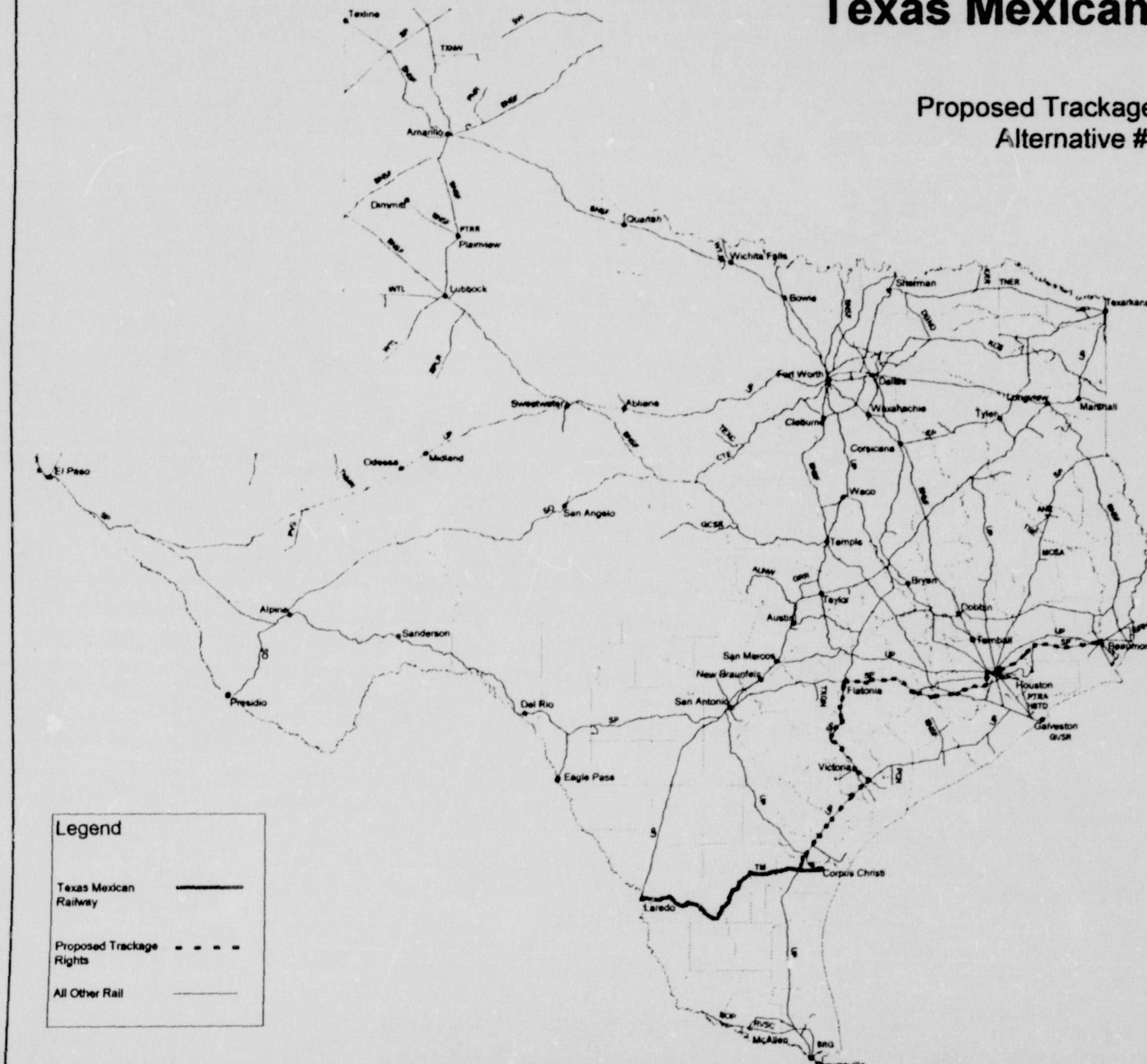
Texas Mexican Railwa,

Proposed Trackage Rights
Alternative #1



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UP	Union Pacific
WRRC	Western
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WTL	West Texas & Lubbock

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EXHIBIT 2

AGREEMENTS - EXHIBIT 2

SECTION 1180.6(a)(7)(ii)

TRACKAGE RIGHTS AGREEMENT BETWEEN HOUSTON AND ROBSTOWN/CORPUS CHRISTI, TEXAS AND BETWEEN HOUSTON AND BEAUMONT, TEXAS

This trackage rights agreement ("Agreement") is made and entered into this ___ day of ______, 19___, by and between Union Pacific Railroad Company and Southern Pacific Transportation Company (hereinafter collectively referred to as "UP/SP") and The Texas Mexican Railway Company (hereinafter referred to as "Tex Mex").

Whereas, the Surface Transportation Board, in its decision in Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Trans. Co., St. Louis Southwestern Rw. Co., SPCSL Corp. and The Denver and Rio Grande Western Corp., Finance Docket Number 32760, ("UP/SP Decision") approved the merger of the Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Corporation ("SP"), but conditioned said merger on the grant of the trackage rights and other conditions as set forth further in the agreement entered into by UP and SP and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (collectively, "BN/Santa Fe") dated September 25, 1995 as supplemented by the Supplemental Agreement between UP and SP and BN/Santa Fe dated November 18, 1995, (collectively, the "BN/Santa Fe Agreement") both appearing in Volume I of the Railroad Merger Application, UP/SP-22 through UP/SP-28, as supplemented by UP/SP-36, (collectively, the "UP/SP Railroad Merger Application"); and

Whereas, the Surface Transportation Board further conditioned said merger on, among other things, the grant of trackage rights and other conditions as set forth further in the Responsive Application of The Texas Mexican Railway Company, dated March 29, 1996, (TM-__); and

Whereas, UP/SP desires to provide Tex Mex with the rights requested in said Responsive Application; and

Whereas, Tex Mex is agreeable to receiving said rights and desires to conduct operations over said rights under the terms and conditions herein and hereafter set forth,

Now, therefore, in consideration of the premises and covenants and agreements herein expressed, the UP/SP and Tex Mex (collectively referred to herein as the "Parties") hereto covenant and agree as follows:

Section 1. Grant of Rights.

(a) UP/SP hereby grants trackage rights to Tex Mex to conduct railroad operations for trains, locomotives, loaded and empty rail cars (including intermodal equipment) cabooses and end-of-train devices ("ETDs"), and other rail equipment (collectively, "Equipment") with its own crews, in either direction, over the Trackage Rights Lines, as hereinafter defined, under the terms and conditions contained herein.

(b) The rights granted herein are for rail traffic of all kinds, carload and intermodal, for all commodities. The rights granted Tex Mex hereunder include the right to move its trains, engines and cars in through service over the Trackage Rights Lines, to store cars, furnish local service, and switch or serve industries thereon or spur tracks leading therefrom, and to act as agent for or to handle or transport the business of any other railroad thereover.

(c) UP/SP shall have the right to admit any other railroad company to the use of all or any part of Trackage Rights Lines except upon written notification to Tex Mex, provided such use shall not unreasonably hinder or obstruct Tex Mex in the enjoyment of the rights granted it hereunder.

Section 2. Management and Operations.

(a) The management, operations (including dispatching) and maintenance of the Trackage Rights Lines shall at all times be under the exclusive direction and control of UP/SP. UP/SP will have the power to make reasonable changes to the management and operations on and over the Trackage Rights Lines as may be necessary, expedient or proper for the operations thereof intended.

(b) UP/SP will give Tex Mex trains utilizing the Trackage Rights Lines pursuant to this Agreement equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable UP/SP or BN/Santa Fe traffic.

(1) Tex Mex agrees that in its use of the Trackage Rights Lines, it will comply with the operating rules and regulations of UP/SP, and that the movement of Tex Mex's trains, locomotives, cars and equipment over the Trackage Rights Lines shall at all times be subject to the orders of UP/SP, provided, however, that Tex Mex may call for arbitration, pursuant to Section 12 of this Agreement, concerning any such operating rule or regulation that Tex Mex deems unreasonable.

(2) Operations of each party upon the Trackage Rights Lines shall be conducted with due regard for, and without undue interference with, the rights of the other party.

(c) If, by any reason of mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of UP/SP or Tex Mex becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by UP/SP on the Trackage Rights Lines, or if in emergencies crippled or otherwise defective cars are set out of UP/SP's or Tex Mex's trains on the Trackage Rights Lines (hereinafter referred to as a "Movement Failure"), the party experiencing a Movement Failure on the Trackage Rights Lines shall give notice by telephone to the other party, UP/SP or Tex Mex, as the case may be. The party experiencing Movement Failure shall take all reasonable actions to clear the Trackage Rights Lines to permit the other party to operate on the Trackage Rights Lines. The party not experiencing a Movement Failure may, upon request or, provided the party experiencing Movement Failure fails to take reasonable efforts to clear the Trackage Rights Lines, upon the expiration of [ ] hours from the time notice of a Movement Failure was given, has the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, or to properly move the disabled equipment, and party experiencing the Movement Failure shall reimburse the other party for the reasonable cost of rendering any such assistance.

(d) Whenever Tex Mex's use of the Trackage Rights Lines requires rerailing, wrecking service or wrecking train service, UP/SP may perform such service, including the repair and restoration of roadbed, track, and structures. The cost and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 9 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by Tex Mex at the time of such wreck shall be promptly picked up by Tex Mex or delivered to Tex Mex and all cost and expense therefor shall be paid by Tex Mex in accordance with the provisions of Section 9 hereof.

(e) Whenever UP/SP's use of the Trackage Rights Lines requires rerailing, wrecking service or wrecking train service, UP/SP shall promptly perform such service, including the repair and restoration of roadbed, track, and structures at its sole cost and risk.

Section 3. Compensation, Invoices and Payment.

(a) The compensation for operations under this Agreement shall be set at the levels shown in the following table:

Table I

Trackage Rights Compensation
(mills per ton-mile)

Intermodal and Carload	3.1
Bulk (67 cars or more of one commodity in one car type)	3.0

(b) These rates shall apply to all equipment moving in a train consist including locomotives. The rates shall be escalated or decreased in accordance with the procedures described in Section 4 of this Agreement. UP/SP shall be responsible for maintenance of its line in the ordinary course including rail relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by the UP/SP under this Agreement.

(c) Within 30 days after the end of each month (commencing with the month of August, 1996), Tex Mex shall furnish to UP/SP a certified statement of the number of cars, loaded and empty, moved by Tex Mex during the preceding month (including a separately stated number of those cars which moved under the "bulk" rate as that rate is used in the compensation term in the subsection (a) of this section) together with a proposed invoice based upon the same. UP/SP shall inspect, endorse and return the invoice to Tex Mex within 30 days. Tex Mex shall pay the invoice within 30 days of receipt. In the event UP/SP disputes the proposed invoice in any respect, Tex Mex shall pay the amount of the invoice within 30 days of its receipt and UP/SP shall seek to resolve the dispute in accordance with Section 12 of this Agreement. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party hereto.

Section 4. Compensation Adjustment.

(a) All trackage rights charges under this Agreement shall be subject to adjustment annually beginning as of the effective date of this Agreement to reflect the increases or decreases in Rail Cost Adjustment Factor, adjusted for changes in productivity ("RCAF-A") published by the Surface Transportation Board or successor agency or other organizations. In the event the RCAF-A is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration under Section 12 of this Agreement.

(b) Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 12 of this Agreement. It is the intention of the parties that the rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

Section 5. Maintenance.

UP/SP shall keep and maintain the Trackage Rights Lines at no less than the track standard designated in the current timetable for the respective lines, and in no event at a level less than reasonably required to accommodate UP/SP's and Tex Mex's use of the Trackage Rights Lines. UP/SP shall not change the track standard designation in its timetable for the respective lines without written approval of Tex Mex. UP/SP and Tex Mex agree to establish a joint service committee to regularly review operations over the Trackage Rights Lines.

Section 6. New Facilities.

(a) Tex Mex and UP/SP will conduct a joint inspection of the Trackage Rights Lines to determine the necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by Tex Mex to the extent such facilities are not reasonable or necessary to implement the trackage rights granted under the BN/Santa Fe Agreement, contemplated in UP/SP Railroad Merger Application, or the Comments of BN/Santa Fe filed in STB Docket No. 32760, including the verified statements filed therewith, BN/SF-1 (collectively, "BN/Santa Fe Comments"). The cost of facilities reasonable or necessary to implement the trackage rights granted under the BN/Santa Fe Agreement, contemplated in UP/SP Railroad Merger Application, or the BN/Santa Fe Comments shall be born by BN/Santa Fe or UP/SP as provided for in the BN/Santa Fe Agreement. If UP/SP decides to utilize such facilities the cost of which is borne by Tex Mex, UP/SP shall have the right to do so upon payment to Tex Mex of one-half (1/2) the original cost of constructing such facilities.

(b) UP/SP shall not oppose the application of Tex Mex, if any, for authority to construct facilities at Robstown, TX and Flatonia, TX as contemplated by the operating plan Tex Mex submitted in F.D. No. 32760.

Section 7. Trackage Rights Lines Defined.

The term "Trackage Rights Lines" means:

(a) The following mainlines:

(1) The UP line between Robstown, TX and Placedo, TX;

(2) The UP line between Corpus Christi, TX and Odem, TX via Savage Lane to Viola Yard on the UP;

(3) The SP line from Placedo, TX to Victoria, TX;

(4) The SP line between Victoria, TX and Flatonia, TX;

(5) The SP line between Flatonia, TX and West Junction, TX;

(6) In the alternative:[19] (a) The UP line from Gulf Coast Junction, TX, through Settegast Junction, TX to Amelia, TX ("UP Mainline Option"); or (b) The SP line from Tower 87 to Amelia, TX ("SP Mainline Option"); and

(7) The joint UP/SP line from Amelia to Beaumont, TX and the connection with KCS at the Neches River Draw Bridge in Beaumont.

(b) The following trackage rights in Houston over SP lines:

(1) The SP line from West Junction through Bellaire Junction to Eureka at SP Milepost 5.37 (Chaney Junction, TX);

(2) The SP line from SP Milepost 5.37 (Chaney Junction, TX) to SP Milepost 360.7 near Tower 26 via the Houston Passenger station;

(3) The SP line from SP Milepost 5.37 (Chaney Junction, TX) to SP Milepost 360.7 near Tower 26 via the Hardy Street yard;

(4) If the UP/SP elects for Tex Mex to operate over the UP Mainline Option, as defined above, the SP line from Milepost 360.7 near Tower 26 to the connection with the Houston Belt & Terminal Railway Company ("HB&T") at Quitman Street near SP Milepost 1.5; and

(5) If the UP/SP elects for Tex Mex to operate over the SP Mainline Option, as defined above, the SP line from Tower 26 through Tower 87 to the SP mainline to Amelia.

(6) The SP line from West Junction to the connection with the Port Terminal Railway Association ("PTRA") at Katy Neck (GH&H Junction), TX, by way of Pierce Junction.

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[19] Tex Mex can operate efficiently over either the UP Mainline Option or the SP Mainline Option. Tex Mex asks the Board to require Applicants to elect which option they prefer Tex Mex to operate.

III. **Terminal Trackage Rights In Houston Over HB&T.**

Terminal trackage rights pursuant to 49 U.S.C. § 11103 over the following terminal tracks of HB&T:[20]

A. If the UP Mainline Option is utilized, the HB&T line from Quitman Street to the HB&T's connection with UP at Gulf Coast Junction.

B. The HB&T line from its connection with the SP line at T. & N.O. Junction, TX (Tower 81) to HB&T's connection with UP at Settegast Junction.

IV. **Terminal Facilities in the Houston Terminal Area.**

The right to use the following yards and other terminal facilities of SP, UP and HB&T:

A. SP's Glidden (TX) Yard.[21]

B. Interchanges with PTRA at the North Yard, Manchester Yard and Pasadena Yard in Houston, TX.

C. Interchanges with HB&T at HB&T's New South Yard.

Section 8. Ownership Rights.

The Trackage Rights Lines are owned by UP/SP and the grant of the rights provided for in this Agreement does not, and is not intended to, convey to Tex Mex any ownership interest therein.

Section 9. Liability

The responsibility of the parties hereto as between themselves for loss of, damage to and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting from, arising out of, incidental to or occurring in connection with this Agreement shall be determined as follows:

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[20] Section 1180.4(c)(6) requires that all "directly related applications" be filed concurrently with the responsive application. The directly related Application for Terminal Trackage Rights pursuant to Section 11103 is submitted with this Responsive Application.

[21] Tex Mex is willing to purchase or lease this yard, at UP/SP's option. The yard is presently inactive.

(a) Whenever any loss of, damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, only one party hereto being involved, that party so involved shall assume all liability therefor and bear all cost and expense in connection therewith and shall forever protect, defend, indemnify and save harmless the other party and its officers, agents and employees from and against any such liability, cost and expense.

(b) Whenever any such loss of, damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment, of or in the account of both UP/SP and Tex Mex being involved, UP/SP and Tex Mex shall separately assume and bear all liability, cost and expense for loss of or damage to said trains, locomotives, cars (including without limitation lading) and equipment operated by each of them and for injury to and death of each of their officers, agents and employees and persons in each of their care and custody, and UP/SP and Tex Mex further agree that all liability, costs and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to and destruction of all other property (including without limitation the tracks covered by this Agreement), so occurring shall be borne equally. Whenever any liability, cost or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party (Party 1) shall forever protect, defend, indemnify and save harmless the other party (Party 2) and Party 2's officers, agents, employees and corporate affiliates from and against that liability, cost and expense assumed by Party 1 and apportioned to Party 1.

(c) In the event both parties are liable under the provisions of this Section 9 for any damages and such liability is settled by a voluntary payment of money or other valuable consideration by one of the parties jointly liable therefor, such party shall secure the release of both parties, by name, from liability. Neither party shall enter into any such settlement requiring a payment of more than Ten Thousand Dollars ($10,000.00) without first seeking the authority of the other party. Failure of the settling party to seek or secure authority from the other party prior to settlement shall not relieve the other party of its obligation to pay its share of the settlement amount unless the settling party's failure to seek or secure such authority actually prejudiced the other party, and then only to the extent of such prejudice.

(d) If traffic on the tracks included in Trackage Rights Lines, or business thereon, is at any time interrupted or delayed by derailments or from any cause, other than the willful act of either party, then and in such case neither party shall have any claim against the other party for loss or damage of any kind caused by or resulting from such interruption or delay.

(e) Tex Mex shall be a named insured on any insurance policies UP/SP obtains covering damage to the Trackage Rights Lines and any liability under this Agreement.

Section 10. Investigation.

(a) Each party will investigate the injuries, property damage and losses sustained by its own employees and persons in its care or custody and adjust or defend any claims by such employees or persons. Other claims, injuries, property damages and losses shall be investigated, adjusted and defended by the party whose train, locomotives, cars or equipment is involved in the accident from which the injury, loss or claim arises (excluding, however, freight loss and damage claims filed in accordance with [Section 11707 of the Interstate Commerce Act]).

(b) In the event a claim or suit is asserted against UP/SP or Tex Mex which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

(c) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions of Section 9 hereof, except that salaries or wages of full-time claim agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(d) It is understood that nothing in this Section 10 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Section 9 hereof.

Section 11. Labor Claims.

(a) Each party agrees to indemnify and hold harmless the other party against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of such party's employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

Section 12. Arbitration.

(a) If at any time a controversy arises between the parties hereto with respect to their rights or duties under this agreement upon which the parties are unable to agree, the question in dispute shall be submitted to a board of arbitrators consisting of three competent, disinterested persons.

(b) The party desiring such arbitration shall give written notice thereof to the other party, setting forth definitely the point in dispute and naming the person selected by the moving party as arbitrator. The party upon whom such notice shall be served shall within fifteen (15) days thereafter, give written notice to the moving party, naming the person selected as arbitrator by the party upon whom the notice shall be served. The two arbitrators thus chosen shall select a third arbitrator. If the party upon whom notice has been served of the selection of an arbitrator shall fail to notify the moving party of the name of the arbitrator selected by the party thus served within fifteen (15) days of the service of such notice, or if the two arbitrators first selected fail within fifteen (15) days after their selection to agree upon the third arbitrator, the second arbitrator or the third arbitrator, as the case may be, shall be appointed by the then Judge of the United States District Court in which the City of Laredo, Texas, shall be situate and upon the application, in the one case, of the moving party and in the other case, of either party. Five (5) days' written notice of such application shall be given by the party making such application to the other party. If such second arbitrator be appointed by said Judge, as herein provided, the two arbitrators shall thereupon select a third arbitrator, and if they fail to agree upon such third arbitrator within fifteen (15) days after the appointment of the second arbitrator, said Judge, on like notice and application as above provided, shall appoint the third arbitrator.

(c) The board of arbitrators chosen as aforesaid shall give to the parties to the controversy five (5) days' written notice of the time and place of the hearing, and shall give said parties an opportunity to be heard upon the question or questions in controversy, and the board of arbitrators shall promptly hear and determine such questions. Their decision shall be in writing. The determination of the board of arbitrators, or of the majority of them, on any question submitted, shall be final and conclusive, and the parties to such arbitration shall abide such decision and perform the same.

(d) Each party to the arbitration shall pay the expense of its own arbitrator; and the cost and expense of the third arbitrator and any other cost of the arbitration shall be borne equally by such parties.

Section 13. Default.

(a) In the event of any substantial failure on the part of either party to perform its obligations under this Agreement, and its continuance in such default for a period of 60 days, the other party shall have the right, [at its option and subject to any necessary regulatory approvals, after first giving 30 days' written notice thereof by personal service or by certified mail, and notwithstanding any waiver by the Owner of any prior breach thereof, to terminate the use of the Joint Trackage by the User and in the exercise of such right, the Owner shall not impair its rights under this Agreement or any rights of action against the User for the recovery of damages. If User has invoked arbitration under Section 11 on the issue of whether a default has occurred, Owner shall not exercise its rights under this Section 12 until the arbitrators have rendered a decision and User has not complied with such decision within 30 days.]

Section 14. Term.

(a) This Agreement shall be effective as of [ ], 1996 ("Commencement Date") and shall continue in full force and effect for a period of 99 years from said Commencement Date; provided however, that either party shall have the right at any time after the Commencement Date to petition the ICC for modification of any of the Agreement's terms.

(b) Notwithstanding the foregoing, UP/SP may seek proper regulatory authority to discontinue operations over or to abandon the Trackage Rights Lines, or any portion thereof, during the term of this Agreement or any renewals thereof. [Should UP/SP seek such regulatory authority, Tex Mex agrees not to oppose or in any way interfere with UP/SP's attempt to secure and to exercise such authority, provided, however, that Tex Mex's efforts to purchase all or part of the Trackage Rights Lines under Title 49 of the U.S. Code or any successor provisions shall not be considered as opposition or interference.] [requirement to provide alternate connections, per provision in BN/Santa Fe Settlement Agreement] UP/SP shall not seek regulatory authority for discontinuance of operations over or abandonment of such Trackage Rights Lines, or any portion thereof, without first giving Tex Mex sixty (60) days' notice of UP/SP's intent to do so. For the purpose of this provision, notice by UP/SP to Tex Mex that it has placed such Trackage Rights Lines, or any portion thereof, on its System Diagram Map as defined in 49 C.F.R. § [ ] or successor, is not notice of UP/SP's intent to seek regulatory authority for discontinuance of operations over or abandonment of such Trackage Rights Lines, or any portion thereof.

(c) Subject to approval of any governmental body having competent jurisdiction, Tex Mex may discontinue operations over all or any part of the Trackage Rights Lines at any time, and upon such discontinuance by Tex Mex, all right of Tex Mex in and to all or any part of the Trackage Rights Lines so abandoned by Tex Mex shall cease and this Agreement shall thereupon be terminated as to such discontinued portion of the Trackage Rights Lines.

(d) [Unless and until such time as Tex Mex and UP/SP have both discontinued operations over the Trackage Rights Lines, or any portion thereof, nothing in this Section shall modify the rights and obligations of the parties under this Agreement.

(e) The provisions of this Section shall also apply in the event no regulatory authority is required to discontinue operations over or to abandon the Trackage Rights Lines or any portion thereof.

Section 15. Successors and Assigns.

This Agreement shall inure to the benefit of and be binding upon the parties hereto, and the successors or assigns of substantially all the rail properties of a party hereto, unless and until terminated as aforesaid, except that termination of this Agreement shall not relieve or release any party hereto from any obligations assumed, or from any liability which may have arisen or been incurred by any party under the terms of this Agreement prior to the termination hereof. No party hereto shall assign or transfer this Agreement or any of its rights hereunder to a party without obtaining the prior written consent of the other party.

Section 16. Notice.

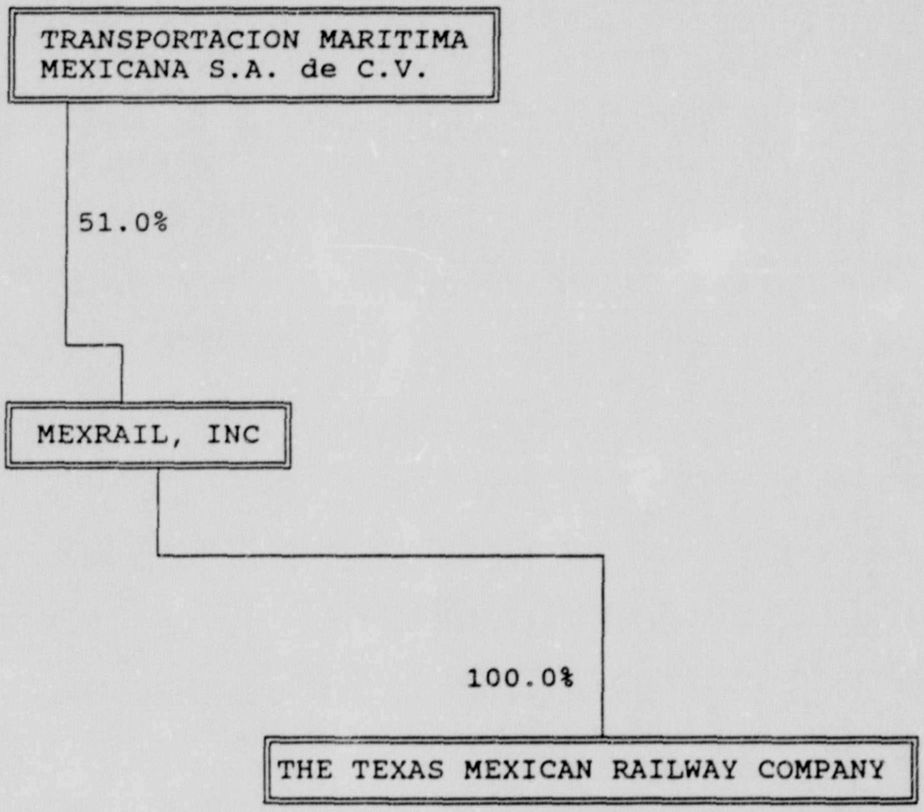
Any notice required or permitted to be given by one party to the other under this Agreement shall be addressed as follows:

[ ]

[ ]

EXHIBIT 11

CORPORATE CHART AS REQUIRED BY
SECTION 1180.6(b)(6)
PART I - INTERCORPORATE RELATIONSHIPS



CORPORATE CHART AS REQUIRED BY SECTION 1180.6(b)(6)(i) PART II - COMMON OFFICERS AND DIRECTORS

Transportacion Maritima Mexicana S.A. de C.V. ("TMM") and Mexrail, Inc. ("Mexrail") - TMM have the following officers or directors in common:

Luis Gutierrez (Director - TMM; Director - Mexrail)
Leopoldo Gomez (Director - TMM; Director - Mexrail)
Jacinto Marina (Director - TMM; Director - Mexrail)

Mexrail, Inc. ("Mexrail") and The Texas Mexican Railway Company ("Tex Mex") - Mexrail and Tex Mex have the following officers and directors in common:

Leopoldo Gomez (Director - Mexrail; Director - Tex Mex)
Larry Fields (Vice President - Mexrail; Director, President and CEO - Tex Mex)
Walter L. Winters, II (Secretary - Mexrail; Secretary and Treasurer - Tex Mex)
Zaragoza Solis, III (Treasurer - Mexrail; Director - Tex Mex)

CORPORATE CHART AS REQUIRED BY
SECTION 1180.6(b)(6)(ii)
PART III - CARRIER STATUS AND PENDING PROCEEDINGS

Transportacion Maritima Mexicana S.A. de C.V. ("TMM") - TMM is a non-carrier with no proceedings pending before the Board.

Mexrail, Inc. ("Mexrail") - Mexrail is a non-carrier with no proceedings pending before the Board.

The Texas Mexican Railway Company ("Tex Mex") - Tex Mex is a carrier with no pending proceedings before the Board.

EXHIBIT 23

OPINION OF COUNSEL FOR
THE TEXAS MEXICAN RAILWAY COMPANY
SECTION 1180.6(a)(4)

As counsel for The Texas Mexican Railway Company ("Tex Mex"), I am generally familiar with the transaction proposed by the Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and the Denver and Rio Grande Western Railroad Company ("Applicants") in the Applicants' Railroad Merger Application (UP/SP-22 through UP/SP-28, as supplemented by UP/SP-36). I have reviewed the foregoing Responsive Application of The Texas Mexican Railway Company for conditions pursuant to be imposed on that transaction pursuant to 49 U.S.C. § 11344(c). That Responsive Application generally asks the Surface Transportation Board to condition its approval of the Applicants' proposed transaction with the grant of trackage rights from Robstown and Corpus Christi, Texas, to Houston, Texas, by way of Placedo, Victoria and Flatonia, Texas, and from Houston, Texas to Beaumont, Texas, and further the grant of other trackage rights and terminal trackage rights to enable Tex Mex to practicably use said trackage rights.

Based on my familiarity and this review, and my knowledge of and experience with the Interstate Commerce Act, it is my opinion that the operations described in this Responsive Application, including the related Section 11103 application for terminal trackage rights, are within the corporate powers of Tex Mex, and will be legally authorized and valid if approved by the Surface Transportation Board and if implemented as contemplated.

Dated this 29 day of March, 1996, at Washington, D.C.

Respectfully submitted,

Richard A. Allen

Richard A. Allen
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 600
Washington, DC 20006-3939
(202) 298-8660

Attorney for Texas Mexican Railway Company

EXHIBIT 24

VERIFIED STATEMENTS OF SHIPPERS SUPPORTING THE RESPONSIVE APPLICATION

BMC

Badger Mining Corporation

409 SOUTH CHURCH ST., P.O. BOX 328, BERLIN, WI 54923
(414) 361-2388 • FAX (414) 361-2826

Mr. John V. Edwards
Zuckert, Scoutt, and Rasenberger
888 17th Street, N.W.
Washington, DC 20006

FINANCE DOCKET NO. 32760

UNION PACIFIC CORP., ET AL
CONTROL & MERGER - SOUTHERN PACIFIC RAIL CORP., ET AL

VERIFIED STATEMENT
OF
ROBERT BARTOL

My name is Robert Bartol. I am the Traffic Manager for Badger Mining Corporation. My business address is P.O. Box 328 Berlin, Wisconsin, 54923. As Traffic Manager, my responsibilities include negotiation of rail contracts, rail property leases and rail equipment leases, and arranging for carload and container on flat car shipments.

Badger Mining operates three mines in Wisconsin which produce silica sand, a specialty sand used in the oil, gas, foundry, glass, abrasive, and water filtration industries. Badger Mining's three Wisconsin mines produce and ship by rail in excess of 600,000 tons of silica sand annually to points throughout the United States, Canada, South America, Mexico, and the Far East. Badger Mining pays more than $6,000,000 per year in rail freight charges.

My company is concerned that the UP/SP merger will reduce competition in the south Texas area. BMC uses rail service to ship more than 700 carloads of sand per year into Mexico. We have been satisfied with the Laredo gateway. The strong concentration of brokers there serves to expedite our traffic through the border crossing. In addition, we ship more than 250 rail cars per year to Houston, Texas via WSOR-Chicago-SP and WC - Chicago-SP. Our Wisconsin locations allow us to benefit from competition between the UP and the SP for our shipments to Houston and Mexico. This competition between railroads keeps us competitive in our destination markets. Our company has a strong interest in keeping rail transportation competitive as we ship a low cost, high density product. The transportation price accounts for a very high percentage of the delivered price of our product.

We believe that the UP and the SP have been much more interested in our Mexican business than the BN and the ATSF. The UP and SP have offices in Mexico, and have been committed to developing markets there. In our experience, both the UP and the SP get rate quotes from the Mexican railroad. Then the UP and SP furnish the rates to the receivers who hold the contracts and pay the freight charges for the Mexican portion of the move. This procedure has facilitated our efforts to be a player in the Mexican market. To date, the BN and the ATSF have not offered this type of service. I understand that the UP has negotiated a new route with the BNSF via BNSF-Corpus Christi, TX-TexMex. We are concerned that this route will not be competitive. It is a longer route from our origins, which translates into higher transit times and higher rates. And that would make us noncompetitive in the Mexican market.

Due to the reduction of covered hopper availability from large railroads, BMC has been forced to lease our own equipment. We currently have about 130 cars in our fleet. As transit times generally have been good, we have been able to use this fleet to move 700 cars of sand between Wisconsin and Mexico via Laredo in addition to our domestic shipments. However, we are concerned that the new UP/SP's high volume corridors will be given high priority in the future and that the Mexican route will suffer slower transit times. As with the new BNSF-TexMex route, the slower transit times would force us to lease more equipment, which would raise our total costs. With an already thin profit margin, we could be forced to exit the market.

Trucks are not a competitive option for BMC as the rates are too high from Wisconsin. However, we do transload sand from railcars to trucks at two leased tracks, one at George West, Texas located on the MP, and one at Dimebox, Texas on the SP. We also have a site at Aguilares, Texas on the TexMex. Shipments then move over the road to receivers in South Texas. We would like to expand the program at Aguilares to truck sand to small receivers in Mexico. The transload points are strategically located to serve our customers. Consequently, we are very interested in whether the TexMex remains a viable carrier serving the south Texas area.

The final issue we would like to address is the ability to maintain and expand our bagged sand business in Houston, Texas, which is currently moving via SP from Chicago. We understand that the TexMex is seeking trackage rights to connect with the KCS at Beaumont, Texas to move traffic to Houston. We support this position as it would provide us with a competitive option for moving our sand into this market.

In summation, we ask that the Surface Transportation Board grant trackage rights to the TexMex to Houston and Beaumont, Texas as a condition of the UP/SP merger. We believe that the trackage rights will benefit shippers who are interested in growing business in south Texas and Mexico by helping to ensure that rail competition is preserved and enhanced there.

I, Robert Bartol, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on March 26, 1996.

Robert Bartol

Signature

Subscribed and sworn before me on March 26, 1996.

Kathleen [illegible]

Notary Public

BHP Copper

VERIFIED STATEMENT OF
FRANK E. HANSON, JR.
ON BEHALF OF
BHP COPPER METALS

Surface Transportation Board
Washington, DC

Re: Finance Docket No. 32760. Union Pacific Corp., et al.
Control & Merger - Southern Pacific Rail Corp., et al.

I am Frank E. Hanson, Jr. Director, International Logistics at BHP Copper Metals. BHP produces copper concentrates at its Nevada facility and produces copper concentrates and/or manufactures copper cathodes and copper rods at its facilities in Arizona. The Arizona facilities are served by shortline railroads that connect with Southern Pacific and our Nevada facility is served by a shortline that connects to Union Pacific. Presently, access to Southern Pacific in Nevada requires re-construction of a crossing of the Union Pacific tracks at Shafter, NV and re-establishing the connection with Southern Pacific at Cobre, NV. BHP ships via rail and truck into Mexico, mainly from San Manuel, AZ to Monterrey, Mexico. We also import copper concentrates through the ports of Corpus Christi, TX and Guaymas, Sonora, Mexico to our smelter at San Manuel, AZ.

Our company favors the Laredo/Nuevo Laredo gateway on rail shipments moving to Mexico. This gateway possesses a high concentration of customs brokers to facilitate traffic moving across the border. We believe that the SP and TexMex have moved our product over Laredo/Nuevo Laredo very effectively, and we are concerned about the loss of competition that will occur when the UP and SP are merged.

We have experimented with various routes and modes to move the rods and cathodes into Mexico. For example, we have trucked directly into Mexico with some success, but fear that the truck rates will increase when rail competition declines in this market. We have trucked copper rods to Phoenix, AZ then moved them via intermodal service on the Burlington Northern Santa Fe to midwestern destinations. It is possible to truck to railheads affording access to rail carriers that compete with Southern Pacific and Union Pacific. Transloading from trucks to railcars often damages the copper rods and renders it unsaleable. Finally, we have looked at the BNSF route from Corpus Christi (negotiated with the UP). In our opinion, this alternative will not provide direct routing for our products particularly, as they relate to cross border movement. Consequently, that route does not represent a viable option for BHP.

We support the TexMex in their effort to get trackage rights to Houston. A TexMex railroad that operates between Houston and Laredo affords our company a competitive alternative to direct truck shipment and captive traffic on SPUP. This competitive access will undoubtedly result in competitive rates that will have a favorable impact on BHP's marketing efforts in Mexico. Therefore, we ask the Surface Transportation Board to grant the trackage rights to the TexMex.

BHP Copper Inc. 7400 North Oracle Road Suite 200 Tucson Arizona 85704
Telephone (520) 575-5600
BHP Copper is a Business Group of The Broken Hill Proprietary Company Limited

VERIFICATION

I, Frank E. Hanson, Jr. declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed this 27 th day of March, 1996 in Tucson, Arizona.

BHP COPPER METALS

Frank E. Hanson, Jr.

Frank E. Hanson, Jr.
Director, International Logistics

State of Arizona

County of Pima

On March 27, 1996, Frank E. Hanson, Jr. personally appeared before me, whom I know personally to be the person who signed the above document, and he proved he signed it

OFFICIAL SEAL
STEPHANIE D. POFF
NOTARY PUBLIC - ARIZONA
PIMA COUNTY
My Comm. Expires Apr. 29, 1999

Stephanie D. Poff
Notary Public

Residing at Tucson, Arizona

My commission expires My Commission Expires April 29, 1999

1625 Front Street N.E.
Salem, Oregon 97303
503-363-2483
503-363-3527 Facsimile

VERIFIED STATEMENT

Of

SCOTT W. CANTONWINE

On behalf of

CASCADE WAREHOUSE COMPANY

CASCADE WAREHOUSE

Scott W. Cantonwine
President/CEO

My name is Scott W. Cantonwine, President/CEO of Cascade Warehouse Company. In August 1995, Cascade submitted a statement of support for the proposed Union Pacific-Southern Pacific merger. We are writing now to amend our original statement to address trackage rights considerations which were not addressed in the original statement filed last August.

Our company has been involved in the movement of forest products for the past decade. We have a break-bulk operation at Salem, OR located on the BNSF and operate a private car fleet of between 150 and 200 cars. Consequently, we have a vested interest in the continued vitality of rail competitiveness.

Cascade is projecting growth in shipments moving from Mexico into the United States. Currently, we move between 50 and 75 cars of wood annually from Mexico over the Laredo gateway to various U.S. destinations via TexMex-Corpus Christi, TX-SP. This route has provided our company with competitive rates and service. In the near future we would like to begin moving product from various points in the U.S. to Laredo for transfer from rail to truck for delivery into Mexico. This would open up the possibility of backhauling our cars from Laredo to the Eastern U.S. Obviously, we are looking for optimum utilization of our equipment and would like to continue to have several railroads competing for our business.

Overall, we find rail shipments to be more cost effective than trucks, especially over long distances. Therefore, trucks are not the best option from a price standpoint for our shipments moving from the Laredo gateway into the U.S. Also, the circuitous trackage rights that the Union Pacific granted the BNSF do not provide an adequate north-south alternative for our shipments.

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CASCADE WAREHOUSE

Scott W. Cantonwine
President/CEO

Verified Statement of Scott W. Cantonwine

Therefore, we urge the Surface Transportation Board to grant trackage rights to the TexMex from Corpus Christi to Houston and Beaumont, TX. This solution will truly preserve the competition that exists today and will be lost after the merger. We believe that the TexMex trackage rights will continue to provide access to an emerging segment of our international business.

I, Scott W. Cantonwine, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on (date) 3/25/96.

Scott W Cant
Scott W. Cantonwine

Subscribed and sworn to before me on (date) March 25, 1996.

Michelle Taylor
Notary Public

OFFICIAL SEAL
MICHELLE TAYLOR
NOTARY PUBLIC - OREGON
COMMISSION NO. 027304
MY COMMISSION EXPIRES AUG. 22, 1997

Date: March 22, 1996

The Texas Mexican Railway Company
c/o Central Business Services
629 Green Bay Road
Wilmette, IL 60091
Fax 708-256-2863

"FINANCE DOCKET NO. 32760

Union Pacific Corp., et al, Control Merger

Southern Pacific Rail Corp., et al."

Attached is a Verified Statement from Darling International, Inc., total pages including cover page is three.

DARLING
INTERNATIONAL INC

251 O'Connor Ridge Boulevard
Suite 300
Irving, TX 75038

DRAFT

VERIFIED STATEMENT
OF
JEFFREY L. GUNN

on behalf of

DARLING INTERNATIONAL

My name is Jefffrey L. Gunn and I am the Transportation Manager of Darling International, with headquarters located at 251 O'Connor Ridge Blvd., Suite 300, Irving,Texas 75038. I am responsible for managing all freight transportation service I am also responsible for negotiating rail equipment leases for 750 rail cars. I have over 23 years of experience in the transportation industry and have been employed by Darling International for 9 years. I have a vast understanding of how to get food waste product from mill origins to customer destinations.

Darling International is the largest recycler of food waste products in the United States. We have 31 plants in the U.S. and we ship food waste products in tank cars mainly to OLEO chemical companies in the United States In addition, we export our product world wide. Darling International is a $400 million per year company and is publicly traded on the NASDAQ stock exchange We spend over $10 million per year on rail freight transportation. Approximately 60% of our rail shipments are over the CNW/UP, 20% SP, and 20% other railroads. Truck and barge service is not an effective substitute for shipment of our products.

214-717-0300
Telex: 734118 (DDHQ)
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Verified Statement
Page 2

DRAFT

We believe that the proposed merger will impact the following areas:

The proposed merger of the UP and the SP will limit our alternative rail service availability unless other carriers are allowed unrestricted trackage rights access to our facilities or to provide us with competitive service over the tracks being eliminated by the merger. Rather than abandoning the tracks, which will no longer be needed by a combined UP/SP company, they should be sold to other rail companies at a very minimum price, as they are a national infrastructure resource which should not be lost.

Our rail costs will continue to rise as a result of the combined UP/SP. Since the acquisition of the CNW by the UP, we have had many problems. Our accessorial charges have doubled and in some cases risen by 400%. In addition, we have seen cost increases in crossings, easement and general freight shipment. We are very concerned that this trend will continue.

The UP expressed a total unwillingness to negotiate with us. The UP has indicated to us that the merger is a "done deal" and their most recent cost quote has come within one cent/hundred weight of that quoted by the SP. Due to the UP/SP monopoly on 80% of our shipping routes, our ability to negotiate competitively will be severely limited.

Darling International believes that the proposed merger between the UP and SP would not be in our best interest, or in the interest of our suppliers and customers. Therefore, we strongly oppose the UP/SP merger. We are also deeply concerned about the trend toward consolidation and accordingly we embrace and fully support efforts by carriers such as the Tex Mex Railroad to enhance the competitive environment.

TRACI J. JOHNSON
Notary Public, State of Texas
My Commission Expires 7-05-98

Traci J. Johnson