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STB

August 1, 1997

D

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 21)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 21)
Union Pacific Corporation, et al. --
Control and Merger -- Southern Pacific
Rail Corporation, et al.

Dear Mr. Secretary:

Enclosed for filing in the above-referenced proceeding please find a separately packaged original and twenty-five (25) copies of the CONFIDENTIAL VERSION of the Comments of The Empire District Electric Company (EDEC-03), which Comments are being filed under seal. In addition, please find an original and twenty-five (25) copies of the REDACTED, PUBLIC VERSION of the Comments (EDEC-04). We have served these documents upon parties of record in the manner described in the Certificate of Service attached to each. Also enclosed is a Wordperfect 5.1 diskette containing the CONFIDENTIAL VERSION of the Comments.

We have included extra copies of these filings. Kindly indicate receipt by date-stamping these copies, and returning them to the bearer of this letter.

ENTERED
Office of the Secretary
AUG 04 1997
3 Part of Public Record

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for The Empire District
Electric Company

Enclosures

cc: All Parties of Record

180906

EDEC-04

BEFORE THE
SURFACE TRANSPORTATION BOARD

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| UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY | ) | Finance Docket No. 32760 (Sub-No. 21) |

COMMENTS OF
THE EMPIRE DISTRICT ELECTRIC COMPANY

PUBLIC REDACTED VERSION

ENTERED
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AUG 04 1997
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THE EMPIRE DISTRICT ELECTRIC COMPANY
P.O. Box 127
Joplin, Missouri 64802

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

By: C. Michael Loftus
Frank J. Pergolizzi
Jean M. Cunningham
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys and Practitioners

Dated: August 1, 1997

**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

| | |
|---|---|
| UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY | Finance Docket No. 32760 (Sub-No. 21) |

**COMMENTS OF**
**THE EMPIRE DISTRICT ELECTRIC COMPANY**

The Empire District Electric Company ("Empire") submits these Comments in response to the Surface Transportation Board's May 7, 1997 Decision instituting a proceeding to implement the oversight condition of Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, et al., Decision No. 44 served August 12, 1996 ("Decision No. 44"). In support of these Comments, Empire submits the attached Verified Statement of Virgil E. Brill, Empire's Vice President of Energy Supply.

**IDENTITY AND INTEREST**

Empire is a publicly-owned electric utility company that generates and provides electricity to approximately

145,000 customers in Missouri, Kansas, Oklahoma and Arkansas. Empire operates two coal-fired generating plants, one located near Asbury, Missouri, the other in Riverton, Kansas. Empire burns approximately 800,000 to 950,000 tons of Wyoming Powder River Basin ("PRB") coal annually at these plants. The coal used at Empire's plants comes from a variety of origins, including the PRB. This coal is transported to the Asbury plant by rail, and a portion of the coal is then trucked from Asbury to Empire's Riverton plant.

Empire's PRB coal is shipped under a long-term rail transportation contract (ICC-WRPI-C-0042) entered on June 14, 1989 by and between Empire and the Union Pacific Railroad Company ("UP"), Western Railroad Properties, Inc. ("WRPI"), and Kansas City Southern Railway Company ("KCS") (collectively "Railroads"). This contract imposes various railroad service parameters, including inter alia,

. Since service began in 1990, the Railroads (including UP, which covers the major portion of the haul) have had great difficulty meeting their contractual service standards. (V.S. Brill at 2.) Empire has attempted to work with the Railroads, to no avail, to minimize the impacts of the service deficiencies. (Id. at 3.)

Through the recent July 1, 1997 UP/SP Report on Merger and Condition Implementation ("Report"), Empire learned that UP/SP is claiming that it is consistently exceeding its performance goals and contractual performance commitments for PRB coal movements. Empire is submitting these comments to inform the Board that its experience has been to the contrary, and to express its concerns that to the extent UP/SP is improving contractual performance of service commitments on PRB service, it may be at the expense of smaller shippers such as Empire.

## COMMENTS

In Decision No. 44, the Board imposed a 5-year oversight condition to examine whether the conditions imposed effectively addressed competitive harms they were intended to remedy. The Board retained jurisdiction to impose additional remedial conditions, if and to the extent it determined that the conditions already imposed had not effectively addressed the competitive harms caused by the merger. This oversight condition is consistent with the recognition that the governing statutes and interpretive case law require careful consideration of the impact of a merger on the quality or adequacy of necessary rail service available to the shipping public. See 49 U.S.C. §11324 (b)(1); Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295, 301 (D.C. Cir. 1983). See also New York Central Sec. Corp. v. United States, 287 U.S. 12, 48 (1932); Norfolk & Western Railway Company and Baltimore & Ohio Railroad Company -- Control -- Detroit, Toledo & Ironton Railroad Company, 360 I.C.C. 498 (1979). In particular, the issue whether UP's acquisition of SP and concomitant integration and reorganization of operations has had a negative impact on rail service quality is a question ripe for Board review in this oversight proceeding. See Decision No. 44 at 146-147.

In responding to Decision No. 44, UP/SP has submitted a Report that extols the dramatic improvement of its combined coal service from various coal origins. In particular, the Report claims that UP/SP has reached a "high level of performance" in serving Powder River Basin coal mines since the merger, and has "consistently exceeded" both UP/SP's "own performance goals and contractual performance commitments for [PRB] coal" in recent months. (Report at 42.) UP/SP further notes that it is achieving record volume levels on such shipments, while at the same time reducing train delays and improving the overall efficiency of coal movements. (Id. at 41.)

Assuming that UP/SP has accurately represented its enhanced post-merger ability to meet contractual service standards on at least some PRB movements, Empire is deeply concerned that these enhancements and the expansion of the UP/SP coal traffic base may be at the expense of its smaller contractual customers. While UP/SP claims to be making great strides in meeting other shippers' service requirements, UP's rail service with KCS for Empire remains unsatisfactory, and shows no signs of changing for the better in the near future.

As Mr. Brill explains in his Verified Statement, Empire's agreement establishes a

. (V.S. Brill at 2.) Railroads, including UP, have been consistently unable to meet this Service

Standard since the contract took effect in 1990. (Id. at 2.) Empire and Railroads have engaged in efforts to alleviate the service deficiencies. Despite these efforts, however, UP and KCS have remained unable to meet the contractual service commitment. (Id. at 3.) Indeed, while UP/SP alleges that it is setting performance records for its other PRB shippers, it

in the most recent quarter. (Id.) In the past month, service has deteriorated even further with

. (Id.)

Compounding Empire's concerns, UP/SP has announced its decision to abandon the Kansas City bypass project originally included in the Merger Application Operating Plan. (Report at 24-25.) The bypass route might have alleviated, at least to some extent, the congestion and delays presently plaguing UP's service to Empire. The elimination of this bypass project, however, leaves Empire with further cause for concern that UP/SP has no real plans to improve its ability to meet its contractual service commitments to Empire. (V.S. Brill at 4.)

The inability of UP/SP to meet Empire's contractual service commitment, while at the same time reporting increasing volumes and improved service to other shippers, suggests that either: (1) UP/SP is not accurately describing its service performance; or (2) UP/SP is deliberately choosing to favor servicing new traffic or large shippers over meeting its existing contractual obligations to smaller shippers such as Empire. In either event, continued oversight of the impacts of the subject consolidation and the adequacy of the imposed conditions is appropriate. While Empire recognizes that its problems with the Railroads' performance of the parties' transportation agreement is ultimately a private, contractual matter outside the Board's jurisdiction, the Board should be aware of the fact that serious service problems for at least some coal shippers do exist, and seem to be getting worse rather than better.

Respectfully submitted,

THE EMPIRE DISTRICT ELECTRIC COMPANY
P.O. Box 127
Joplin, Missouri 64802

By: C. Michael Loftus
Frank J. Pergolizzi
Jean M. Cunningham
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys and Practitioners

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: August 1, 1997

**VERIFIED STATEMENT**
**OF**
**VIRGIL E. BRILL**

My name is Virgil E. Brill. I am Vice President of Energy Supply for the Empire District Electric Company ("Empire"). My business address is 602 Joplin Street, Joplin, Missouri 64801.

As Vice President of Energy Supply, I am responsible for the negotiation and administration of Empire's fuel and fuel transportation contracts. Among the contracts that I administer is the rail transportation agreement (ICC-WRPI-C-0042) entered on June 14, 1989 by and between Empire, Western Railroad Properties, Inc. ("WRPI"), Union Pacific Railroad Company ("UP") and Kansas City Southern Railway Company ("KCS")(collectively "Railroads"). Pursuant to Empire's long-term rail transportation agreement with Railroads, Empire ships approximately 800,000 to 950,000 tons of coal per year to its Asbury Generating Units 1 and 2, located in Asbury, Missouri. A portion of that coal is trucked to our Riverton Generating Units No. 7 and 8, located in Riverton, Kansas. In connection with the administration of this agreement, I am intimately familiar with the service obligations of the Railroads under the agreement, including

that are critical to Empire's receipt of quality rail service. I am also familiar with the extent to which Railroads have been unable to meet Empire's contractual standards in recent years.

The purpose of this Verified Statement is to respond to certain representations made in UP/SP's July 1, 1997 Report on Merger and Condition Implementation ("Report") relating to improvements that UP/SP has made in the overall quality of its coal service since the merger was approved. Specifically, the Report states that UP/SP has had great success in meeting contractual service obligations to Powder River Basin ("PRB") shippers since the approval of the merger. UP/SP notes that it "has consistently exceeded its own performance goals and contractual performance commitments for Powder River Basin Coal in recent months," and that "[i]ndeed, performance levels have reached all-time records." (Report at 42.) UP/SP further notes performance levels of higher than 90%. (Id.)

Empire's experience since the approval of the merger has been markedly different from the rosy picture presented by UP/SP. Far from providing record-setting service to Empire, UP and KCS have consistently failed to even come close to meeting its contractual service obligations to Empire.

Empire's agreement includes a

. Railroads have been unable to meet this contractual service standard since the commencement of service in 1990. Studies performed for Empire in 1996 confirmed that Railroads'

than required under the agreement. A February 1997 study reflected that

Empire has had numerous confidential discussions with Railroads concerning

. Notwithstanding these discussions, the Railroads' service to Empire continues to decline. For example, Railroads

The chronic failure to meet Empire's contractual service standard, and the more recent indications of even worsening performance, raise serious concerns over the ability of UP/SP (along with KCS) to meet its performance obligations in the future. While UP/SP are now using their combined resources to move "record setting" volume levels, we fear that such expansion will be at the continued expense of smaller shippers, such as Empire. (Report at 41.) UP, by its continual failure to improve transit times, is demonstrating very clearly that meeting Empire's contractual performance standard is not a priority in the post-merger environment.

Empire is also concerned that UP/SP has reneged on a plan to construct a Kansas City bypass that might have served to alleviate, at least to some extent, the unacceptable service that Empire has been receiving. In the merger proceeding, UP/SP presented a plan to expend $91 million to create a bypass around Kansas City for coal trains moving between the PRB and Texas. In its Report, UP/SP now states that it will not be going forward with this project, and that it "plans to leave the coal trains on their present routes." (Report at 24-25.) UP/SP now claims that rather than bypass Kansas City with this traffic, it intends "to increase investment to provide additional capacity in Kansas City and on the lines emanating from Kansas City that carry coal to utilities, as well as other traffic. The greater capacity on routes via Kansas City will improve transit times, reduce congestion, and provide greater flexibility <u>in future years</u>." (<u>Id.</u> (emphasis added).)

These statements cause Empire grave concern for its prospects of any near-term improvement in the quality of its rail service. Empire simply cannot continue to tolerate

in the ever-increasing competitive electric utility market. Such service deficiencies put a serious strain on Empire's fuel procurement and planning activities, and put us at tremendous disadvantage with respect to other rail shippers who, according to UP/SP, are having their contractual service standards met.

In sum, while UP/SP claims it is making great strides in improving the quality of service provided to rail shippers, Empire's real-world experience is quite the opposite. UP and KCS have consistently failed to meet the contractual

set forth in its transportation contract with Empire. Its recent inability to improve on this situation, coupled with its announced plan to continue to route Texas coal traffic over a line that appears to be over-utilized, raises serious doubts as to UP/SP's ability to fulfill its contractual service obligations to unit-train coal shippers in the post-merger period.

## VERIFICATION

State of Missouri )
) ss:
County of Jasper )

VIRGIL E. BRILL, being duly sworn, deposes and says that he has read the foregoing, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Virgil E Brill

Virgil E. Brill

Sworn and subscribed before me this 31st day of July, 1997

YVONNE BURNETT
Notary Public Notary Seal
STATE OF MISSOURI
JASPER COUNTY
MY COMMISSION EXP APR. 15,2001

Yvonne Burnett

Notary Public

My Commission Expires: Apr. 15, 2001

## CERTIFICATE OF SERVICE

I hereby certify that Confidential copies of the foregoing Comments were served this 1st day of August, 1997, by hand upon:

Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

Michael D. Billiel, Esq.
Joan S. Huggler, Esq.
U.S. Department of Justice
Antitrust Division, Suite 500
325 Seventh Street, N.W.
Washington, D.C. 20530

I further certify that Redacted copies of the foregoing Comments were served this first day of August by hand upon Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, D.C., 20006, and by first-class mail, postage pre-paid, upon all parties of record in Finance Docket No. 32760 (Sub-No. 21).

Jean M Cunningham

Jean M. Cunningham

STB FD-32760 (SUB 21) ID-180903 8-1-97 D

180903


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August 1, 1997


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Office of the Secretary
Case Control Unit
ATTENTION: STB Finance Docket No. 32760 (Sub No. 21)
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, D. C. 20423-0001

Re: Finance Docket No. 32760 (Sub No. 21), Union Pacific Corporation, et al. — Control and Merger — Southern Pacific Rail Corporation, et al.

Dear Mr. Secretary:

Enclosed herewith for filing in the above-captioned proceeding are the original and 25 copies of the Comments and Verified Statement of North American Logistic Services, a division of Mars, Incorporated.

Also enclosed is a 3.5-inch diskette for this document that is formatted for WordPerfect 7.0.

Yours very truly,

Terrence D. Jones

Attorney for North American Logistic Services,
a Division of Mars, Incorporated


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Enclosures

180903



NALS-1



BEFORE THE

SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 32760 (SUB-NO. 21)

UNION PACIFIC CORPORATION,
UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY
— CONTROL AND MERGER —
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

[OVERSIGHT]

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# COMMENTS AND VERIFIED STATEMENT ON BEHALF OF NORTH AMERICAN LOGISTIC SERVICES, A DIVISION OF MARS, INCORPORATED

---

OF COUNSEL:

KELLER AND HECKMAN
1001 G STREET, N.W.
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TERRENCE D. JONES
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ATTORNEY FOR NORTH AMERICAN LOGISTIC SERVICES, A DIVISION OF MARS, INCORPORATED

AUGUST 1, 1997

BEFORE THE

SURFACE TRANSPORTATION BOARD



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STB FINANCE DOCKET NO. 32760 (SUB-NO. 21)

UNION PACIFIC CORPORATION,
UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY
— CONTROL AND MERGER —
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

[OVERSIGHT]

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COMMENTS AND VERIFIED STATEMENT
ON BEHALF OF NORTH AMERICAN LOGISTIC SERVICES,
A DIVISION OF MARS, INCORPORATED

---

COMES NOW, North American Logistic Services, a Division of Mars, Incorporated ("NALS"), and submits its Comments and Verified Statement of James E. DeVoe in the above-captioned proceeding and, in support thereof, respectfully shows:

I.

The accompanying Verified Statement of James E. DeVoe documents the inability of the Union Pacific Railroad Company ("UP") to meet the transportation needs of the new pet food manufacturing facility of Kal Kan Foods, Inc. at Wunotoo, NV, thereby jeopardizing the ability of that plant to stay in business.

In its decision granting the UP's merger with the Southern Pacific Rail Corporation, the STB concluded that the Wunotoo plant was not a "2-to-1" point and thus was not entitled to the direct service of the BNSF (Decision No. 44, pp. 192-193). That decision was wrong then*/, and it is wrong now. As the only railroad able to serve the plant directly, the UP has proven unable — or unwilling because of the absence of direct competition — to provide anything approaching a satisfactory service to the plant.

For the reasons contained in Mr. DeVoe's Statement, the STB, in the exercise of its oversight jurisdiction over this merger, should correct its prior failure to impose a condition allowing competitive service at the Kal Kan plant, and direct the UP to provide direct access thereto by the BNSF.

II.

NALS submits that the conditions implemented in the merger case have not addressed the competitive harms being suffered by the Kal Kan plant at the hands of the UP, and that remedial

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*/ See, Comments and Request For Conditions and Verified Statement on Behalf of NALS, dated March 29, 1996, NALS-1, and Brief on Behalf of NALS, dated June 3, 1996, NALS-2, both filed in the Docket No. 32760 proceeding.

action by the STB is required. NALS, therefore, respectfully requests that such conditions be modified to require that the UP provide the BNSF direct access to the plant.

Respectfully submitted,

NORTH AMERICAN LOGISTIC SERVICES,
A DIVISION OF MARS, INCORPORATED

BY: TERRENCE D. JONES
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ATTORNEY FOR NORTH AMERICAN
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OF COUNSEL:

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WASHINGTON, D. C. 20001

AUGUST 1, 1997

BEFORE THE

SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 32760 (SUB-NO. 21)

UNION PACIFIC CORPORATION,
UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY
— CONTROL AND MERGER —
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

[OVERSIGHT]

---

VERIFIED STATEMENT OF JAMES E. DEVOE

1. My name is James E. DeVoe. I am Rail Transportation Manager of North American Logistic Services, a Division of Mars, Incorporated ("NALS"). My business address is 800 High Street, Post Office Box 731, Hackettstown, New Jersey 07840-0731.

2. I have been employed by NALS since its formation as a Division of Mars, Incorporated ("Mars") in 1989. Prior thereto, I was employed in various logistics positions with Mars. NALS is responsible for arranging for the transportation service received by the production units of the Mars corporate family, including M&M/Mars, Uncle Ben's, Inc. ("Uncle Ben's"), and Kal Kan Foods, Inc. ("Kal Kan"). NALS selects the carriers used to transport the

units' traffic and pays the carriers' rates and charges. NALS enters into transportation contracts with rail and motor carriers when contract carriage is used to serve the Mars units.

3. NALS participated in the STB's Docket No. 32760 proceeding in which the STB approved, with conditions, the common control and merger of the rail carriers controlled by Union Pacific Corporation and Southern Pacific Rail Corporation. By its participation, NALS sought to preserve the competing rail service available to a newly-constructed Kal Kan pet food manufacturing plant at Wunotoo, Nevada, about 30 miles east of Reno (Verified Statement of William R. Thompson of NALS, NALS-1, filed March 29, 1996). Prior to the merger, only the Southern Pacific Transportation Company ("SPT") could serve the plant directly. The plant was a closed point on the SPT's main line between Weso, NV and Oakland, CA. The Union Pacific Railroad Company ("UP") was able to serve Reno, NV, from which the raw materials used by Kal Kan could be trucked the 30 miles to the plant.

4. Because of the existence of the UP/motor service, NALS contended that the Kal Kan plant was a "2 to 1" point at which, pursuant to the agreement dated September 25, 1995, as amended, between the applicant railroads and the Burlington Northern Santa Fe Railroad Company (the "BNSF Agreement"), the BNSF should be granted trackage rights to serve the plant directly.

5. In Decision No. 44 served on August 12, 1996, the STB declined to impose the conditions sought by NALS. The STB noted that the plant will be served after the merger by the

UP, as the successor to the SPT, and that the BNSF Agreement was amended to allow the BNSF to establish a transloading operation at Reno. Thus, the STB concluded, although the BNSF was granted trackage rights to run its trains right by the plant on the SPT line, it was not necessary to give the BNSF access to the plant in order to preserve existing competition. (Decision No. 44, pp. 192-193).

6. The STB instituted this oversight proceeding to receive comments concerning any effects of the merger on competition and the implementation of the conditions imposed to address competitive harms. NALS submits that the conditions imposed by the STB on this merger have not proven adequate to protect the Kal Kan plant from the predictable consequences of being served by a single railroad.

7. Since the STB declined to grant the BNSF direct access to the Kal Kan plant, that facility, as noted, is directly served only by the UP. That service has been inadequate and has jeopardized the ability of this new facility - - which began production less than one year ago, in September 1996 - - to sustain its operations.

8. Attached hereto as Appendix A is a copy of my memorandum to the UP dated July 24, 1997 which documents service failures by the UP at Kal Kan's Wunotoo plant for the period April 15, 1997 through June 30, 1997. I have received no response from the UP to this memorandum, or to the other memoranda and letters contained in the Appendices to this

Statement which I have sent to the UP concerning its inadequate service. I can only assume that UP is unable to offer any explanation or justification for its documented failures.

9. NALS's contract with the UP for service to Wunotoo requires that inbound rail cars of grain that are received in interchange or originated at Ogden, UT, be transported to the plant — whose location is identified in Appendix A as Sparks, NV — within 120 hours, or five days. Cars moved through or from Denver, CO must be received at the plant within 144 hours, or six days. Cars which are received at Sparks must then be placed at the plant within 48 hours after their arrival at Sparks.

10. While Appendix A covers the two-and-one-half months ending on June 30, 1997, it is representative of the rail service received by the plant from the UP/SPT since the plant began operations last September. Appendix A thus shows that, during this period, the UP failed on 152[2] occasions to transport rail cars of grain to the plant as required by its contract. This failure rate constituted 29.5% of the 516 cars that the UP was tendered during that period. These were not minor service failures. For example, in placing cars at the plant after their arrival at Sparks — which the UP is required to do within two days — 39 cars were not moved to the plant for at least four days, with some cars languishing at Sparks for more than 20 days. (Appendix A, pp. 3-4).

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[2] While Appendix A reports 153 UP failures, the correct number is 152. The fifth movement shown on Appendix A, p. 5. from Ogden is identified erroneously as a UP service failure. That shipment was in fact transported by UP in accordance with the terms of its contract with NALS.

11. The UP's inability to meet its contractual obligations on shipments moving through Ogden to the plant is equally egregious. For a movement that the UP has promised to complete within five days, it has taken as long as 20 days, and on 13 occasions 10 or more days, for the UP to provide service from Ogden to the plant. (Appendix A, pp. 6-7). As I pointed out in my July 24 letter to the UP, its inability to provide the service the Kal Kan plant requires — and which it has agreed to provide in its contract — places the plant "at risk of production disruptions". (Appendix A, p. 1) This plant cannot maintain its production schedule when the vital raw ingredients it requires are not received by it in accordance with its transportation contract with the UP almost 30% of the time.

12. The STB declined to treat the Kal Kan plant as a "2-to-1" point and, accordingly, the BNSF was not given access thereto. The UP — having no competition in the form of another railroad able to serve the plant directly — has responded to the STB's decision in the typical fashion of a monopolist by providing service so poor that it is threatening the plant's existence.

13. It has been almost a year since this merger was consummated. And during that time, the Kal Kan plant has suffered from the UP's unacceptably poor service. The UP has been given more than enough opportunity to demonstrate to the STB and to NALS that it can meet the plant's transportation needs, and it has failed to do so. It is now time for the STB to take action to insure that the plant has the service it needs by ordering the UP to provide direct access to the plant by the BNSF.

14. The Uncle Ben's rice manufacturing facility in Houston, TX — for which NALS is also responsible for arranging transportation — is also experiencing significant difficulties with the UP service. Attached hereto as Appendix B are copies of recent representative communications I have sent to the UP documenting such service deficiencies. The problems with the UP service have been particularly pronounced on shipments of rice to one of Uncle Ben's customers in Ontario, Canada. (The name of the customer has been deleted from Appendix B; the UP knows who it is.) The failure of the UP to provide equipment and timely service to Uncle Ben's "has placed [its] business at risk with our customer in Canada". (Appendix B., p.3).

15. The problems at the Uncle Ben's facility are continuing. On July 26, 1997, the UP picked up four rail cars of rice at the plant for movement to the Canadian customer. As of July 30, 1997 — four days later — those cars were still in Houston.

16. Despite Uncle Ben's instructions to the contrary, the UP continues to furnish cars to the Uncle Ben's plant which, because of their size, are not suitable for the plant's track. The result has been several derailments by these cars in recent weeks, which have caused disruptions and bottlenecks at the plant. (Appendix B, p.6).

17. The poor service the UP has been providing NALS is not limited to the Wunotoo and Houston facilities. For the five months ending May 31, 1997, the combined service failures for the UP and SP for all facilities for which NALS arranges transportation — including Wunotoo

and Houston — was 56.6%. (See, Appendix C.) It is obvious that the UP it is not providing NALS with the service it requires for its production units to conduct their business. One step the STB can take to address the UP's failure is to at least allow the BNSF to have direct access to the Wunotoo plant.

NORTH AMERICAN LOGISTIC SERVICES
North American Logistic Services
P.O. Box 731, 800 High Street
Hackettstown, NJ 07840

24 July 1997

To: Maureen Horrigan - Union Pacific Railroad

Fr: Jim DeVoe - NALS

Re: Reno Service Failures

Based on records provided by TIE logistics, the Union Pacific Railroad has a 29.7% service failure record covering car movement to Kal Kan in Sparks, Nevada. As you know, NALS has a penalty clause within contract ICC-SP-13487 for service failures of 20% or greater during any calendar month.

As you can see from the report a total of 516 cars were measured over the periods of April through June and the UP/SP failed on 153 movements. The service performance failures mainly occur between the UP and SP themselves in the Ogden service area. It is quit apparent that the operation group in Odgen for both railroads has not worked out a method in which they can work in harmony to provide reliable and consistent service.

As explained to you on several occasions, the inconsistent service level on the part of the Union Pacific Railroad places the Kal Kan Plant at risk of production disruptions when it does not meet service standards. Surely, Kal Kan customers would not accept it if our shelve space at stores was empty 29.7% of the time because of transportation failure. They would buy from our competitive, which unfortunately NALS is unable to do at Sparks, Nevada with the Union Pacific the sole provider of service to the plant.

I have received numerous verbal reasons on action being taken to improve service. At this time. I would like something in writing from the Union Pacific Railroad on what action will be taken to correct the service between Odgen and Sparks and when we can expect to see a consistency of service to the plant in Sparks, Nevada?

Appendix A
Page 2

5/30/97
16:36:20

Time Elapsed Report 4/15/97- 4/30/97 Hour Limit: 48
From:Sparks , NV (Y,D) To:Sparks , NV (Z)



| Car | Number | Date and Time | Date and Time | Time In Transit |
|---|---|---|---|---|
| CNW | 753128 | 4/20/97 7:53:00 | 4/22/97 4:10:00 | 56:45 |
| LCGX | 254 | 4/20/97 7:53:00 | 4/22/97 4:10:00 | 49:34 |
| MKT | 4783 | 4/22/97 6:05:00 | 4/24/97 5:00:00 | 50:52 |
| UP | 87381 | 4/14/97 5:50:00 | 4/17/97 13:05:00 | 71:51 |
| UP | 87652 | 4/14/97 5:50:00 | 4/17/97 13:05:00 | 64:45 |
| UP | 87842 | 4/14/97 5:50:00 | 4/17/97 13:05:00 | 64:45 |
| UP | 88617 | 4/20/97 7:53:00 | 4/22/97 4:10:00 | 49:39 |
| UP | 89382 | 4/24/97 7:20:00 | 4/27/97 1:00 | 79:51 |

LATE COUNT 8 TOTAL 21 PERCENT LATE 38 %

**END OF REPORT**

6/02/97
15:39:27

Time Elapsed Report 5/01/97- 5/31/97 Hour Limit: 48
From:Sparks , NV (Y,D) To:Sparks , NV (Z)



| Car | Number | Date and Time | Date and Time | Time In Transit |
|---|---|---|---|---|
| BN | 458650 | 5/07/97 11:24:00 | 5/10/97 3:00:00 | 77:00 |
| BN | 461336 | 4/24/97 7:20:00 | 5/07/97 18:00:00 | 314:30 |
| CNW | 174892 | 5/18/97 7:45:00 | 5/22/97 18:30.00 | 84:49 |
| CNW | 179094 | 5/18/97 7:45:00 | 5/22/97 18:30:00 | 85:15 |
| CNW | 752014 | 5/20/97 6:10:00 | 5/24/97 5:45:00 | 109:42 |
| CNW | 752154 | 5/20/97 6:10:00 | 5/24/97 5:45:00 | 96:24 |
| CRLE | 528088 | 4/29/97 8:05:00 | 5/03/97 3:30:00 | 106:01 |
| CRLE | 530224 | 5/26/97 7:00:00 | 5/29/97 20:30:00 | 59:34 |
| CTRN | 100588 | 5/07/97 12:30:00 | 5/10/97 3:00:00 | 76:00 |
| DRGW | 10625 | 5/18/97 7:45:00 | 5/22/97 18:30:00 | 90:00 |
| DRGW | 10900 | 4/27/97 8:00:00 | 5/10/97 3:00:00 | 316:45 |
| FCTX | 230 | 5/07/97 20:00:00 | 5/10/97 3:00:00 | 77:00 |
| FCTX | 531 | 5/13/97 13:32:00 | 5/22/97 8:00:00 | 228:00 |
| GVSR | 528018 | 5/19/97 9:10:00 | 5/22/97 18:30:00 | 67:00 |
| MP | 716444 | 5/18/97 7:45:00 | 5/22/97 18:30:00 | 83:54 |
| MP | 717919 | 5/20/97 6:10:00 | 5/24/97 5:45:00 | 98:00 |
| NAHX | 800632 | 4/28/97 6:30:00 | 5/01/97 17:40:00 | 62:09 |
| PLMX | 5989 | 5/21/97 7:03:00 | 5/24/97 5:45:00 | 73:15 |
| PLMX | 10410 | 4/27/97 8:00:00 | 5/03/97 3:30:00 | 147:33 |
| SIRX | 515048 | 5/13/97 13:32:00 | 5/22/97 8:00:00 | 216:00 |
| SIRX | 515122 | 5/13/97 13:32:00 | 5/22/97 8:00:00 | 221:31 |
| SSW | 74991 | 4/28/97 6:30:00 | 5/01/97 17:40:00 | 61:19 |
| UP | 74386 | 5/21/97 7:03:00 | 5/24/97 5:45:00 | 72:39 |
| UP | 76903 | 5/18/97 7:45:00 | 5/22/97 18:30:00 | 83:49 |
| UP | 77316 | 5/18/97 7:45:00 | 5/22/97 18:30:00 | 85:15 |
| UP | 78569 | 5/20/97 6:10:00 | 5/24/97 5:45:00 | 98:00 |
| UP | 83533 | 5/19/97 9:05:00 | 5/22/97 18:30:00 | 59:39 |
| UP | 87506 | 4/27/97 8:00:00 | 5/06/97 5:15:00 | 218:03 |
| UP | 87614 | 4/27/97 8:14:00 | 5/03/97 3:30:00 | 148:30 |
| UP | 87807 | 4/27/97 8:00:00 | 5/03/97 3:30:00 | 147:48 |
| UP | 89102 | 5/07/97 12:30:00 | 5/09/97 6:00:00 | 49:18 |
| UP | 90090 | 4/22/97 6:05:00 | 5/01/97 23:00:00 | 201:04 |
| UP | 90508 | 5/13/97 13:32:00 | 5/22/97 6:00:00 | 223:31 |
| UP | 90999 | 4/22/97 6:05:00 | 5/10/97 3:00:00 | 442:31 |
| UP | 91287 | 5/13/97 13:32:00 | 5/22/97 8:00:00 | 214:04 |

LATE COUNT 35 TOTAL 74 PERCENT LATE 47 %

**END OF REPORT**

Appendix A
Page 4

7/11/97
11:19:57

Time Elapsed Report 6/01/97- 6/30/97 Hour Limit: 48
From:Sparks , NV (Y,D) To:Sparks , NV (Z)

Page: 1
R1PERRRB

| Car | Number | Date and Time | Date and Time | Time In Transit |
|---|---|---|---|---|
| AEX | 5215 | 6/18/97 6:15:00 | 6/25/97 7:00:00 | 169:21 |
| BN | 446402 | 5/26/97 7:00:00 | 6/10/97 3:25:00 | 364:57 |
| CLSX | 256 | 6/12/97 6:40:00 | 6/25/97 7:00:00 | 312:00 |
| CNW | 181109 | 6/16/97 6:00:00 | 6/25/97 21:40:00 | 203:04 |
| CRDX | 13998 | 6/11/97 8:35:00 | 6/13/97 1:15:00 | 52:45 |
| CTRN | 100589 | 6/16/97 6:00:00 | 6/25/97 21:40:00 | 202:54 |
| FCTX | 230 | 6/11/97 8:35:00 | 6/13/97 1:15:00 | 52:45 |
| FCTX | 517 | 6/17/97 7:40:00 | 6/20/97 6:00:00 | 74:34 |
| GACX | 6712 | 6/17/97 7:40:00 | 6/24/97 8:15:00 | 165:45 |
| GACX | 6762 | 6/12/97 6:40:00 | 6/16/97 18:30:00 | 85:09 |
| GCCX | 81059 | 6/16/97 6:00:00 | 6/21/97 2:00:00 | 124:39 |
| MP | 715701 | 6/16/97 6:00:00 | 6/27/97 8:50:00 | 265:30 |
| MP | 717009 | 6/04/97 7:05:00 | 6/13/97 1:15:00 | 220:45 |
| MP | 723273 | 6/12/97 6:40:00 | 6/16/97 18:30:00 | 86:04 |
| MP | 724003 | 6/07/97 23:20:00 | 6/10/97 3:25:00 | 75:15 |
| NAHX | 487282 | 6/23/97 15:00 | 6/27/97 19:00:00 | 85:21 |
| PTLX | 15331 | 6/05/97 13:30:00 | 6/10/97 3:25:00 | 123:15 |
| SIRX | 512212 | 6/23/97 10:20:00 | 6/27/97 19:00:00 | 90:30 |
| SIRX | 516322 | 6/11/97 8:35:00 | 6/16/97 19:35:00 | 108:46 |
| SIRX | 516463 | 6/11/97 8:35:00 | 6/13/97 1:15:00 | 55:19 |
| SSW | 79645 | 6/12/97 6:40:00 | 6/21/97 2:00:00 | 222:34 |
| UP | 72977 | 6/09/97 9:34:00 | 6/16/97 18:30:00 | 165:00 |
| UP | 74767 | 6/02/97 8:45:00 | 6/08/97 8:00:00 | 146:19 |
| UP | 75307 | 6/11/97 8:35:00 | 6/16/97 18:30:00 | 110:15 |
| UP | 76145 | 6/04/97 7:05:00 | 6/13/97 1:15:00 | 223:19 |
| UP | 78587 | 6/12/97 6:40:00 | 6/21/97 2:00:00 | 222:34 |
| UP | 79807 | 6/23/97 10:20:00 | 6/27/97 19:00:00 | 96:10 |
| UP | 83170 | 6/09/97 9:34:00 | 6/21/97 2:00:00 | 296:19 |
| UP | 88476 | 6/11/97 8:35:00 | 6/13/97 20:00:00 | 49:18 |
| UP | 89042 | 6/17/97 7:40:00 | 6/25/97 21:40:00 | 178:54 |
| UP | 89095 | 6/17/97 7:40:00 | 6/24/97 8:15:00 | 167:24 |
| UP | 89519 | 6/12/97 6:40:00 | 6/16/97 18:30:00 | 86:04 |
| UP | 89792 | 6/05/97 13:30:00 | 6/08/97 8:00:00 | 85:06 |
| UP | 90999 | 6/11/97 8:35:00 | 6/13/97 1:15:00 | 55:30 |

LATE COUNT 34 TOTAL 71 PERCENT LATE 47 %

**END OF REPORT**

Appendix A

Page 5



Time Elapsed Report 4/15/97- 4/30/97 Hour Limit: 120

From:Ogden , UT (R) To:Sparks , NV (Y,D,Z)



| Car | Number | Date and Time | Date and Time | Time In Transit |
|---|---|---|---|---|
| CNW | 96410 | 4/16/97 13:36:00 | 4/22/97 4:10:00 | 153:25 |
| CNW | 752519 | 4/18/97 1:00:00 | 4/27/97 9:55:00 | 207:04 |
| CNW | 753128 | 4/14/97 18:36:00 | 4/20/97 7:53:00 | 154:42 |
| LCGX | 254 | 4/14/97 18:36:00 | 4/20/97 7:53:00 | 154:42 |
| MKT | 4783 | 4/19/97 5:00:00 | 4/24/97 5:00:00 | 120:00 |
| MP | 718119 | 4/18/97 1:00:00 | 4/24/97 7:20:00 | 137:39 |
| SIRX | 515005 | 4/20/97 12:31:00 | 4/29/97 6:44:00 | 221:46 |
| UP | 87381 | 4/10/97 1:45:00 | 4/17/97 13:05:00 | 155:54 |
| UP | 87652 | 4/10/97 1:45:00 | 4/17/97 13:05:00 | 161:06 |
| UP | 87842 | 4/10/97 1:45:00 | 4/17/97 13:05:00 | 161:06 |
| UP | 88617 | 4/14/97 18:36:00 | 4/20/97 7:53:00 | 154:42 |
| UP | 89382 | 4/22/97 19:15:00 | 4/27/97 1:00 | 139:13 |

LATE COUNT 12 TOTAL 63 PERCENT LATE 19 %

**END OF REPORT**

Appendix A
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6/02/97
15:38:13

Time Elapsed Report 5/01/97- 5/31/97 Hour Limit: 120
From:Ogden , UT (R) To:Sparks , NV (Y,D,Z)

Page: 1
R1PERRRB

| Car | Number | Date and Time | Date and Time | Time In Transit |
|---|---|---|---|---|
| BN | 449544 | 5/10/97 23:05:00 | 5/15/97 20:45:00 | 122:19 |
| BN | 460843 | 5/16/97 15:50:00 | 5/22/97 18:30:00 | 141:19 |
| CNW | 174892 | 5/16/97 15:50:00 | 5/22/97 18:30:00 | 141:19 |
| CNW | 179094 | 5/16/97 15:50:00 | 5/22/97 18:30:00 | 141:19 |
| CNW | 181082 | 5/10/97 23:00:00 | 5/16/97 21:00:00 | 146:00 |
| CNW | 181515 | 5/10/97 23:00:00 | 5/15/97 19:28:00 | 123:31 |
| CNW | 752014 | 5/16/97 15:50:00 | 5/24/97 5:45:00 | 202:04 |
| CNW | 752154 | 5/16/97 15:50:00 | 5/24/97 5:45:00 | 202:04 |
| CRLE | 527004 | 5/10/97 23:05:00 | 5/15/97 20:45:00 | 122:19 |
| CRLE | 528088 | 4/28/97 11:31:00 | 5/03/97 3:30:00 | 139:34 |
| CTRN | 100588 | 4/30/97 14:16:00 | 5/06/97 8:35:00 | 157:25 |
| DRGW | 10625 | 5/16/97 15:50:00 | 5/22/97 18:30:00 | 141:19 |
| DRGW | 10900 | 4/23/97 2:35:00 | 5/10/97 3:00:00 | 420:49 |
| FCTX | 531 | 5/11/97 15:00:00 | 5/22/97 8:00:00 | 271:00 |
| GVSR | 528018 | 5/16/97 15:50:00 | 5/22/97 18:30:00 | 141:19 |
| HS | 1453 | 5/13/97 8:00:00 | 5/19/97 9:05:00 | 142:54 |
| MKT | 4139 | 5/10/97 23:00:00 | 5/15/97 18:35:00 | 122:45 |
| MP | 712077 | 5/10/97 23:00:00 | 5/15/97 18:35:00 | 124:24 |
| MP | 715113 | 5/24/97 11:30:00 | 5/29/97 6:25:00 | 125:04 |
| MP | 716444 | 5/16/97 15:50:00 | 5/22/97 18:30:00 | 141:19 |
| MP | 717919 | 5/16/97 15:50:00 | 5/24/97 5:45:00 | 202:04 |
| MP | 723260 | 5/14/97 7:00:00 | 5/20/97 6:00:00 | 145:00 |
| MP | 723660 | 5/24/97 11:30:00 | 5/29/97 6:25:00 | 125:04 |
| PLMX | 5989 | 5/18/97 13:00:00 | 5/24/97 5:45:00 | 151:15 |
| PLMX | 10410 | 4/24/97 6:11:00 | 5/03/97 3:30:00 | 225:30 |
| SIRX | 515048 | 5/11/97 15:00:00 | 5/22/97 8:00:00 | 271:00 |
| SIRX | 515122 | 5/11/97 15:00:00 | 5/22/97 8:00:00 | 271:00 |
| UP | 71775 | 5/10/97 23:05:00 | 5/15/97 20:45:00 | 122:19 |
| UP | 72079 | 5/24/97 11:30:00 | 5/29/97 6:25:00 | 125:04 |
| UP | 74386 | 5/18/97 13:00:00 | 5/24/97 5:45:00 | 151:15 |
| UP | 76903 | 5/16/97 15:50:00 | 5/22/97 18:30:00 | 141:19 |
| UP | 77316 | 5/16/97 15:50:00 | 5/22/97 18:30:00 | 141:19 |
| UP | 78569 | 5/16/97 15:50:00 | 5/24/97 5:45:00 | 202:04 |
| UP | 83533 | 5/13/97 20:00:00 | 5/19/97 9:05:00 | 154:54 |
| UP | 87506 | 4/24/97 6:11:00 | 5/06/97 5:15:00 | 296:45 |
| UP | 87614 | 4/24/97 6:11:00 | 5/03/97 3:30:00 | 218:40 |
| UP | 87807 | 4/24/97 6:11:00 | 5/03/97 3:30:00 | 226:30 |
| UP | 89102 | 5/03/97 36:00 | 5/09/97 6:00:00 | 138:36 |
| UP | 90090 | 4/20/97 12:31:00 | 5/01/97 23:00:00 | 262:21 |
| UP | 90508 | 5/11/97 15:00:00 | 5/22/97 6:00:00 | 273:00 |
| UP | 90999 | 4/20/97 12:31:00 | 5/10/97 3:00:00 | 492:00 |
| UP | 91287 | 5/11/97 15:00:00 | 5/22/97 8:00:00 | 271:00 |

LATE COUNT 42 TOTAL 166 PERCENT LATE 25 %

**END OF REPORT**

Time Elapsed Report 6/01/97- 6/30/97 Hour Limit: 120
From:Ogden , UT (R) To:Sparks , NV (Y,D,Z)



| Car | Number | Date and Time | Date and Time | Time In Transit |
|---|---|---|---|---|
| AEX | 5215 | 6/14/97 13:01:00 | 6/25/97 7:00:00 | 270:00 |
| CLSX | 256 | 6/09/97 12:00:00 | 6/25/97 7:00:00 | 389:00 |
| FCTX | 517 | 6/15/97 15:00:00 | 6/20/97 6:00:00 | 129:00 |
| GACX | 6712 | 6/15/97 15:00:00 | 6/24/97 8:15:00 | 222:45 |
| GACX | 6762 | 6/09/97 12:00:00 | 6/16/97 18:30:00 | 161:30 |
| GCCX | 81059 | 6/14/97 13:01:00 | 6/21/97 2:00:00 | 179:00 |
| MP | 715701 | 6/14/97 11:25:00 | 6/27/97 8:50:00 | 314:34 |
| MP | 717009 | 6/02/97 6:50:00 | 6/13/97 1:15:00 | 269:34 |
| MP | 723273 | 6/08/97 5:56:00 | 6/16/97 18:30:00 | 179:25 |
| MP | 724003 | 6/02/97 11:00:00 | 6/10/97 3:25:00 | 199:34 |
| PTLX | 15331 | 6/04/97 14:00:00 | 6/10/97 3:25:00 | 154:34 |
| SIRX | 516322 | 6/10/97 1:00:00 | 6/16/97 19:35:00 | 125:24 |
| SSW | 79645 | 6/04/97 14:00:00 | 6/12/97 6:40:00 | 199:19 |
| UP | 74767 | 5/31/97 10:05:00 | 6/08/97 8:00:00 | 194:04 |
| UP | 75307 | 6/10/97 1:00:00 | 6/16/97 18:30:00 | 126:30 |
| UP | 76145 | 6/02/97 6:50:00 | 6/13/97 1:15:00 | 269:34 |
| UP | 78587 | 6/07/97 8:36:00 | 6/12/97 6:40:00 | 121:55 |
| UP | 79650 | 6/02/97 11:00:00 | 6/08/97 8:00:00 | 147:00 |
| UP | 89042 | 6/15/97 15:00:00 | 6/25/97 21:40:00 | 233:19 |
| UP | 89095 | 6/15/97 15:00:00 | 6/24/97 8:15:00 | 222:45 |
| UP | 89519 | 6/09/97 12:00:00 | 6/16/97 18:30:00 | 161:30 |

LATE COUNT 21 TOTAL 118 PERCENT LATE 17 %

**END OF REPORT**

6/02/97
15:40:25

Time Elapsed Report 5/01/97- 5/31/97 Hour Limit: 144
From:Denver , CO (R) To:Sparks , NV (Y,D,Z)

Page: 1
R1PERRRB

| Car | Number | Date and Time | Date and Time | Time In Transit |
|---|---|---|---|---|
| BN | 458650 | 5/03/97 5:03:00 | 5/10/97 3:00:00 | 170:03 |

LATE COUNT 1 TOTAL 3 PERCENT LATE 33 %

**END OF REPORT**

NALS
NORTH AMERICAN LOGISTIC SERVICES
North American Logistic Services
P.O. Box 731, 800 High Street
Hackettstown, NJ 07840

12 June 1997

Ms. Maureen Horrigan
Business Manager-Food Products
Union Pacific Railroad Company
43 Saddlebrook Drive

Dear Maureen:

NALS employs the service of TIE Logistics, Inc. to monitor all rail shipments throughout North America for all MARS, Inc units. Enclosed is a copy of the report generated by TIE Logistics covering the movement of rice from Uncle Ben's in Houston, Texas to in Agincourt, Ontario, Canada. Based on the service record reflected herein, it is felt that both railroads need to explain themselves on their failure to meet standard transit time established on this lane. Furthermore, I would appreciate in writing what action the UPRR is going to take to insure they meet the standard seven day ship to hand off service on this movement in the future.

This business is relative new over the last six months and our customer is quit upset with the railroads failure to perform a consistent reliable service. If this level of service continues, you can be assured that our customer will be reconsidering its decision to source additional business from the Houston market. In support of the business, NALS will look to alternative competitive service if improvements are not made immediately.

I have addressed this issue with the Canadian National under a separate letter and between the two companies I expect a quick response on what action each railroad will be taken to meet the standard service THEY established.

Please provide me with feedback no later than Monday, 23 June on what the UPRR resolution will be to improve its service on this lane.

Sincerely,

J. E. DeVoe
Rail Transportation Manager

For the Month of April, 1997



# Tie Logistics, Inc.

## Move/Carrier Report

## NORTH AMERICAN LOGISTIC SRVCS

**Shipper** Uncle Bens Plant, Houston, TX
**Consignee** Agincourt, ON
**Route** SP/SHRPT SSW/ESTL SSWN/CHGO CN TX-ON

| Car No | | Ship Date | I/C Date | I/C Time | RR | Days on RR | C/P Date | C/P Time | A/P Date | A/P Time | Days C/P-A/P | Transit Time Ship-C/P | Total Time Ship-A/P |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| SSW | 077663 | 1/27/97 | 1/27/97 | 0:01 | SP | 14 | 3/12/97 | 18:20 | 4/3/97 | 12:10 | 22 | 44 | 44 |
| | | | 2/11/97 | 15:00 | CN | 29 | | | | | | | |
| SSW | 074321 | 3/17/97 | 3/17/97 | 0:01 | SP | 8 | 4/17/97 | 12:01 | 4/17/97 | 12:05 | 0 | 31 | 31 |
| | | | 3/27/97 | 3:30 | CN | 21 | | | | | | | |
| SSW | 074069 | 3/21/97 | 3/21/97 | 0:01 | SP | 9 | 4/8/97 | 11:40 | 4/8/97 | 11:41 | 0 | 18 | 18 |
| | | | 3/30/97 | 5:11 | CN | 9 | | | | | | | |
| SSW | 078994 | 3/24/97 | 3/24/97 | 0:01 | SP | 5 | 4/8/97 | 11:39 | 4/8/97 | 11:41 | 0 | 15 | 15 |
| | | | 3/30/97 | 14:15 | CN | 9 | | | | | | | |

| Carrier | Shipments | Early | Late | Standard | % Early | % Late | % Standard | Specified | Actual | Variance |
|---|---|---|---|---|---|---|---|---|---|---|
| CN | 4 | 0 | 4 | 0 | 0.00% | 100.00% | 0.00% | 4.0 | 17.0 | 13.0 |
| SP | 4 | 1 | 3 | 0 | 25.00% | 75.00% | 0.00% | 7.0 | 9.0 | 2.0 |
| Route Total | 4 | 0 | 4 | 0 | 0.00% | 100.00% | 0.00% | | | |

NALS
NORTH AMERICAN LOGISTIC SERVICES

North American Logistic Services
P.O. Box 731, 800 High Street
Hackettstown, NJ 07840

24 July 1997

To: Maureen Horrigan - Union Pacific Railroad

Fr: Jim DeVoe - NALS

Re: Hot Rush Shipment For Canada

Enclosed is a self explanatory memo from the Uncle Ben's Plant regarding two loads destined to , in Agincourt, Ontario, Canada. It is imperative that the Union Pacific Railroad do everything possible to insure that these cars move forward without delay and interchange with the Canadian National Railroad without exception.

This movement represents only two of the five cars that Uncle Ben's planned to ship to Canada this week. Again, the failure by the Union Pacific Railroad to provide equipment and timely transit service has placed our business at risk with our customer in Canada.

Again, to prevent any further threat and embarrassment, I would like you to communicate to the proper management in your railroad that these cars need to be placed on a priority listing for movement through interchange. I would also like you to provide me with up dates on the movement of these cars while on the Union Pacific.

Your prompt attention to this request is appreciated.

## Devoe, Jim

**From:** Louka, Connie
**To:** Devoe, Jim
**Cc:** Kowalyk, Lvdia: McCabe, Kris; Dietz, Robert; Hanson, Larry; Wright, Debbie
**Subject:** 2 Cars to in Canada
**Date:** Friday, July 25, 1997 9:51AM
**Priority:** High

We need to expedite 2 railcars that were pulled by the SP this morning from the Clinton plant:

SSW74733 and SSW74305

These need to be Hot Rushed to at Agincourt, Ont. The co-packer will shutdown if the cars don't arrive quickly. I requested the cars weigh in Toronto vs Houston, since there is always several days delay.

Thanks in advance for your help!

Connie

NALS
NORTH AMERICAN LOGISTIC SERVICES

North American Logistic Services
P.O. Box 731, 800 High Street
Hackettstown, NJ 07840

24 July 1997

To: Maureen Horrigan - Union Pacific Railroad

Fr: Jim DeVoe - NALS

Re: Poor Car Supply Service

As of AM today, Uncle Ben's finally received two cars off their order request dated 14 July. Still unaccounted for are the three cars requested for loading the week of 21 July. I need to speak to your Vice President in charge of covered hopper car supply. NALS has addressed this issue with the UPRR for sometime without any resolution in site.

If NALS and Uncle Ben's cannot get an immediate satisfactory resolution on car supply and service improvement from the Union Pacific Railroad, I will move forward to secure an agreement with the Burlington Northern/Santa Fe.

As explained to you on a number of occasions, this poor service is jeopardizing our business with our customer                     in Ontario. Why hasn't anything been done to assist Uncle Ben's in providing a consistency in equipment availability and service to our valuable customers?

cc: Dick Davidson - UPRR

NORTH AMERICAN LOGISTIC SERVICES
North American Logistic Services
P.O. Box 731, 800 High Street
Hackettstown, NJ 07840

24 July 1997

To: Maureen Horrigna - Union Pacific Railroad

Fr: Jim DeVoe - NALS

Re: Another Derailment At Houston Plant

The Uncle Ben's plant had another derailment yesterday involving two cars of which one was again a Clorox car (ECUX 860480). The crew has not yet returned to set these cars up and eliminate the bottleneck at the plant. Need names, telephone numbers down in Houston to get some resolution on this continues service problem.

This is the second time in which the UPRR has brought is a foreign car which ended up in a derailment. Based on information from the plant, the length and size of the Clorox cars are not suitable to travel across the Uncle Ben's track, yet the railroad continues to bring them into the facility. Why??????

Need answers today. The plant manager and logistic group need solutions that will prevent this from happening again.

NORTH AMERICAN LOGISTIC SERVICES
North American Logistic Services
P.O. Box 731, 800 High Street
Hackettstown, NJ 07840

20 June 1997

To: Maureen Horrigan - Union Pacific Railroad

Fr: Jim DeVoe - NALS

Re: Year To Date Service Performance

Enclosed is a copy of May, 1997 service performance from TIE Logistics for your review and comments. The year to date combined service failures for the UP and SP is 56.6%. You will have to agree that this is not a record the railroad wants to publish to the Surface Transportation Board in a few months.

What does it take for a customer to get acceptable service from the Union Pacific? I know, the logistic group is looking a the problem areas, but when will we the customer see improvements? Our Houston, Waco and Sparks Plants continue to have problems with no signs of service improvement. NALS needs answers to communicate back to its plant management.

*6/18/97 2:11:45 PM*

For the Month of May, 1997



***Tie Logistics, Inc.***

**Rail PerFormance, All Mars Units - YTD**

NORTH AMERICAN LOGISTIC SRVCS

| Carrier | # Moves | # Early | # Late | # On Time | Favorable Service Performance |
|---|---|---|---|---|---|
| UP | 576 | 143 | 302 | 131 | 47.57% |
| SP | 274 | 48 | 179 | 47 | 34.67% |

## VERIFICATION

STATE OF NEVADA )
) ss
COUNTY OF WASHOE )

JAMES E. DEVOE, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

James E DeVoe

James E. DeVoe

Subscribed and sworn to before me this 30th day of July, 1997.

Lisa Godoy

Notary Public

My commission expires: 3-24-2001

LISA GODOY
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 97-0600-2 - Expires March 24, 2001

# CERTIFICATE OF SERVICE

I hereby certify that I have on this date served copies of the foregoing document on all parties of record as follows:

(1) Three copies have been hand-delivered upon:

Arvid E. Roach, II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566;

(2) Three copies have been served by first class mail, postage prepaid, upon:

James V. Dolan, Esq.
Paul A. Conley, Jr., Esq.
Louise A. Rinn, Esq.
Law Department
Union Pacific Railroad Company
Southern Pacific Transportation Company
1416 Dodge Street
Omaha, NE 68179

Carl W. Von Bernuth, Esq.
Richard J. Ressler, Esq.
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018; and

(3) A single copy has been served upon all other parties of record by first class mail, postage prepaid.

Terrence D. Jones

August 1, 1997
Washington, D. C.

STB FD-32760 (SUB 21) ID-180901 8-1-97 D

180901

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# MAYER, BROWN & PLATT

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RECEIVED
AUG 1 1997
MAIL MANAGEMENT
STB 7

August 1, 1997

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

D

Re: Finance Docket No. 32760 (Sub-No. 21)

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket, please find an original plus twenty (20) copies of the Comments of The Burlington Northern and Santa Fe Railway Company (BNSF-1). Also enclosed is a 3.5-inch diskette containing the text of BNSF-1.

Please date-stamp the enclosed extra copy and return it to the messenger for our files. Thank you for your time and attention.

ENTERED
Office of the Secretary
AUG 04 1997
3 Part of Public Record

Sincerely,

Kelley E. O'Brien

Kelley E. O'Brien

Enclosures

BNSF-1[1]

182901

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
AUG 11 1997
MAIL
MANAGEMENT
STB 7

Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

ENTERED
Office of the Secretary
AUG 04 1997
3 Part of
Public Record

COMMENTS OF THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY


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Richard E. Weicher
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Attorneys for The Burlington Northern and Santa Fe Railway Company


August 1, 1997

[1] Previously in this sub-docket, The Burlington Northern and Santa Fe Railway Company ("BNSF") filed progress reports that were designated with the prefix "BNSF-PR." Because this is the first non-progress report filed by BNSF in this sub-docket, it is being designated BNSF-1.

BEFORE THE
SURFACE TRANSPORTATION BOARD

BN/SF-1
RECEIVED
AUG 1 1997
MAIL MANAGEMENT
STB

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Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
— CONTROL AND MERGER —
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

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## COMMENTS OF
## THE BURLINGTON NORTHERN & SANTA FE RAILWAY COMPANY

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Pursuant to the Surface Transportation Board's Decision No. 1, served May 7, 1997, The Burlington Northern and Santa Fe Railway Company ("BNSF") submits the following comments regarding the Board's oversight of the UP/SP merger.

### INTRODUCTION AND SUMMARY

In Decision No. 44 in this proceeding, the Board granted extensive trackage rights to BNSF as a condition of the UP/SP merger, and added several other conditions designed to "permit BNSF to replace the competition that will be lost when SP is absorbed into UP." Dec. No. 44, at 116. Rejecting assertions that BNSF would be "generally unwilling or otherwise uninterested in providing all the service contemplated in the trackage rights agreement" (*id.* at 133), the Board noted that BNSF is the "most able and aggressive competitor" to the merged UP/SP system (*id.* at 103) and "expect[ed] that BNSF will compete vigorously for the traffic opened up to it" (*id.* at 146).

The Board's confidence was fully justified. In the ten months since the UP/SP merger was consummated, BNSF has made swift and substantial progress in providing competitive service over the trackage rights awarded in the merger proceeding. With the initiation of service in the I-5 Corridor on July 15, BNSF has now implemented direct train service in all of the corridors on which it received access under the BNSF Settlement Agreement and the Board's conditions, except for the 150-mile segment between Corpus Christi-Brownsville; as to that segment, BNSF supplies locomotive power for much of the haulage over the segment, and is trying to obtain access from UP to a redundant UP facility that would give each carrier its own yard facility for the traffic carried over that segment. BNSF's July 1 quarterly progress report more fully explains the growth in service and traffic as BNSF has implemented its merger-related rights.

In this oversight proceeding, the Board has announced that it will consider "whether the conditions imposed effectively addressed the competitive harms they were intended to remedy." Dec. No. 1, at 3. The evidence to date shows that, in general, the conditions are working as intended. BNSF has increased traffic volume over the trackage rights lines. Moreover, BNSF's competitive presence is generally having the effect that the Board intended: UP reports that BNSF competition has forced it both to *reduce* rates to 2-to-1 shippers and to improve service and car supply to those shippers (UP/SP-303, at 100 - 104). Against this empirical backdrop, and at this very early stage of the implementation of the merger and the merger conditions alike, the Board's 1997 oversight proceeding should not permit relitigation of the fundamental legal issues that were resolved in the primary case.

To the contrary, and importantly, the oversight proceeding should focus on situations in which the merger conditions are *not* working as intended. The Board should act where particular allegations warrant relief, and police UP's commitment and performance under the Board's conditions. By using the oversight process to address and act on concrete concerns, such as those described below, but excluding broad-based challenges to settled legal and regulatory principles, the Board can strike the balance that will produce oversight that is "a focused, probing and productive process * * * that is not unduly burdensome." Comments of Chairman Morgan, Dec. No. 1, at 9.

## I. BNSF'S PROGRESS CONFIRMS THAT THE BASIC PRINCIPLES SUPPORTING THE CONDITIONS ARE SOUND

The theory underlying the merger conditions was that BNSF could (because it had been given adequate tools to use together with its extensive route system and resources) and would (by behaving as an aggressive competitor) provide competitive discipline on the merged UP/SP system, generally replacing the discipline lost by the elimination of SP as an independent competitor. The Board adhered to those premises in the face of substantial disagreement with them by merger opponents, including dire predictions of a non-competitive Western rail "duopoly." The Board made each of its predictions — about the adequacy of the tools given BNSF and about BNSF's willingness to compete vigorously — subject to further examination through these oversight proceedings, as actual experience sheds light on their accuracy. Accordingly (and as explained in more detail below), in these proceedings the Board should focus on the adequacy in practice of the tools BNSF was given in providing effective competition as intended to UP, and on the level of effort that BNSF has exerted in competing for the newly available business.

### A. BNSF Has Shown Its Willingness to Compete

Although in certain situations the tools BNSF was given are not working as the Board intended, and despite the early stage at which BNSF's merger-related operations are being evaluated, BNSF is clearly doing its part to satisfy the basic goals of the conditions, and already is having increasing commercial success. Evidence of BNSF's competitive vigor includes not only the traffic it has gained in its few months of operation over the new routes, but — just as tellingly — "the fact that average UP/SP rates for '2-to-1' traffic *declined* in the six months following the merger compared to the same period a year earlier." UP/SP-303 at 104 (emphasis added). BNSF has worked hard both in operations and in marketing to make its new service fully competitive as quickly as possible. BNSF is finding, contacting, and aggressively bidding for the business of 2-to-1 shippers. Unlike SP, however, BNSF can compete in service quality as well as in price. That considerably increases the pressure on UP to reduce its prices or improve its service (or both) in order to retain traffic.

An oversight proceeding one year into a large railroad merger is not the place to revisit the premises of last year's proceeding without a compelling reason to do so. Any proponent of drastically rearranging the balance the Board struck in Decision No. 44, by adding additional carriers or substituting a different carrier for BNSF, should have a heavy burden to show that BNSF is not competing vigorously. No party can meet that burden because BNSF is competing to the fullest extent possible with the specific conditions provided by the Board. The Board contemplated a substantial change in the western railroad map only if BNSF "fail[ed] to conduct trackage rights operations" in three corridors: the Central Corridor, Houston-New Orleans, and Houston-Memphis. *Id.* at 134, 146 n.178. But BNSF was conducting trackage rights operations over all three corridors by mid-January 1997, and has increased service in all three corridors since then.

**B. BNSF Is As Effectively As Possible Using The Competitive Tools It Received As It Works To Overcome Obstacles To Continued Growth Of New Business**

The magnitude of BNSF's undertaking should not be understated. In less than one year, BNSF has expanded its operations to include routes that themselves would constitute a mid-sized rail system, but a rail system over which BNSF began with a *zero* market share just 10 months ago: *all* affected shippers used UP or SP, and some had done so for more than a century. Inducing these customers to switch carriers is not done instantaneously or without substantial effort by BNSF. Several factors assist UP in retaining the business of shippers at 2-to-1 points in the short term despite BNSF's vigorous efforts. Most obviously, UP retains access to virtually all of the former UP/SP customers that BNSF now reaches. Furthermore, much traffic remains committed under long- or medium-term contracts with UP or SP, where the transaction cost to the shipper of changing carriers may not justify releasing part of that traffic to BNSF — particularly for contracts that expire in 1997 or 1998. That impediment diminishes every month, as contracts expire. Nevertheless, as discussed in more detail below, the contract reopener condition has not yielded much business for BNSF.

Even where no contract is in place, however, many shippers on the new routes have long-standing commercial and operational relationships with UP and SP but not with BNSF. BNSF lacks a service record on these routes, and indeed was disproportionately hampered in forging one by the severe weather conditions this past winter that disrupted the availability of cars and motive power. As BNSF establishes itself in new areas during normal weather conditions, shipper habits increasingly lose force. In addition, as BNSF continues to consolidate its own operations less than two years into its own merger, BNSF service quality is improving further. This improvement will accelerate now that BNSF's newly integrated real-time information system is on-line.

Despite challenges, BNSF has demonstrated meaningful success in attracting new business over the trackage rights lines. And the significance of BNSF's achievements in securing new business is even greater when consideration is given to BNSF's absolute commitment to safe railroad operations. BNSF must assure that its crews are trained for operation on the territories covered by the new trackage rights and over the newly purchased lines before its own direct service can commence. In addition, crews must learn any local operating rules affecting service to particular facilities. Certain shippers (such as chemical shippers) also require special safety precautions due to the nature of the material being shipped, and BNSF crews are trained on each of these local requirements as well before BNSF switches such a facility.

BNSF is very proud of its safety record. As noted in the July 1 Progress Report (BNSF-PR-4 at 5), the number of BNSF's employee on-duty injuries fell 29 percent from 1995, while the 1996 derailment rate per billion gross ton miles was 27 percent lower than in 1995. Through the first half of 1997, BNSF has achieved safety improvements comparable with last year.

Indeed, BNSF has placed safety considerations ahead of operational convenience. For example, when BNSF began operations over the Iowa Junction-Avondale line it purchased from UP, BNSF reduced the track speed for both freight and Amtrak operations, because in BNSF's view, the line did not meet appropriate standards for the speed rating it held prior to the BNSF acquisition.[1/] BNSF is now expending substantial resources to rebuild the line's operational capacities. Even though the lower speed standards now in effect may present operational inconveniences to some customers, BNSF will not sacrifice safety considerations to improve operational efficiencies, and will not increase the speed over that line until it can safely support higher speed operations.

BNSF has safely increased its service and volumes along the trackage rights lines. BNSF has every intention of continuing to pursue rapid growth, as it becomes more established on the new routes and in the new markets. Initial successes — "footholds" in new markets — demonstrate to additional customers that BNSF is serious about competing and is on these lines to stay. Early success can breed substantial additional success over time. The key — for evaluative purposes — is not what BNSF's market share is at this early stage, but whether BNSF is competing in ways that confirm its seriousness and provide meaningful competition to UP.

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1/ BNSF and UP are currently in arbitration over the issue of the line's condition prior to BNSF's acquisition and the responsibility for the cost of line rehabilitation.

## II. THE OVERSIGHT PROCEEDING SHOULD BE NARROWLY TAILORED TO ADDRESS THE CIRCUMSTANCES IN WHICH THE CONDITIONS ARE NOT WORKING AS THEY SHOULD TO PRESERVE PREMERGER COMPETITION

### A. The Evidence So Far Does Not Support Relitigation of the Fundamental Premises of the Merger Conditions

In imposing the merger conditions, the Board recognized that, at first, BNSF must simply "attempt * * * to gain a foothold in [the] new market[s]." Dec. No. 44, at 133. In evaluating the adequacy of the merger conditions at this early date, the Board should focus its attention on whether BNSF's ***initial*** implementation of competitive service has met the Board's expectations. The Board should focus on actual marketplace behavior in the areas in which the merger reduced the number of competing rail carriers from two to one. Any review of these issues must take into account the necessary "ramping-up" period as BNSF begins its own operations and incorporates 4,000 additional miles into its core route system.

The Board recognized that western rail transportation is — and was even *before* the UP/SP merger — a "rapidly evolving market, not a static one" (Dec. No. 44, at 104). At this incipient stage of the post-merger market, BNSF's competitive presence — whether BNSF is effectively available on an ongoing basis to "2-to-1" shippers that lost access to an independent SP — is far more significant than static snapshots of traffic volumes during a ramp-up period or other crude numeric tests. Rather, the prime consideration in evaluating the effectiveness of BNSF's competitive efforts is whether they have been reasonably consistent with the successful establishment of a long-term substantial competitive presence in the "2-to-1" areas where the Board has relied on BNSF to prevent the UP/SP merger from having anticompetitive effects.

Accordingly, reliance on static market share statistics would make no sense now because such "metric" tests ignore more market and operational realities than they measure. BNSF's most important ongoing function is to prevent monopolistic behavior by UP. It is equally and commercially important that BNSF derive meaningful volumes of business in order to generate the densities that will allow it to lower its costs and earn *more* business. But the rationale supporting the imposition of conditions in a merger case is to ensure that the new entrant's competitive presence in the market is sufficient to provide competitive discipline on the behavior of the merged railroad. Market share statistics at this early ramp-up stage are too crude a measure of whether this goal has been met.

Nor can BNSF's performance, especially after only 10 months, sensibly be compared either with the service that SP provided or the volumes that SP carried after developing the markets for a century, or with the "cash-flow" prices that SP occasionally provided to shippers willing to tolerate its inconsistent, low-quality service. As the Board recognized, SP could not "generate adequate cash flow" to sustain its operations. Dec. No. 44, at 116.

The proper analysis therefore is not structural, but essentially behavioral. The broad issues were decided last year, and should not be relitigated unless pervasive and compelling evidence mandates re-examination. Instead, the oversight analysis should be rooted in the real-world effects of the structure imposed in Decision No. 44, and should focus on whether BNSF has entered the markets it is supposed to enter, and whether that entry is providing (or, based on current trends, can be expected to provide) the desired constraint on UP: in other words, has the availability of competition from BNSF for 2-to-1 shippers' rail business forced UP to offer a competitive price/service package?

**B. The Oversight Proceeding Should Address Situations Where The Conditions Are Not Working As Intended Or Where UP Is Impeding Their Proper Functioning**

While the experience to date does not support revisiting whether the conditions imposed as part of the approval of the UP/SP merger are generally appropriate, there are situations in which the conditions have not resulted in effective competitive options, as BNSF observed in its July 1 Progress Report (BNSF-PR-4 at 12-13). The Board should be responsive to showings of such failures. For example, if shippers identify examples in which the merger conditions have not practically resulted in BNSF's being able to serve particular shippers that were adversely affected by the merger, the Board should evaluate whether the effects resulted from merger-related market power and, if so, whether the Board should grant BNSF additional competitive tools so that the affected shippers may take advantage of BNSF's service. As another example, if it is shown that UP has actively impeded BNSF's access to particular customers, Board intervention is appropriate as part of the oversight process or in response to separate petitions for relief.

Furthermore, the Board during the oversight proceeding should examine and act on concrete examples in which UP's implementation of the conditions has hampered BNSF's ability to compete as effectively with UP as the conditions contemplated. The competitive tools that the Board has given BNSF may require additional regulatory fine-tuning in the oversight proceeding or in separate, companion proceedings, to address instances in which UP has not complied with the letter or intent of the competition-preserving conditions.

BNSF discussed some issues of concern to it in its July 1 Progress Report, and will review and update those concerns here.

For example, as noted in the July Progress Report (BNSF-PR-4, V.S. Rickershauser at 10-11), BNSF is hindered by UP's failure to agree with BNSF on the process to be used in identifying "2-to-1" industries eligible for two-carrier service. While this process should be relatively straightforward, as a practical matter, the "2-to-1" identification process has been exceedingly labor-intensive and slow. Indeed, as noted in the July Progress Report, as of July 1 UP had not responded for several months to a BNSF request to confirm the identification of approximately 250 "2-to-1" customers, and had withdrawn "2-to-1" status from 93 shippers (BNSF-PR-4, V.S. Rickershauser at 10-11).[2] Under these circumstances, BNSF cannot serve the shipper until UP affirmatively agrees to its "2-to-1" status. And BNSF does not control the information needed to determine with certainty whether the shipper was, indeed, served by two carriers in the premerger time period. UP's delays in responding to BNSF's proposals have impeded BNSF's ability to respond promptly to shipper requests for new service.

As reported in BNSF's July 1 Progress Report (BNSF-PR-4, V.S. Rickershauser at 10), BNSF stated that UP had removed 93 customer facilities earlier recognized as being "2-to-1" from the "2-to-1" access list jointly kept by BNSF and UP during the second quarter. BNSF then verifies whether the customer's location is a "2-to-1" point. As an example of what this means to both BNSF and its customers, BNSF had completed a

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[2] Since BNSF raised this matter on July 1, UP provided a response on the then-pending shippers, which denied "2-to-1" status for more than half of the shippers BNSF had identified. An additional request to UP made on June 24, 1997, remains pending with only partial response.

competitive contract with a customer UP had earlier advised as being "2-to-1" at South Gate, CA, only to be subsequently informed by UP during the second quarter that the customer was not "2-to-1" and could not be accessed by BNSF. The customer, researching its files, produced correspondence establishing without question that it was entitled to "2-to-1" access at this location. BNSF forwarded this information to UP, which in July admitted its error and restored the customer to "2-to-1" status. Considerable BNSF and shipper time was expended on this exercise, and three months of shipping time via BNSF under the terms of the contract earlier reached was disrupted.

As is apparent, this is very time consuming for both BNSF and the customers involved. With every "2-to-1" customer UP removes from the "2-to-1" list, BNSF will certainly make the research effort and challenge those UP decisions it feels are inaccurate. It is evident, however, that under the current processes the determinations of which customers are "2-to-1" will not be finalized for an extended time into the future, delaying full implementation of the merger conditions.

In light of these impediments to full competition, and BNSF's inability to persuade UP to respond more promptly to BNSF's "2-to-1" shipper identification proposals, BNSF requests that the Board establish a presumption that any shipper located at a "2-to-1" location is entitled to two-carrier service, and place the burden of proof on UP to disprove the presumption with evidence that the location was not served by UP and SP (and only those two carriers) pre-merger. In this way, shippers deserving of two-carrier service will not have to await an uncertain determination of their eligibility by UP. UP, not BNSF, should also be required to notify a shipper when UP removes the shipper's location at a "2-

to-1" point from access to BNSF, and provide the shipper the opportunity to refute the claimed basis for UP's action before it is implemented.

Similar issues attach to UP's narrow interpretations of the Board's conditions with respect to "new facilities" and "transloads" (BNSF-PR-4, V.S. Rickershauser at 24). BNSF has been working with shippers to establish "new facilities" and "transload" facilities on a project-by-project basis, but has been stymied by UP intransigence in recognizing that particular projects are "new facilities" or "transloads." Currently, UP's position on "new facilities" and "transloads" is that the only such facilities BNSF can access as a result of the merger conditions and agreements are either totally new "greenfield" sites or existing facilities to which rail service is extended for the first time. UP's position on BNSF access to existing transloads at "2-to-1" points is that such access is limited to "public" transloads (*i.e.*, ones that are for hire and open to the public in general). The Board should use the oversight process to set clear principles governing the definitions of "new facilities" and "transloads," and clear procedures requiring UP to respond promptly to any requests to recognize particular projects as "new facilities" or "transloads," so that shippers and BNSF do not have to engage in protracted disputes with UP on a case-by-case basis about the status of such projects. Otherwise, by simply dragging its feet and interpreting those terms narrowly, UP can continue to deny competition to shippers that the Board clearly intended to protect by its conditions.[3/]

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[3/] BNSF requests that the Board determine that the definition of "new facilities," although it does not include expansions of or additions to existing facilities, does include (1) vacant or existing rail-served facilities that undergo a change of ownership or lessee and (a) change the product shipped from or received at the facility, or (b) have not shipped or received by rail for at least 12 months prior to the resumption or proposed resumption of rail service; (2) existing facilities

In addition, UP currently can foreclose BNSF from access to some traffic by bundling rates and volumes at 2-to-1 points with rates and volumes from solely served UP points. Such bundling arrangements, in the context of the UP/SP merger, can make it impractical for a shipper needing access to any destinations served solely by UP to award competitive traffic to BNSF, contrary to the intention of the merger condition. In particular, UP has used Guideline #9 (in Decision No. 57) to render it impractical for such origin- or destination-dependent shippers to reopen existing contracts so that BNSF can bid on traffic to competitive or BNSF destinations. In its July Progress Report, BNSF suggested that the Board should reexamine and eliminate Guideline #9 during the oversight proceeding (BNSF-PR-4 at 12 and V.S. Rickershauser at 20-24). When anticompetitive effects as a result of the UP/SP merger can be shown (*i.e.*, as a result of the loss of source or other competition), BNSF should be granted access to the bundled UP sole-served facilities to restore competitive alternatives lost because of UP's leveraging. These bundling situations should be addressed on an expedited basis because of their nexus to the merger.

BNSF is constantly vigilant in modifying its service plans over the trackage rights lines to ensure that its service over those lines is increasingly competitive with UP's. Where BNSF's access depends on reciprocal switching or haulage provided by UP, however, UP's inconsistent service and lack of cooperation has produced unnecessary delays for rail shippers. For example, as reported in the July 1 Progress Report (BNSF-PR-4, V.S. Hord at 18-19 and V.S. Rickershauser at 4), BNSF replaced UP with the Utah Railway as the agent for providing local switch service to Utah customers. BNSF was

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constructing trackage for accessing rail service for the first time; and (3) newly constructed rail-served facilities.

required to make this change to ensure adequate service to BNSF's Utah customers. Customers hold BNSF accountable for the quality of services it provides them, even when those services are provided in part by — and problems are attributable to — UP under these arrangements. Repetitive service failures for BNSF traffic moving in UP haulage or reciprocal switch can cause rail customers to reevaluate their competitive options, possibly taking the business away from BNSF and returning it to UP routing.

In other situations, because of UP's delays in handling the business of BNSF's customers, BNSF will propose to UP protocols, standards, and measurements for switching and haulage to ensure that service provided by UP to BNSF's shippers is consistent and at least as good as that provided to UP's own customers.[4/] BNSF will seek STB intervention as part of the oversight process if these proposals to UP are not acted on expeditiously, since BNSF should not have to — and will not — tolerate poor service that impedes competitive service over rights that were granted to *prevent* UP from engaging in monopolistic behavior.

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[4/] Recently, under the Houston-Brownsville haulage arrangement, a shipment from Borger, TX, to Corpus Christi spent 10 days sitting in Houston on a UP train (and is still there as of July 31), causing the customer to request that BNSF consider relinquishing future shipments to an interline route with UP, which would of course defeat the very purpose of the rights granted in the merger case. Similarly, a shortline recently advised BNSF that it had delivered 23 cars to UP in Little Rock for haulage to BNSF in Pine Bluff, but that the cars had been on UP for 4-12 days, again causing customer complaints. Yet another customer has experienced at least three instances of UP failure to move BNSF cars moving under haulage to the Tex Mex yard at Corpus Christi. These are only recent examples of recurring situations in which haulage arrangements are not functioning as intended and as promised.

Where BNSF needs reasonable accommodations from UP for access to terminal and related facilities to ensure that BNSF's trackage rights service is commercially competitive with UP's service, BNSF will push hard for such accommodations. For example, for traffic between the Pacific Northwest and Utah destinations over the Central Corridor — traffic newly served via the I-5 corridor as of July 15 — BNSF currently must move the traffic more than 375 miles out of route, adding three extra transit days, to handle the traffic down through Stockton for cross-yarding and back up to the Central Corridor. If UP would permit BNSF to use available and existing side tracks near Oroville, CA (space permitting) to set out and pick up this traffic on a Central Corridor-bound train, BNSF's Central Corridor service for this traffic would be more competitive with UP's service. BNSF intends to continue to press for this accommodation at this location and any location at which a similar situation arises. If UP does not provide reasonable accommodations, BNSF will ask the Board to intervene.

Another unresolved facilities problem exists at the Sjolander facility in Dayton (see BNSF-PR-4, V.S. Hord at 22-23). Loaded plastics cars are released by "2-to-1" shippers to UP for storage before the shipper determines whether the cars will be billed out on BNSF or UP. UP moves the cars to the Sjolander facility for storage, but, when that facility is full, UP selects the cars to store elsewhere on the UP system. By selecting the cars of "2-to-1" shippers rather than non-"2-to-1" shippers to store elsewhere, UP has disadvantaged BNSF in competing for those customers' business. The Board should require UP to store "2-to-1" shippers' cars at Dayton whenever possible, and not to store other shippers' cars at Dayton in preference to the "2-to-1" shippers' cars. Furthermore, to the extent that cars *are* stored at locations other than Dayton and later billed to BNSF, they should be handed over to BNSF at the most efficient point, not returned all the way to Dayton before interchanging to BNSF.

Still another example of UP's unreasonable impairment of competition pertains to the Halsted facility of the Lower Colorado River Authority. Although the facility is clearly a point to which BNSF was granted access by the settlement agreements on which the merger was conditioned, UP has taken the indefensible position that Decision No. 57, which declared the facility not to be a "2-to-1" point *for purposes of the contract reopener condition*, means that it is not a facility that BNSF is currently entitled to access *at all*, even for traffic not committed under any prior contract. BNSF will be moving jointly with the shipper in the near future for a prompt declaration confirming BNSF's right to immediate access to the Halsted facility.

Also of continuing concern to BNSF are the lack of long-term stability and other problems in the relationships and business arrangements necessary to serve Mexico over Laredo using the trackage rights granted BNSF for that purpose. Although BNSF reported in its most recent Progress Report that it had concluded a working marketing arrangement with Tex Mex (BNSF-PR-4 at 8-9), it also observed that "BNSF and Tex Mex have not completed a long-term agreement" (*id.* at 8), echoing concerns expressed in earlier Reports (BNSF-PR-1 at 22; BNSF-PR-2 at 3-4; BNSF-PR-3 at 8). The absence of a long-term agreement precludes BNSF from offering long-term commitments to customers and is a substantial impediment to BNSF's effective use of the Mexico-related trackage rights to provide competitive discipline on UP. Furthermore, Tex Mex has been pressing BNSF to route traffic over Houston. The result is that shippers desiring to use BNSF service to Mexico via Laredo could be required to use Tex Mex's inferior route from Houston to Corpus Christi. The more efficient route is to use BNSF to Robstown and Tex Mex to Laredo. If Tex Mex is allowed to insist on Houston routings, BNSF's ability to provide competitive service to Mexico will be diminished.

Another issue flagged by BNSF in its July Progress Report is the question of access to former UP or SP customers at New Orleans through reciprocal switch (BNSF-PR-4 at 12). As noted there, UP has declined to permit BNSF to have access to former UP or SP customers at New Orleans, although it does permit all other carriers serving New Orleans to access these customers through reciprocal switch. UP's actions here have created significant problems for shippers of westbound traffic out of New Orleans, who have effectively been denied access to competitive two-carrier service. BNSF plans to file a separate petition for relief, seeking an order to require UP to open these industries to reciprocal switching by BNSF, shortly.

Finally, UP only recently responded to — and declined — BNSF's request pursuant to the settlement agreement process for trackage and property sufficient to establish its own team tracks in Salt Lake City, for the benefit of occasional rail customers in the Salt Lake City area, even through Decision No. 44 provides access for BNSF to establish team tracks at "2-to-1" points (BNSF-PR-4, V.S. Rickershauser at 25). UP refused to make available track at Rose Park, UT, and Welby, UT. To prevent the parties from being in constant states of impasse with respect to team tracks, to the detriment of shippers, the Board should use the oversight process to set clear principles governing when BNSF may gain access to team tracks. To provide team track service at major points on the trackage rights effectively, UP should be required within 30 days of a written request to provide BNSF with access to either existing team track facilities made redundant by the UP/SP merger, or shared access to existing UP team tracks, under existing terms as spelled out in the merger agreements and conditions.

* * *

The structural approach to the oversight proceeding recommended by BNSF will more reliably center the oversight proceeding on competitive issues that actually affect shippers, or have the potential to do so, rather than on bids by various parties for a regulatory hand-out. And, with respect to UP, the Board should examine whether UP has implemented the conditions with the spirit of allowing effective competition in the West. Where the evidence suggests otherwise, the Board should take appropriate remedial actions at an early stage to meet its goals of preserving full competition.

A narrowly tailored proceeding that is defined to focus on examples of actual or potential harm to shippers will accomplish the goal of ensuring the adequacy of post-merger competition without an elaborate relitigation of last year's merger proceeding.

## CONCLUSION

In light of the dynamic and evolving competitive situation in the areas where UP and SP formerly competed, the Board's assessment of the sufficiency of the merger conditions itself should be dynamic rather than static. Oversight should focus on whether UP is impeding BNSF's ability to compete in the ways that the merger conditions contemplated.

Even with the growth in its business to date, BNSF will not be satisfied until the conditions are working as intended to provide customers with a full substitute for the competition that was lost when SP merged into UP. BNSF will take all necessary steps to cause the conditions to achieve that goal. Where necessary, the Board should modify the conditions to ensure that they are serving the purpose for which they were intended. In particular, the Board should:

- establish a presumption that any shipper located at a "2-to-1" location is entitled to two-carrier service and place the burden on UP to rebut that presumption;
- establish clear principles governing the definitions of "new facilities" and "transloads" and clear procedures requiring UP to respond promptly to requests to recognize particular projects as such;
- grant BNSF access to bundled UP sole-served facilities when necessary to restore competitive alternatives lost as a result of the UP/SP merger combined with UP's leveraging activity;
- address service issues, including but not limited to those existing at the Sjolander facility in Dayton, where UP should be required to prefer cars from "2-to-1" customers over those from non-"2-to-1" customers when space at Sjolander is short, and to return any cars not stored at Dayton to BNSF at the most efficient point;
- promptly reject UP's indefensible position that LCRA's Halsted facility is not a point to which BNSF received immediate access;
- address Mexico-related issues if Tex Mex to prevent inefficient routings that harm competition; and

- set clear principles governing access to team tracks and require UP within 30 days of any written request to provide BSNF access to either team tracks made redundant by the merger or existing UP team tracks.

Respectfully submitted,

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August 1, 1997

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of The Burlington Northern and Santa Fe Railway Company was served on all parties of record in Finance Docket No. 32760 (Sub-No. 21).

Kelley E. O'Brien

Kelley E. O'Brien

STB FD-32760 (SUB 21) ID-180899 8-1-97 D

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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| UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY | Finance Docket No. 32760 (Sub-No. 21) |

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**AMTRAK'S COMMENTS**

In response to the Board's decision requesting comments that was served in this docket on May 7, 1997, the National Railroad Passenger Corporation (Amtrak) submits the following comments on the impact of the UP-SP merger on its operations.

**Background**

The operating plan that UP and SP filed with their merger application in November of 1995 projected large increases in freight traffic on a number of SP lines where Amtrak trains were already experiencing significant on-time performance problems.[1]

[1] UP/SP subsequently amended a number of the freight traffic projections in their application. In many cases, these amendments increased the level of projected freight train operations.

-- The proposed abandonment of SP's Tennessee Pass line, and the trackage rights granted to BNSF over SP's Moffat Tunnel line, were projected to add approximately 3 freight trains a day to that line between Denver and Orestod, Colorado, which is traversed by Amtrak's California Zephyr. During fiscal year 1995, the on-time performance of the Zephyr between Denver and Salt Lake City was a dismal 45.7% under the so-called "ICC Formula",[2] and the rate of freight train interference between these points (388.7 minutes of delay per 10,000 train miles) was among the highest experienced by any Amtrak train.

-- The operating plan projected an increase of up to 8 freight trains per day on portions of SP's Donner Pass line between Alazon/Winnemucca, Nevada and Oakland, California. On this line, which is also part of the California Zephyr's route, Amtrak's on-time performance had fallen to 37.5% in fiscal year 1995, a drop of nearly 50% from the previous year that was attributable to a doubling in the rate of freight train interference and a nearly two-fold increase in delays caused by slow orders.

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[2] The "ICC Formula", which is based upon the formula developed by the ICC in <u>Adequacy of Intercity Rail Passenger Service</u>, 344 I.C.C. 758, 809 (1973), measures the train's actual on-time performance. A train is considered "on time" if it arrives at its destination, or an intermediate check point, within a "tolerance" (which varies with the distance travelled) of 10 to 30 minutes of its scheduled arrival time.

-- The operating plan also projected a near doubling of freight traffic on much of the Sunset Limited's route between El Paso and Los Angeles. The Sunset Limited's on-time performance on the New Orleans-to-Los Angeles portion of its route (then owned entirely by SP) had dropped to just 22.1% in fiscal year 1995, and the freight train interference rate (152.5 minutes per 10,000 train miles) had increased for the fourth straight year.

Despite these projected increases in traffic, and its concerns about existing on-time performance problems, Amtrak did not oppose or seek conditions on the UP-SP merger. Amtrak believed that UP, which generally had a more positive attitude than SP towards Amtrak, a better historical record of on-time performance, and the financial resources to remedy SP's deferred maintenance and capacity constraints, would do a better job of accommodating Amtrak's trains than SP had done.

UP assured both Amtrak and the Board that this would be the case. In his concurrence to the Board's decision approving the merger, STB Commissioner Owen reminded UP and SP that Amtrak's trains had statutory priority over Amtrak's freight trains, and of

> their assurances given during oral argument that their merged railroad will move immediately to correct persistent Amtrak service problems on Southern Pacific lines. I encourage Amtrak to keep this

> agency aware of every failure on the part of the applicants to translate those words into deeds.

Finance Docket No. 32760, Union Pacific Corp. -- Control -- Southern Pacific Rail Corp., Decision served Aug. 12, 1996, pp. 250-51 (Owen, Commissioner, concurring).

**Amtrak's Comments**

Amtrak has yet to see the improvement in the on-time performance of its trains on SP that it anticipated -- and that UP/SP promised -- would result from the UP/SP merger.

Since the merger occurred in September of 1996, there has been a modest improvement in SP's overall level of on-time performance under the "ICC Formula", which increased from 70% in fiscal year 1996 to 74.1% in the first nine months of fiscal year 1997 (October 1996 to June 1997).[3] However, SP's performance measured by its incentive earnings -- the payments railroads receive for achieving a monthly on-time performance equal to or greater than 80%, which increase as performance increases above 80% to 100% -- has actually declined.

During fiscal year 1996, SP earned only $2,352,803 in incentive payments, which represents barely 20% of the total

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[3] Contrary to the implication in Applicants' July 1, 1996 Report on Merger and Condition Implementation ("Applicants' Report"), SP's poor on-time performance under the ICC Formula is not in any way attributable to delays that occur on BNSF prior to a train's arrival on SP's lines. Railroads are not penalized for delays that result from late delivery of trains by another railroad.

incentives ($11,400,693) it was eligible to earn. In the first eight months of fiscal year 1997, SP's performance fell significantly from this already-low level: SP earned just 14.4% ($1,029,392) of the $7,144,570 in potential incentives. During this eight-month period, the California Zephyr between Denver and Salt Lake City had positive incentive earnings in just a single month, which means that in each of the remaining seven months its performance was below 80% <u>after</u> the exclusion of certain delays not under railroad control.[4] The poor on-time performance of the Zephyr is particularly unacceptable given that the scheduled running time of the train between Denver and Salt Lake City -- approximately 14 3/4 hours -- is nearly an hour <u>slower</u> than it was when Amtrak commenced operating it in 1983.

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[4] While the ICC formula measures actual on-time performance, the incentive provisions in Amtrak's contracts with most freight railroads specify that many delays for which railroads are not responsible are to be excluded when determining on-time performance for incentive purposes. Because of this, a railroad can earn incentives even though its actual on-time performance, measured under the "ICC Formula", is considerably below the 80% level that the ICC deemed to be the minimum level acceptable. <u>See</u> Finance Docket No. 28165, <u>National R.R. Passenger Corp. and Union Pacific R.R., Use of Tracks and Facilities and Establishment of Just Compensation</u>, 348 I.C.C. 926, 950 (1977) ("The 80-percent allowance in itself recognizes and makes allowance for occasions when on-time performance is not possible.").

When performance in a month drops below 70%, a railroad is penalized. However, because the penalty cannot exceed total incentives earned during the preceding 12 months, a railroad whose performance is consistently before 70% does not actually pay penalties, but rather simply fails to earn any incentives.

With nothing more than normal diligence, a railroad should earn at least 50% of its incentives, which equates to a "contract" on-time performance of approximately 90%. A number of Amtrak's contracting railroads earn considerably more.

While SP's monthly "contract" performance was generally in the mid-80s during the first eight months of fiscal year 1996, as Applicants' Report suggests, it has never reached 90% in any month during this period according to Amtrak's calculations.[5] Nor has SP ever "ranked as high as first among all the railroads with substantial Amtrak operations" under this measure (Applicants' Report, p. 63); in many months it has been close to last. In June of 1997, the most recent month for which data is available, SP's systemwide on-time performance under this measure was just 76.6%, and its performance under the ICC Formula was an abysmal 65.5%.[6] The poor performance in June may in part be attributable to a recent surge in delays on the Los Angeles-to-

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[5] Since an 80% on-time performance under the ICC Formula -- the minimum the ICC deemed acceptable -- will generally equate to a "contract" performance of approximately 90% -- a "contract" performance in the mid-80s is quite unsatisfactory.

[6] The on-time performance of Amtrak's trains on SP since the merger occurred has also been the impetus for hundreds of customer complaints to Amtrak. In <u>every</u> month since the merger occurred, tracking reports based upon Amtrak's customer surveys have indicated a level of dissatisfaction with the on-time performance on both the Sunset Limited and the California Zephyr that is higher than the average for all Amtrak Intercity trains. (The Amtrak Intercity business unit operates all of Amtrak's long distance trains other than the Los Angeles-to-Seattle Coast Starlight.)

Seattle Coast Starlight that have been caused by SP dispatching problems.

Two other developments that have occurred since the merger are quite disturbing to Amtrak. The first is that, during fiscal year 1997, freight train interference delays on UP have increased to the point that UP has surpassed SP as the railroad with the highest rate of freight train interference. The second is several incidents of egregious violations of the statutory priority to which Amtrak is entitled under the Rail Passenger Service Act.

The most recent of these incidents took place on July 9-11 of this year as Amtrak's Sunset Limited operated over SP's lines from Iowa Junction (Lake Charles), Louisiana to Los Angeles. In the course of its journey, the Sunset, which had left New Orleans just six minutes late, experienced more than a dozen separate incidents of freight train interference:

-- Between Lake Charles, Louisiana, and Beaumont, Texas, the Sunset was delayed for 34 minutes because it was required to follow freight trains.

-- Between Houston and San Antonio, 67 more minutes were lost while the Sunset was twice placed in sidings to allow freight trains to pass, and then was forced to stop once again to let a third freight go by.

-- Between San Antonio and El Paso, the Sunset was stopped for 40 minutes at Uvalde, Texas to await the passage of three freight trains, and for 1 hour and 32 minutes at Lasca, Texas behind an underpowered eastbound freight train that had to be split into two sections so that it could get over a hill.

-- At Lanark, New Mexico, the Sunset was held for an eastbound freight, resulting in a 9 minute delay.

-- Between Maricopa, Arizona and Yuma, Arizona, the Sunset was again operated behind a slower freight train and then stopped once more to let an eastbound train go by, for a total delay of 47 minutes.

-- Frink, California brought another 22 minute wait in a siding while two freight trains passed.

-- Between Palm Springs and Los Angeles, nearly another hour was lost while the Sunset waited for the passage of two helper engines; waited for the arrival of another eastbound freight train; and then, in a final display of indignity, was routed off the main track and through Colton Yard.

The final tally: an eight hour late arrival at Los Angeles; 5 hours and 59 minutes of freight train interference;[7] numerous violations of the Rail Passenger Service Act; and a trainload full of angry passengers who would never set foot on an Amtrak train again.

The lack of any meaningful improvement in SP's on-time performance to date is particularly troubling because the merger-

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[7] The remainder of the delay was attributable to slow orders.

related increases in freight traffic on the SP line segments where Amtrak is presently encountering its greatest problems have yet to occur. For example, freight traffic levels on much of the California Zephyr's route over Donner Pass between Alazon/Winnemucca, Nevada and Oakland, California are presently constrained by the ceiling on the number of freight trains that can be operated through Reno, Nevada until environmental mitigation issues are resolved. UP/SP have just begun the traffic changes that are the predicate to the discontinuance of service on SP's Tennessee Pass line, which will shift the coal traffic that moves over that line to the Moffat Tunnel line on which the California Zephyr operates. In addition the current level of BNSF's trackage rights operations over the Moffat Tunnel line is less than a third of that projected in its filings in the merger proceeding.[8]

Finally, as Applicant's Report notes (p. 64), Amtrak and UP/SP are presently in negotiations over a new operating agreement in the course of which they are working to develop new understandings regarding train performance. In light of the figures cited above, there can be no dispute that the current

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[8] See UP's Response to Consolidated Information and Discovery Requests to UP, pp. 20-21 (objecting to interrogatory which sought information on changes in traffic levels over the Moffat Tunnel line on the ground that it was "premature" because "Applicants have only begun to shift traffic from the Tennessee Pass line to the Moffat Tunnel line on July 1. The total number of trains on the Moffat Tunnel Line has not yet increased . . . .").

contract incentive compensation provisions are not producing a satisfactory level of on-time performance by UP/SP. A possible solution is incentive compensation provisions that, in accord with Congress' directive when it amended the Rail Passenger Service Act in 1981, "include a penalty for untimely performance" that is not capped by the amount of incentives earned. 49 U.S.C. § 24308(a)(1).

## CONCLUSION

UP/SP will undoubtedly claim that it is too early to make any definitive judgments about their post-merger performance in handling Amtrak's trains. Amtrak does not disagree. Indeed, Amtrak believes that it is essential that the Board conduct another oversight proceeding on the second anniversary of its approval of the UP/SP merger. Amtrak also believes that the Board should direct UP to include, in its quarterly status report filed prior to that proceeding, detailed information on changes in freight traffic levels on the routes of the Sunset Limited, California Zephyr and Coast Starlight; the impact those changes have had on the on-time performance of the Amtrak trains operating over those routes; and a description of the steps UP/SP have taken to fulfill their commitment to improve the performance of the Amtrak trains that operate over SP's lines.

During the coming year, Amtrak will continue to work with UP/SP on efforts to improve on-time performance, and to mitigate any adverse impacts on its trains' performance that are attributable to merger-related traffic increases. Amtrak hopes that its initial expectation that the UP/SP merger will have a positive impact on Amtrak will prove to be correct, and that it will be able to present a more favorable report on UP/SP's performance to the Board next year.

Respectfully submitted,

Richard G. Slattery
NATIONAL RAILROAD PASSENGER
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60 Massachusetts Avenue, N.E.
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Attorney for National Railroad
Passenger Corporation

Date: August 1, 1997

## VERIFICATION

I, Robert C. VanderClute, Jr., Vice President-Operations of the National Railroad Passenger Corporation (Amtrak), verify under penalty of perjury that I have reviewed the foregoing Amtrak's Comments, and that all of the facts stated therein are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to verify these Comments. Executed on this 1st day of August, 1997.

Robert C. VanderClute., Jr.

## CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 1997, I served a copy of the foregoing Amtrak's Comments by hand delivery or by first class mail, postage prepaid, upon all parties of record in this proceeding.

Richard G. Slattery

STB FD-32760 (SUB 21) ID-180897 8-1-97 D

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August 1, 1997

Mr. Vernon A. Williams
Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 21)
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: *Union Pacific Corp. et al. -- Control & Merger -- Southern Pacific Rail Corp., et al.*
Finance Docket No. 32760 (Sub-No. 21)

Dear Mr. Williams:

Enclosed please find an original and 25 copies of the Comments of the Intermountain Power Agency ("IPA") (IPA-3) for filing in the above-referenced action. Also enclosed is a 3.5 inch diskette containing the text of this pleading in WordPerfect 5.1 format.

Please date-stamp the extra copy provided and return it with our messenger. Thank you.

Sincerely,

Charles A. Spitulnik

Charles A. Spitulnik

Enclosure
cc: All Parties of Record

Q52029-1

IPA-3



SURFACE TRANSPORTATION BOARD
Washington, D.C.

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Finance Docket No. 32760 (Sub-No. 21)

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Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company [OVERSIGHT]

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**COMMENTS OF THE INTERMOUNTAIN POWER AGENCY**

The Intermountain Power Agency ("IPA"), by its undersigned counsel, hereby submits its comments in accordance with the Board's Decision No. 2 in this docket served on June 19, 1997. IPA submits that the claims of shipper satisfaction with the merger made by the Union Pacific Corporation, et al. ("UP") in the various quarterly reports filed in this proceeding do not reflect the position of all shippers, including IPA. Although UP claims to have passed along the efficiencies realized by the merger to its shippers, IPA has seen none of those benefits. Rather, UP now receives a virtual windfall under its transportation services agreement with IPA and -- in spite of boasting about decreased cycle times and other service enhancements -- continues to ignore IPA's pleas to remedy scheduling and service problems. The reduction in source competition and the increased efficiencies gained by UP in providing single line service from former DRGW coal sources has only heightened the inequities present in its transportation services arrangement with IPA. While UP has renegotiated agreements with other shippers and informed the Board that rates for transporting coal have decreased across the board, UP has chosen to permit IPA to share none of those benefits. Instead, and contrary to its representations to the Board in this proceeding, UP is taking clear advantage of its increased market power and IPA's captive status by refusing to modify an arrangement that is grossly inequitable in light of the efficiencies gained from the merger.

## BACKGROUND

IPA is a political subdivision of the State of Utah, with thirty-six members located primarily in Utah and California.[1] In the early 1980's, IPA was created to build and operate a power generating plant located at Lynndyl, Utah. IPA required coal to operate the plant and entered into agreements with various coal suppliers in Utah to satisfy that need. IPA also entered into agreements with three railroad carriers to transport the coal to Lynndyl: (1) with the Denver & Rio Grande Western Railroad Company ("DRGW") (which was acquired subsequently by the SP) to transport coal from sources served by DRGW to Provo, Utah; (2) with the Utah Railway Company ("Utah") to transport coal from sources served by Utah to Provo, Utah; and (3) with UP, which connected with DRGW and Utah at Provo, to transport the coal from Provo to the power generating plant at Lynndyl. As a result of the merger with SP, UP no longer had to interchange at Provo for coal originating on former DRGW sources. Instead, having assumed

[1] The members of IPA are: (1) six municipal purchasers from California, including the Los Angeles Department of Water and Power (the operating agent for the Intermountain Power Project); (2) twenty-three municipal purchasers from Utah; (3) six rural electric cooperative purchasers; and (4) Utah Power & Light/Pacific Corp., which is an investor owned purchaser.

DRGW's transportation agreement with IPA, UP is now providing single line service to the power generating plant from those sources.

IPA filed comments during the merger proceeding, expressing concern about the impact of the merger on the competitive balance in the area. *See* Finance Docket No. 32760, Comments of the Intermountain Power Agency (IPA-2), filed on March 29, 1996. IPA reserved its specific objections to the merger, however, because of the settlement agreement between UP and the Utah Railway Company that appeared to remedy some, though not all, of IPA's competitive concerns. IPA also reserved the right to return to the Board in the event that the merger adversely impacted competition in the area. *See Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al.*, F.D. No. 32760, Decision No. 44 (service date August 12, 1996), at 63.

## COMMENTS

In its two most recent status reports to the Board, UP boasts of the benefits of the merger and indicia of effective competition. As examples, UP cites to:

- millions of dollars in savings and additional revenues by reducing empty car miles through common fleet management, *see* UP/SP-300 at 3 (filed April 1, 1997);
- reduction in rates for all major commodity groups, *id.*;
- dramatic improvement in service for SP-originated Utah and Colorado coal, *see* UP/SP-303, at 38 (filed July 1, 1997);
- decrease in average rates for coal originating at DRGW points, *id.* at 116-17 and Confidential Appendix E;
- reduction of car cycle time for the movement of Utah coal, *id.* at 39; and
- a promise of further service improvements for both eastbound and westbound Utah and Colorado coal, *id.* at 117.

UP also noted that "dozens" of 2-to-1 shipper contracts have been reopened or renegotiated, with shippers receiving lower rates and other valuable benefits, such as new investments in equipment. *See* UP/SP-300 at 5. While many shippers may have indeed realized benefits from the merger, the benefits are not universal as UP implies. IPA, for example, has received none of the above-referenced benefits and has been put in an untenable and grossly inequitable position as a result of the merger.

While IPA is not a classic 2-to-1 shipper, its situation is unique in that service from DRGW sources is no longer provided by two separate carriers whose rates and agreements were negotiated under that premise. Although the Utah Railway still competes for traffic from certain coal sources, UP has a distinct advantage over the Utah because it will be able to provide single line service directly from the coal sources it serves to Lynndyl while the Utah cannot. In spite of these changes and the great benefit derived (according to UP's own pronouncements) from providing single line service, UP has not offered, and has indicated it is not willing, to renegotiate rates under the agreement. These rates, when viewed on a percentage revenue-to-variable-cost basis, are an astonishing 344%. UP thus, by virtue of the efficiencies gained from the merger, is receiving a veritable windfall from IPA.

As if the astronomical rates were not damaging enough to IPA, UP has failed to pass on the dramatic improvements in service referred to in its quarterly reports. Indeed, the opposite is true. If anything, since the merger IPA has experienced greater difficulties in securing appropriate and effective solutions to service problems with UP. For example, since the merger UP's adherence to schedules for service agreed upon by the parties has not been acceptable. IPA's efforts to seek resolution to this problem and maintain on-time service have not been successful. Failure to adhere to schedules by

UP has broad ramifications for IPA in that it deprives IPA of an efficient use of its own equipment, which UP uses to provide the service. IPA should not, given the increased capabilities and efficiencies resulting from the merger, have to accept such a lack of service, especially in view of the rates being paid and the promises of further service improvements in the transportation of Utah coal made by UP to the Board.

## CONCLUSION

While IPA's concerns are not directly related to the competitive questions at issue in this proceeding, they are important to demonstrate that UP's representations to the Board -- to support its claim that the merger has realized benefits for shippers and that competition is enhanced -- are not entirely accurate. The reality, as demonstrated by IPA's experience, is that UP has not passed on merger benefits to all its shippers and is not as open and responsive to shipper needs as it portrays in its filings to the Board. In IPA's case, UP has used its increased leverage gained by the merger to the detriment of IPA.

Dated: August 1, 1997

Respectfully submitted,

Charles A. Spitulnik
Alicia M. Serfaty
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for the Intermountain Power Agency

# VERIFICATION

I, Michael J. Nosanov, verify under penalty of perjury that I have reviewed the foregoing Comments of the Intermountain Power Agency, and that all of the facts stated therein are true and correct. Further, I certify that I am qualified and authorized to verify and file these Comments. Executed on this 31st day of July, 1997.

Michael J. Nosanov

MICHAEL J. NOSANOV

Subscribed and sworn to
before me this 31st
day of July, 1997.

DEMETRIS LEWIS
Commission # 1097097
Notary Public — California
Los Angeles County
My Comm. Expires May 9, 2000

Dimetris Lewis

Notary Public

My commission expires:

______________________________

## CERTIFICATE OF SERVICE

I hereby certify that on August 1, 1997, a copy of the foregoing Comments of the Intermountain Power Agency (IPA-3) was served by hand delivery upon the following:

Erika Z. Jones, Esquire
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Arvid E. Roach II, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

I also certify that copies of the aforementioned pleading were served by first class mail, postage prepaid upon all parties of record in this proceeding.

Charles A. Spitulnik

Charles A. Spitulnik

Q52030-1

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# HOPKINS & SUTTER

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August 1, 1997

Mr. Vernon A. Williams
Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 21)
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: *Union Pacific Corp. et al. -- Control & Merger -- Southern Pacific Rail Corp., et al.*
Finance Docket No. 32760 (Sub-No. 21)

Dear Mr. Williams:

Enclosed please find an original and 25 copies of the Comments of Southern California Regional Rail Authority ("SCRRA") (SCRR-6) for filing in the above-referenced action. Also enclosed is a 3.5 inch diskette containing the text of this pleading in WordPerfect 5.1 format.

Please date-stamp the extra copy provided and return it with our messenger. Thank you.

Sincerely,

Charles A. Spitulnik

Charles A. Spitulnik

Enclosure
cc: All Parties of Record

Q52029-1

SCRR-6

SURFACE TRANSPORTATION BOARD
Washington, D.C.

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Finance Docket No. 32760 (Sub-No. 21)

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Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company
[OVERSIGHT]

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## COMMENTS OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

Southern California Regional Rail Authority ("SCRRA") hereby submits its comments with respect to the Board's oversight of the control and merger transactions approved in Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company* ("UP/SP"), Decision No. 44 (Service Date August 12, 1996).[1]

In comments filed when this Board was considering whether to approve the proposed merger, SCRRA reserved judgement about the potential impact of the transaction on the commuter services it provides. SCRRA stated at the time that it did

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[1]SCRRA has not previously filed a Notice of its intent to participate in the Oversight proceeding. However, SCRRA is filing today a Petition for Leave to File Comments and to participate as a party of record (SCRR-5), and is filing these Comments today consistent with that request.

not have enough information to determine the actual impact, but was "concerned that the merger may have an adverse impact on the commuter operations SCRRA administers." Decision No. 44 at 38. *See* Comments of Southern California Regional Rail Authority, SCRR-4, filed in Finance Docket No. 32760, March 29, 1996. SCRRA has learned from experience with the merged carriers since the merger that its concerns were justified -- the increased traffic resulting from the merger has caused SCRRA trains' on-time performance to decline on lines where it shares operations with the Union Pacific Railroad Company (including the lines of the former Southern Pacific Transportation Company).

## BACKGROUND

SCRRA is a joint powers authority, formed pursuant to Cal. Pub. Utilities Code §130255 and Cal. Govt. Code S6500 *et seq.*, and pursuant to an agreement among its five member county transportation agencies: the Los Angeles County Metropolitan Transportation Authority; the Orange County Transportation Authority, the Riverside County Transportation Commission, San Bernardino Associated Governments; and the Ventura County Transportation Commission. It is charged with responsibility for planning, design and construction, and then administering the operation of regional passenger lines serving the five member counties. SCRRA began operation over three (3) routes and 112 miles of line in October 1992. Today, SCRRA trains (under the trade name METROLINK®) carry over 24,000 passenger trips per day in commuter rail service operated over six (6) different routes representing 404 route miles, including lines acquired outright by the member counties from either Union Pacific Railroad Company ("UP") or from Southern Pacific Transportation Company ("SP"), and lines, including former SP lines, it uses as a trackage rights tenant with UP, as the owner. On portions of SCRRA's routes from Los Angeles Union Station to Riverside (via City of Industry and Ontario), to Lancaster and to Oxnard, it operates jointly with UP, which continues to provide freight service along those lines. The rights of both SCRRA and UP are detailed in the joint operating agreements entered into at the time the SCRRA member agency acquired the lines or the right to operate over them from SP or UP, respectively.[2]

**COMMENTS**

Since the approval of the merger, SCRRA has seen a distinct erosion in UP's ability to respect SCRRA's rights and to honor the obligations created by the respective operating agreements. SCRRA's experience since the merger was consummated in September 1996 causes it to believe that the UP line from Riverside to Los Angeles and the former SP Coast Line are moving more freight traffic than before the merger. Whether the increase has been more or less than predicted, or precisely the amount projected in the application, the impact has been serious -- an increase in freight train interference with commuter operations during peak commuter hours to an unprecedented level, creating a marked negative effect on METROLINK® trains' on-time performance.

During the merger application process UP proposed improvements to be made to the lines and facilities to accommodate this increased traffic. *E.g.*, Railroad Merger

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[2]These joint use agreements were submitted to the Interstate Commerce Commission in Docket No. AB-12 (Sub-No. 139X), *Southern Pacific Trans. Co. -- Abandonment Exemption -- Los Angeles Co., Ca.*, and related cases, and in Finance Docket No. 32374, *Los Angeles Co. Trans. Comm. -- Petition for Exemption -- Union Pacific R. Co.* and Finance Docket No. 32375, *Los Angeles Co. Trans. Comm. -- Notice of Exemption for Trackage Rights -- Union Pacific R. Co.*, Petition for Exemption filed November 8, 1993.

Application (UP/SP-24), Vol. 3, Operating Plan (Exhibit 13) at 233-34 (filed Nov. 30, 1995). From SCRRA's perspective, either the improvements have not yet been made, or the improvements that were planned and that have been implemented to date are not sufficient to accommodate the increased traffic.

Whatever the reason, the increased traffic on these lines has caused periodic delays in operations on the METROLINK® lines. On the Riverside Line, for example, UP appears to be handling higher volumes of time-sensitive traffic, and these trains are being accorded priority over the commuter trains. On the Coast Line, the increased traffic volumes and added sections of trains that were not contemplated in the operating plan for segments south of Moorpark (for example), are disrupting scheduled train meets, preventing compliance with posted commuter train schedules.

Integration of the dispatching operations has proven problematic from SCRRA's perspective as well. From discussions with UP personnel, SCRRA staff believes that part of the difficulty stems from the merger of a non-union dispatching staff with a unionized group. Tension between the respective staffs and shortages in the number of employees available to fill the positions has resulted in inefficiencies in the operation. With fewer personnel, the dispatching territories have grown, requiring the employees doing this work to assume more responsibilities, decreasing efficiency and the ability to ensure compliance with the priority guidelines established by the joint use and other related agreements.

## CONCLUSION

SCRRA, like UP and SP and their corporate affiliates and like this Board, had reason to hope that the efficiencies the railroads claimed would result from the merger would redound to its benefit. Reduction of the number of freight partners from three to two, and potential consolidation of traffic on lines other than those used for commuter service, or, if that were not possible, more even allocation of traffic across the merged system's lines to avoid adverse impact on commuter operations, would have been possible. Unfortunately, from SCRRA's perspective, those benefits have not been realized. As the situation declines, SCRRA continues to monitor the traffic increases and UP's handling of its obligations with respect to dispatching and priority of METROLINK® trains. During the course of the Board's continuing oversight of the implementation of the merger, *see* Decision No. 44 at 146, 231 para.6, SCRRA will continue to apprise the Board of the impacts of this traffic growth on its operations. If and when reopening the proceeding for the purpose of addressing the merger's impacts on METROLINK®'s operations becomes appropriate, SCRRA will seek appropriate relief from this Board.

Respectfully submitted,


Charles A. Spitulnik
Alicia M. Serfaty
HOPKINS & SUTTER
888 16th Street, N.W.
Washington, D.C. 20006
(202) 835-8000

Counsel for Southern California Regional Rail Authority


Dated: August 1, 1997

## VERIFICATION

I David Solow, Deputy Executive Director of Southern California Regional Rail Authority , verify under penalty of perjury that I have reviewed the foregoing Comments of the Southern California Regional Rail Authority, and that all of the facts stated therein are true and correct. Further, I certify that I am qualified to verify and file these Comments. Executed on this 31st day of July, 1997.

David Solow

Subscribed and sworn to before me this 31st day of July, 1997.

Lorraine Host
Notary Public

My Commission expires:

LORRAINE HOST
COMM. # 1019002
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires FEB 27, 1998

## CERTIFICATE OF SERVICE

I hereby certify that on August 1, 1997, a copy of the foregoing Comments of Southern California Regional Rail Authority (SCRR-6) was served by hand delivery upon the following:

Erika Z. Jones, Esquire
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Arvid E. Roach II, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

I also certify that copies of the aforementioned pleading were served by first class mail, postage prepaid upon all parties of record in this proceeding.

Charles A. Spitulnik

Q52030-1

STB FD-32760 (SUB 21) ID-180892 8-1-97 D

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# GALLAND, KHARASCH & GARFINKLE, P.C.

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August 1, 1997

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Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
Mercury Building
1925 K Street, NW
Washington, DC 20423-0001

**Re: Finance Docket No. 32760 (Sub.-No. 21),** ***Union Pacific Corp., et al. – Control & Merger – Southern Pacific Rail Corp., et al. (Oversight)***

Dear Mr. Williams:

Enclosed for filing please find an original and 25 copies of the Comments of Utah Railway Company in the above proceeding. True copies are being mailed to counsel for parties of record. A diskette formatter for Word Perfect 7.0 is being forwarded under separate cover.

Please stamp and return the enclosed copy of the service letter when the Comments are filed.

Office of the Secretary
AUG 04 1997
3 Part of Public Record

Very truly yours,

Charles H. White, Jr.
Counsel for Utah Railway Company

cc: Counsel of Record

180892

UTAH-2



**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 32760 (Sub-No. 21)**

**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY**
**-- CONTROL AND MERGER --**
**SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY**

**[OVERSIGHT]**

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# COMMENTS OF THE UTAH RAILWAY COMPANY

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**Charles H. White, Jr.**
**GALLAND, KHARASCH & GARFINKLE, P.C.**
**1054 - 31st Street, N.W.**
**Washington, DC 20007**
**(202) 342-6789**

**Counsel for TheUtah Railway Company**

**Dated: August 1, 1997**

VERIFIED STATEMENT
OF
JOHN E. WEST, III

My name is John West, and I am Executive Vice President of Utah Railway Company ("UTAH'). I previously submitted verified statements in this proceeding, most recently on July 1, 1997, in the Union Pacific ("UP") quarterly progress report. The purpose of this statement is to give a more comprehensive description and analysis of the impact of the merger and its associated conditions as they relate to our company. Conditions specifically related to our operations which are addressed in this verified statement are found in the Utah Railway/Union Pacific Settlement Agreement dated January 17,1996, ("UTAH Settlement Agreement") and the Burlington Northern Santa Fe/Union Pacific Settlement Agreement dated September 25, 1995 ("BNSF Settlement Agreement').

We have worked hard to implement the conditions related to our operations and it is a continuing process. With more work, the conditions show promise in preserving competition. Should additional conditions or modifications to the existing conditions be imposed by the Surface Transportation Board we stand ready to implement them.

I will address the two areas most significant to our current operations: ( 1) Coal movements on the Central Corridor; and (2) Switching service for the BNSF served two-to-one ("2:1") customers in Utah.

**OVERVIEW**

UTAH has been in business side 1912 and historically has been a coal hauling road covering a 98 mile territory from Mohrland, UT to the east and Provo, UT to the west. This territory embraces the coal rich Carbon and Emery counties in Central Utah. UTAH has a joint trackage agreement with UP (formerly DRGW/SP) dating back to 1913 and a joint facilities agreement with UP dating back to 1920. Its long-term relationship with its connecting carriers has been good. Providing a competitive rail transportation option was the reason UTAH was built.

UTAH's position is unique both from a pre-merger and post-merger perspective. Pre-merger it served as UP's primary link to the coal fields of Central Utah. It also connected with SP and, although it historically had moved the vast majority of coal it originated to UP (over 90% of all shipments), UTAH had, beginning in 1994 until consummation of the merger, interchanged a significant amount of export coal to SP (over 40% of export coal). UTAH, at once, is a connecting carrier and a competing partner to the Class I carriers it connects with.

UTAH has had two-carrier access since its beginning 85 years ago. UTAH's interchange points were Provo, UT with both UP and SP (DRGW) and Utah Railway Junction with SP (DRGW). After the merger of the UP and SP, UTAH continues to have two-carrier access - with UP and BNSF - by virtue of the BNSF Settlement Agreement which provides for BNSF's trackage rights between Denver, CO and Stockton, CA and access to 2:1 customers and connections with various short line railroads.

Post-merger UTAH operates 276 miles in coal service with the ability to interchange with both BNSF and UP at three locations: Grand Junction, CO, Utah Railway Junction, UT, and Provo, UT. This was brought about by the provision in the UTAH Settlement Agreement giving UTAH trackage rights to Grand Junction and provisions in the BNSF Settlement Agreement granting interchange rights. Additionally, since April 1, 1997, UTAH operates, as BNSF's agent, over 121 miles of mainline and branchlines between Provo and Ogden/Little Mountain, UT.

From our perspective, the conditions in the UP/SP merger have, for the most part, provided a mechanism to minimize the potential negative impacts of combining the UP and SP systems. UTAH is directly affected by many of the agreements and conditions agreed to and imposed in the merger.

The conditions negotiated during the merger process were designed to preserve competition which in our case provided the means to protect UTAH's future. The specific conditions addressed in this verified statement include conditions in both the UTAH Settlement Agreement as well as the BNSF Settlement Agreement and are listed below:

**1. UTAH SETTLEMENT AGREEMENT CONDITIONS ADDRESSED HEREIN:**

(a) Trackage rights from Utah Railway Junction, UT to Grand Junction, CO with interchange to both BNSF and UP, Interchange at Utah Railway Junction and Provo, UT with BNSF.

(b) Competitive access to the Savage Coal Terminal (SCT) on the CV Spur near Wellington, UT.

(c) Exclusive access to the new Cyprus Amax Willow Creek coal mine located near Castle Gate, UT.

**2. BNSF SETTLEMENT AGREEMENT CONDITIONS ADDRESSED HEREIN:**

BNSF's right to select a third party switch carrier to serve 2:1 customers

---

A detailed analysis of the above listed conditions from our perspective, follows:

## 1. UTAH SETTLEMENT AGREEMENT CONDITIONS

(a) Trackage rights from Utah Railway Junction, UT to Grand Junction, CO with interchange to both BNSF and UP. Interchange at Utah Railway Junction and Provo, UT with BNSF.

For the ten months since consummation of the merger until July 27,1997(this week), UTAH had not had the opportunity to exercise its trackage rights between Utah Railway Junction and Grand Junction. However, on Sunday, July 27, 1997, we originated the first test train of coal destined to interchange at Grand Junction and delivered it to BNSF at 0400 Monday, July 28,1997. It was interchanged to BNSF to move it from Grand Junction to destination in the Chicago area. The trainload shipment of coal will be tested at an eastern facility and, depending on the suitability of the coal, may lead to additional eastern shipments on a regular basis. The test train originated at Wild Cat, UT and was moved 184 miles by UTAH of which 178 miles are under trackage rights obtained in the merger. We hope and expect this movement to be a prelude to future business and will demonstrate how UTAH can provide the means whereby real competition between UP and BNSF exists. (Prior to this test train we moved only twelve (12) trains under our new trackage rights, and those trains were from SCT, routed UTAH-Provo, UT-UP, a distance of 88 miles, only 13 miles under our new trackage rights.)

BNSF power and cars (5 - SD70 MAC's and 105 aluminum cars) were used on this test train which UTAH picked up empty in Grand Junction and moved to Wild Cat for loading and was returned to Grand Junction in 20 hours from the original interchange. Total round trip is 368 miles.

This was an historic event - the first train for UTAH to move to Grand Junction using the trackage rights and the first coal from a Utah mine to move via UTAH-Grand Junction, CO-BNSF. We feel this is significant and although we are off to a slow start it is our intent to pursue all opportunities to grow the eastbound business and keep our dedicated employees gainfully employed.

It is very difficult to predict how much business will actually be generated from UTAH origins. We have not yet secured office space in Grand Junction even though our agreements with UP provide for it to lease space or property for offices and lockers in connection with these rights. So far, the level of business has not warranted setting up the infrastructure.

For the first train (and we anticipate the same for the foreseeable future) we deadheaded a crew from our Martin, UT terminal 178 miles to Grand Junction. The crew was allowed sufficient time to rest and was called to move the empty train set from Grand Junction to Utah Railway Junction. Another crew was then called to take the train to the designated coal loading facility for loading and return to the Martin yard while the first crew was given eight (8) hours rest so it would have sufficient time to work the train back to Grand Junction in compliance with the hours of service law. The first crew was called to take the loaded train back to Grand Junction and then deadheaded to its home terminal at Martin. Until business is sufficient to warrant, the extra crew charges associated with deadheading will have to be absorbed making this movement marginal, yet promising.

(b) <u>Competitive access to the Savage Coal Terminal on the CV Spur near Wellington, UT</u>.

In the first ten (10) months since consummation of the merger we have moved twelve (12) trains from SCT, the first on December 28, 1996. All of the trains were interchanged with UP at Provo and originated at SCT to protect existing contracts normally moved from other UTAH origins and are not, therefore, counted as new business. These trainload shipments were originated at SCT due to production problems at two (2) mines and were "one-time" shipments of three (3) trains to one customer and nine (9) to another. We do not expect future shipments of like nature.

Our access is "competitive" which, by definition, means UTAH/BNSF will compete with UP for movements from this coal loading facility to destinations over Provo or Grand Junction. No trains have moved from SCT via UTAH-BNSF to this date. Other than the 12 trains from SCT previously mentioned, which were shipped under existing UTAH/UP contracts, UTAH has not been able to participate in bids for UTAH-UP business from SCT. However, because the access is competitive, we have participated in bids with BNSF and hope we are successful in the future in securing some traffic originating from this facility. It is interesting to note that we have been approached by RAILCO requesting service to its coal transloading facility adjacent to the SCT on the CV Spur, which according to RAILCO, will allow them to compete with SCT. There are no provisions/conditions for UTAH to serve this facility.

(c) Exclusive access to the new Cyprus Amax Willow Creek coal mine located near Castle Gate, UT.

The Willow Creek mine is located near Castle Gate on joint track UTAH has operated across for 85 years. The exclusive access to this new mine ensures that Willow Creek will have an outlet to both BNSF and UP through UTAH. UTAH can move Willow Creek coal westbound to Provo or eastbound to Grand Junction for interchange to either UP or BNSF. The mine is in development stages and loaded its first full (84 car) train on July 21,1997.

UTAH gained exclusive access by negotiating with both UP and Cyprus Amax and UTAH his invested over $2 million upgrading the loading yard adjacent to Willow Creek in order to facilitate efficient unit train loading. Trains of up to 110 cars can be loaded at this facility now that the loading tracks have been upgraded by UTAH. The loadout is located on a 2.25% grade in a narrow canyon and the work done by UTAH included hauling in over 100,000 cubic yards of fill to build a yard next to the mainline to reduce the grade to 1.3% (still steep in railroad standards) for loading full trains.

The access to Willow Creek is a replacement for the Cyprus Amax Plateau (Starpoint) mine that is winding down output as it reaches the end of longwall production. It has a limited life after supplying coal for over 60 years. Willow Creek, on the other hand, is reportedly designed to produce 5 million or more tons per year. Because the mine is not yet in full production, UTAH has not had the opportunity to determine just how competitive UP and BNSF will be in marketing service for coal originating at Willow Creek in connection with UTAH. But the important fact remains, by using UTAH as the sole originating carrier each of the major systems will have equal competitive access to the new mine facility.

**2. BNSF SETTLEMENT AGREEMENT CONDITION:**

BNSF's right to select third party switch carrier to serve 2:1 customers

Under BNSF's Settlement Agreement with UP, BNSF was provided the option to have UP physically spot and pull cars for BNSF customers, elect to do its own switching ,or select a third party switching carrier to serve the 2:1 customers it gained access to in Utah. UTAH was chosen by BNSF to be its third party switch carrier in Utah. The choice of UTAH was, as required in the BNSF/UP agreement, presented to UP for concurrence. In March, 1997, UP gave its concurrence and UTAH, in thirteen (13) days established operating offices in Midvale and Ogden, UT and expanded operations at Provo. In this same thirteen (13) day period, UTAH secured locomotives, hired certified locomotive engineers, qualified conductors and brakemen as well as experienced trainmasters for each location. We believe this effort demonstrates UTAH's ability to respond effectively to competitive demands.

On April 1, 1997, switching service commenced whereby UTAH directly serves customers on BNSF's behalf between Provo and Ogden/Little Mountain, UT. The start up was rapid and we have the potential to serve all customers on the 2:1 list agreed to by UP and BNSF. This list has fluctuated in the first four months of operation as apparently there is some confusion about 2:1 customers. The list provided in the verified statement of Mr. Peter J. Rickershauser on July 1, 1997, shows (currently) a potential 124 customers in Utah of which UTAH has, as BNSF's agent, physically served 35 of them. We have established three (3) switch jobs at Midvale, with locomotives, consisting of three (3) person crews which serve the Salt Lake Valley area, and one switch job each at Ogden and Provo. We have also designated a "shuttle" assignment to move trains between Ogden and Provo.

The switching service has provided us with an opportunity to diversify from handling only coal to handling many commodities to several customers and is going well. The size of BNSF trains coming into Utah from Denver, CO and Stockton, CA has grown significantly in recent weeks, which is an indication that BNSF, with UTAH as its agent, is becoming more competitive in Utah. Anecdotal evidence also suggests that shippers are pleased with the new service they are receiving.

We are experiencing several impediments to efficient service, however. The first, and most important, is the lack of adequate yard track capacity. This is an ongoing issue between BNSF and UP, and it directly affects the ability to serve additional 2:1 customers in Utah. Our rail yard in Provo is fully utilized and BNSF has secured limited track space in Midvale (Salt Lake Valley) and Ogden. Mr. Ernest L. Hord, Vice President, Operations, BNSF pointed out in his verified statement dated July 1, 1997, that BNSF is working hard to secure additional track in Utah. We are constantly looking for unused track. If BNSF can negotiate sufficient space with UP, it will allow us to serve additional customers, and handle our existing business more efficiently, hence competitively. So far, limited yard space has often forced us to handle the same cars in switching operations many times as we classify cars. For example, one day last week we moved 95 cars into Midvale and 74 cars out for a total of 169 cars - all in a yard that has a capacity of 60 cars. Many cars had to be handled four (4) or more times.

We feel that it is imperative that BNSF is successful in securing additional track capacity in Utah so this business can grow to the level that will allow it to be operated efficiently and competitively and to achieve the goals and intent of the conditions by fulfilling customer requests and needs.

Overall congestion in the Salt Lake Valley has been a second impediment. Operationally, UTAH has had a difficult time getting into and out of certain customers and areas due to rail congestion in and around Salt Lake City. Many times, our switch crews operating out of Midvale use the maximum time allowed by hours of service and fresh crews must be put on the locomotives to accomplish just a few assigned spots and pulls. There have been occasions when it has taken three (3) crews and 30+ hours to complete tasks that we believe should take only eight hours or less. This situation has been aggravated, in my opinion, by isolated cases of individual UP employees unilaterally acting to impede the movement of our switch crew. UP has assured us that some of the causes for delay will subside once UP implements its operational changes covering train movements in Utah.

It is our belief that competition between UP and BNSF is enhanced when local switching is performed by an entity that <u>must</u> concentrate on local customer service as a primary goal, such as UTAH is providing in the Provo to Ogden area. Since some customers desire or have an operational necessity to be switched by only one carrier, more meaningful competition (or in some cases the only means of competition) can be possible if switching is provided for both Class I's by a neutral, single source switching service.

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In summary, we believe the merger decision was fundamentally correct. We at UTAH are working hard to do our part to make it succeed.

## VERIFICATION

**State of Utah )**
**)**
**County of Carbon )**

**John E. West, III, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.**

**John E. West, III**

**Subscribed and sworn to before me on this the** 30th **day of July, 1997.**

Luella H. Davis
**Notary Public**

**My commission expires** Oct. 31, 2000.

LUELLA H. DAVIS
NOTARY PUBLIC • STATE of UTAH
2395 SOUTH 310 EAST
PRICE, UTAH 84501
COMM. EXP. 10-31-2000

## CERTIFICATE OF SERVICE

I, Charles H. White, Jr., certify that on the first day of August, 1997 I served true copies of the foregoing Comments of the Utah Railway Company by first-class mail, postage pre-paid on counsel of record.

As requested, I also served the following by hand-delivery on the same date:

Arvid E. Roach, II., Esq.
(Counsel for UPSP)
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044-7566

and

Erika Z. Jones, Esq.
(Counsel for BNSF)
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Charles H. White, Jr.
Counsel for Utah Railway Company

STB FD-32760 (SUB 21) ID-180888 8-1-97 D

180888

# SLOVER & LOFTUS

ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036



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August 1, 1997

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VIA HAND DELIVERY

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

Re: Finance Docket No. 32760 (Sub-No. 21)
Union Pacific Corporation, et al. --
Control and Merger -- Southern Pacific
Rail Corporation, et al.

Dear Mr. Secretary:

Enclosed for filing are the original and 25 copies of Public Service Company of Colorado's Comments in the above-referenced oversight proceeding. Also enclosed is a diskette in WordPerfect 5.1 format containing the text of this pleading.

An extra copy of this pleading is also enclosed. Kindly confirm receipt by date-stamping and returning the extra copy to the bearer of this letter.

Respectfully submitted,

Christopher A. Mills

Christopher A. Mills
An Attorney for Public Service
Company of Colorado

CAM/mfw
Enclosures

cc: Parties of Record shown in revised service list in F.D. 32760 (Sub 21)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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| UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY | Finance Docket No. 32760 (Sub-No. 21) |

## COMMENTS OF PUBLIC SERVICE COMPANY OF COLORADO

Public Service Company of Colorado ("PSCo") submits the following comments in response to the Board's Decision No. 1 in this docket served May 7, 1997. That decision instituted a proceeding to implement the oversight condition imposed by the Board in approving the Union Pacific/Southern Pacific ("UP/SP") merger in Finance Docket No. 32760 (Decision No. 44 served August 12, 1996) ("Merger Decision").

One of PSCo's principal concerns with the proposed UP/SP merger was the possible impact of the proposed abandonment of SP's Tennessee Pass line on the quality of SP service in transporting western Colorado coal to PSCo's power plants in the Denver area via SP's Moffat Tunnel line. The Tennessee Pass line, which crosses the Continental Divide west of Pueblo, CO, has long been used by SP to transport overhead merchandise traffic and coal traffic originating in western Colorado and Utah and moving to destinations in the midwest. In the merger proceeding, UP/SP represented that such traffic would be shifted to the already-busy Moffat Tunnel line after the merger. PSCo's concern was (and is) that service problems could develop on the Moffat Tunnel line as a result of this additional traffic (as well as traffic BNSF anticipates moving over the Moffat Tunnel line under its new Central Corridor trackage rights). This matter was addressed at some length in PSCO's Comments in the merger proceeding filed March 29, 1996 (PSC-3), and in its Brief filed on June 3, 1996 (PSC-4).

In response to PSCo's concern, the Board imposed a condition permitting UP/SP to discontinue service on the Tennessee Pass line, but denying the requested authority to abandon it. See Merger Decision at 155-156, in which the Board states as follows (page 156):

> Notwithstanding [the applicants'] reassurances, we will grant discontinuance authority rather than full abandonment authority because of the crucial nature of this through route. This will preserve the line intact until applicants demonstrate that overhead traffic over the Tennessee Pass line has been successfully rerouted.

PSCo had hoped that the parties would have sufficient experience with the changed operations in the Central Corridor to be able to address the rerouting/service issues involving the Moffat Tunnel line in a meaningful way in this oversight proceeding. However, UP's (and BNSF's) July 1, 1997 quarterly progress reports and responses to discovery in the oversight proceeding indicate that it is too early for this.

In particular, UP has indicated that it has only recently (on July 1, 1997) begun the process of shifting coal and other trains that formerly used the Tennessee Pass line to the Moffat Tunnel route. (See Applicants' July 1, 1997 progress report at 34-35 and 38-40; Applicants' Responses to Consolidated Information and Discovery Requests dated June 2, 1997, at 19-20 (Response to Request Nos. 20-22)).[1] BNSF is also in the early stages of developing its operations in the Central Corridor using its new trackage rights, and at this point is operating only one short daily train in each direction five days per week between Denver and Salt Lake City via the Moffat Tunnel. BNSF quarterly progress report at 16-17, 18. (In the merger proceeding, BNSF indicated that it ultimately expects to operate six daily trains on this line, three in each direction.)

Given these facts, the impacts of increased traffic density on the Moffat Tunnel line are not yet ascertainable in any meaningful fashion. However, the strong possibility remains that such impacts will result in a deterioration in UP's quality of service for western Colorado coal movements to PSCO's Denver

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[1] With respect to the future of the Tennessee Pass line, UP's progress report indicates that it is "working closely with the State of Colorado. . . [and] cooperating with Colorado's efforts to find viable rail options" that apparently may preserve rail service on the Tennessee Pass line via a sale to a short-line operator. Id. at 59. PSCO notes that such a sale probably would not resolve its concerns unless the purchaser continues to operate UP through trains via the Tennessee Pass line -- something PSCo views as unlikely.

area power plants. Accordingly, PSC respectfully requests the Board to revisit this issue in one year, on July 1, 1998, when sufficient data on the effects of shifting additional traffic to the Moffat Tunnel line should be available. The Board should retain jurisdiction in this oversight proceeding for that purpose, and order UP and BNSF to provide detailed information concerning changes in traffic volume, service levels and transit times during the preceding twelve-month period in their quarterly status reports to be filed on July 1, 1998.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF COLORADO

By: C. Michael Loftus
Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys for Public Service Company of Colorado

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: August 1, 1997

## CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 1997, I served copies of the foregoing Comments of Public Service Company of Colorado by facsimile on Washington counsel for the Applicants and for BNSF, and by first-class mail, postage prepaid on all parties of record shown in the corrected service list in Finance Docket No. 32760 (Sub-No. 21).

Christopher A. Mills

STB FD-32760 (SUB 21) ID-180887 8-1-97 D

180887

# SLOVER & LOFTUS

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CHRISTOPHER A. MILLS
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347-7170

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

Re: Finance Docket No. 32760 (Sub-No. 21)
Union Pacific Corporation, et al. --
Control and Merger -- Southern Pacific
Rail Corporation, et al.

Dear Mr. Secretary:

Enclosed for filing in the above-referenced proceeding please find a separately packaged original and twenty-five (25) copies of the CONFIDENTIAL VERSION of the Comments of Sasol Alpha Olefins North America, Inc. (SNA-02), which Comments are being filed under seal. In addition, please find an original and twenty-five (25) copies of the REDACTED, PUBLIC VERSION of the Comments. We have served these documents upon parties of record in the manner described in the Certificate of Service attached to each. Also enclosed is a Wordperfect 5.1 diskette containing the CONFIDENTIAL VERSION of the Comments.

Extra copies of these filings are enclosed. Kindly indicate receipt and filing by time-stamping these copies and returning them to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Kelvin J. Dowd
Attorney for Sasol Alpha
Olefins North America, Inc.

Enclosures

180887

SNA-02

BEFORE THE
SURFACE TRANSPORTATION BOARD

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| UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY | Finance Docket No. 32760 (Sub-No. 21) |

**COMMENTS OF**
**SASOL ALPHA OLEFINS NORTH AMERICA, INC.**

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5 Part of Public Record

**-- REDACTED --**
**ACCESS NOT RESTRICTED**

SASOL ALPHA OLEFINS
NORTH AMERICA, INC.
9800 Center Parkway
Suite 870
Houston, Texas 77036

By: Kelvin J. Dowd
Slover & Loftus
1224 Seventeenth Street, N.W.
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Attorney and Practitioner

OF COUNSEL:

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1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated August 1, 1997

SNA-02

BEFORE THE
SURFACE TRANSPORTATION BOARD

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| UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY | Finance Docket No. 32760 (Sub-No. 21) |

**COMMENTS OF
SASOL ALPHA OLEFINS NORTH AMERICA, INC.**

In response to the Surface Transportation Board's ("Board") Decision served May 7, 1997, implementing the oversight condition imposed in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Et Al. ("UP/SP"), Decision No. 44 served August 12, 1996, Sasol Alpha Olefins North America, Inc. ("Sasol NA") hereby submits its Comments on the impacts of the implementation of the merger of the Southern Pacific Transportation Company ("SP") into the Union Pacific Railroad System ("UP"). Supporting these Comments is the attached Verified Statement of Sasol NA Senior Customer Service Representative Liz Schaefer.

## IDENTITY AND INTEREST

Sasol NA is a small company engaged in the distribution and sale of alpha olefins, liquid comonomers used primarily in the manufacture of polyethylene. Sasol NA imports alpha olefins by ocean vessel from its parent, South Africa-based Sasol Ltd., a multi-national, multi-billion dollar mining, fuel and petrochemical concern. See V.S. Schaefer, at 1. From storage facilities in the vicinity of Houston, Texas, Sasol NA ships its product to customers throughout Texas, the continental U.S. and into Canada, including ***** ******* ****., ***** ****., ******* ******** *** ******* ******** *******. Id.

Significant volumes of Sasol NA's product are transported by rail, in tank cars owned or leased by the company. The only rail lines serving the Houston storage facilities from which Sasol NA's shipments originate are those formerly operated by SP. Sasol NA's interest in this oversight proceeding arises from the dramatic, adverse changes in the quality of available rail service that Sasol NA has experienced since the merger of SP into UP was consummated.

## COMMENTS

The governing statutes and interpretive case law confirm that the impact of a merger on the quality or adequacy of necessary rail service available to the shipping public is a legitimate consideration for the Board, as it deliberates the merits of the consolidation and evaluates the need for conditions on its approval. See 49 U.S.C. §11324(b)(1); Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295, 301 (D.C. Cir. 1983). See also New York Central Sec. Corp. v. United States, 287 U.S. 12, 49 (1932); Norfolk & Western Railway Company and Baltimore & Ohio Railroad Company -- Control -- Detroit, Toledo & Ironton Railroad Company, 360 I.C.C. 498 (1979). In particular, the issue whether UP's acquisition of SP and concomitant integration and reorganization of operations has had a negative impact on rail service quality is a question ripe for Board review in this oversight proceeding. See V.S. Schaefer, Exhibit ___ (LS-01). Cf. UP/SP, Decision No. 44 at 147.

As discussed below and attested by Witness Schaefer, post-merger changes in rail operations to, from and through Houston implemented by UP have resulted in a deterioration of service quality levels previously enjoyed by Sasol NA, with the consequence that the company now faces a 25% real increase in its annual transportation costs. Efforts to address these problems through direct communications with UP have been singularly unsuccessful. Sasol NA therefore respectfully requests that the Board exercise its oversight authority to extend and enhance its monitoring conditions in the manner described in Part II, infra, to encourage UP to respond promptly, meaningfully and positively to correct service deficiencies experienced by Sasol NA and other similarly-situated shippers.

## I. UP's Post-Merger Operations Changes Have Shortchanged Sasol NA

UP's July 1, 1997 Report on Merger and Condition Implementation ("Report") includes a brief discussion of what the carrier refers to as "SP Houston Terminal Problems." <u>See</u> Report at 11-14. From UP's perspective, however, the only service problems in and around Houston were inherited from SP, and are centered on congestion-related delays for through trains moving over longer hauls to, from and through New Orleans, Memphis and St. Louis. <u>Id</u>. at 12. UP outlines routing and other operational changes that ostensibly will address the situation, most of which UP hopes to implement fully once various labor-related agreements are concluded later this year. Nowhere, however, does UP acknowledge service deficiencies or other problems arising from the merger itself.

In fact, UP's absorption of SP and resultant changes in rail operations in the Houston vicinity has had a direct, adverse impact on rail transportation service available to Sasol NA. As Witness Schaefer explains, many of the re-routings and other changes implemented by UP supposedly to benefit long-haul traffic have significantly increased transit times on movements of Sasol NA's liquid alpha olefins to key destinations and interchange points. For example:

1. Shipments to a customer located on Burlington Northern Santa Fe Railway's lines at ********, **, which is served via a former SP interchange at ******, TX, have experi-

enced a 40% increase in transit time post-merger, due to UP's re-routing of the trains in which the shipments move. Instead of direct transit to ******, Sasol NA's ********-bound shipments now are being routed east, through Shreveport, LA. (V.S. Schaefer at 3).

2. Shipments to ******* ********, a Sasol NA customer located approximately 125 rail miles ********* of Houston, used to average six-days, each way. Since UP implemented its merger-related changes, however, cars bound for this customer have been routed first via Livonia, LA -- nearly 200 miles in the <u>opposite</u> direction -- adding up to ten days to the round trip. <u>Id</u>. at 3-4.

3. The Baytank (Houston) Inc. storage facility from which Sasol NA ships its product is served by the former SP's Strang Yard, which apparently is undergoing changes in traffic patterns and train frequency under the new UP operating plan. <u>See</u> Report at 13. For a shipper like Sasol NA, however, whose traffic moves in multiple car lots that must be combined with other traffic to fill a train, the changes led to delays in the assembly of trains bound for certain destinations. In Sasol NA's case, this has meant a post-merger 35-50% increase in transit times on shipments to ***** ***** at ********, **. <u>Id</u>. at 4.

All of the difficulties outlined above and detailed by Witness Schaefer result directly from UP's implementation of its SP consolidation plan. In economic terms, the impact of these new service problems is an estimated 25% increase in Sasol NA's overall transportation costs,[1] an increase which cannot be passed through to the customers due to the intense competition that characterizes the alpha olefins/petrochemicals markets. Additionally, the service delays and longer transit times threaten Sasol NA's continued ability to respond to the just-in-time orientation of its customers' purchase patterns, with obvious negative consequences for its long-term business prospects. See V.S. Schaefer at 5.

## II. The Board Should Extend and Enhance Its Monitoring Condition to Protect Sasol NA and Other Similarly-Situated Shippers

As Witness Schaefer testifies, efforts by Sasol NA to remedy post-merger service problems through normal business channels have been wholly ineffective. See V.S. Schaefer at 5. UP may be entitled to realize the system benefits of its acquisition of SP, now that the Board has given its approval, but it should not be permitted to ignore otherwise avoidable service quality reductions that result from implementation of the consolidation. Sasol NA respectfully submits that the Board has both the power and the responsibility to impose and enforce conditions that will serve to ameliorate the merger-related, adverse service impacts that are now a matter of record. See 49 U.S.C. §§11324(b)(1) and (c).

Absent clear evidence, Sasol NA will not assume that the post-merger service deficiencies that it has experienced are

[1]V.S. Schaefer at 6.

a product of deliberate malfeasance on UP's part. Indeed, while it by no means would be a legitimate excuse, it may be that the problems experienced by Sasol NA -- serious though they are -- thus far have not competed successfully with other matters for senior UP management attention. Nevertheless, Sasol NA submits that if UP is required to formally acknowledge, monitor and report on service deficiencies attributable to the merger until such time as they are remedied, enlightened business self-interest will lead to their resolution as quickly as any reasonable command-and-control condition that the Board could devise.

In view of the foregoing, and based upon the self-defined scope of the Board's exercise of its authority under 49 U.S.C. §11324(c),[2] Sasol NA requests that the Board (1) re-affirm the 5-year monitoring and oversight condition imposed in its 1996 Decision on the merits (UP/SP, Decision No. 44 at 146); and (2) modify the reporting condition to require that throughout the monitoring period, UP must file quarterly written, public reports with the Board (with service on requesting parties) detailing (i) all merger-related service deficiencies or other problems reported to UP during the quarter by affected shippers; (ii) the specific actions taken by UP during said quarter to remediate the reported deficiencies; and (iii) the results of those remedial actions. Finally, Sasol NA requests that the Board reopen this oversight proceeding six (6) months after the effective date of the imposition of the foregoing condition, for the limited

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[2] See UP/SP, Decision No. 44 at 144.

purpose of receiving public comment concerning UP's progress in resolving reported service problems, and considering whether modification of the condition is appropriate.

## CONCLUSION

For the reasons set forth in these Comments, the Board should continue to retain jurisdiction over this matter, retain the monitoring/oversight condition imposed in UP/SP, Decision No. 44, and impose the service deficiency reporting condition described in Part II, *supra*.

Respectfully submitted,

SASOL ALPHA OLEFINS
NORTH AMERICA, INC.
9800 Center Parkway
Suite 870
Houston, Texas 77036

By: Kelvin J. Dowd
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorney and Practitioner

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated August 1, 1997

VERIFIED STATEMENT

OF

LIZ SCHAEFER

My name is Liz Schaefer, and my business address is 9800 Centre Parkway, Suite 870, Houston, Texas. I am the Senior Customer Service Representative of Sasol Alpha Olefins North America, Inc. (Sasol NA). Sasol NA is a wholly-owned subsidiary of Sasol Ltd., a multi-faceted, multi-billion dollar mining, fuels and petrochemical company headquartered in Johannesburg, Republic of South Africa.

Sasol NA is engaged in the importation and distribution of alpha olefins extracted and purified by Sasol Ltd. from the synthetic fuels manufacturing process. Linear alpha olefins, particularly pentene and hexene, are used principally as comonomers in the manufacture of polyethelene. Major U.S. customers and potential customers of Sasol NA include ***** ******* ***********, ***** ***********, ******* ******** ****., ******* ********, ********** ************, *** ********, ******** ********, ******** ********, ****** ******** *** ***** ********.

Inbound Sasol NA alpha olefins are delivered by international ocean vessels into storage tanks at Seabrook, Texas. The marketed product then moves to customers within the U.S. in rail tank cars or trucks, depending upon volume and the type of delivery facility employed by the customers. The demand for alpha olefins often is very unpredictable, as it follows demand fluctuations in the polyethelene and other plastics markets. To build and retain sales volume, Sasol NA must be able to respond quickly and efficiently with the volume and product quality grade sought by its customers, most of whom practice just-in-time inventory control and dictate their own delivery dates and other requirements. As such, delay or uncertainty in the transportation of our alpha olefins to the ultimate user can have direct, serious and adverse consequences for Sasol NA's business.

Rail shipments of our product take place in tank cars leased by Sasol NA, and originate from Baytank (Houston) Inc.'s Seabrook storage facility. The facility is served solely by lines of the former Southern Pacific Transportation Company. While minor problems inevitably arose from time to time, SP service from Seabrook historically has been reliable and adequate to meet our requirements and those of customers. Since the merger of SP's lines into the Union Pacific System, however, the quality of rail service available to Sasol NA has deteriorated dramatically. I am making this Statement in order to apprise the Board of these new problems -- which barely have been acknowledged by UP much less addressed satisfactorily -- and to ask the Board to order appropriate, remedial action through this oversight proceeding.

Since UP took over our service, transit times for Sasol NA shipments to and from our customers' rail sidings have soared, principally as a result of train re-routings that add miles in each direction and thereby delay both the delivery and return trips. For example:

* Sasol NA ships alpha olefins to ******* ******** at ********, *****. ******* ********** facility is served by the Burlington Northern Santa Fe Railway, via the UP/SP interchange at ******, Texas. Prior to the merger, SP routed our cars from Houston directly to ******. Since UP took over, however, our cars have been placed into trains that first move through Shreveport, Louisiana, adding two (2) days to what previously had been a five (5) day trip each way, a 40% increase in transit time.

* ******* ******** ****. receives our product by rail at its ***** *******, ***** facility, some 125 railroad miles ********* of Houston. Prior to the merger, our shipments to ******* averaged six (6) days, each way. Since the merger, however, changes in routings and yard operations by UP have added one to two days to the loaded move, and from <u>four (4) to nine (9) days</u> to movements of empty cars. Some of this extra time is attributable to Sasol NA cars being delayed at UP's ******** Yard. Of even greater concern, however, is the fact that at

times UP also has been routing the empty cars via Livonia, Louisiana, some 200 miles <u>northeast</u> of Houston. While this may serve some larger UP plan for train assembly, it causes enormous problems for Sasol NA. Doubling our transit time means additional costs both for equipment acquisition and maintenance, and for per diem payments to railroads (including UP) on whose lines our cars sit idle or move in inefficient, circuitous service.

* ***** *********** is a Sasol NA customer served by rail at its facility near ********, *****. Prior to the merger, we experienced reasonably stable transit times of eight (8) days round-trip, SP-direct (including time spent in yards). Since the merger, however, UP has de-emphasized traffic movements through SP's Strang Yard, which serves the Baytank storage facility. The result has been delays in the assembly of full trains of mixed shipments. Because Sasol NA's traffic moves in multiple car lots, not entire trainloads, this has meant an additional three (3) to four (4) days in round-trip transit to *****, a 35-50% increase in transit time.

These service delays and transit time increases mean higher costs for Sasol NA across-the-board, as we must acquire additional railcars just to be able to service our current customers. Moreover, these are increases which Sasol NA cannot pass through to the customer, due to the highly competitive nature of the market for alpha olefins supply and distribution.

When we began experiencing the service problems that I have described, we brought them to the attention of UP. We pointed out that sales losses for Sasol NA meant revenue losses for UP, and suggested that it was in UP's own economic interests to remedy the situation. Apparently, however, either Sasol NA's revenue contribution is not substantial enough to get and hold UP's attention, or UP is confident that Sasol NA will absorb the added cost in order to keep traffic moving, because our appeals produced no beneficial changes in UP operation around and through Houston. On the advice of the Board's Office of Compliance and Enforcement (Exhibit ___ (LS-01)), therefore we felt that our only option was to bring the matter before the Board in this oversight hearing.

When the UP-SP merger first was proposed, we (like many shippers) were approached with promises of better routings, faster transit times, enhanced service, etc., etc. As a smaller shipper, however, we were skeptical that Sasol NA actually would experience any of these benefits, as UP was more likely to focus its attention on higher volume, long-haul shipments through selected gateways. We therefore took a neutral position on the UP-SP merger, and did not participate in the main proceeding before the Board. Unfortunately, our concerns about the impact of the merger on our business opportunities have been confirmed.

As compared to our experience prior to the merger, we estimate that the routing and other operational changes implemented by UP will force Sasol NA to incur more than $40,000.00 in annual additional transportation-related costs just to maintain our current market share; a cost increase of over 25%. For us, the merger clearly has not worked. I therefore urge the Board to impose additional conditions during this oversight phase, that at least will restore the service quality available to Sasol NA before the UP/SP combination.

Exhibit ___ (LS-0

# Surface Transportation Board
Washington, D.C. 20423-0001

*Office of Compliance and Enforcement*

May 13, 1997

Liz Schaefer
Sr. Customer Service Representative
Sasol Alpha Olefins North America, Inc.
9800 Centre Parkway, Suite 870
Houston, Texas 77036

Re: Post UP/SP Merger Service Problems

Dear Ms. Schaefer:

This letter responds to your correspondence and enclosure of May 1, 1997, to Chairman Morgan, in which you indicate concern for post-merger service levels being provided by the Union Pacific and Southern Pacific Railroads (UP/SP) to your company. Chairman Morgan has asked me to respond to your letter.

Your letter correctly notes that the UP/SP merger was approved by this Board. An essential part of the merger process was the Board's analysis of the merger's effects on shippers and the extent to which conditions must be imposed on the merger to ameliorate those effects. An equally essential part of the merger process is the Board's post-merger monitoring to assess how successfully the parties have implemented the terms of the merger decision. In this regard, the Board has just initiated an oversight proceeding (decision enclosed) to take comments from interested persons on any "Effects of the Merger on Competition and Implementation of the Conditions Imposed to Address Competitive Harms." As noted in Chairman Morgan's separate statement in the enclosed decision, "the Board has taken the case very seriously from the beginning and will continue to do so." She also noted that she views oversight as an "ongoing component of the approval process of the UP/SP merger."

With that in mind, I would invite you to participate in that process in order to make your concerns known to the Board. As noted in the decision, you have until May 27, 1997, to indicate your intent to participate in the oversight proceeding.

I appreciate the opportunity to be of assistance and hope you will not hesitate to contact me if we can be helpful in the future.

Sincerely,

Melvin F. Clemens, Jr.
Director

## VERIFICATION

| | | |
|---|---|---|
| STATE OF TEXAS | ) | |
| | ) | SS: |
| COUNTY OF HARRIS | ) | |

Liz Schaefer, being duly sworn, deposes and says that she has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of her knowledge, information and belief.

Liz Schaefer

Liz Schaefer

Sworn and subscribed
before me this 25th day of July, 1997

Notary Public

TERRY L. JOHNSON
Notary Public, State of Texas
My Commission Expires
AUGUST 4, 1999

My Commission expires: 8/4/99

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 1997, I served Confidential copies of the foregoing Comments by hand upon the following:

Arvid E. Roach II, Esq.
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Michael D. Billiel, Esq.
Joan S. Huggler, Esq.
U.S. Department of Justice
Antitrust Division, Suite 500
325 Seventh Street, N.W.
Washington, D.C. 20530

I further certify that Redacted copies of the foregoing document were served by first class mail, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No.21).

Kelvin J. Dowd

180432

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July 1, 1997



**BY HAND**

Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 21)
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al. -- Oversight

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket are an original and twenty-five copies of the Applicants' Report on Merger and Condition Implementation. Also enclosed is a 3.5-inch diskette, formatted so that it can be converted into WordPerfect 7.0, containing the pleading.

Also enclosed are an original and twenty-five copies of the Confidential Appendices to Applicants' Report on Merger and Condition Implementation, clearly marked "Highly Confidential," along with a diskette containing the confidential appendices, to be filed under seal.

Applicants have served the Report on all parties of record. Applicants have also served the "Highly Confidential" Appendices on parties' outside counsel that indicated, in the merger proceeding, that they will adhere to the restrictions of the Protective Order granted in UP/SP, Decision No. 2, served Sept. 1, 1995.

I would appreciate it if you would date-stamp the enclosed extra copy of the pleading and return it to the messenger for our files.

Sincerely,

Arvid E. Roach II

Enclosures

cc: Parties of Record

180432

UP/SP-303



BEFORE THE
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY -- OVERSIGHT

---

APPLICANTS' REPORT ON MERGER AND CONDITION IMPLEMENTATION



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July 1, 1997

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Zacky Farms

Public Bodies

Caltrans

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Metra (Chicago, Illinois)

North Front Range Transportation & Air Quality
Planning Council

Railroads

California Northern Railroad Co.

Copper Basin Railway, Inc.

Dallas, Garland & NorthEastern Railroad, Inc.

Georgetown Railroad Company

Little Rock & Western Railway

Louisiana & Delta Railroad, Inc.

Northwest Texas Rual Rail Transportation District

Rio Valley Switching Company/Southern Switching Company

Salt Lake, Garfield & Western Railway Co.

San Joaquin Valley Railroad Company

South East Kansas Railroad/South Kansas &
Oklahoma Railroad

Utah Railway Company

Willamette & Pacific Railroad, Inc.

Willamette Valley Railway Company

CONFIDENTIAL APPENDICES (separately bound and filed under seal)

A -- Examples of New Single-Line Service and Shorter Routes

B -- Examples of Traffic Handled by BNSF

C -- Examples of Benefits to Shippers Where UP Has Retained "2-to-1" Traffic

D -- Geneva Steel Competition

E -- UP/SP Rate Comparisons

F -- Build-In Condition

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I -- "1-to-2" Shippers

J -- Early Impacts of New BNSF Single-Line Service In I-5 Corridor

K -- Benefits to the Auto Makers From Stronger Rail Competition

UP/SP-303

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY -- OVERSIGHT

## APPLICANTS' REPORT ON MERGER AND CONDITION IMPLEMENTATION

Applicants UPC, UPRR, SPR, SPT, SSW, SPCSL and DRGW[1/] are pleased to submit this report on their progress to date in implementing the UP/SP merger, and on the implementation and effectiveness of the competition-preserving conditions imposed by the Board in its decision approving the merger. This report is being submitted in accordance with Decision No. 1 in this oversight sub-docket, served May 7, 1997.

## INTRODUCTION AND SUMMARY

As set forth in this report, the UP/SP story to date is one of solid achievements in gaining the benefits projected for the merger -- and, as the Board expected, of stronger competition. UP/SP is implementing this merger deliberately and with careful planning. Labor implementing agreements are

1/ Acronyms used herein are the same as those in Appendix B of Decision No. 44. On January 1, 1997, Applicant MPRR merged into Applicant UPRR.

being reached, vital computer systems are being installed on the entire merged system, and an ambitious $1.5 billion merger capital investment program has been initiated. New train services are now being instituted, including a Chicago-Oakland premium intermodal train that is challenging the longstanding Santa Fe dominance of that traffic, and the first-ever Los Angeles-Seattle expedited intermodal service. Common management of the UP and SP car fleets is already yielding major benefits for shippers. Many other positive steps to implement the merger are underway, as detailed in Part I of this report.

Part II shows that, as the Board anticipated, the merger and the competition-preserving conditions are strengthening transport competition in the West. In particular, the experience of only nine months allows the controversies over the BNSF conditions to be definitively laid to rest. BNSF is operating nearly 400 trains a month over its trackage rights. It is mounting fully competitive service. BNSF's traffic volumes, which are continuing to increase, already far surpass the gloomy predictions of merger critics as to the amount of traffic that BNSF would <u>ever</u> carry on the rights. As predicted, "2-to-1" shippers are better off: they are benefitting both from access to the comprehensive and expanded BNSF system and from rate and service initiatives UP/SP is taking in response to BNSF competition. Also, as the

Board found would be the case, there has been no competitive harm to "3-to-2" shippers, or to shippers of Utah and Colorado coal, Gulf Coast chemicals, or grain. The facts are entirely to the contrary: these shippers are enjoying better service, lower rates, and all the benefits of the creation of two much more competitive, comprehensive rail systems in the West.

The proper conclusions as we approach the end of Year One following the Board's merger decision are: Merger implementation is proceeding well. The conditions are working well. The merger, as conditioned by the Board, is on course to produce major public benefits and preserve and intensify competition. No changes in the Board's merger decision are called for, or would be appropriate.

The format of this report reflects the fact that the purpose of the oversight proceeding is not a full-scale relitigation of the merger case, but rather, in the words of Chairman Morgan, to conduct a "focused, probing and productive" inquiry that is "not unduly burdensome." Decision No. 1, served May 7, 1997, p. 9. Applicants have therefore not presented lengthy verified statements of their officers, or asked the literally thousands of shippers, communities and railroads that are already benefitting from the merger and the competition-preserving conditions to submit statements. Instead, to provide a direct perspective of such affected parties, Applicants have asked only a very limited number of representative shippers, public bodies and shortline railroads to prepare short verified statements setting forth their views of the implementation of the merger and the competitive conditions to date. Those verified statements are attached hereto, and their contents are noted at appropriate places in the report.

## I. PROGRESS IN IMPLEMENTING THE MERGER AND ACHIEVING ITS SERVICE AND EFFICIENCY BENEFITS

UP's acquisition of SP on September 11, 1996 set in motion a multi-year process of creating a new, much more efficient, much more competitive Western rail system. That process is on schedule and proceeding well.

As UP knows from past experience, consolidating two railroads is a tremendously complex undertaking, requiring carefully phased coordination of hundreds of interrelated activities. Common computer systems must be established, or nothing will work well. Trains cannot be consolidated and traffic cannot be moved via the most efficient routes until labor implementing agreements are in place, a time-consuming process that must be accomplished within the constraints of the labor protective conditions imposed by the Board. Managements must be combined and function effectively. Capital -- here, more than $1.5 billion dollars -- must be invested in track, equipment and facilities needed for the most efficient merged operations. All of this, done properly, requires several years.

These first nine months have necessarily been devoted in significant part to preparing the foundation for later improvements. Even so, after only nine months, shippers are already seeing the benefits of this merger. UP/SP moved quickly and decisively to improve service on SP. Now, the merger's benefits are arriving at an accelerating pace. New trains are beginning to appear. Freight cars are being deployed to meet shipper needs. New terminal facilities are under construction.

UP/SP is operating more efficiently, generating savings that can be passed on to shippers in the form of lower rates. Annual efficiency savings associated with the merger, estimated in the application at $580 million, are now expected to exceed $820 million after full implementation. The consolidated system's operating ratio has already dropped by 2 full percentage points, from 85.1 in the period from October 1995 to May 1996 to 83.1 in the period from October 1996 to May 1997.

There has been no repetition of the merger-related disruptions that UP encountered in absorbing CNW. SP has a long history of operational and service difficulties, and when UP acquired it on September 11 SP had shortages of locomotives and train crews, a physical plant in need of more work than UP had anticipated, and weaknesses in operational discipline. UP/SP has been especially challenged by continued SP operating problems in the Houston area that pre-dated the merger. UP/SP is moving aggressively to address these situations, not only in the Houston area, but across the West. The ultimate solution to SP's operating problems, however, is full integration with UP, supported by labor implementing agreements, improved technology, and UP capital investment.

Of particular importance, UP/SP is making use of the best talent of both merging roads. This is being done with harmony and esprit de corps, in important part because UP/SP is led by experienced railroaders who know both systems and already have a history of working together. UP's President, Jerry Davis, was the President of SP, yet is no stranger to UP or to working with UP's CEO, Dick Davidson. For many years following the UP/MP/WP merger, Davis of UP and Davidson of MP were the two top Operating Department officers at Union Pacific. Their close working relationship has set the pattern for the entire new organization.

A. Preliminary Steps and Challenges

1. The Planning Process

The UP/SP merger is proceeding smoothly because it was planned well from the outset and is being implemented in a deliberate, orderly, scheduled way. UP and SP were determined to learn from UP's experience in integrating CNW into the UP system, and to avoid disruptions through detailed planning and careful implementation.

UP and SP personnel created the bedrock for effective implementation of the merger during the 1995 preparation of the UP/SP application, when they mounted an extraordinarily comprehensive and resource-intensive planning exercise. More than 200 transportation experts from both railroads assembled a comprehensive Operating Plan that was designed not only to quantify the benefits of the proposed merger, but also to serve as the blueprint for its implementation. Elaborated and updated, that Operating Plan is being implemented now.

As the merger date approached, UP and SP gave further attention to plans for the immediate integration of the support systems that allow large network businesses like railroads to function effectively: computerized operating systems, telecommunications, customer service systems, train dispatching, timekeeping, crew management, procurement, financial and accounting activities, and many others. Preparations were made within the Human Relations and Labor Relations Departments for the early transition from two work-forces to one. UP and SP managers also reviewed and refined their plans for the operating functions of the railroad, including train service, terminal consolidations, car and locomotive repairs, and track maintenance.

Intense UP/SP planning activities generated the coordinated, methodical schedule that is essential for merger implementation without significant management or service failures. This process does not make headlines, and it is not as exciting as dozens of new and improved train operations, but without it the merged system would have been unable to deliver the service improvements that shippers are now beginning to see.

2. <u>Immediate Steps to Improve Service</u>

Although full integration of UP and SP service requires substantial time to negotiate labor agreements, integrate information systems, and complete capital projects, UP/SP acted immediately to improve lagging service on SP lines.

SP had long been short of locomotives, or at least of locomotives that worked. Immediately after the merger, as many as 180 UP locomotives were moved to the SP system. UP also exchanged 50 of its high-tech alternating current locomotives for 50 SP units requiring substantial maintenance.

At common points, locomotive assignments were rearranged. In many instances, the use of UP yard locomotives allowed SP road units to be released from inappropriate roles in SP freight yards. UP/SP achieved interim agreements with several unions to allow UP and SP locomotives to be maintained at shops of both railroads under higher UP maintenance standards. More than 85 furloughed UP engineers and trainmen voluntarily moved to SP lines to relieve chronic crew shortages, especially on SP's Tucumcari line and at San Antonio. UP/SP modified SP's terminal operating practices to run trains as scheduled rather than holding them for more cars, and to run more extra trains.

The results were impressive and immediate:

- In August 1996, SP held 717 trains because it did not have engines to pull them. It held only half that many in September, and only 264 in October. By May, the number of SP trains held for power had fallen to only 153.
- The percentage of SP trains arriving on or ahead of schedule jumped from approximately 10% during the summer of 1996 to approximately 44% in May -- not good enough, but a major improvement.
- The percentage of SP trains departing their origin terminals on time also climbed significantly over the same period.
- SP's overall network velocity -- the effective speed at which cars move -- increased by 5%.[2/]

These steps have directly benefitted shippers. Occidental Chemical, for example, states in its verified

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[2/] "Velocity" is the average speed of shipments, taking all car time, including time in terminals, into account. UP/SP's first-quarter 1997 progress report, filed April 1, 1997, mistakenly described this 5% velocity improvement as a 5 mph increase in average train speed. UP/SP-300, p. 3.

statement that it has been "particularly impressed with the improvements in the supply of locomotive power for our traffic." Prior to the merger, OxyChem "had numerous shipments delayed due to SP's lack of locomotives," and the merger "has largely eliminated this problem." Another significant shipper, Coors, wrote to UP/SP in May to underscore "the successes we have enjoyed stemming from the UP/SP merger." Coors stated: "Chiefly, the reestablishment of reliable rail service to points in Texas and California has been huge to us. . . . We have no regrets as to the merger and realize it was the 'right' thing to do to save a 'bunch' of our rail-served facilities to continue being rail-served. Certainly, the UP/SP merger will help our respective companies achieve our goals and visions of the future."

But impressive as these early gains are, they are only a beginning, achieved without full integration of operations.

3. <u>Response to Western Floods</u>

Shippers also garnered early benefits from the merger during some of the worst flooding of the century in the Far West, when heavy, warm rains followed heavy snows and caused a massive runoff. Hardest hit were UP's Feather River line, which was washed out for most of 100 miles between Portola and Oroville, California, and SP's I-5 Corridor in the Sacramento River Canyon between Redding and Dunsmuir, California. Indeed, both north-south rail routes through Northern California were severed.

Thanks to the merger, UP/SP was able to act immediately to handle shipments over new routings even before the storms eased. Without a merger, UP and SP would have had to negotiate with each other about detours, a process that would have taken time and left limitations and restrictions on detour operations. As a single system, UP/SP was able to move trains and train crews immediately to the lines that could accept them. A number of UP Feather River route trains moved over the SP via Reno. SP's Oregon lumber traffic to the Midwest promptly began to flow over SP to Portland and east via UP. Some UP transcontinental freight was shifted quickly to SP's Tucumcari line, while other UP trains used the new UP/SP trackage rights on BNSF between Barstow and Mojave, California. I-5 Corridor trains used either UP's long route via Salt Lake City or a previously unimaginable combination of UP and SP routes: to get from Portland to Sacramento, trains used SP from Portland to Flanigan, Nevada, UP from Flanigan east to Winnemucca, Nevada, and SP southwest from Winnemucca via Reno and the Donner Pass to Sacramento. One way or another, aided by the merger, shipments got through.

4. <u>SP Houston Terminal Problems</u>

One area of particular difficulty in the early days of the merger has been the SP operation in Houston. The merged system has continued to confront the chronic problems in the Houston terminal that had plagued SP for years. These difficulties cannot be fully solved until labor agreements are in place and SP operations are combined with UP operations in that terminal and on lines running east toward New Orleans and northeast toward Memphis and St. Louis.

SP's always-difficult Houston-area operations have been further hampered by two additional problems. First, after purchasing the SP line between Iowa Junction and Avondale, Louisiana, in December pursuant to the settlement agreement, BNSF reduced speed limits and began a heavy maintenance schedule with daily line closures. Because this remains a busy UP/SP mainline between Houston and New Orleans -- and indeed most of the trains on the line are UP/SP trains -- this BNSF action had a far more severe impact on UP/SP operations than on BNSF operations. Second, a weather-related line closure in Arkansas severely disrupted a new service plan that was intended to improve traffic flows in the Houston terminal.

UP/SP is working hard to find interim solutions to these problems. For example, UP/SP has developed new blocking arrangements with CSX and NS that should save SP Houston and Beaumont traffic a full day passing through the New Orleans gateway. On June 22, UP/SP, BNSF and Tex Mex adopted directional operation between Houston and Beaumont to improve service for all three carriers. To address shortages, UP/SP began importing locomotives to Houston from other terminals and train crews from other parts of the system. UP/SP has arranged an improved route for BNSF through Houston, and has worked with BNSF to reduce delays caused by BNSF maintenance activities east of Houston. Yard functions are being coordinated to reduce the switching burden at Englewood Yard. And UP/SP has created a special task force to find alternatives for handling the unusual numbers of empty private tank cars and covered hopper cars in SP's Houston-area terminals.

But the real solution lies in combining UP and SP operations, which will begin after Labor Day as implementing agreements are put in place for operating crafts covering the Houston area and lines to New Orleans. It will then be possible to route all SP traffic for New Orleans and beyond to UP's modern and highly efficient Livonia Yard near Baton Rouge, which will prepare run-through trains and detailed blocks for NS, CSX and IC, as well as many points on UP/SP. It will also be possible to begin coordinating the functions of the UP and SP yards in Houston. The goal is for UP's Settegast Yard to serve as the system's receiving and industry yard for shipments destined to customers north of the Houston Ship Channel, SP's Strang Yard to play the same role for customers south of the Ship Channel, and SP's Englewood Yard to serve as the system's primary classification yard for outbound trains. Ultimately, achieving the full benefits of the merger in the Houston area will require the additional labor agreements that will permit directional running. Those agreements should be completed by the end of the year.

B. The Three Essential Building Blocks For UP/SP Merger Benefits

In order to attain all the benefits of the UP/SP merger, three essential building blocks must be in place. First, in an era in which information technologies control virtually every aspect of operations and customer service, UP/SP must have common information and management control systems. Second, UP/SP must integrate two large workforces. Third, UP/SP must carry out a phased capital investment program, now projected at $1.5 billion dollars, to improve facilities and link the two rail systems. UP/SP is moving forward as rapidly as is prudent on all three of these fronts.

1. Installation of TCS on SP

UP's Transportation Control System ("TCS") is the recognized industry leader in railroad management systems. It is the glue that holds the railroad together and allows it to function as an efficient, integrated system. TCS and associated systems provide all the information needed for day-to-day operations, including train and shipment scheduling, shipment monitoring, freight car accounting, car ordering, billing of customers, and financial reporting.

Conceptually, TCS is based on car movements. When shipment instructions are loaded into TCS, as they are for every shipment, the system creates a trip plan for the shipment, which is then used to assign the car to blocks, trains and routes. Similarly, when a shipper needs an empty car, TCS finds it, assigns it to the shipper, and schedules its movement to the shipper's facility. TCS keeps track of cars in yards and helps yardmasters build trains. It helps assign locomotives and crews to trains, provides timekeeping information, and maintains payrolls for train and engine crews. TCS drives the accounting systems related to all car movements, including collecting revenue and paying car hire to car owners. It generates data for financial accounting systems, including the general ledger and accounts payable.

The full benefits of the merger can be achieved only when the entire merged system uses common operating and financial support systems for all operations and shipments. Installation of TCS on SP is therefore critical. TCS implementation is also important from a shipper's perspective, because, along with the formal consolidation of the separate railroads, it allows the shipper to specify only "UP" on a bill of lading instead of a detailed routing between the separate railroads that comprised the UP and SP systems.

The Operating Plan projected the expansion of TCS to cover the SP system over a two-year period. UP/SP now expects to finish the job in 20 months, by May 1, 1998. The first of four TCS expansion phases, illustrated on Map #1, was completed on May 1, 1997, when TCS was implemented on DRGW territory, which extends from Herington, Kansas, to Ogden, Utah.[3] That transition was successful, with very few disruptions. Field personnel were trained during the weeks preceding implementation, and UP/SP stationed experts across the DRGW to be sure that the new system operated smoothly.

The second phase of TCS expansion will encompass the SSW and SPCSL corridors between Chicago and Texas and between Chicago and Santa Rosa, New Mexico. This phase is on schedule for cutover by August 1, 1997. UP/SP will then tackle the remainder of the SP east of Yuma, Arizona, with a scheduled cutover on February 1, 1998. The final phase, covering all SP western lines from Yuma up the West Coast to Portland and east to Elko, is scheduled for cutover three months later. When all TCS and related system cutovers are complete, more than 16,000 employees in 54 cities across the SP system will have received training at an estimated cost of $40 million.

2. Workforce Integration

UP/SP is also proceeding methodically to obtain implementing agreements with labor unions under New York Dock procedures, and to integrate non-agreement workforces.

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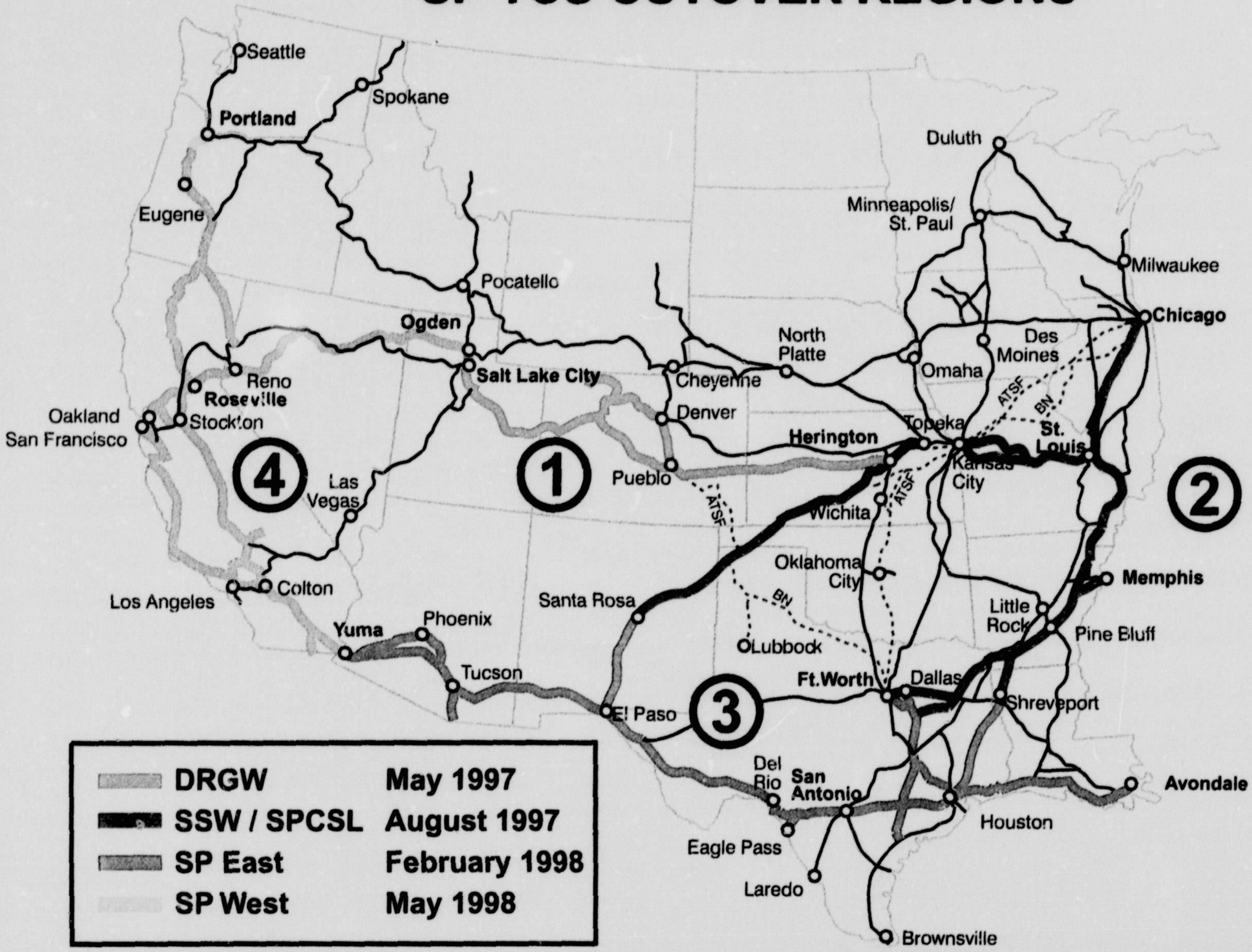
[3] Also, in a supplement to this first phase, TCS was extended beyond Ogden to Elko, Nevada, in mid-June.

Map #1

# SP TCS CUTOVER REGIONS

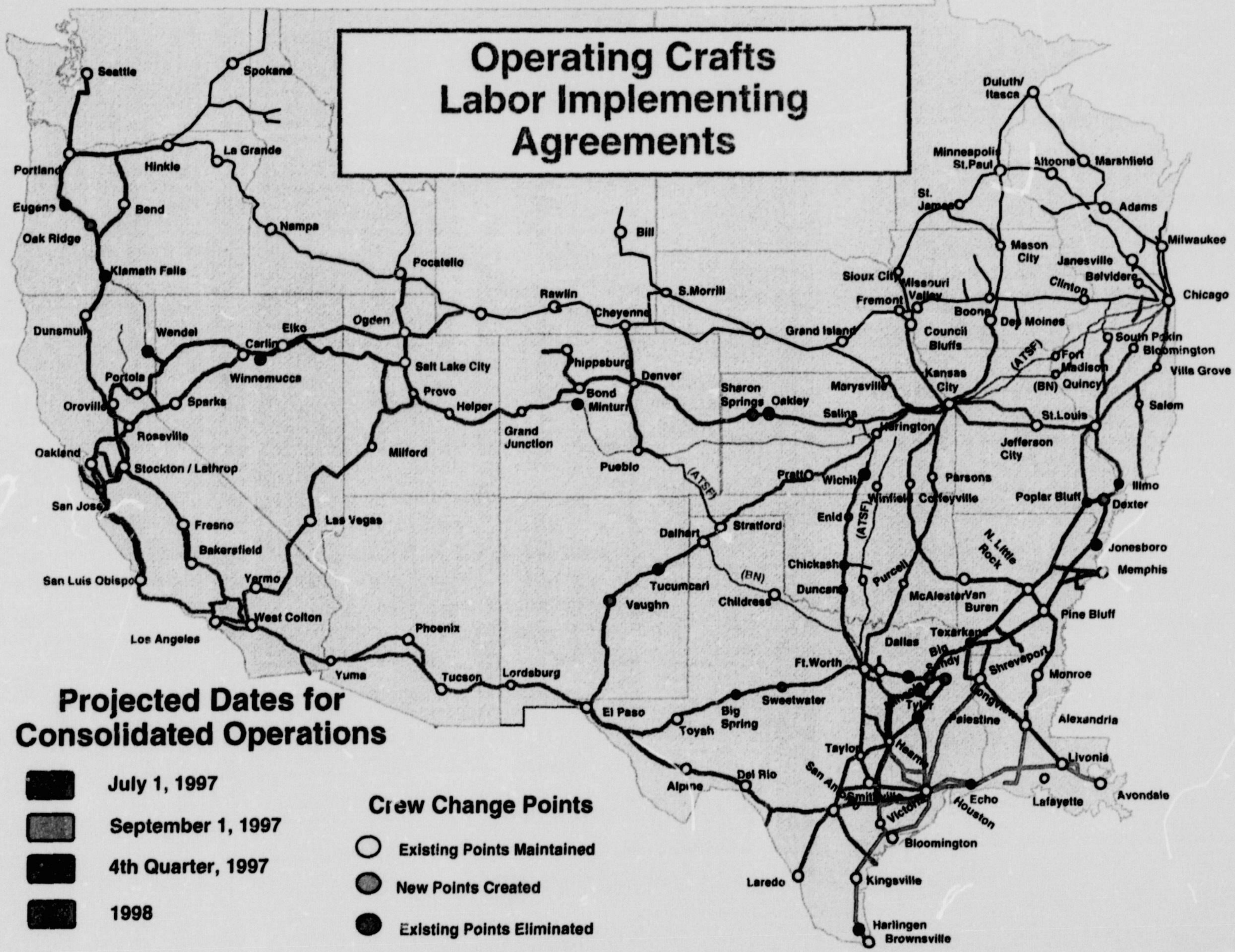


the effectiveness of the award in Decisions served May 30 and June 10. The stay was lifted and UTU's petition largely denied on the merits on June 26.

The next focus of operating craft negotiations will be on the system lines in Northern California and Oregon. After those agreements have been obtained, negotiations will focus on Southern California. In the eastern part of the system, UP/SP served notices in May to implement directional running and other consolidated operations over UP and SP lines between Missouri and Texas. Once those implementing agreements are obtained, negotiations as to the eastern part of the system will focus on the St. Louis and Chicago areas.

Where UP/SP achieves labor implementing agreements with its operating employees but has not yet implemented TCS, a set of procedures called "commingling" will permit the merged system to make changes made possible by the implementing agreements and achieve some of the benefits of combined operation. The procedures will enable UP/SP to manage the impact of changes as they cascade to territories where implementing agreements have not yet been reached. Commingling involves reciprocal use of haulage rights by UP over SP lines and SP over UP lines. While shippers in the affected areas continue to route their shipments as they did before the merger, UP/SP will be able to use the most efficient route. Programs linking UP's TCS system with SP's

# Map #2


Operating Crafts Labor Implementing Agreements
Projected Dates for Consolidated Operations
July 1, 1997
September 1, 1997
4th Quarter, 1997
1998
Crew Change Points
Existing Points Maintained
New Points Created
Existing Points Eliminated
Seattle
Spokane
Portland
Hinkle
La Grande
Eugene
Bend
Oak Ridge
Nampa
Klamath Falls
Pocatello
Dunsmuir
Wendel
Elko
Ogden
Carlin
Winnemucca
Salt Lake City
Portola
Provo
Oroville
Sparks
Helper
Roseville
Oakland
Stockton / Lathrop
Milford
San Jose
Fresno
Las Vegas
Bakersfield
San Luis Obispo
Yermo
West Colton
Los Angeles
Phoenix
Yuma
Tucson
Lordsburg
El Paso
Rawlin
Cheyenne
Bill
S.Morrill
Phippsburg
Bond
Minturn
Denver
Grand Junction
Pueblo
Grand Island
Sharon Springs
Oakley
Salina
Marysville
Herington
Pratt
Wichita
Dalhart
Stratford
Tucumcari
Vaughn
(ATSF)
(BN)
Childress
Toyah
Big Spring
Sweetwater
Alpine
Del Rio
Laredo
San Antonio
Smithville
Victoria
Bloomington
Kingsville
Harlingen
Brownsville
Duluth/ Itasca
Minneapolis St.Paul
Altoona
Marshfield
St. James
Adams
Mason City
Janesville
Milwaukee
Belvidere
Sioux City
Missouri Valley
Clinton
Chicago
Fremont
Boone
Des Moines
Council Bluffs
South Pekin
Bloomington
Fort Madison
Villa Grove
Kansas City
Quincy
Salem
St.Louis
Jefferson City
Parsons
Winfield
Coffeyville
Poplar Bluff
Illmo
Dexter
Enid
Jonesboro
N. Little Rock
Chickasha
Purcell
Memphis
Duncan
McAlester
Van Buren
Pine Bluff
Texarkana
Dallas
Big Sandy
Ft.Worth
Shreveport
Monroe
Tyler
Longview
Palestine
Alexandria
Taylor
Hearne
Livonia
Lafayette
Avondale
Echo
Houston

TOPS system will transfer revenues and haulage charges between the two carriers. UP/SP expects to put commingling to work in the Houston-New Orleans corridor as soon as implementing agreements are in place so that SP manifest traffic can be routed over the UP line via Livonia and blocked for points on the UP/SP, CSX, NS and IC systems. Once both TCS and operating-craft labor agreements are in place across the system, commingling will no longer be necessary.

*ATDD.* UP/SP obtained an agreement in February with BLE's American Train Dispatchers Department covering employees responsible for distributing locomotives and balancing crews. Pursuant to this agreement, SP agreement employees have moved to non-agreement UP positions in Omaha, permitting UP/SP to consolidate those responsibilities. UP/SP hopes to obtain a comparable agreement this summer with the same union to consolidate UP/SP train dispatching functions in Omaha.

*Other Crafts.* UP/SP reached implementing agreements late in 1996 covering the crafts that work in certain locomotive and car repair facilities in Houston, Denver, Salt Lake City, Los Angeles and Kansas City, allowing the consolidation of repair activities in those locations. In recent weeks, UP/SP has reached further agreements with those unions to permit consolidation of the SP Pine Bluff car repair shop and the SP Sacramento wheel shop with UP facilities. UP/SP is still negotiating with the Brotherhood of Maintenance of Way Employees and the Brotherhood of Railroad Signalmen, although a tentative agreement has been reached with BMWE to consolidate UP and SP work in California.

b. <u>Non-Agreement Employees</u>

Implementing agreements with unionized employees are not the only prerequisite for integrated operations. There also must be an orderly integration of the non-agreement employees who manage and administer the railroad.

As the merger date approached, human resources experts from the two railroads worked through such issues as employee selection, severance packages, adjustments to compensation, employee benefits, training for new positions and communications with employees Under the resulting plans, all UP and SP non-agreement employees were assured that they would be offered a "good job or a good severance" -- and that is what happened.

Interested SP and UP applicants were considered and interviewed for non-agreement jobs with the new system, and the best employee was selected for each merged-company position. On a company-wide basis, over 580 non-agreement employees qualified for severance packages. A number of UP and SP departments, including Marketing, Finance, Labor Relations, Law, Risk Management and Contract Services, are fully integrated. Most of the remaining departments should be fully integrated by the end of July.

The non-agreement integration process is proceeding smoothly, and UP and SP managers are cooperating effectively. UP/SP's management capabilities will continue to improve as employees learn their new jobs and continue to work with each other. As employees relocate, primarily to Omaha and St. Louis, redundant facilities have been or are being closed, with SP's headquarters offices in Denver and San Francisco expected to be vacated by year-end.

3. Merger-Related Capital Investments

In their merger application, UP and SP proposed to invest over $1.3 billion in capital over four years, beyond the amounts the two railroads would have spent separately, to implement their merger and achieve its benefits. UP/SP is now on course to spend even more than that to combine the two railroads. Total merger-related capital investment is likely to exceed $1.5 billion over a five-year period. Such investments were entirely beyond SP's means.

This massive infusion of capital has begun in earnest. This year, UP/SP is spending over half a billion dollars on merger-related capital projects. UP/SP is coordinating its capital investments with the phased implementation of the merger by targeting spending on those projects that are necessary to build the foundation for future service improvements and efficiencies. For example, UP/SP is investing $108.8 million -- $57.8 million more than UP would otherwise have spent[4] -- on information technologies and integration of computer systems. UP/SP is also beginning the upgrades of several major line segments, a process that will accelerate next year as labor implementing agreements are reached. And capital dollars are flowing into connections between UP and SP to facilitate future operating improvements.

UP/SP also found that it needed to spend more capital than expected to bring the SP system up to UP standards. To address a critical shortage of working locomotives on SP, UP/SP is purchasing 40 extra fuel-efficient, high-horsepower locomotives at a cost of some $77 million. It is spending $134.4 million through 1999 to upgrade and rehabilitate SP locomotives and to bring them into compliance with FRA requirements. UP/SP concluded that it needs to devote some $95 million more than expected to upgrade rail and roadbed on SP lines. UP/SP must spend $12 million over three years to replace wheels on SP freight cars in order to comply with FRA and AAR standards. And UP/SP will be spending $7 million on environmental remediation in 1997, the first year of a five-year program required for SP to satisfy local, state and federal environmental laws.

In addition, UP/SP will make much larger investments in three major terminal facilities than anticipated in the

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[4] SP contracted out its computer systems, and had no separate capital budget in this area.

merger application. First, UP/SP concluded it should not simply upgrade, but should completely rebuild, SP's Roseville Yard, increasing the cost of that project from $38 million to $128.9 million. Second, UP/SP is spending $69.5 million to build a new intermodal facility at Ebony, Arkansas, across the Mississippi River from Memphis. When the merger application was prepared, UP and SP anticipated that a third party would fund this project, even absent the merger. That funding mechanism proved impractical, however, so this capital outlay -- which SP could not have afforded on its own and UP could not have justified on its own -- must be considered a merger-related cost. Third, the planned merger-related $7.7 million upgrading of Livonia Yard has been expanded to $15.5 million, allowing UP/SP to provide improved service for chemical and other shipments. A $4.3 million locomotive fueling and servicing facility will be built at Livonia as well.

Although the primary focus of 1997 capital investments is to build the foundation for merged operations, UP/SP has launched the major line upgrade projects featured in the Operating Plan. On the Sunset Route, the crucial 10.9-mile doubletracking project between Anapra and Strauss, New Mexico, is underway. This project will not only add needed capacity, but will also reduce the risk that stopped freight trains will be boarded by illegal aliens crossing the adjacent Mexican border.

The upgrade project on the Kansas Pacific line between Topeka and Denver is well underway. Sidings are being constructed at Riga, Dorrance and Sharon Springs, Kansas, and Kit Carson, Limon and Byers, Colorado, to handle coal trains and other through traffic on the line. New trackage is also being constructed in Denver to improve the movement of these trains to the KP route. A new siding to be constructed later this year at Wild Horse on the Texas & Pacific line in West Texas will help expedite the new Memphis-Los Angeles intermodal trains using that route. A $10.3 million project to expand capacity on a bottleneck SP segment in southeastern Missouri will begin in mid-August. Preliminary work is underway to remove clearance restrictions on Donner Pass in California. Design and planning work is also underway for 1998 projects.

Notwithstanding increased capital requirements, UP/SP still intends to pursue all but one of the major corridor upgrade projects described in the Operating Plan. The amounts spent may vary from those predicted, and the timing of specific investments will change from year to year with market conditions and operating needs, but UP/SP expects to complete the projects within a total of five years.

The one exception involves the proposal in the Operating Plan to spend some $91 million to create a "Kansas City Bypass" route for coal trains between the Powder River

Basin and Texas, using UP's line through Marysville, Kansas, to Topeka, SP's line from Topeka to Herington, Kansas, and UP's "OKT" route from Herington to Texas. In part as a result of complaints from the City of Wichita about increased coal traffic, UP/SP reconsidered this plan, and has decided instead to invest only $30 million in the OKT line, which will still allow improved manifest service over this line. UP/SP plans to leave the coal trains on their present routes and to increase investment to provide additional capacity in Kansas City and on the lines emanating from Kansas City that carry coal to utilities, as well as other traffic. The greater capacity on routes via Kansas City will improve transit times, reduce congestion, and provide greater flexibility in future years.

UP/SP has also begun constructing the connections that will allow trains to use both railroads as one. Top priority went to connections between UP and SP mainlines in the Avondale (New Orleans) area to facilitate BNSF's operations and its acquisition of the Iowa Junction-Avondale line. Other connections are being built in Louisiana to allow SP manifest traffic from the Houston and Beaumont areas to reach UP's highly efficient Livonia Yard. Several Texas and Arkansas connections are planned for later this year, linking the two carriers in Fort Worth, Houston, San Antonio, Pine Bluff and other points. In Southern California, a number of connections are now or soon will be under construction to provide greater operating flexibility.

UP/SP also is pursuing a number of major investments that, although not required by the merger, will ensure that the merger's benefits are achieved. For example, tens of millions of dollars are being invested in a new computer-assisted dispatching system to allow the entire system to operate more efficiently. UP/SP has accelerated some of its "Project Yellow III" projects, designed to improve flows of Powder River Basin coal and other traffic moving over the lines involved. These include the first steps toward triple-tracking the UP mainline between Kansas City and Topeka. And $33 million is being spent on a new locomotive repair facility and diesel shop at Hinkle, Oregon, which will service locomotives in the Pacific Northwest.

C. Service Enhancements Thus Far

Although much more remains to be achieved with full integration of UP and SP operations, shippers are already enjoying important new and improved services as a result of the merger. The Operating Plan predicted some of these service enhancements, and others were identified in the process of merger implementation. As TCS and labor arrangements expand over the next eighteen months, and with ongoing capital investments, shippers will enjoy ever-increasing service improvements.

1. <u>New and Improved Expedited Train Services</u>

a. <u>Chicago-Oakland Intermodal Service</u>

When UP and SP presented their application late in 1995, they pledged to break BNSF's stranglehold on premium intermodal service between Chicago and the San Francisco Bay Area. They proposed to combine UP's superior route between Chicago and Ogden with SP's superior route between Ogden and Oakland in order to launch an intermodal service that would match or beat BNSF's trains 199 and 991, generally regarded as the fastest freight trains in America.

UP/SP has done just that, effective March 19. New train ZG1OA makes the Chicago-Oakland run on a 53-hour schedule three days a week, and on a 57-hour schedule four days a week. This reduces transit time by a day compared to prior UP service and by two days or more compared to SP service, even though the train stops in Reno (Sparks), Nevada, and at Roseville to drop off traffic for Lathrop, California, in California's Central Valley. Eastbound train ZOAG1 operates on a 56-hour schedule[5] with the same stops, cutting almost two days off SP's best prior Bay Area-Chicago service and a full day off UP's. Chicago-Reno service times are improved by at least two days.

In fact, UP/SP is consistently beating even these schedules. These trains have been on or ahead of schedule

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[5] One day a week, the schedule is 53-1/4 hours.

more than 95% of the time. As predicted, they are beating BNSF's trains 199 and 991 by several hours every day.

These "Overland Express" trains have quickly proven a dramatic commercial success, with daily loadings as high as 100 units eastbound and over 70 westbound in only two months. Heavily utilized by trucking firms such as Roadway Express, Consolidated Freightways, J.B. Hunt, Nationsway, Yellow Freight and ABF, and by intermodal marketing companies, the trains are taking traffic off the highway as well as winning traffic from BNSF. The verified statement of Martrac, a division of United Parcel Service, confirms that this new service "is four to five hours faster than service offered by BNSF," and provides for the first time "a second alternative for this expedited traffic."

The new service is conservatively projected to handle 20,000 units in its first year. Prodded by this new competition, BNSF is reported to be looking for ways to improve its own Chicago-Bay Area service.

b. Memphis-California Intermodal Service

On July 10, UP/SP will launch the new Memphis-California premium-service intermodal trains described in the Operating Plan. This service will also draw on the best routes of both railroads -- UP's direct Texas & Pacific line between Memphis and El Paso via Dallas, and SP's Sunset Route between El Paso and Los Angeles. The route used by these trains will be 233 miles, or 11%, shorter than SP's between Memphis and Los Angeles, and 283 miles, or 16%, shorter than SP's between Dallas and Los Angeles.

From Memphis to Los Angeles, train ZMELT will provide second-afternoon service, shaving a day off SP's best current transit time. These trains will also provide service beyond Los Angeles to UP/SP's Northern California intermodal ramp at Lathrop, California, reducing SP's transit time between Dallas and Northern California by three days and competing with the unmatched expedited service that BNSF has been able to provide in that corridor as a result of its own merger.

Like the new Chicago-Oakland premium train, this new service will attract traffic from both the highway and BNSF. It is projected to handle some 40,000 loads in its first year.

c. <u>I-5 Corridor Intermodal Service</u>

On June 3, UP/SP initiated the first-ever dedicated intermodal trains between Los Angeles and Seattle. These trains, which provide third-morning deliveries in both cities, will take dozens of trailers off busy Interstate 5 every day, especially from Portland to Seattle where many SP trailers moved by road. The northbound train makes the run in 42-1/2 hours, with southbound service in 49 hours. Both trains serve the Fresno and Lathrop ramps, providing service to California's Central Valley and the Bay Area, as well as

Portland. Volumes have already increased to the point that UP/SP is considering adding an additional train. Significant numbers of loads are being handled in international steamship containers that would have moved empty before the merger. Clearance work to be completed next year will allow the service to be expanded to include high-cube doublestacks.

d. <u>Sunset Route Intermodal Service</u>

An important merger objective was to deploy UP's service planning capability and operating systems to cure SP's chronic service problems. UP/SP planners have entirely redesigned SP's intermodal services on the Sunset Route connecting Memphis, New Orleans, Houston, and San Antonio with El Paso, Tucson, Phoenix, and Southern California. This "re-plan" went into effect on May 13. SP intermodal trains on this route were unreliable and inefficient because they did extensive switching and block exchanging en route, often stopping seven or eight times between origin and destination. As well as impairing service, this increased SP's costs and caused severe terminal congestion.

UP/SP simplified the operation of intermodal trains in this corridor by emphasizing ramp-to-ramp services and limiting the amount of work that trains perform en route.[6/]

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[6/] Under normal conditions, no train adds or sets out cars more than three times between origin and destination, eliminating 118 weekly setouts and pickups. Terminal congestion is reduced, because the new service plan eliminates (continued...)

To improve service further, UP/SP and NS are shifting one set of trains from the New Orleans gateway to the Memphis gateway. The new Sunset Route schedules will reduce crew costs, while also improving reliability.

e. Midwest-California Intermodal Service

UP/SP will shortly institute a similar restructuring of SP intermodal services connecting Chicago, St. Louis and Kansas City with California in order to provide more reliable and customer-responsive service.[7] SP intermodal service in this corridor has been unreliable because SP operated separate westbound trains from each of three intermodal ramps in Chicago and from St. Louis, each with traffic to multiple destination ramps in California. Those trains swapped blocks or were switched at many locations en route.

The merged system will restructure SP's intermodal service so that trains from the three Chicago ramps (IMX,

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[6](...continued)
26 setouts and pickups at City of Industry, 36 at Tucson, 36 at Pine Bluff, 9 at El Paso, and 11 at San Antonio.

[7] UP/SP had intended to implement this restructuring, and to launch several of the other new services described in this report, during June, but was prevented from doing so by the interim stay granted to the UTU. In its decision vacating the UTU stay, the Board expressed doubt that the stay could have had the severe impacts described by UP/SP in a June 19 petition, which the Board correctly noted should have been filed earlier. Finance Docket No. 32760 (Sub-No. 22), Decision served June 26, 1997, p. 2 n.2. UP/SP assures the Board that it did experience the service delays and financial costs described in that filing, and apologizes for its delay in bringing those facts to the Board's attention. UP/SP appreciates the Board's prompt action on the UTU appeal.

Bedford Park and Forest Hill) and from St. Louis will meet at Herington, Kansas, with their traffic pre-blocked for Arizona and California ramps. At Herington, blocks of traffic will be reorganized by destination ramp in California, and dedicated trains will operate with little or no work en route to each of four SP California facilities (LATC, ICTF, City of Industry and Oakland). This will allow UP/SP to provide faster, more reliable service. For example, transit time for Chicago-Oakland intermodal trains will be reduced by one day, and those trains will use a route that can accommodate high-cube doublestack equipment. (This traffic eventually will be routed over the UP Central Corridor route.) Eastbound trains reverse the process, again improving reliability.

f. <u>Ohio-Los Angeles Intermodal Service</u>

On July 12, UP/SP and NS will team up to offer new 77-hour premium intermodal service between Columbus, Ohio, and UP's East Los Angeles intermodal ramp, via Kansas City. These trains will take advantage of SP's direct Tucumcari route between Kansas City and Southern California. They will remove large numbers of trucks from the highway by offering an all-rail alternative for shipments that today are trucked to and from Chicago or across the country. SP had been unable to offer this type of premium service on a reliable basis. This new service is only possible because of the synergies of SP's short route, UP's strategic East L.A. ramp, power and operating discipline, and the traffic volumes the merging railroads together can secure.

g. <u>Southern California Intermodal Operations</u>

Following the merger, UP granted SP trackage rights over UP lines in the Los Angeles Basin, quickly improving the movement of SP doublestack trains to and from the Intermodal Container Transfer Facility near the Ports of LA/Long Beach. These rights gave SP trains multiple routes to and from ICTF, saving an average of two to three hours for each train.

The merged system has also taken immediate steps to allow its largest intermodal customer, APL, to provide intermodal services in the important and rapidly growing "Inland Empire" region east of Los Angeles, which BNSF has dominated with its modern facility at San Bernardino. Ultimately, UP/SP plans to build a major new "Inland Empire" intermodal facility, but while planning for that construction goes forward, SP's City of Industry ramp has been made available to APL. As APL indicates in its verified statement, this has enabled APL to "gain efficient access" to "a source of substantial intermodal business."

h. <u>California-Texas Automotive Service</u>

A new service not identified in the Operating Plan will speed finished automobiles from California to Texas auto facilities. SP had been moving autos from California to Texas on numerous trains, resulting in switching and delays en route. New train ADOHO operates from the SP Dolores facility in Southern California to Houston carrying all the automobiles from Warm Springs (near Fremont) and Los Angeles/Long Beach to Texas automobile unloading facilities.

2. New and Improved Manifest Services

a. Central Corridor Service Improvements

Effective July 1, UP/SP will begin to institute new routings for manifest traffic across the Central Corridor. For many years, UP and SP trains traveling toward the same destinations operated in opposite directions on the busy Ogden-Salt Lake City UP line, causing delays and congestion. The merged system will now solve that longstanding problem. UP manifest trains will be shifted from the Western Pacific route via Salt Lake City to the much faster and more direct SP route across the Great Salt Lake causeway. This 71-mile shorter route will save three to four hours for every train.

SP manifest traffic will be shifted from SP's slow, single-track Tennessee Pass route to UP's 150-mile shorter, much faster doubletrack mainline through Wyoming. The new route will allow UP/SP to provide much more reliable manifest service than SP was able to, saving at least a day for every shipment and greatly reducing costs. SP encounters severe difficulties in using the Tennessee Pass route. Tennessee Pass is the highest mainline railroad summit in the United States, with sustained 3% eastbound grades. Surmounting these grades requires the time-consuming addition and removal of expensive helper locomotives that could be better used to pull trains elsewhere. SP's route then turns southeast toward Pueblo, Colorado, winding through a series of canyons, including the Royal Gorge. East of Pueblo, SP trains use UP's Pueblo line. That line, with long stretches of jointed, light-weight rail, has been carrying far more traffic than it can handle efficiently. In addition to these obstacles, SP manifest trains are often delayed for switching at Salt Lake City, Grand Junction, Pueblo and Herington because there is not enough traffic between SP terminals to fill full trains.

Beginning today, SP manifest freight trains will begin rolling east from Ogden on UP's high-speed mainline across Wyoming, leaving the Rockies behind many hours before an SP train using the Tennessee Pass route could reach Pueblo. The UP route between Ogden and Kansas City is 152 miles shorter than the SP line, has 37% less curvature, and imposes 13,500 fewer feet of rise and fall. On UP, the trains will not be switched until they reach North Platte, Nebraska, the largest freight classification yard in the world. There, cars will be distributed into an expanded network of connecting UP trains for points further east. Shipments will reach Midwestern gateways and terminals at least a day earlier than SP could have delivered them under optimal conditions, and several days earlier than SP's usual pre-merger performance.

UP and SP traffic in the Far West will remain segregated pending additional labor agreements, but SP yards at Stockton, Oakland and Eugene will now be able to assemble through trains for North Platte that are not delayed for work en route. By combining UP and SP traffic flows at North Platte, UP/SP expects to inaugurate a run-through train from Western Nebraska all the way to Selkirk Yard on Conrail near Albany, New York, reducing transit time by a day on shipments to the New York City area and New England.

In addition to manifest traffic, UP/SP will route Denver-Salt Lake City intermodal trains via the UP mainline, saving several hours' transit time for each train. In coming weeks, automotive trains will operate this way as well, saving shippers additional transit time.

These changes are only the first step in integrating UP and SP Central Corridor services, because labor agreements cover only part of the route. Further service improvements will occur as additional agreements are adopted. For example, UP/SP is designing improved California-Midwest manifest service to attract time-sensitive perishables and other food products that are now moving over the road and via BNSF.

b. <u>Pacific Northwest-Texas Service</u>

UP/SP will shortly initiate through manifest train service between Texas and the Pacific Northwest. Eastbound, these trains will gather traffic from throughout the Pacific

Northwest at UP's Hinkle hump yard. They will operate through Denver to Pueblo, where traffic will be classified for delivery directly to Fort Worth and two yards in Houston. The westbound trains will gather blocks from all three Texas yards for movement to Hinkle. These trains will cut 240 miles off UP's existing routes and save a day of transit time for all shipments. They will provide much improved service for SP shippers whose shipments today must travel through Southern California and surmount grades through four mountain ranges.

c. Improved Gulf Coast-Southeast Service

Early in April, UP/SP began building new blocks of traffic at the SP yards in Houston and Beaumont for Atlanta, Mobile and New Orleans on CSX, and for Birmingham and New Orleans on NS. Trains carrying the blocks for points east of New Orleans should save 24 hours compared to prior SP service by avoiding the need for interchange in New Orleans. Once labor agreements are in place later this summer, UP and SP carload traffic bound to NS, CSX and IC will be consolidated, and the combined flows will be routed through Livonia. This will provide even better service to and from the Southeast.

d. Directional Running

UP/SP cannot implement its highly efficient plan for directional running on UP and SP lines in Missouri, Arkansas, Louisiana and Texas until it reaches labor implementing agreements with BLE and UTU, expected by the end of the year.

However, directional running on a small scale will begin in South Texas shortly after Labor Day. Southbound trains in the Dallas/Fort Worth-Houston corridor will use the UP line from Navasota, Texas, to Settegast Yard in Houston, while northbound trains will originate at Englewood Yard in Houston and operate over SP to Navasota. East of Houston, most westbound trains will operate over UP from Beaumont to Settegast Yard, while most eastbound trains will use SP from Englewood to Beaumont.

3. Improved Coal Service

a. Colorado and Utah Coal to the Midwest

Service for SP-originated Utah and Colorado coal has dramatically improved, and will be improving even more. One of UP/SP's first operating changes was to move UP locomotives to Utah and Colorado mines to clear up a backlog of coal that SP had been unable to move due to lack of power. The backlog quickly disappeared, and UP/SP set an all-time record for moving Utah and Colorado coal only one month after the merger.

Coal volumes from SP origins continue to grow. For the first eight months since the merger, SP Colorado/Utah coal volumes increased 11% over the same period a year earlier, reflecting a rate of growth several times that for Powder River Basin coal. UP/SP has moved all the coal that SP origins in Colorado and Utah can produce, and volume today is constrained only by mine capacity.

The merged system is not only moving more of this coal; it is carrying it more efficiently. Colorado and Utah coal cycle times improved quickly after the merger, requiring less equipment to move the same volume of coal. Before the merger, SP cycled unit coal trains from mine to unloading facility and back approximately twice a month. Within thirty days, UP/SP was achieving 2-1/2 cycles a month. UP/SP operating performance for Colorado and Utah coal producers continues to improve. A year ago, SP met its cycle-time goals for these coal shipments approximately 70% of the time. Through May of this year, UP/SP is meeting those goals approximately 90% of the time. In a letter to UP's President, one major receiver of Colorado coal, Western Resources, called these improvements "successes that provide dividends for both our companies."

UP/SP has begun shifting some eastbound Colorado and Utah coal from SP's route via Pueblo to UP's more direct Kansas Pacific route from Denver to Topeka. The merged system has already invested $16 million in KP line upgrades, and another $87 million will be invested in the line over the next several years.[8] For the many coal trains originating on the former DRGW Craig Branch in Colorado, the KP route eliminates

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[8] UP/SP is also investing to upgrade the DRGW's North Fork and Craig Branches, where significant volumes of coal originate in Colorado. Some 2.5 miles of rail are being relaid on the North Fork Branch, and later this year 7.7 miles will be relaid on the Craig Branch.

119 miles, many hours of transit time, and the use of helper engines on the congested "Joint Line" with BNSF between Denver and Pueblo. More coal trains will be routed via the KP line as capacity is added, and UP/SP expects to reach 80-100 loaded and empty Colorado coal trains per month via the line by the fall. Eventually, UP/SP will transport some eastbound Utah coal, and Colorado coal bound to Upper Midwest destinations, via UP's Nebraska mainline and Omaha, but labor agreements do not yet permit that improved routing.

b. Utah-Southern California Coal

One of the earliest service improvements made possible by the UP/SP merger was the more efficient routing of SP-originated Utah coal bound for Southern California port facilities and consumers. SP's route was remarkably circuitous and difficult, requiring trains to operate from Utah mines north to Ogden, west through Reno and over Donner Summit, south through California's Central Valley and over tortuous Tehachapi Pass, and finally into Los Angeles. Some 16,000 carloads moved over this route in 1996. In post-merger contracts, shippers have elected the direct UP/SP route. This route saves 470 miles, avoids the costs of several sets of helper engines, and improves cycle time by several days.

In addition, to promote the export of Utah coal via the merged system's single-line route, UP/SP has invested nearly $20 million in Los Angeles export facilities and 350

315,000-pound cars. Longer, 100-car trains at 315,000 pounds per car are being tested for this traffic, which until now has been handled in 84-car trains at 268,000 pounds per car.

c. <u>Powder River Basin Coal</u>

Some Powder River Basin coal consumers expressed concerns that UP service from the Basin might deteriorate as the merger was implemented. Operating results to date should alleviate any such concerns.

In 1996, UP/SP set a record by moving nearly 110 million tons of PRB coal, averaging 2,727 carloads per day. Significantly, UP/SP performance improved as the railroad moved this flood of coal. Thanks to increased track capacity, more high-horsepower locomotives, distributed horsepower technology (in which locomotives are spread throughout the train, so that trains can carry up to 135 cars of coal), and innovative one-week maintenance curfews, with shipper cooperation, that allowed major track work to be completed quickly,[9] the amount of train delay was greatly reduced. By increasing the overall velocity of its PRB coal trains, UP was able to handle more coal while reducing the number of train sets in service from 230 in February 1996 to 180 at the end of the year. This is a major efficiency benefit for coal shippers who supply their own coal cars.

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[9] These curfews were a benefit of the UP/CNW merger. The two separate railroads had never before been able to agree on such an innovative plan.

UP/SP has consistently exceeded its own performance goals and contractual performance commitments for Powder River Basin coal in recent months. Indeed, performance levels have reached all-time records. During the first five months of 1997, UP/SP cycled PRB coal trains more quickly than scheduled 93% of the time, versus performance targets ranging from 87% to 90%. The performance level in May was 94%, despite the huge volumes of coal leaving the Basin. UP/SP is efficiently delivering all the coal desired by the Wisconsin utilities that seemed to be most concerned about the merger last year.

UP/SP's goal is to maintain this high level of performance as SP traffic is consolidated with UP traffic on UP's mainline through Nebraska, Iowa and Illinois. UP/SP continues to invest heavily in capacity on affected rail lines to ensure that it can meet that objective and improve service for other shippers on those lines. A $36.6 million project to add 16.2 miles of third mainline in Nebraska will be completed by September, and work is also underway on another segment of Nebraska triple track and a $32.7 million restoration of second main track on the former CNW mainline in western Iowa, which will eliminate a major operating bottleneck.

D. <u>Terminal Improvements and Consolidations</u>

1. <u>Intermodal Terminals</u>

UP/SP is improving and consolidating its intermodal terminals. The largest project in 1997 is the urgently-needed new intermodal terminal on the west side of the Mississippi River opposite Memphis. As noted earlier, this expenditure must be considered a merger-related project, because SP would not have been able to fund it as a separate company and UP would not have been able to justify the investment without SP's routes and traffic. This new terminal is already under construction, with over $37 million to be spent this year.

UP/SP is also investing in 1997 to expand its Mesquite intermodal ramp near Dallas, adding a new gatehouse, 32 spots for doublestack cars, and 535 more trailer/container parking spaces. Work is beginning on a major expansion and rehabilitation of the UP ramp in Houston, and design work is underway for a new intermodal facility east of Reno.

Several duplicate intermodal facilities have been consolidated, and others will be in coming months. UP and SP intermodal facilities in New Orleans have been combined. SP's Pine Bluff ramp has been consolidated with UP's facility in Little Rock. UP and SP intermodal operations in Denver will be combined at the UP facility on July 1.

Consolidation of SP's old and relatively inefficient Roseville ramp into UP's more modern Lathrop facility is especially beneficial for shippers. By combining the equipment pools of the two railroads at Lathrop, UP/SP is improving utilization of equipment, including chassis and containers, and thereby making more equipment available to shippers. UP/SP can also provide better train service by stopping trains at only one ramp. Moreover, the Lathrop facility is more centrally located in the growing Stockton-Modesto corridor than the Roseville ramp, reducing drayage costs for the majority of shippers.

UP/SP will improve intermodal service by installing superior terminal management technologies at SP facilities. For example, a system called OASIS (Optimization Alternatives Strategic Intermodal Scheduler) reduces the time necessary to plan the loading of outbound trains from several hours to 30 minutes, and allows a ramp manager to communicate by computer with employees who reposition trailers and containers. Managers in Omaha can "watch" train-loading operations at any OASIS-equipped terminal. UP's implementation of this system won the Progressive Railroading Productivity Award in 1996. In the future, UP/SP will also install the Automated Gate System ("AGS") at intermodal terminals throughout the merged system. AGS automates the process of logging in information about arriving trailers and containers. Instead of entering information by hand, which takes four to five minutes per shipment and creates long lines, AGS will inspect the trailers and containers electronically, read their markings into TCS, and even look for damage automatically. As a result, intermodal facilities will be able to process shipments much more quickly and reduce drayage costs.

2. <u>Freight Yards</u>

By far the most significant rail yard project associated with the merger is at Roseville, California, which will be UP/SP's primary Northern California facility when completely rebuilt in 1999. Roseville will serve as a hub for the north-south I-5 Corridor and will also serve as the distribution and gathering point for traffic between Northern/Central California and points east.

When UP and SP filed their application, they planned to perform a substantial upgrade at Roseville, returning to service portions of the yard that SP could not afford to maintain. The applicants expected to spend some $33 million on upgrading the yard at Roseville, plus several million more to build new mainline trackage around the yard.

After additional study, UP/SP has decided to rebuild Roseville from the ground up at a capital cost of $128.9 million. Roseville was closed on June 16 for this project, and its work was shifted to other yards, including the yard at Grand Junction, Colorado. Constructed in 1906, with a hump added in 1953, Roseville Yard is operating far below its capacity due to antiquated operating systems and out-of-service tracks. The receiving and departure tracks that remain in service are too short to chamber many of the trains serving the terminal. UP/SP will construct 16 long receiving and departure tracks, 55 classification tracks, several car repair tracks, tracks for locomotives, and a second main track. When complete in 1999, the new yard will be able to process twice as many cars as it does today and operate efficiently as the hub for the merged system's Northern California service.

With TCS and labor implementing agreements now in place in the Denver and Salt Lake City regions, UP/SP is consolidating operations effective July 1 at freight yards in Utah and Colorado. In Salt Lake City, manifest trains will pick up and set out traffic at the UP yard, while SP's Roper Yard will be used for industry support. Yard operations will be reorganized in Provo as well. As a result of these changes, interchanges between UP and SP and cross-hauling will be eliminated. In Denver, SP's North Yard will be the primary manifest yard for the combined system, while intermodal service will use the UP yard, again eliminating interchange delays. Most terminal consolidations elsewhere across the UP/SP system must await additional labor agreements.

Even without labor implementing agreements, changes in the Los Angeles Basin are generating substantial transit time savings for shippers. UP/SP established new interchanges at City of Industry and at Los Angeles, both of which allow SP shipments to reach UP customers three full days more quickly than the prior interchange and operational arrangements between the two carriers.

E. Equipment Repair Facilities

UP/SP moved quickly to consolidate and coordinate locomotive and car repair facilities, negotiating implementing agreements with affected unions to cover specific consolidations. In the New Orleans area, SP's locomotive maintenance shop at Avondale Yard was closed last December and combined with UP's Avondale shop. In Houston, SP's Hardy Yard heavy locomotive repair facility was consolidated into the UP Settegast facility early this year. In February, SP closed its EMD contract locomotive repair operation at BNSF's Murray Yard in Kansas City, consolidating repairs in UP's Neff Yard. At the beginning of June, UP/SP consolidated the SP Armourdale (Kansas City) locomotive facility into Neff Yard as well. The Brooklyn (Portland), Oregon, SP facility was combined into UP's Albina Yard in June.

A major locomotive repair facility consolidation is scheduled for September 1, when the work done at SP's EMD rebuild shop in Denver will be transferred to UP's modern Jenks Locomotive Shop at North Little Rock, Arkansas. A major freight car repair facility consolidation took place at the end of January, when SP's Denver car repair work was transferred to UP's more modern DeSoto, Missouri, shop.

Local car maintenance facilities, known as "one-spot" facilities, have been combined at a number of UP/SP common points. UP one-spots were closed at Oakland, El Paso, Salt Lake City and Denver, with the work absorbed by the corresponding SP facility. SP one-spots were closed at Avondale, Kansas City and Portland, with UP facilities absorbing that work.

F. <u>Freight Car Utilization</u>

Since last October, the UP and SP car fleets have been managed as a single fleet of equipment which consisted of 146,013 freight cars as of the end of May. As a result, UP/SP and its shippers have begun to enjoy the benefits of the improved equipment utilization predicted in the application. It is not possible to measure the full extent of these benefits as they accrue. Changes in traffic patterns and volumes complicate inter-period comparisons, and railroad operations over extensive networks are simply too complicated to measure the effects of each decision by a shipper or a UP/SP manager to use an SP car instead of a UP car or vice versa.

Despite these difficulties, UP/SP has maintained conservative measures of the accelerating equipment utilization savings already achieved at this early stage in merger implementation. Through the first eight months of merged operations (October 1996 through May 1997), UP/SP calculates that it saved at least $4 million in costs attributable to reduced car-days and car-miles. In addition, UP/SP estimates that it avoided lease payments that would total more than $6.4 million on an annual basis. These savings, which assuredly do not reflect all the efficiencies achieved to date, are impressive because relatively few of the operating synergies made possible by the merger are yet in place. As TCS expands, labor agreements are obtained and additional capital is invested, UP/SP will implement numerous operational changes and terminal consolidations which will increase these equipment savings.

There are already many instances of shippers' benefitting by drawing on the combined UP and SP fleets as a single source of car supply:

- UP doublestack cars made empty in Northern California are being moved over SP's direct route to Southern California, where they are used for eastbound moves at the Intermodal Container Transfer Facility, remedying a persistent SP car shortage. These cars had previously been repositioned to Southern California over UP's extremely circuitous route via Utah, or returned empty to Chicago.

- UP and SP have eliminated cross-hauls of empty doublestack cars between the Pacific Northwest and Northern California. Before the merger, SP had moved a full train of such cars south from Portland twice a month, while UP paid SP to relocate even more UP empties to Portland from Northern California. Now these cars are reloaded where they become empty.

- UP intermodal flatcars that previously would have moved empty back to Chicago are meeting SP equipment needs in Texas.

- At Portland, Oakland and Los Angeles, UP is providing conventional intermodal cars to SP that had routinely returned empty to Chicago.

- Surplus trailers on SP at Salt Lake City are being used by UP shippers there. UP had been repositioning empty trailers from other locations to Utah to handle those loads. Similarly, surplus UP trailers are being used to fill SP's trailer deficit at Oakland.

- UP and SP intermodal facilities at common points are routinely supplying trailers to each other to remedy temporary shortages.

- As a result of the merger, SP empty centerbeams and boxcars are being reloaded at UP points in Texas, Louisiana and Arkansas for backhauls to SP points in Arizona and California.

- Use of SP boxcars for paper loading in Arkansas is allowing UP to terminate the lease of over 300 cars and reduce use of foreign cars.

- UP centerbeams are now being provided to SP Pacific Northwest lumber shippers. SP had few 73-foot centerbeam flatcars, which are significantly less expensive to load with lumber than other types of equipment. The availability of UP cars has allowed these shippers to load 1,043 more centerbeams in the first five months of 1997 than in the same period in 1996. Also, the merged system has recently taken delivery of 475 new TTX 73-foot centerbeams to fill demand at SP points.

- SP is giving 200 to 500 plain 50-foot boxcars per month to UP at Portland and Ogden for loading in Washington, Oregon, Idaho and Utah. Prior to the merger, these cars would generally have been returned to Eastern or Midwestern connections or locations. UP lumber shippers often faced car shortages, and had to ship in less desirable equipment, ship by truck, or lose opportunities to market their products.

- California food products shippers served by SP are benefitting from access to UP's larger fleet of 60-foot boxcars, and from UP's car-cleaning policies, for their shipments to the Midwest and the East. Conversely, UP-served California shippers are benefitting from access to SP's larger fleet of 50-foot boxcars. Customers gain from the flexibility of shipping their goods in <u>either</u> 60-foot cars, which are preferred for shipments to distribution centers, <u>or</u> 50-foot cars, which are preferred for shipments to retailers.

- UP is now providing from 30 to 125 high-cube 50-foot boxcars per month to SP for paper moves from Oregon to Southern California. In addition, UP is providing as many as

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125 60-foot boxcars per month to SP for lumber loading in the Pacific Northwest.

- UP is providing up to 70 60-foot boxcars per month to SP Arkansas plywood and rubber customers.

- Instead of returning SP double-door boxcars to SP at Ogden, as UP did before the merger, the merged system is making those cars available to UP-served customers in the Denver area. UP and SP cars are similarly being cross-utilized in the Omaha and Kansas City areas.

- Gondolas terminating on UP in Los Angeles that previously returned empty to Utah are now being reloaded by SP for waste movements to Utah. Similarly, by using available UP gondolas, a shipper on SP in Northern California will ship wastes to Utah. The cars are then cleaned and loaded again with steel products for Los Angeles.

- Steel shippers in Illinois, Colorado and Oregon that had experienced chronic SP car shortages are benefitting from the use of UP cars. Texas steel shippers are enjoying improved access to UP and SP 65-foot gondolas. The availability of UP coil cars to move traffic to SP-served destinations in Texas is attracting traffic from truck at significantly lower rates.

- SP 50-foot plain boxcars available at Ogden are moving to Little Mountain, Utah, for salt loading and to other area customers on UP, instead of moving empty further west.

- SP boxcars are being used to load copper for UP shippers in Utah and at El Paso.

- SP empty boxcars have been used to load cottonseed at UP points in the Arkansas-Louisiana delta area and cotton at UP points in Texas.

- UP is using empty SP RBL cars for beer and canned goods loading at Laredo.

- UP refrigerated boxcars are now available to SP-served California potato shippers during the off season for Idaho potato production.

- UP has been able to supply appropriate boxcars for moving tinplate from Eastern points to SP-served canners in California. SP lacked such equipment.

- In Mexico, shippers on lines south of Eagle Pass, who suffered from SP car shortages before the merger, are now receiving UP boxcars and hopper cars, either via Eagle Pass or via repositioning in Mexico. UP and SP equipment made empty in Mexico can now be returned to the U.S. via any UP/SP border crossing. The availability of UP equipment is also allowing new traffic to move from areas of Mexico served via SP gateways, such as Nogales, Arizona.

- Thanks to the merger, high-quality UP covered coil cars moving from Chicago to Los Angeles can now be repositioned to Northern California for reloading and eastward movement.

- UP open-top hoppers are supplementing SP equipment supplies to transport petroleum coke originating in central Kansas.

- UP open-top hoppers terminating in Arizona had been returning empty before the merger, but are now being used for copper concentrate loading on SP. Similarly, SP open-top hoppers made empty in California are being used by UP shippers in Nevada and Texas.

- Salt shippers in Kansas have benefitted from the merged system's new policy of supplying SP lined C-4 covered hoppers for their business. This has allowed the shippers to use private equipment elsewhere.

- Barites shippers in Nevada are benefitting from the availability of UP 60-foot boxcars for shipments to SP points and via SP routes. Because SP lacked such cars, customers were often forced to load more expensive equipment.

G. Marketing and Sales; Customer Service Centers

Among the very first steps UP/SP took after September 11, 1996 was to begin speaking to customers with one voice. UP and SP business team leaders were chosen and on the job by November, and they named business directors shortly thereafter. The Marketing and Sales Departments were fully merged by the end of 1996.

Customer service centers handle all day-to-day customer contacts, including car orders, releases of loads, shipment tracing, and problem resolution. As SP converts to TCS, UP/SP continues to consolidate the two railroads' national customer service centers at the UP facility in St. Louis. (Mexican border functions have been consolidated at a separate customer service center in Laredo.) The UP/SP National Customer Service Center will be organized along the product lines previously employed by UP -- allowing customer service representatives to gain expertise about the needs of each customer industry -- instead of geographically as was the case on SP. UP's Electronic Data Interchange ("EDI") system is in operation at both the SP and UP centers today. NCSC has the ability to transmit work orders directly to train crews on UP, a capability that will be expanded to SP lines next year.

Customer service responsibility for SP's National Accounts (its largest customers) and intermodal and automotive customers was transferred to St. Louis earlier this year. On May 5, 71 SP employees began ten-week training courses for certification as UP/SP customer service representatives. Two more groups totaling 140 SP employees will move to St. Louis to begin training in August and November.

H. <u>Technology and Support Systems</u>

Although expansion of TCS throughout SP is the most important pillar of systems support for merged operations, UP/SP has been moving to integrate other important support functions as well. Within the first month after merger, UP/SP had achieved electronic mail and voice mail connections. By April, UP/SP's central computer systems had been expanded sufficiently to support the combined railroads.

With essential computer upgrades completed or underway, UP/SP began to consolidate major support systems. Between November 1 and May 1, all of SP's office support systems were combined with their UP counterparts. These included payroll systems, accounts payable, miscellaneous billing, project tracking, asset inventories, general ledger, budgeting, and all other general accounting functions. A number of employee databases and systems also have been consolidated, although that process will continue into 1998. UP and SP revenue-reporting systems should be consolidated by November, permitting UP/SP to process all bills of lading from customers and waybills from other railroads on one computer system.

Locomotive management was consolidated for the entire system during the first quarter of 1997, supported by UP's Locomotive Management System. Treating the combined locomotive fleet as a single power pool improved locomotive utilization.

On March 1, UP/SP began an eleven-part cutover of CMS -- UP's Crew Management System -- starting with former DRGW territory. With this cutover, UP/SP can call crews to work and maintain timekeeping records from a single location.

Two more areas on the former SSW saw cutover in April, and additional SP segments will be assimilated through the remainder of this year. As regions change to CMS, SP employees gain the ability to use UP's Automated Voice Response system, which provides updated train line-up information so that crews will have more accurate information about when they will go to work. Unreliable line-ups are a problem for all rail workers, but an especially severe irritant on SP lines.

By May 1, all former SP locomotive and car repair shops were using UP systems, a major step in facilitating shop consolidations and achieving merger-related economies and cost controls. UP's information system for car repairs has been installed at several SP locations and will be coordinated with adoption of TCS elsewhere. UP's labor tracking systems have been adopted at all SP shops. UP's Car Repair Billing System was adopted on SP in May, and its Car Information System is being phased in on SP.

I. <u>Supply Savings</u>

The UP/SP Operating Plan predicted that the combined carriers would save tens of millions of dollars annually by consolidating their purchases. These savings are attributable both to volume discounts and to better management of the acquisition process, using techniques developed by UP and not available to SP prior to the merger. UP/SP spends a total of almost $4 billion annually on goods and services, so the opportunities for cost reduction are enormous. UP/SP's Supply Department is exceeding its aggressive targets.

SP has been included in UP's fuel procurement programs. Savings will be approximately $8.1 million for 1997, and will increase in later years. Volume purchasing of locomotives has already saved UP/SP some $6.8 million through April, and savings from purchases of such materials as signal equipment, rail, spikes, rail anchors, concrete ties, bridge components and other supplies exceeded $7.5 million through the same month. Savings from improving SP's service contract processes are estimated at $10.4 million through May.

To support cost-efficient supply functions, UP/SP acted quickly to convert SP materials centers to UP's Materials Management System ("MMS") and related systems, which are more sophisticated than their SP counterparts. SP's company warehouses at Pine Bluff, Roseville, Denver, Los Angeles, Houston and Sacramento were converted to UP systems over the last several months. All SP inventories have been transferred to MMS. UP's Pro-Card system, which is essentially a credit card arrangement for small purchases in the field, is being expanded throughout SP territory.

J. <u>Abandonments</u>

UP/SP has thus far carried out only two of the abandonments authorized in connection with the merger. It abandoned the five-mile UP mainline between Melrose and Magnolia Tower through the streets of Oakland, California. By shifting trains to the parallel SP line, UP/SP greatly improved vehicular traffic flow in this busy urban area. And UP/SP abandoned the UP Anaheim Branch between Whittier Junction and Colima Junction, a distance of about five miles.

UP/SP is working closely with the State of Colorado in connection with the three abandonments authorized in that state: Sage-Leadville (69 miles); Malta-Canon City (109 miles); and NA Junction-Towner (122 miles). UP/SP is cooperating with Colorado's efforts to find viable rail options for these lines, and a bidding process is in progress with proposals due by July 21. The State of Colorado intends to have the bids evaluated by August.

UP/SP has determined that the portion of the Edwardsville-Madison abandonment (Docket No. AB-33 (Sub-No. 98X)) between MP 145.2 and MP 148 78 will not be carried out. This portion of the line will be continued in rail service as part of a joint relocation project involving UP/SP and the Alton & Southern Railway.

K. <u>Safety</u>

UP/SP senior managers have stated a clear company policy: neither the pressure to reduce costs and move freight expeditiously nor the importance of implementing this merger will take higher priority than continuing to improve the company's safety record. As merger implementation goes forward, UP/SP is adhering to that policy. Though tragic incidents such as the recent head-on collision of UP/SP trains near San Antonio have unhappily not yet been eliminated, significant progress in the safety area has been made.

Rates of reportable injuries have declined sharply on both UP and SP since the merger took effect. Using a twelve-month rolling average to smooth monthly variations, the number of reportable injuries per employee-hour declined by 22.2% on the combined system in nine months. SP's pre-merger reportable injury rate was substantially higher than UP's, but the SP rate for the first five months of 1997 was comparable to the rate on UP for the same period.

UP/SP is also working to bring down the severity and frequency of derailments, especially on SP. SP's derailment costs per million gross ton miles of freight carried were more than 50% higher than UP's in 1996. As UP's track investment, maintenance and inspection standards are applied to SP lines, results for the combined system should approach the UP experience. UP deploys hot-box detectors to prevent derailments more extensively than any other railroad, and the merged system is expanding the number of such detectors on SP lines. UP/SP is also upgrading switches at SP yards in Houston and Pine Bluff, which had the highest incidence of derailments.

The verified statement of Dow Chemical Company notes the merged system's excellent safety performance in the chemicals area. The merger brought UP's award-winning hazardous materials safety programs to SP lines. UP's Chemical Transportation Safety program is the industry leader, and it is being applied across the merged system. UP's unique program of risk assessment along key chemical routes will be expanded to SP beginning in the third quarter of this year. UP/SP is also expanding UP's program of preparing detailed emergency response plans, and its program of conducting emergency response drills, to SP lines. And SP routes should benefit from UP's industry-leading efforts to reduce the incidence of non-accident releases of hazardous materials.

L. <u>Passenger Service</u>

1. <u>Commuter Trains</u>

Commuter authorities across the UP/SP system are benefitting from the merger. As a matter of company policy, UP/SP takes a different approach to working with commuter agencies than SP did before the merger. For a variety of reasons, SP was reluctant to support commuter operations over its lines and preferred to sell lines to governmental agencies. UP/SP sees commuter operations as potentially beneficial to the railroad and is willing to work with agencies that want to mount new services or expand existing services on appropriate UP/SP tracks. The verified statements of Caltrans, the Colorado Department of Transportation and the North Front Range Transportation & Air Quality Planning Council attest to this new, more constructive approach following the merger.

After the UP/CNW merger, Chicago's Metra commuter authority expressed concern about deterioration of commuter service on UP's line between Chicago and Geneva, Illinois. UP quickly repaired those problems and also added capacity to the line to alleviate conflicts between commuter and freight trains. The results have been spectacular. Earlier this year, UP set an all-time record for performance on the Chicago-Geneva line, and UP has consistently exceeded performance targets on all of its Metra lines in 1996 and 1997. Metra's verified statement confirms that Metra "has been extremely satisfied with UP's performance since the SP merger."

2. Amtrak

The merged system presently handles Amtrak passenger trains on numerous SP routes, as well as on UP lines including those between St. Louis and San Antonio and between St. Louis and Kansas City.

During the Board's voting conference and again in his concurring opinion in Decision No. 44, Commissioner Owen expressed concern about the quality of Amtrak service on SP. UP/SP has instructed train dispatchers on the importance of handling Amtrak trains properly, and has succeeded in improving Amtrak performance on SP. Amtrak performance on SP is being adversely affected by maintenance-of-way slow orders, reflecting the amount of track work needed to bring SP up to UP standards. Nonetheless, using the so-called "ICC Method," which considers only whether a train arrives on time at its destination, SP's on-time performance improved significantly from the first quarter of 1996 (65.4% on time) to the first quarter of 1997 (71.9% on time). SP had improved still further by May, with 74.5% of Amtrak trains arriving on time. These improvements were achieved even though, under this method, delays on another railroad's lines are often charged against SP. For example, if southbound Amtrak trains encounter delays on BNSF tracks between Seattle and Portland, causing them to be late at their SP destinations, SP and BNSF are both treated under the ICC Method as having failed to perform.

SP's performance is also evaluated on the basis set forth in Amtrak's contracts with freight railroads, in which a railroad's performance is evaluated on a segment basis and it is not held responsible for delays caused by other railroads. Since the merger, SP's on-time performance on this basis has ranged from 82% in the dead of winter, with snow delays, to 91%. Under this method, SP has ranked as high as first among all the railroads with substantial Amtrak operations.

In negotiations that are underway now, UP/SP is working to develop new understandings with Amtrak regarding train performance on UP/SP lines.

K. Compliance With Environmental Conditions

As reflected in the attached Exhibit A, UP/SP has now fully complied with, or continues to make progress toward complying with, all of the 108 Environmental Mitigating Conditions prescribed in Appendix G to Decision No. 44. By complying with the "Systemwide" and "Corridor" mitigation conditions (Conditions 1-17), UP/SP has already made or will be making significant changes in its operations. For example, UP/SP has extended to SP territory a number of safety-enhancing programs that UP considers standard operating procedure but that SP could not afford, such as the UP supplemental tank car inspection program, use of head-hardened rail in mountain areas, a more disciplined program for track inspections, the TRANSCAER program to develop hazardous material emergency response plans, and increased training for community response personnel in trackside cities and towns.

The Board's conditions regarding air quality will have very significant and long-lasting effects on UP/SP. UP/SP has already upgraded maintenance standards for the SP locomotive fleet to UP standards, which has the effect of reducing emissions. Further, applying recently-proposed EPA regulations to large segments of UP/SP's Southern, Central and

I-5 Corridors pursuant to Condition No. 14, UP/SP will be required to adopt technologies not yet even on the market to reduce locomotive emissions to new levels. And under a separate agreement between railroads serving California and the California Air Resources Board, UP/SP locomotives operating in Southern California will generate 67% lower emissions by 2010.

UP/SP continues to implement Memoranda of Understanding with the East Bay Regional Park District (Condition No. 19) to improve access across the railroad to San Francisco Bay parklands, with the Town of Truckee (Condition No. 20) to reduce traffic congestion and air pollution in Truckee, and with Placer County (Condition No. 21) to reduce rail/vehicle conflicts and facilitate possible commuter train operations in that county. UP/SP also continues to work with the Board's Section of Environmental Analysis as it studies mitigation measures for the Reno and Wichita areas, pursuant to Conditions Nos. 22 and 23.

## II. COMPETITION

Even at this relatively early date, it is apparent that both the merger and the competitive conditions are greatly strengthening transport competition in the West. The UP/SP system is already becoming more competitive, through new single-line and shorter routings, improved service, lower rates, better equipment supply, and reduced switch fees. The competitive conditions -- and particularly the extensive trackage and haulage rights granted to BNSF -- are proving effective. Shippers are benefitting from BNSF's strong competition, as reflected in both the substantial volumes of traffic they are awarding to BNSF and the price reductions and service improvements UP/SP has had to provide to meet BNSF competition. Events are also proving that the Board was correct in its rejection of claims that the merger would have adverse competitive effects on "3-to-2" traffic or on Utah and Colorado coal, Gulf Coast chemicals, or grain.

A. <u>Early Competitive Benefits of the Merger</u>

With each step to implement the merger, the UP/SP system is becoming more competitive. Shippers are experiencing this enhanced competitiveness in many ways.

1. <u>New Single-Line Service and Shorter Routes</u>

One important element of enhanced competition is new single-line service. Full exploitation of new single-line routes must await labor agreements, installation of TCS across SP, and the capital outlays that will occur over several years. But much has already been done. In scores of instances, the availability of single-line service is yielding extended hauls on existing UP and SP business and attracting new business from other railroads and trucks. As a result, shippers are enjoying improved service and, in many cases, significant rate reductions.

A prominent example is the new UP/SP Los Angeles-Seattle intermodal train instituted on June 3. This is the harbinger of a broad array of new single-line service offerings in the I-5 Corridor. The merger makes possible, for the first time, direct single-line rail service between the upper Pacific Northwest region and the northwestern Canadian gateways, on the one hand, and California, Arizona, Texas and the southwestern Mexican gateways, on the other hand. Indeed, with the sale of the Keddie-Bieber line to BNSF on July 15, there will be two competing single-line rail systems in this corridor, where before there were none.

The merger is already opening up major new single-line marketing opportunities for UP grain producers to move their grain to SP destinations such as the Imperial Valley and the Nogales gateway; for SP Pacific Northwest and California lumber producers to reach new markets served by UP; for UP-served South Central lumber producers to reach SP destinations; for SP waste paper shippers to reach UP-served paper mills; and for SP aggregates producers to reach new UP-served destinations in the Houston area. New single-line routes are also bringing benefits to UP shippers using SP's Sunset Route across the Southern Corridor; to numerous UP-served and SP-served Gulf Coast chemical manufacturers moving product to destinations and junctions on the other merging railroad; and to a wide range of other shippers.

The attached verified statements provide many other illustrations:

- For example, Albert City Elevator, an Iowa cooperative of 1,100 corn and soybean producers, states that "the new single-line service to SP destinations had given us more efficient access to customers in Arizona, Southern California, Arkansas and Mexico."

- Zacky Farms, a major feed grain receiver served by SP in California's San Joaquin Valley, reports that single-line service from UP origins has made it possible to run "the first domestic 75-car shuttle trains" of grain from UP's Iowa and Minnesota origins to Zacky's facilities, at lower rates. These shuttle trains increase "equipment utilization and productivity" and improve "turn times by 200 percent." The new UP/SP service has in turn provoked BNSF to reduce rates "to attract some of the UP/SP's market share," and "we have seen our rates drop as much as $440.00 per car."

- And South East Kansas Railroad/South Kansas & Oklahoma Railroad and Willamette Valley Railway, among others, provide a variety of specific instances of new markets that their shippers are now reaching because of the merged system's expanded single-line service.

Competition is also being enhanced through the use of shorter routes. The new premium Chicago-Oakland intermodal service that commenced on March 19 provides for the first time a competitive, and indeed superior, alternative to BNSF premium intermodal service in this market. It was possible because of the merged system's far shorter route in the Central Corridor. Similarly, the new Memphis-Los Angeles-Lathrop intermodal service, to be instituted on July 10, will exploit a much shorter merged-system route and bring head-to-head competition to BNSF in a corridor in which it has had by far the superior service since the BNSF merger created the premier Memphis-California route. Mileage savings, as already described, are also greatly improving the competitiveness of UP/SP's Central Corridor manifest train services and of UP/SP Utah coal movements to California consumers and ports.

Confidential Appendix A contains over 75 specific examples of how new single-line service and shorter routings made possible by the merger have already brought shippers lower rates and better service. These pro-competitive benefits are also attested to by the verified statements of a number of UP- and SP-served shortlines, including the California Northern Railroad, the Copper Basin Railway, the Dallas, Garland & Northeastern Railroad, Louisiana & Delta Railroad, the Northeast Texas Rural Rail Transportation District, Rio Valley Switching Company/Southern Switching Company, the San Joaquin Valley Railroad, South East Kansas Railroad/South Kansas & Oklahoma Railroad, Willamette & Pacific Railroad, and the Willamette Valley Railway.

2. Competitive Benefits for PNW Shippers

Of particular note at this stage of merger implementation are the competitive benefits being realized by Pacific Northwest shippers through a combination of service improvements, equipment synergies, and rate initiatives.

SP lumber and food products shippers in this region are already seeing dramatic improvements in service. Traffic that would have taken weeks to move to Midwestern points via SP is being handled in days, as a result of the transfer of UP locomotives to SP and the handling of new traffic movements over Portland and UP's east-west mainline in place of time-consuming switching in SP yards. These service benefits will become even more widely available with labor agreements and the implementation of TCS.

SP Pacific Northwest lumber shippers have also experienced a dramatic improvement in the availability of centerbeam and bulkhead flats, which are the preferred equipment type for this traffic. Despite equipment supply problems occasioned by the severe winter flooding and unprecedented levels of demand for these car types -- driven both by an unusually prolonged period of robust demand for Pacific Northwest lumber and an ongoing shift toward centerbeam flats from other equipment types -- UP/SP was able to satisfy far more car orders during the first three months of this year than UP and SP satisfied during the same period in 1996. For example, UP/SP supplied 882 more centerbeams to Oregon shippers and 398 more to California shippers during the first quarter of this year than UP and SP together supplied during the first quarter of 1996. UP/SP achieved this improvement by securing, through TTX, 475 new, higher-capacity centerbeam flats, and improving the utilization of the combined car fleets (online cycle time dropped from 25 days to 18 days between January and May). Similarly, SP food products shippers in the Pacific Northwest are benefitting from the availability of UP refrigerated boxcars. In its financially-straitened condition, SP was simply unable to make new investments in the equipment that its PNW shippers needed.

These service and equipment improvements are attracting substantial new traffic to the merged system from the highway and less efficient BNSF routings. Here are just a few examples:

- Two major Pacific Northwest shippers of frozen food, Agripac and Dean Foods, are returning hundreds of cars of traffic from truck to rail. If rail transit times are reasonable and reliable, these shippers much prefer to ship by rail, which saves them $500-$1,000 or more per car. Now, thanks to the merger, they can do so. The attached verified statement of Agripac attests to the transit time, service and equipment supply benefits that the merger has already produced, and the significant return of traffic from the highway to rail that this has brought about. Having to be dependent on truck "caused Agripac to be noncompetitive with other producers, particularly frozen vegetable producers located in the Midwest." As a result of the merger, Agripac is competitive in these markets again.

- Norpac, another Pacific Northwest frozen food shipper, though directly served by SP, had been paying a substantial switch fee to ship via BNSF because of poor SP service and car supply. Norpac will now ship its 700 cars per year via the merged system.

- Also on account of poor SP service, Patterson Frozen Foods had been shipping most of its traffic from Iowa to an exclusive SP location in California via a BNSF rail haul to a nearby point and a truck-rail transload. Now the traffic will move via UP/SP at substantial savings to the customer.

- Universal Forest Products reports in its verified statement that, because of the service improvements that have already resulted from the merger, it "has begun using rail service again on routes formerly served by SP" for Pacific Northwest lumber. Before the merger, "because of SP's poor service and uncompetitive rates, Universal had largely ceased to purchase lumber from SP-served mills on the West Coast and avoided SP by trucking or using transload services and other rail carriers." Universal's conclusion is: "The benefits that UP had promised would result from the merger are in fact coming true, and it is happening more quickly than we had expected."

SP's PNW lumber shippers have also greatly benefitted from the merged system's complete redesign and simplification of SP's cumbersome lumber tariffs, following a model initiated by UP before the merger. UP/SP replaced a three-foot stack of SP tariffs and circulars, which included a large number of byzantine rules tariffs, with a simple-to-read 28-page matrix. This streamlined format will achieve tremendous savings in shipper clerical time spent in retrieving and interpreting tariffs, and will greatly improve the accuracy with which shippers are able to determine what rate will apply to their shipments. The simplification improves the shippers' ability to do business by making rates understandable and accessible to the personnel who are responsible for buying and selling lumber, rather than requiring interpretation by rate specialists.

UP/SP's rate simplification also dramatically reduced the level of SP's lumber rates. Rates for traffic moving from SP shippers to Midwest points and gateways and UP destinations in Nevada, Utah, Colorado, Idaho, Nebraska, Iowa, Wisconsin and Minnesota were lowered significantly. For example, for lumber shipments between SP points in Northern California and Midwest points and gateways, rates dropped by $400 to $1,000 per car. Lower rates for shipments to Las

Vegas have for the first time opened this important market to SP lumber shippers. Similarly, for UP lumber shippers in Washington, Oregon and Idaho, the rate simplification brought about a significant reduction in rates to SP destinations in California and Arizona, effectively quadrupling the market opportunities in those states available to UP shippers.[10]

3. Other Service Improvements

Merger synergies are also producing a wide range of other competition-intensifying service improvements. Here are just a few examples among many:

- The new premium intermodal service between Columbus, Ohio, and Los Angeles that UP/SP will shortly institute with NS -- possible, as already noted, only because of the synergies of SP's short route; UP's East L.A. facility, locomotives and operating capabilities; and the traffic volumes the merged system can attract -- will bring an unprecedented level of rail competition to that corridor.

- In a similar vein, UP/SP will institute later this year the first-ever direct New Orleans-Laredo intermodal service. SP, which lacked a route to Laredo, had drayed such traffic from San Antonio at substantial cost and delay, while UP did not have sufficient volumes to justify a through

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[10] These lumber rate reductions and simplifications in fact apply beyond the Pacific Northwest. They have also opened up new markets in California and Arizona for UP forest products producers in Arkansas, Texas, Oklahoma and Louisiana.

service. This new service is expected to attract at least 4,000 units in the first year.

- The greatly improved availability of power on SP lines is not only enhancing competition against other railroads; just as important, it is strengthening competition against trucks. For instance, SMI, an SP-served steel producer in Texas, has shifted 500 carloads of traffic a year from truck to UP/SP rail service because, with improved locomotive availability, UP/SP is now able to switch its plant five or six days a week, rather than only three.

- The new pre-blocking of SP Gulf Coast chemicals traffic bound to the Southeast should cut a day off transit times -- a substantial competitive improvement for chemical shippers, who generally own the equipment in which their traffic is transported.

- The verified statement of the Salt Lake, Garfield and Western Railway notes that "prior to the merger SP often delayed the interchange of cars." Since the merger, "UP/SP has provided SLGW and its customers as much as a 4-day improvement in operations," enhancing rail competitiveness for this "2-to-1" railroad's shippers.

4. <u>Equipment</u>

We have already referred more than once to another important dimension of strengthened competition -- equipment supply and utilization. The merger of the UP and SP equipment fleets, and the consolidation of the car management functions, has allowed UP/SP to bring many competitive benefits to shippers. All across the merged system, UP shippers are benefitting from access to SP equipment, and vice versa. Consolidation of the two railroads is also opening up numerous opportunities for backhauls, triangulation, and more efficient equipment repositioning -- all of which allows more competitive rates to be quoted, and service to be provided, to customers. Many of these steps are described above, and other detailed, customer-specific examples are included in Confidential Appendix A. The verified statements of Albert City Elevator, 3M, California Northern Railroad and Northeast Texas Rural Transportation District, among others, also describe the equipment-supply benefits that the merger has brought about.

5. Switch Fees

Still another important dimension of enhanced competition is the elimination and reduction of switch fees. As soon as the merger was consummated, switch fees between UP and SP were eliminated. These fees, frequently $495 per car, were a major obstacle to use of most efficient routes, and to competition for shorter-haul movements against truck and alternative product sources. UP-SP switch fees amounted to more than $16 million, for over 50,000 cars, in the year prior to the merger.

SP had imposed these high reciprocal switching charges on all major railroads, and those railroads had reciprocated. Pursuant to the BNSF settlement agreement, as augmented by the CMA agreement, fees charged by the merged system to BNSF at "2-to-1" points were set at $130/car, and fees charged by SP at all other points to all railroads were reduced to no more than $150 per car. The applicants and BNSF reached further agreement that charges between BNSF and SP at all locations would be reduced to no more than $130/car. All these dramatic, two-thirds reductions in fee levels went into effect promptly upon consummation of the merger. Based on switching volumes in the year prior to merger, the BNSF-SP reductions alone will amount to more than $10 million per year, on over 65,000 cars.

In total, eliminations and reductions of switch charges as a result of the merger and the settlement agreements will amount to some $28 million per year -- and this does not even reflect the new traffic that will now move thanks to the removal of these impediments.

* * *

In all of these ways as well as others discussed throughout this paper, the merger is intensifying transport competition in the West. As we next show, the competitive conditions are also very effectively preserving -- and indeed enhancing -- competition.

B. <u>Effectiveness of Competition-Preserving Conditions</u>

The Board imposed, as conditions to its approval of the merger, the settlement agreements entered into between the primary applicants and BNSF and CMA, and augmented those settlements in a number of ways. The Board also granted in part Tex Mex's trackage rights application, and imposed as a condition the applicants' settlement agreement with the Utah Railway. All of these conditions have been implemented and are working well.

1. <u>Compliance With the Conditions</u>

The applicants have devoted extraordinary resources to complying strictly with all merger conditions. UP/SP's compliance with the competition-preserving conditions is described below.

a. <u>BNSF and CMA Agreements</u>

UP/SP has fully complied with the BNSF and CMA agreements.

<u>*Definitive Contracts.*</u> Compliance with the BNSF and CMA agreements began even before the merger was approved, with the completion and filing of some 30 definitive trackage rights agreements and a master haulage agreement. All the disputes that had been pending before the Board as to the scope of BNSF's rights, including disputes involving CPSB, CMTA and TUE, have now been resolved -- the last of these, involving TUE, in Decision No. 72, served May 23, 1997. In

accordance with the latter decision, an amended and restated BNSF settlement agreement reflecting the Board's determinations is being filed herewith as Exhibit B hereto. Applicants have worked with BNSF to reach agreement on the wording of all the changes necessary to memorialize the Board's decisions, and most of the changes are agreed upon. Disagreements remain, which may have to be referred to the Board for resolution, as to the definition of "new facility" and the specification of the UP/SP lines where BNSF is entitled to serve new industries and transloads.[11]

*Implementation Steps.* Operating and data systems were put in place for immediate commencement of BNSF service upon consummation of the merger. Initial service was through haulage, under a blanket haulage agreement expiring March 10. Various line segments were transferred to trackage rights operations over several months following the merger, as described in detail below.

Hundreds of UP/SP personnel worked with BNSF to assist with the institution and expansion of BNSF's haulage and trackage rights operations. UP/SP devoted intense effort to address very complex implementation issues, including the

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[11] The only other remaining "loose end" was Applicants' obligation to file a notice of class exemption with respect to the additional rights granted to BNSF to handle CPSB traffic. Decision No. 46, served Aug. 26, 1996, pp. 2-3. Applicants, CPSB and BNSF have finally resolved some minor details as to these rights, and will file the notice within a few days.

development of necessary computer systems and qualification of crews.

Planning for implementation of the BNSF rights began in early 1996, some eight months before the merger was approved. UP devoted 40 employees to planning for the trackage rights and haulage. Since the merger, 23 UP/SP employees have been assigned full-time to the implementation of BNSF's rights. Following merger consummation, daily UP/SP-BNSF conference calls, generally lasting at least two hours, were conducted seven days a week. The purpose of these calls was to address and resolve problems in the implementation of the trackage and haulage rights. Some ten to fifteen UP/SP employees from different functional areas typically participated in these calls. Sunday calls were phased out in late December. As implementation of the trackage rights progressed, the daily calls were eventually scaled back to weekly calls in April.

A full-time UP/SP manager at the Harriman Dispatching Center in Omaha oversees the dispatching of BNSF trains, and another full-time UP manager is stationed at BNSF's Fort Worth dispatching center to facilitate the movement of BNSF trackage rights traffic. UP/SP expects BNSF to place a full-time manager at the Harriman Center, as provided for in the dispatching protocol, when SP dispatchers are transferred to Omaha, which is likely to be in September.

Computer systems were a major issue affecting the implementation of the haulage and trackage rights. Twelve UP/SP employees have worked essentially full-time for more than a year to develop the computer technology needed to support the rights. Four different mainframe computer systems are involved -- those of UP, SP, BN and Santa Fe. Very extensive programming and systems work was required to allow these systems to communicate with each other. Systems had to be developed to allow the direct exchange of EDI messages between railroads for trackage rights and haulage traffic.

The interim and permanent haulage agreements also presented special computer support issues, which required the development of new codes and standards. UP/SP also worked with the shortline railroads that were gaining new access to BNSF to develop necessary computer capability (as well as blocking and other operational capabilities). Still other complex systems issues were posed by joint use of the Dayton storage-in-transit yard. UP/SP developed all these new capabilities in order to improve the handling of BNSF traffic. Inevitable computer "bugs" had to be worked out. UP/SP retained one full-time consultant simply to work on reviewing computer error messages.

Still another area in which UP/SP assisted BNSF was in connection with its new haulage access to the Mexican border at Brownsville. UP/SP aided BNSF in establishing customs clearance arrangements and the necessary systems to move the haulage traffic to and across the border.

An ongoing effort has developed a definitive list of all "2-to-1" shipper facilities, and the parties have continued to develop the details of how BNSF will serve each "2-to-1" shipper (directly, via reciprocal switching, or, with UP/SP concurrence, through an agent) and how BNSF wishes to serve "omnibus" points. On June 6, UP/SP agreed to extend permanent haulage to all "omnibus" points that BNSF does not elect to serve directly.

*Voluntary Further Agreements.* UP/SP has taken a number of steps to assist BNSF that go beyond the requirements of the settlement agreements and the Board's orders. The interim haulage arrangement is one example. Another is UP/SP's agreement to allow BNSF to designate the Utah Railway as its agent for switching customers in the Utah Valley -- an agreement which, as Utah Railway notes in its verified statement, "has provided us with an opportunity to diversify from handling coal only to handling many commodities to several customers, and is going well."

Also, in addition to the Brownsville and Pine Bluff-Little Rock segments, where the settlement agreement gave BNSF the option of operating under haulage in lieu of trackage rights, UP/SP has entered into a number of other longer-term haulage arrangements with BNSF to facilitate BNSF operations.

Such arrangements have been established with respect to the following locations: El Paso-Sierra Blanca; Beaumont-Orange; Odem-Corpus Christi; Pine Bluff-Camden; Shreveport-Tenaha; Texarkana-Shreveport; and service to Nevada paired track customers, to Turlock, Fullerton and South Gate CA, and in the Baytown TX, San Jose CA, Stockton CA, Salt Lake City UT and Lake Charles LA areas. Some of these, such as the Odem-Corpus Christi and Shreveport-Tenaha haulage, are no longer in use because BNSF is instead running trackage rights trains at those locations.

*Line Sales.* The BNSF settlement agreement provided for the sale to BNSF of three line segments: Dallas-Waxahachie, Iowa Junction-Avondale and Keddie-Bieber. The first two sales were completed on September 20 and December 15, respectively. The Keddie-Bieber sale will close on July 15, simultaneously with the commencement of the I-5 proportional rate arrangement.

An arbitration is pending regarding a dispute as to whether the Iowa Junction-Avondale line met the contractual requirement as to physical condition on the sale date. An escrow has been established that will either revert to UP/SP or be paid in whole or in part to BNSF in accordance with the decision of the arbitrator.

*Connections.* UP/SP work on connections to facilitate BNSF trackage rights operations has been completed at Sealy, Texas, Bridge Junction, Arkansas (near Memphis), and Avondale, Louisiana (near New Orleans).[12] The connection at Westwego, Louisiana, is scheduled for completion on July 11, and alternative alignments for the connection at Stockton, California, are under discussion.

*Storage-in-Transit Capacity.* In accordance with requirements of the CMA agreement and the Board's merger approval decision, UP/SP has made storage-in-transit ("SIT") capacity available to BNSF at Dayton Yard, near Houston, and at Beaumont, Texas. A detailed contract has been signed concerning the Dayton Yard, and BNSF is building track to support its operations there.

*New Facilities Protocol.* To facilitate compliance with the conditions allowing BNSF to serve new industries and transloading facilities at "2-to-1" points and on the trackage rights lines,[13] UP/SP has been working with BNSF on a formal written protocol regarding procedures for initiating such service. As noted above, the parties have thus far not been able to agree on a definition of "new facility," and that matter may need to be referred to the Board for resolution.

*Non-Discrimination in Dispatching.* UP/SP issued instructions to all dispatchers to handle trackage rights

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[12] Some signal work remains to be done on one of the Avondale connections, but that connection is in service.

[13] The applicants have sought judicial review of aspects of these conditions.

trains of BNSF (and other tenants) with strict neutrality. The Joint Service Committee provided for in the parties' dispatching protocol met most recently on June 4 and June 26. The parties agreed that UP/SP, BNSF and Tex Mex would institute directional operations between Houston and Beaumont. The parties also addressed other steps to alleviate congestion in the Houston area. For example, UP/SP agreed to give BNSF trackage rights over a more direct route through the Houston terminal to reach its existing Houston-Iowa Junction trackage rights. Also, a study group is considering how most efficiently to handle loaded cars that are billed out of SIT tracks for a BNSF haul.

*Segregated Funds.* The CMA agreement requires UP/SP to establish two segregated funds for trackage rights fees, and to expend such fees solely for operating and capital expenses relating to the trackage rights lines. These accounts were duly established, and expenditures on the trackage rights lines are greatly exceeding the trackage rights revenues.

*Contract Reopener Process.* The CMA agreement, as further augmented by the Board, provided that UP/SP must allow all "2-to-1" shippers to divert to BNSF up to 50% of contracted-for volumes under contracts in effect when the merger was consummated. Questions concerning the details of this condition were resolved in Decision No. 57, served Nov.

20, 1996. UP/SP promptly sent notices to all affected shippers -- approximately 275 -- as required by the Board's decision.

Some 930 UP and SP contracts containing minimum volume commitments for "2-to-1" traffic were in effect when the merger was consummated. A majority of them were to expire within a year or less. As to most of the contracts, shippers have taken no action at all, suggesting that they were satisfied with the existing contractual arrangement. In a substantial number of other cases, shippers elected to negotiate new contracts with UP/SP to supersede the pre-merger contract prior to its expiration.

Only six shippers have written to UP/SP pursuant to Guideline No. 10 in the Board's decision to ask whether UP/SP would terminate the contract if the shipper diverted contractually-committed volumes to BNSF.[14] A total of eight contracts were involved in these inquiries. UP/SP's response as to four was that the contract would be terminated, and as to the other four was that it would not be. In several other instances noted in Confidential Appendix B, shippers diverted volumes under pending contracts to BNSF without formally inquiring whether UP/SP would terminate the contract, and UP/SP has not elected to terminate those contracts.

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[14] In one other case, UP/SP advised an inquiring shipper that its business was not "2-to-1" business covered by the condition.

Rate and service benefits received by shippers as a result of this contract-reopener process are discussed below.

*I-5 Proportional Rate Arrangement.* Virtually all issues as to implementation of the BNSF settlement agreement were quickly resolved. The key exception concerned the I-5 proportional rate arrangement.

Under this arrangement, which was described in Exhibit B to the settlement agreement, UP/SP is entitled to have BNSF quote proportional rates for the movement in BNSF-UP/SP joint-line service via Portland, Oregon, of traffic between a northern region spanning Washington, parts of Oregon, Idaho and Montana, and western Canadian points and gateways, on the one hand, and a southern region spanning Arizona, California, Colorado, New Mexico, Nevada, parts of Texas and Oregon, and the Mexican gateways at El Paso and to the west, on the other hand.

A number of complex issues arose as to the memorialization of this unprecedented arrangement in a formal contract. Certain disputes were submitted to arbitration, then settled in principle in January. Considerable further time was required to resolve other issues. A definitive proportional rate agreement was finally signed on May 23. A copy is attached as Exhibit C hereto. As indicated, the proportional rate arrangement will go into effect on July 15, simultaneously with the Keddie-Bieber line sale. UP/SP's trackage rights over BNSF's Bend-Chemult segment will also go into effect on that date.

This agreement will add a still further important dimension of enhanced competition in the I-5 Corridor. Not only will there be two new single-line rail systems in this corridor as a result of the merger of UP and SP and the sale of the Keddie-Bieber line to BNSF; UP/SP will be able to compete directly for the business of shippers at BNSF local points and junctions by offering competitive service and rates via the BNSF-Portland-UP/SP route that handled most rail traffic in this corridor before the merger.

b. Tex Mex Trackage Rights

As with the BNSF rights, UP/SP had operating and data systems in place for immediate commencement of the Tex Mex trackage rights as soon as the merger was consummated. Tex Mex began trackage rights operations on October 8. As previously reported, final trackage rights terms have been established for Tex Mex's trackage rights over UP/SP's lines between Beaumont and Corpus Christi/Robstown and its terminal trackage rights over HB&T in the vicinity of Houston.

UP/SP constructed a new connecting track in October at Flatonia to facilitate the movement of Tex Mex's trains. Plans are advancing for the construction of a new connection and associated siding at Robstown, which Tex Mex will construct, and a new siding south of Flatonia, which UP/SP will construct at Tex Mex's expense. Tex Mex and BNSF trains have connected with Tex Mex's Corpus Christi-Laredo line at both Corpus Christi and Robstown (with Robstown trains using a back-up move at present).

UP/SP has taken several steps to facilitate Tex Mex's trackage rights operations. It has established an operating liaison for Tex Mex within UP/SP's Harriman Dispatching Center who communicates with Tex Mex on a daily basis regarding its planned operations so that UP/SP's operational planning can accommodate Tex Mex's operations. UP/SP has assisted Tex Mex in training its crews to operate on the trackage rights lines and has put in place systems to monitor the performance of Tex Mex trackage rights trains. Tex Mex has thus far been using SP's computer system to effect electronic data interchange concerning train crew and consist information. UP/SP is working with Tex Mex to develop EDI protocols to be implemented when Tex Mex switches to KCS's computer system in August 1997.

c. Utah Railway Trackage Rights

A definitive trackage rights agreement was concluded with Utah Railway before the merger was approved. As with the BNSF and Tex Mex rights, UP/SP had operating and data systems in place for immediate commencement of the Utah Railway trackage rights as soon as the merger was consummated. Actual operations began on December 7.

2. <u>The Conditions Are Working Well</u>

Each of these competitive conditions is working to provide effective competition.

a. <u>BNSF</u>

BNSF is providing vigorous and effective competition using the rights that it received as a condition to the merger.

*Institution and Expansion of Service.* BNSF moved promptly to institute and expand service. As noted, haulage went into effect immediately at all points that BNSF had the right to serve. Since then, BNSF has made the transition to full trackage rights operations in all major corridors. Here are the key dates of BNSF transitions to trackage rights, and of particularly notable increases in service frequency:

| | |
|---|---|
| 10/8 | Denver-Salt Lake City |
| | Salt Lake City-Stockton |
| | Houston-Corpus Christi |
| | Kerr-Temple (aggregates trains from Georgetown Railroad to Houston area) |
| 10/26 | Riverside-Ontario CA |
| 12/16 | Houston-New Orleans |
| | Pine Bluff-Memphis |
| | Houston-Cleveland TX |
| | Richmond-Warm Springs CA |
| 1/13 | Houston-New Orleans intermodal service (later increased to 7 days per week) |

| | |
|---|---|
| 1/16 | Houston-Pine Bluff-Memphis[15] |
| | Houston-Dayton TX |
| 2/4 | Denver-Salt Lake City intermodal service (currently consolidated in manifest trains) |
| 2/10 | Denver-Salt Lake City service increased from 3 to 5 days per week |
| 3/10 | Temple-Waco TX |
| | Temple-Elgin TX (with Longhorn Ry. interchange) |
| 3/13 | Temple-San Antonio |
| 3/23 | Beaumont-Amelia TX |
| 4/1 | Direct service to Utah Valley "2-to-1" customers by Utah Railway as BNSF's agent |
| 4/2 | San Antonio-Eagle Pass |
| 4/21 | Longview-Memphis via Tenaha TX: "second merchandise train to accommodate increasing steady demand"[16] |

BNSF has also indicated that it will shortly institute an additional daily Denver-Utah train pair, and has referred in public presentations to plans to shift from permanent haulage to trackage rights between Corpus Christi (Robstown) and Brownsville and between Pine Bluff and Little Rock.

Public information evidences BNSF's aggressive steps to implement the rights. BNSF has reported its establishment

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[15] Rather than operate over trackage rights between Memphis and St. Louis, BNSF has elected to work with Illinois Central via Memphis on traffic bound to, from and via St. Louis and nearby gateways.

[16] BNSF Presentation to Financial Analysts, Apr. 22, 1997.

of a new position of Vice President-Marketing for UP/SP Lines, the hiring of numerous personnel, the creation of a new Gulf Division, and the assumption of direct supervision of HBT's BNSF functions. BNSF indicated in public presentations that it would need 150 locomotives for trackage rights service in the second quarter, and it will undoubtedly need more in the quarters to come. BNSF is clearly making a major, long-term, serious commitment to the rights.

*BNSF Traffic Volumes.* Through May, BNSF had operated a total of 1,852 through freight trains over the trackage rights lines. And, though final data for June are not yet available, preliminary indications are that June volumes are significantly above May.

The volume of traffic handled by BNSF under the rights has been rapidly increasing. This is shown in Charts #1, #2 and #3, depicting, by month, the numbers of BNSF through trackage rights freight trains and the numbers of cars and tons on those trains. The number of BNSF trackage rights trains had grown to nearly 400 in May. As train lengths grew, tonnages increased even more sharply, to nearly 1.4 million gross tons in May. And cars moving in through trackage rights trains reached 17,834 (10,077 loads and 7,757 empties) in May.

These figures do not include the many local trackage rights trains that BNSF has operated. Much of the business on these trains connects directly with BNSF's through trains on

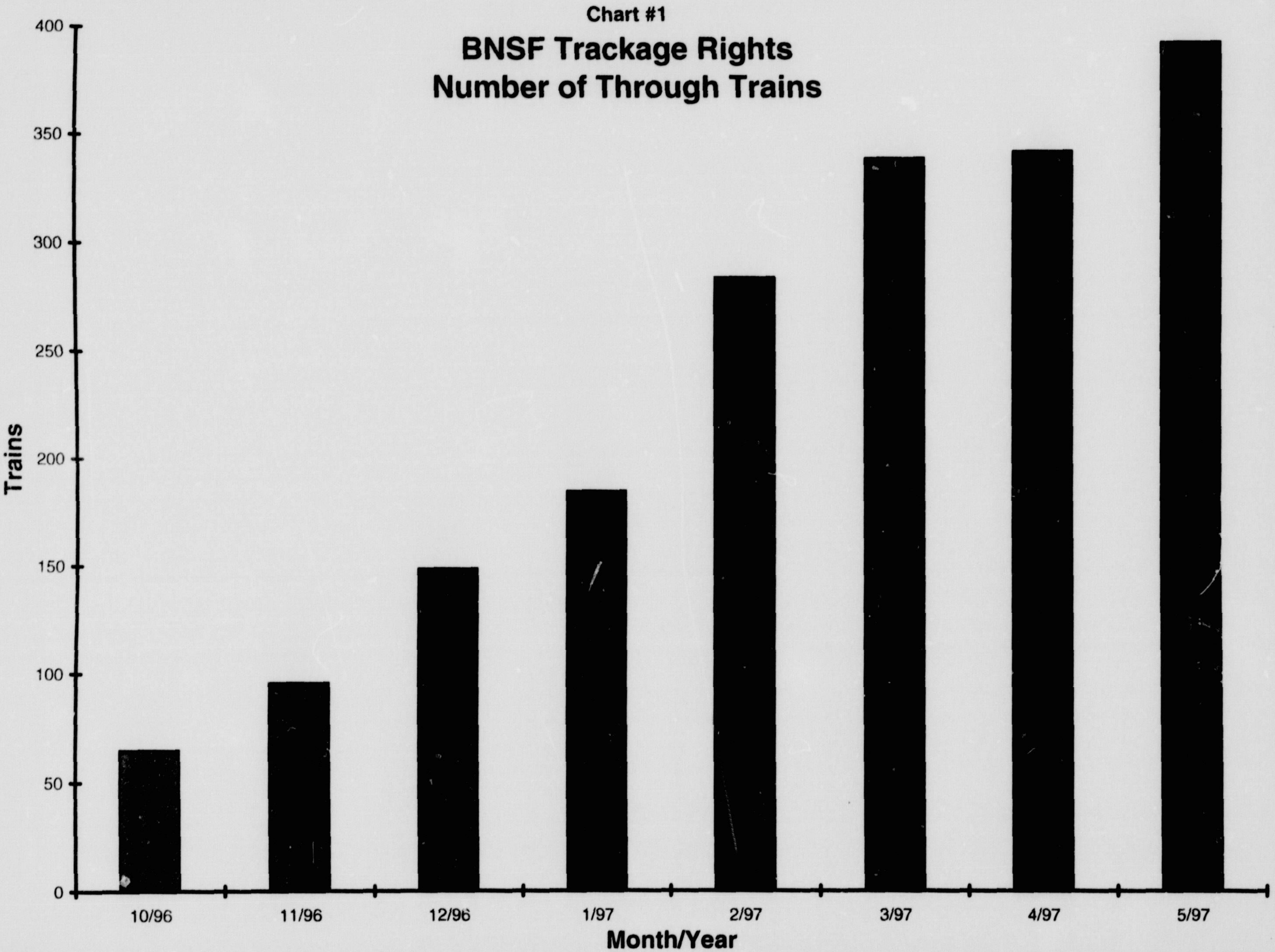
Chart #1
BNSF Trackage Rights
Number of Through Trains
Trains
0
50
100
150
200
250
300
350
400
10/96
11/96
12/96
1/97
2/97
3/97
4/97
5/97
Month/Year

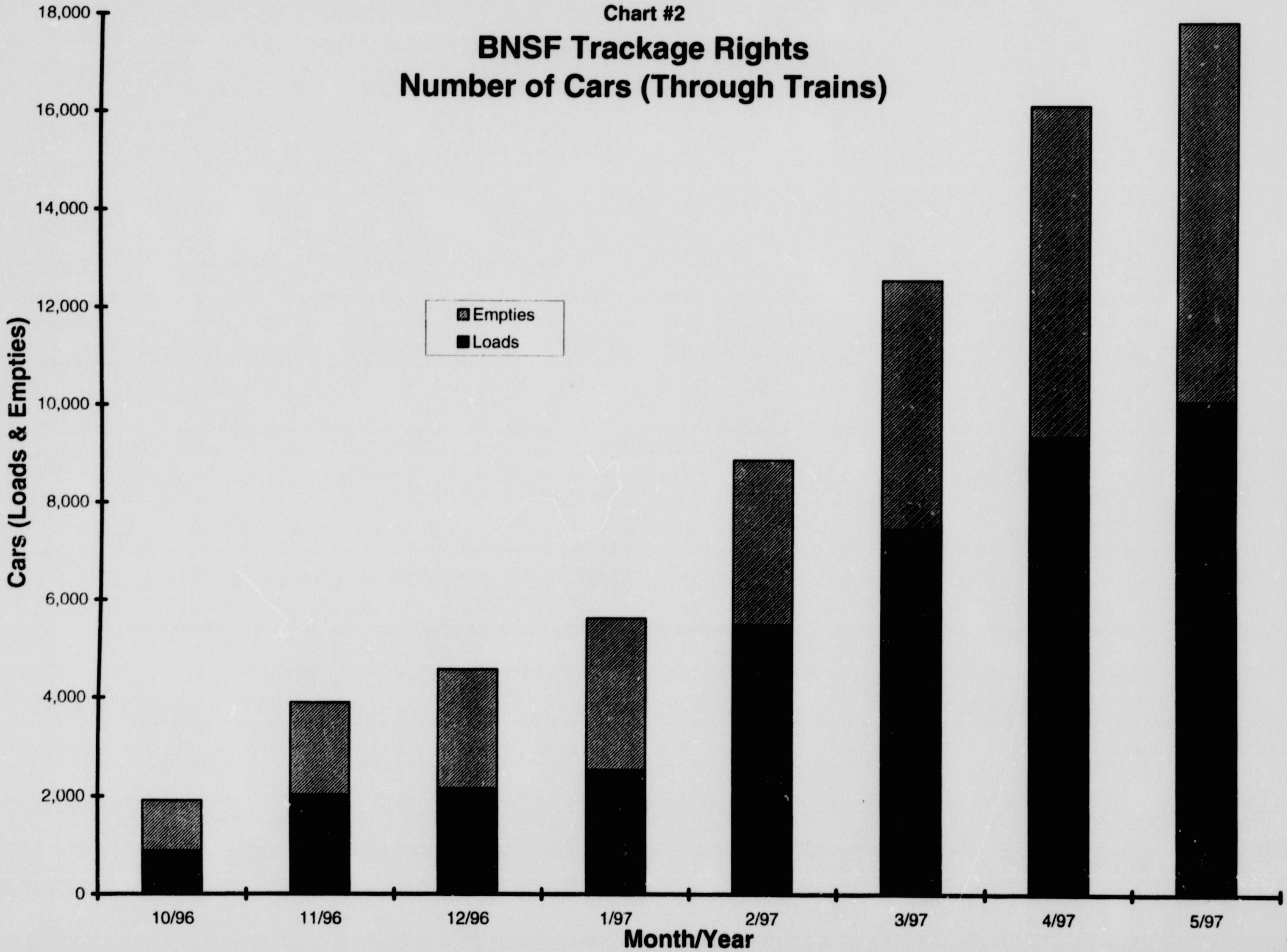

Chart #2
BNSF Trackage Rights
Number of Cars (Through Trains)
Empties
Loads
Cars (Loads & Empties)
18,000
16,000
14,000
12,000
10,000
8,000
6,000
4,000
2,000
0
10/96
11/96
12/96
1/97
2/97
3/97
4/97
5/97
Month/Year

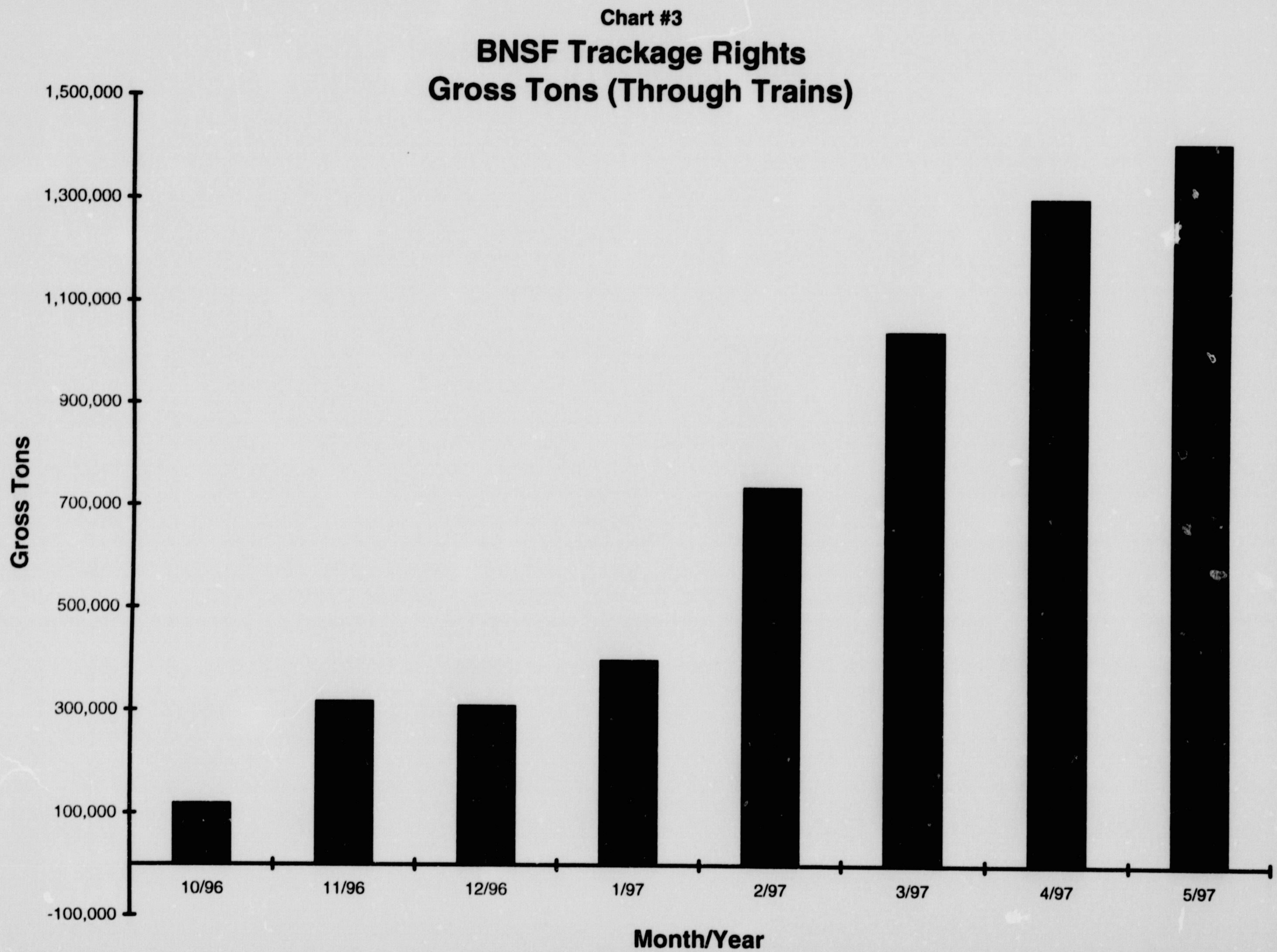
Chart #3
BNSF Trackage Rights
Gross Tons (Through Trains)
1,500,000
1,300,000
1,100,000
900,000
700,000
500,000
300,000
100,000
-100,000
Gross Tons
10/96
11/96
12/96
1/97
2/97
3/97
4/97
5/97
Month/Year

its own lines -- and thus represents still further traffic secured by BNSF because of the rights. Just since January, BNSF has operated 91 locals between Houston and Dayton, Texas; 70 locals between Temple and Waco or Elgin, Texas; and 102 locals between Richmond and Warm Springs or Oakland, California. These trains handled over 6,357 loaded and empty cars. In addition, since commencing service as BNSF's agent for local train operations in the Utah Valley on April 1, the Utah Railway has operated 101 local trains in only two months, carrying a total of more than 2,100 loaded and empty cars.

In addition to its trackage rights volumes, BNSF has also moved substantial volumes via haulage. Haulage cars, loaded and empty, rose from over 3,500 in October to over 6,200 in January, decreasing to some 2,900 in March and about 1,300 in May as trackage rights operations replaced haulage at more and more locations.

BNSF's through train frequencies -- daily or more frequent at most locations -- now support highly competitive service:

- In the Central Corridor, BNSF operated 76 through trains in May, carrying 176,777 gross tons. These included trains between Denver and the Salt Lake area, and between the Salt Lake area and Stockton.

- In the Houston-Memphis corridor, BNSF operated 104 through trains in May, carrying 391,743 gross tons. These included northbound trains from Houston and Tenaha to Memphis, and southbound trains from Memphis to Tenaha and Houston.

- In the last of the three major BNSF corridors -- Houston-New Orleans -- BNSF operated 120 through trains in May, carrying 384,942 gross tons. These included westbound trains from Iowa Junction to Beaumont and Houston, and from Beaumont to Houston, and eastbound trains from Houston to Beaumont and Iowa Junction, and from Beaumont to Iowa Junction. (These trains connect at Iowa Junction to the SP line that BNSF purchased, running between Iowa Junction and Avondale.)

These figures do not include many other trackage rights trains, including trains between Houston and Corpus Christi, trains between Temple and Eagle Pass via San Antonio, rock trains interchanged with the Georgetown Railroad, grain trains to Ontario, California, and a variety of locals.

BNSF publicly stated that its annualized revenues associated with the rights were running at nearly $150 million in March,[17] and volumes have risen significantly since then. This indicates overall volume in the range of 20% of BNSF's estimate during the merger proceeding of a $1 billion total universe of available traffic.[18] This is a remarkable

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[17] BNSF Presentation to Financial Analysts, Apr. 22, 1997.

[18] The primary applicants' estimate was consistent with BNSF's, but also included existing BNSF revenues relating to (continued...)

record after only nine months, given the inevitable transitional problems (as well as BNSF's need to deal with its own ongoing merger implementation) and the fact that some shippers are naturally happy with existing long-term, contracts and others have negotiated improved contracts with UP/SP.[19] Clearly, no other carrier could have instituted and expanded service this quickly -- or indeed could have provided this range of service at all. As Map #3 demonstrates, BNSF, with its extensive Western network and infrastructure of terminals and other support facilities, was uniquely situated to mount fully competitive service over the new rights.

Quite simply, there is no reason why BNSF cannot ultimately reach 50%, or even more, of the entire available universe of traffic -- though UP/SP will fight for every carload. And regardless of exact volumes, the real point is that BNSF is there for the long term with fully competitive service. It can capture any available traffic movement at any time. Its trackage rights and haulage service is supported by its existing, comprehensive Western rail network, and its

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[18] (...continued)
potential reroutes and extended hauls, and additional new marketing opportunities, such as new intermodal services, which remain available to BNSF but have not yet been exploited as BNSF has focused on providing service to "2-to-1" carload customers.

[19] Also, some high-volume contracts, such as those of LCRA and CPSB, were not subject to immediate reopening.

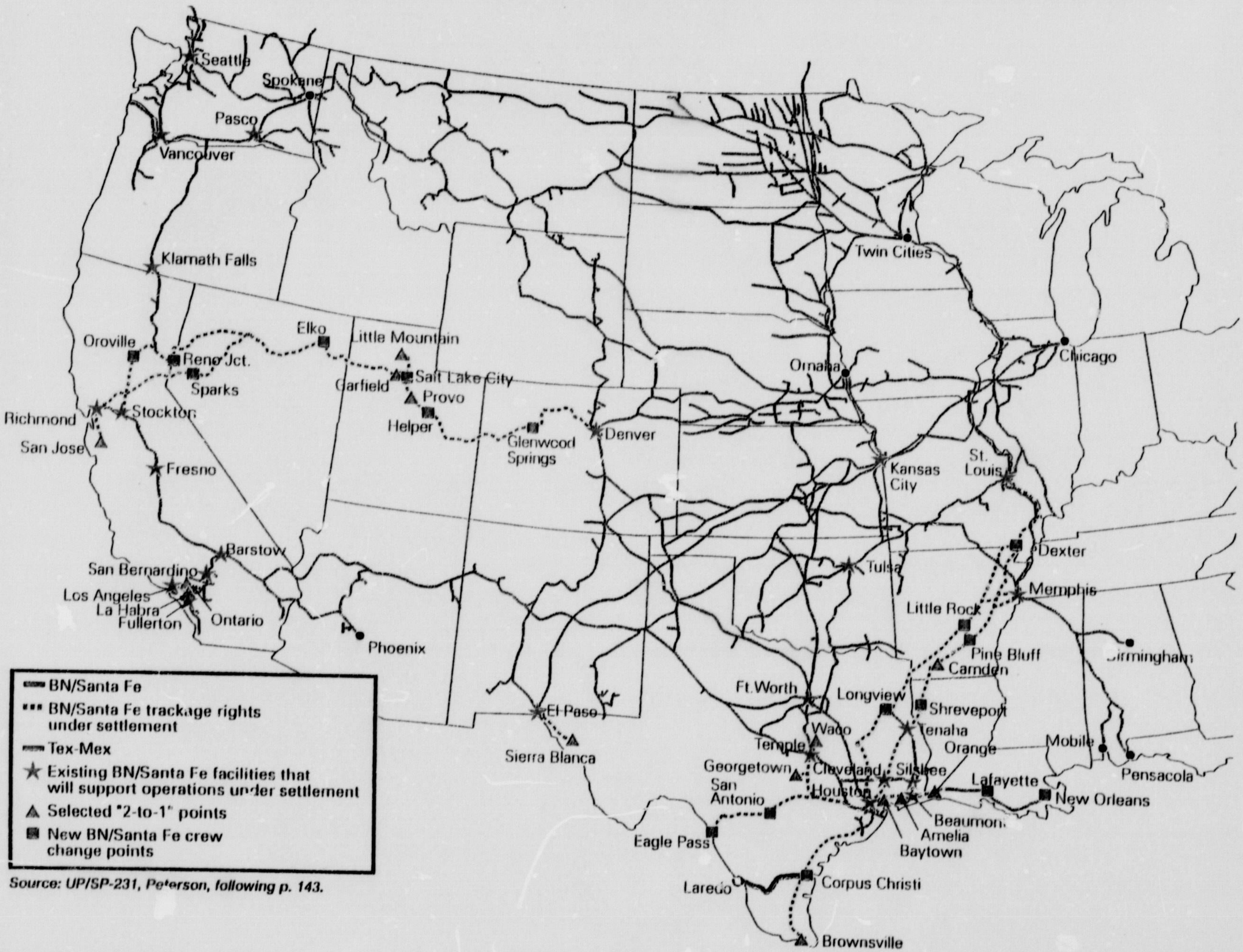
costs for moving trackage rights and haulage traffic are incremental.

*BNSF Competitive Successes.* BNSF has been aggressively competing for the "2-to-1" business, quoting very competitive rates and bidding on all major contracts. Indeed, BNSF is often a more aggressive competitor than SP was, calling on shippers and receivers that SP had not actively solicited and making repeated proposals in order to capture some or all of a customer's business. As the verified statement of the Salt Lake, Garfield and Western Railway, one of the "2-to-1" shortlines that BNSF received the right to serve, states: "The new competition between UP/SP and BNSF is much stronger than the competition between UP and SP prior to the merger." Similarly, the Little Rock & Western Railway, another "2-to-1" railroad that handles 6,500 carloads per year in Arkansas, calls BNSF "a vigorous competitor" for the business of the shippers on its lines, and notes that both UP/SP and BNSF "have a broader set of routes and offer more single-line service than either UP or SP alone did" before the merger.

BNSF has captured numerous traffic movements across the full range of "2-to-1" points and corridors. Confidential Appendix B contains some 75 specific examples. As those examples demonstrate, shippers have benefitted from lower rates, improved routings, and new single-line access to BNSF

Map #5

# BNSF NETWORK, INCLUDING TRACKAGE AND HAULAGE RIGHTS




*Source: UP/SP-231, Peterson, following p. 143.*

points. Indeed, the many rate reductions demonstrate that BNSF is providing <u>stronger</u> competition than SP did in these markets. Examples of BNSF traffic include:

- Large volumes of grain moving to Mexico via Corpus Christi and the Tex Mex, and via Brownsville.
- Scrap paper, cotton and tallow movements to Mexico.
- Large volumes of auto parts from the Midwest to the NUMMI plant at Fremont, California.
- OOCL's 55,000-unit east-west doublestack container contract, which BNSF captured because of its new access to New Orleans.
- Traffic movements from virtually all the "2-to-1" chemical plants in the Gulf states.
- Traffic from major chemical manufacturers in Longview, Texas, to Houston and points in the Midwest and East, for which the Houston-Memphis trackage rights gave BNSF new direct single-line routes.
- Large volumes of aggregates from Texas Crushed Stone at Feld, Texas, to the Houston area -- BNSF had run 116 rock trains on its trackage rights through May.
- Traffic of major "2-to-1" shippers in Arkansas such as 3M and Green Bay Packaging.
- Traffic of major Utah shippers such as Kennecott, Amoco and Chevron.

- Numerous unit-train movements of grain to Kruse Grain in the Los Angeles Basin.

- Corn from Midwest origins to Tyson Foods in Pine Bluff, Arkansas.

- Wheat from Kansas to Corpus Christi, Texas, for export.

- Barites movements from the UP-SP paired track in Nevada.

- Intermodal traffic to Salt Lake City.

Many of these movements formerly moved in single-line UP or SP service -- belying the contention by witness Crowley, on behalf of a various parties, that BNSF would be unable to compete for such traffic.[20]

Shipper verified statements describe a number of these BNSF gains:

- Exxon, in its statement, advises that it has "already awarded BN/Santa Fe a movement of 500 cars of asphalt from our East Billings, MT facility (served by Montana Rail Link) to the Salt Lake City area (Woods Cross, UT, a '2-to-1' point)," and will "use BN/Santa Fe to move approximately 11 cars per day from our Mont Belvieu, Baytown, Baton Rouge, and Anchorage, LA chemical complexes, as well as from the East Billings facility."

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[20] See, e.g., NITL-9, Crowley, pp. 24, 43-44; SPI-11, Crowley, pp. 36, 55-56; see also UP/SP-231, Peterson, pp. 163-67 (refuting Crowley contentions).

- Texas Crushed Stone, a large "2-to-1" shipper located on the Georgetown Railroad at Feld, Texas, reports that it had "previously leased an unloading site at UP's Eureka Yard site in Houston, but BN/ATSF successfully bid to provide an alternate site at an inactive BN/ATSF yard property." As a result of this and other initiatives, BNSF "has proven to be a strong competitor" for Texas Crushed Stone's business:

> "On several recent occasions we received competing bids from UP and BN/ATSF for movements of crushed stone to points in Texas. Early in 1997, we contracted with BN/ATSF for the movement of approximately 1,200 carloads per year to Houston after BN/ATSF provided a competitive bid for this traffic. More recently, we contracted with BN/ATSF for shipment of approximately 5,000 carloads per year to various BN/ATSF points in Texas. Because we can now move these shipments directly from the Georgetown Railroad Company to BN/ATSF, without switching to the UP for part of the journey, these movements are more efficient and have resulted in competitive prices for us. In some cases, the ability to use BN/ATSF has opened new markets to us by making it more economical to ship to the BN/ATSF destinations."

The verified statement of the Georgetown Railroad further elaborates on the stronger competition for Houston-area aggregates traffic that has resulted from the merger and the BNSF trackage rights.

- OxyChem states that "the competition between UP and BNSF has been far stronger than the pre-merger competition between UP and SP." It offers several cases in point:

> "In one case we awarded BNSF a contract for movement of over 100 carloads of polyvinyl chloride

resins from Houston, TX to High Springs, FL via New Orleans. BNSF captured this business by offering a rate that was significantly lower than either the prior SP contract rate or the rate UP offered after the merger.

We also awarded BNSF a movement of liquid sodium silicates from Dallas, TX to S. Plainfield, NJ. This traffic originally was routed UP-Salem-Conrail. BNSF offered a much lower rate than UP, which resulted in a substantial savings for us on this movement. In carrying this traffic, BNSF uses new trackage rights to Memphis that it obtained in the merger.

In addition, OxyChem recently received competing bids from UP and BNSF for a movement of caustic soda from Houston, TX, to Jacksonville, FL. We have not yet chosen the carrier for this traffic but we have the competing bids which were made possible by BNSF's purchase of a line to New Orleans in connection with the merger.

Finally, BNSF recently won a five-year extension of a contract to carry our polyvinyl chloride resin shipments from Pasadena, TX, to various points throughout the United States. This contract involves several thousand carloads per year. The trackage rights BNSF was awarded as a part of the merger played an important role in making this contract extension attractive to us."

*Benefits for "2-to-1" Shippers Using UP/SP.* Just as important as BNSF's successes in capturing traffic, shippers at "2-to-1" points and in "2-to-1" corridors have gained rate, service and equipment benefits where UP/SP has retained traffic in the face of this powerful competition from BNSF. Confidential Appendix C contains some 50 specific examples. The Board would not have wanted UP/SP to pull its punches -- and UP/SP has not done so. Again, these many instances of rate, service and equipment improvements for shippers over the pre-merger status quo are proof that UP/SP-BNSF competition is actually stronger than the UP-SP competition that preceded it.

A prime example is Geneva Steel in Geneva, Utah, by far the largest single "2-to-1" shipper. In May, after intense competition involving many rounds of bidding, UP secured a 15-year contract for 99% of Geneva's business to and from UP points and competitive junctions.[21/] The ultimate contract brought Geneva major rate savings and other benefits even compared to the contract that it entered into with UP in 1996 in anticipation of the merger.

Geneva in fact did significantly better than the so-called "lowball" SP rates that it expressed concern during the merger case that it might lose. The new contract covers taconite from Minnesota -- for which the merger and BNSF's Central Corridor trackage rights produced two much shorter single-line routes -- as well as outbound steel, metallurgical coal and coke from Eastern points, coal from Colorado, imported coke from Richmond, California, and inbound limestone and scrap. In competing for Geneva's business, UP/SP and BNSF both offered large rate reductions and heavy investments in

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[21/] Geneva Steel's volumes are so large that the Geneva traffic remaining available to BNSF will be substantial. Geneva Steel's verified statement estimates those volumes at 13,000 cars per year, and indicates that Geneva plans "to offer to the BNSF as much competitive traffic as is available." Still more traffic will be available to BNSF if UP/SP does not meet the stringent service requirements in the contract.

equipment. BNSF offered investment competition that SP never could have, and both systems offered a wider range of single-line service, shorter routes, better rates and better equipment supply than either UP or SP could have before the merger. For details of the Geneva Steel competition, see Geneva's verified statement and Confidential Appendix D.

Other examples of rate and service benefits that UP/SP "2-to-1" shippers have received as a result of strong BNSF competition, as detailed in Appendix C, include new contracts on improved terms, or broad rate reductions, for:

- Many Gulf "2-to-1" chemical manufacturers.
- Shippers of grain and grain products.
- California food products shippers.
- Nevada barites producers.
- Utah salt producers.
- Utah petrochemicals shippers.
- Shippers of Arkansas building supplies.
- A wide range of manifest and intermodal traffic moving via New Orleans.
- Louisiana carbon black manufacturers.
- Shippers to and from Mexico.
- Intermodal shippers.
- Texas aggregates shippers.

Shipper verified statements provide further confirmation:

- Albert City Elevator states that "BNSF's aggressive pricing via Brownsville and Corpus Christi-Tex Mex has led UP/SP to reduce rates for Mexican grain movements by $250-$400 per car," and "competitive pressure from BNSF has caused UP to waive penalties for a failure to ship grain to Mexico when UP had issued a permit for such movements."

- Bayer indicates that the "increased competition" provided by BNSF for its business at its plant in Eldon, Texas, has resulted in lower rates for traffic shipped via UP/SP, as well as for traffic shifted to BNSF.

- 3M, a major "2-to-1" shipper at Little Rock, describes several contracts that UP/SP has won at "more favorable rates" in intense competition with BNSF (as well as business captured by BNSF). 3M stresses that "BNSF's regular daily train service on the Houston, TX to Memphis, TN line" has made it competitive for 3M's business. 3M also reports that, spurred by BNSF competition, UP/SP has "steadily improved" the quality and quantity of equipment supplied.

- Dow Chemical reports that BNSF bid on a 350-carload-per-year movement of calcium chloride from Ludington, Michigan, to the "2-to-1" point of Opelousas, Louisiana, and "UP/SP responded by agreeing to a significant rate reduction in order to retain the business for three years." As a result, "Dow has benefited from the merger-conditioned competition between UP/SP and BNSF."

*"2-to-1" Rates.* Still further proof of the effectiveness of BNSF competition for "2-to-1" traffic can be seen in the fact that average UP/SP rates[22] for "2-to-1" traffic declined in the six months following the merger compared to the same period a year earlier. See Confidential Appendix E.

Note, too, that this analysis reflects only the "2-to-1" traffic that UP/SP handled in the post-merger period, compared with the overall average rate for UP and SP in the pre-merger period. Post-merger rates for the entire universe of "2-to-1" traffic, including the traffic handled by BNSF, undoubtedly fell even more, given the many movements that BNSF captured by rate decreases. Furthermore, the data do not reflect substantial future rate decreases provided for in contracts that UP/SP has signed post-merger to retain traffic in the face of BNSF competition.

*Build-In Condition.* The CMA agreement, as augmented by the Board's merger approval decision, preserved shippers' pre-merger opportunities to build in from SP points to UP points, and vice versa, and thereby obtain rail competition. Though no such build-ins have yet occurred in connection with the BNSF rights, this condition is already having a significant competitive effect, as described in Confidential

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[22] All average rate figures herein are computed as total revenue (net of allowances) divided by total ton-miles for the particular periods and commodities at issue.

Appendix F. The Dow Chemical verified statement confirms that the condition has worked "to maintain at least the competitive balance that existed prior to the merger."

*Transload Condition.* The BNSF settlement agreement permitted BNSF to serve existing and new transloading facilities at "2-to-1" points. The Board's merger approval decision also gave BNSF the right to serve new transload facilities on all BNSF trackage rights lines.[23/] This condition, too, is proving effective. For example, BNSF is handling via transloading facilities that SP had operated in Salt Lake City soda ash from the UP-exclusive Green River area. BNSF is also handling steel to a new transload in Salt Lake City, and has competed for a variety of other traffic movements with transloading proposals. Details are in Confidential Appendix G.

*New Industries Condition.* The BNSF settlement agreement permitted BNSF to serve new industries at "2-to-1" points. The CMA agreement extended this right to SP-owned BNSF trackage rights lines, and the Board's merger approval decision expanded it to all BNSF trackage rights lines. Again, experience is showing that this condition is effective. BNSF is already serving a significant new Total Petroleum facility in Grand Junction, Colorado, on the overhead portion

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[23/] The applicants have sought judicial review of aspects of this condition and the new industries condition discussed immediately below.

of its trackage rights on the DRGW east-west mainline; is serving a major new Pilgrim's Pride feed mill near Tenaha, Texas, on the Houston-Memphis trackage rights line; and has successfully bid for large volumes of traffic from a new iron carbide facility in Corpus Christi. And BNSF successfully competed to attract a major new industry to the trackage rights lines in Nevada, against UP/SP proposals for a different site. Details are in Confidential Appendix H.

*"1-to-2" Shippers.* Special, additional competitive benefits have been realized by shippers on the Iowa Junction-Avondale line that was sold to BNSF. As a negotiated "quid pro quo" in the settlement, shippers on this line that had formerly been exclusively served by SP gained service from both BNSF and UP/SP. Substantial rate reductions have resulted, as detailed in Confidential Appendix I and in the verified statement of the Louisiana & Delta Railroad.

*BNSF Single-Line Service in I-5 Corridor.* Finally, a further extremely significant pro-competitive "quid pro quo" aspect of the BNSF settlement agreement was the sale to BNSF of the Keddie-Bieber line, which, together with BNSF's trackage rights from Keddie to Stockton, links up the BNSF system on the West Coast and creates a second single-line rail alternative all up and down the I-5 Corridor between the Pacific Northwest and the Pacific Southwest. The establishment of two new single-line rail alternatives in the

I-5 Corridor, together with the proportional rate arrangement, will bring to this region an enhancement of competition that is entirely without precedent in any rail merger.

As already noted, BNSF has indicated it will close the Keddie-Bieber line sale and begin operations on July 15. BNSF is already establishing transload centers and new rate structures throughout the Far West to exploit its new single-line capability. New BNSF transload centers have been opened in Phoenix and the Los Angeles Basin, and BNSF has been including trucking and reload charges in new, lower through rates aimed at undercutting UP/SP rates. BNSF has already entered into significant long-term contracts in anticipation of the Keddie-Bieber line sale that bring major rate benefits to shippers, and UP/SP has responded with its own rate reductions. The verified statement of Birmingham Steel, which moves 2,000 carloads of rebar annually from Seattle to California, provides an example:

> "Recently both UP and BN/Santa Fe submitted bids based on single-line service on the I-5 Corridor. We gave the bulk of the business to BN/Santa Fe, with the remainder to UP. The competing bids we received allowed us to negotiate a rate discount of close to 30 percent, an amount that is very significant for Birmingham Steel. This reduction has been very important in allowing us to stay in the market and compete with steel producers located in California, Arizona, and Mexico."

Further customer-specific details concerning the new I-5 Corridor competition that is already occurring are set forth in Confidential Appendix J.