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**Sheet 39**

**Joint MP-SP Train Order and CTC Office – Beaumont**

Date: Jan 19

**Form 29405**

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- 23
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**Date:** June 16 1997

**Form:** 29406

**Columns:**
- Columns 1-11: ZONE USED
- Column 12: REMARKS

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| G 4237 | RO         | 10:66                  |                  | 12:10 PM   | 12:10 PM    | SSW  | SSW | 108108108 | LOC 1: Rock in Td 76, 12118 |
| SW 9760 | RO         | 57                     |                  | 12:11 PM   | 12:11 PM    | WEST | COST | 57 59     | Lane F By 117 km |
| PX 2891 | RO         | 4                      |                  | 9:31 AM    | 9:31 AM     | AST  | WNS | 6 6 6     | Lane E By 117 km |
| S 8190 | RO         | 57                     |                  | 9:35 AM    | 9:35 AM     | AST  | WNS | 6 6 6     | Lane E By 117 km |
| SJ 7246 | RO         | 5                      |                  | 9:35 AM    | 9:35 AM     | AST  | WNS | 6 6 6     | Lane E By 117 km |
| UP 7180 | RO         | 20                     |                  | 3:12 PM    | 3:12 PM     | WNS  | U VNS | 25 16     | HAC 18 335 3 0352689685 |
| SP 7143 | RO         | 6                      |                  | 3:21 PM    | 3:21 PM     | TP  | YD  | 8         | 135 7 2 338 9 |
| TF 8110 | RO         | 105                    |                  | 3:55 PM    | 3:55 PM     | TP  | YD  | 107       | P217 5 F 408 P194 |
| SP 7742 | RO         | 3 9                    |                  | 4:10 PM    | 4:10 PM     | TP  | YD  | 2 3       | Heg 3 408 1465 025 701 |
| UP 3999 | RO         | 40                     |                  | 4:30 PM    | 4:30 PM     | TP  | YD  | 2 3       | Heg 3 408 1465 025 701 |
| SP 7699 | RO         | 16                     |                  | 5:55 PM    | 5:55 PM     | TP  | YD  | 17 17     | Heg 3 408 1465 025 701 |
| SP 4810 | RG          | 3                      |                  | 5:26 PM    | 5:26 PM     | TP  | YD  | 9 9       | Heg 3 408 1465 025 701 |
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| SP 7822 | RO         | 122                    |                  | 5:35 PM    | 5:35 PM     | TP  | YD  | 124       | Heg 3 408 1465 025 701 |
| UP 5020 | RO         | 97                     |                  | 5:40 PM    | 5:40 PM     | TP  | YD  | 99 99 Aid 1008 | Heg 3 408 1465 025 701 |
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### Joint MP-SP Train Order and CTC Office - Beaumont

**Date:** Jan 8 1997

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**Date:** January 7, 1991

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UTU TRAFFIC REROUTE REPORT

TRAIN ID LSFCH025

DATE 3-19-97

ENGINE #C495515, UP3706, UP9247

CONDUCTOR Ehlbrick

ENGINEER Morris

TRAIN TYPE Empty Potash

ON DUTY TIME 10:15 AM

LOADS 0 EMPTYS 70 TONS 2160

ENGINEER PROviso

LENGTH 4314

R.R. REROUTED FROM SPCS

TIME OF REROUTE 7:15 PM

R.R. REROUTED TO UP(CNW)

TRAIN ORIGINATED AT Bloomington

TERMINATED AT PROviso

LOCATION OF REROUTE PROviso

OTHER SPECIFIC DETAILS Took empty Potash train to Joliet, cut on Metra Rock Island at 2:40 PM. Then got on F&B at Grand Trunk Tower at 5:15 PM. Took F&B to to CNW. Arrived Proviso at 7:15 PM. Took train down #19 main to number 9 yard. Tied train down in #1 track in yard #9 at 9:30 PM then deadheaded back to the B&O. Tied up at 11:00 PM.
UTU TRAFFIC REROUTE REPORT

TRAIN ID 1CHSF P-25 DATE 3-25-97
ENGINE UP9247, UP3706 CONDUCTOR M.A. WEPPRECHT
CNW 5515 ENGINEER B.F. RUEHL, PILOT CHARLIE TURNER
TRAIN TYPE Potash ON DUTY TIME 4:00 pm
LOADS 7O EMPTYS 0 TONS 9171 LENGTH 4355 w/f
R.R. REROUTED FROM BRC YARD R.R. REROUTED TO PROVISO YARD
LOCATION OF REROUTE 20M TIME OF REROUTE
TRAIN ORIGINATED AT TERMINATED AT SPRINGFIELD, IL.
OTHER SPECIFIC DETAILS ON DUTY BRC AT 4:00P, DEADHEAD TO PROVISO, WAIT TILL 8:45P TO DEPART.
## HOURS OF SERVICE AND TRAIN REPORT

<table>
<thead>
<tr>
<th>PLACE OF STATION NUMBER</th>
<th>DURATION OF DELAY</th>
<th>ENGINEER'S SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>L</td>
<td>7:00 - 6:30 150</td>
<td>99</td>
</tr>
<tr>
<td>RC</td>
<td>5:30 - 6:30 100</td>
<td>Deadhead to Proviso</td>
</tr>
<tr>
<td>8:00</td>
<td>6:30 - 8:45 215</td>
<td>WHIT 208</td>
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<tr>
<td>2nd St</td>
<td>10:15 - 11:30 15</td>
<td>W &amp; T traffic</td>
</tr>
<tr>
<td>12th Ave</td>
<td>10:00 - 12:00 25</td>
<td>Traffic</td>
</tr>
<tr>
<td>5th Ave</td>
<td>13:00 - 3:00 135</td>
<td>Signal</td>
</tr>
<tr>
<td>Jewett</td>
<td>4:00 - 5:00 100</td>
<td>Back up more</td>
</tr>
</tbody>
</table>

### FULL EXPLANATION OF CAUSE AND DELAYS

- 7:00 - 6:30: Wait for material.
- 5:30 - 6:30: Deadhead to Proviso.
- 6:30 - 8:45: WHIT 208.
- 10:15 - 11:30: W & T traffic.
- 10:00 - 12:00: Traffic.
- 13:00 - 3:00: Signal.

IHB would not handle #4 for J. Richards.

---

4:00 - 5:00: Back-up more.

---

8:45 - 9:00: Switch 10 to lockport (search by Charlie Turner), lockport to Bloomington.

---

Engineer's Signature: [Signature]

Conductor's Signature: [Signature]
| TRAIN-ID   | 9786SF  
| POOL      | 95/97  
| CALL DATE AND TIME | 03/25/97 0400  
| DIVISION  | SRCIL  
| TERMINAL DEPARTING | CHICAGO  
| SCHEDULED TO DEPART |  

**IF DEATH HEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINATION AND SVC**

| WORKER NAME | EMP-SSA-HBR TURN | CALL DUTY DEAD TIME DATE 
|-------------|-----------------|-------------------------
| RX ROHLFS   | 360-58-3298 BC134 | 1403 0325 1600 0326 0400 0230 |
| RX MA WEPPRECHT | 319-50-5155 BC136 | 1403 0325 1600 0326 0400 0230 |

<table>
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<tr>
<td>LOADS:</td>
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<tr>
<td>EMPTIES:</td>
<td>TONS:</td>
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**NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT, THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY.**

UP 9247
UP 3706
CMW 5515
70X0 9171 4355 W/E
## Hours of Service and Train Report

**Ain No.:** SFMP - 28  |  **Engine No.:** 5515  |  **Engineer:** Harris  |  **Date:** 5-4-77

All delays must be shown and divided between causes.

<table>
<thead>
<tr>
<th>Place</th>
<th>Station Number</th>
<th>Duration of Delay</th>
<th>Full Explanation of Cause and Delays</th>
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</thead>
<tbody>
<tr>
<td></td>
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<td>Time Begun</td>
<td>Time Ended</td>
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<tr>
<td>BLT J</td>
<td></td>
<td>1015 A</td>
<td>12 E</td>
</tr>
<tr>
<td>BA Calo</td>
<td></td>
<td>2:40 B</td>
<td>110 P 1:30</td>
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<tr>
<td></td>
<td></td>
<td>3:40 T</td>
<td>5:35</td>
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<td>7:15 P</td>
<td>9:50 P 2:35</td>
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<tr>
<td>Bne</td>
<td></td>
<td></td>
<td>1100 P</td>
</tr>
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**Instructions:**
May 5, 1997

Brenda J. Council, Senior Counsel
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
FAX (402) 271-5610

Dear Brenda:

On the SPCSL, UTU General Chairperson C. W. Downey was advised by phone last week by Mr. Richard McInally (?) of Timekeeping in Omaha that UP is going to implement a new timekeeping system (computer) next month. UP has sent a handful of conductors to computer training, and some of the more senior conductors have complained that UP is trying to squeeze two (2) years of training into two (2) days.

The UP has moved payroll and General Chairperson Downey personally has been short for two pay periods in a row, the most recent being a $661.99 shortage (see enclosed voucher). Many UTU represented employees have complained of shortages and were told UP policy was not to afford them vouchers, according to General Chairperson Downey.

Rule 8(c) of the SPCSL Agreement states: - "Paydays"

"(c) Vouchers for pay shortages not due to the fault of the employee which are equal to one (1) basic days pay or more shall be issued upon request, with payment to be made (postmarked or delivered) within forty eight (48) hours of the request, excluding Saturdays, Sundays, and holidays."

In my view this is either a violation of the "usual manner" under Section 3 First(i) of the Act [45 U.S.C. § 153 First(i)] and/or once again, early merger implementation.

Please advise.

Very truly yours,

Clinton J. Miller, III
General Counsel

Enclosure

cc: R. D. Meredith, UP Gen. Dir.-Employee Relations Planning (Fed. Ex.) (w/encl.)
C. W. Downey, General Chairperson (FAX) (w/out encl.)
Brenda J. Council, Senior Counsel  
Union Pacific Railroad Company  
1416 Dodge Street  
Omaha, Nebraska 68179  

May 16, 1997

Dear Brenda:

This is a supplement to my April 17, 1997 letter to you regarding the carrier's early implementation of the merger without implementing agreement(s). This information which relates to the matters discussed in my previous letter was recently brought to my attention.

First, operating officers in the El Paso Terminal have initiated a new practice for handling interchange between the Southern Pacific and the Union Pacific. Specifically, the historical application of the clear and unambiguous language of the interchange agreement(s) covering movements between SP and the UP has provided for "reciprocal interchange," i.e., the SP delivers to the UP and the UP delivers to the SP. To date, the liability of the Carrier is escalating based on "penalty claims" filed by the SP employees who are instructed to go to the UP yard and gather cars and then move the same cars to the SP yard. In a disingenuous attempt to circumvent the current agreement, local officers have posted bulletins designating all tracks in both yards as interchange tracks, which is permissible under the agreement. However, this does not change the provision of the agreement which provides that the SP will deliver to the UP and the UP will deliver to the SP. This type of arrangement is an obvious attempt by the carrier to prematurely implement the merger without benefit of an implementing agreement required by the New York Dock conditions.

Also, on the SPCSL, UTU General Chairperson C. W. Downey was advised by phone last week by Mr. Richard McInally (?) of Timekeeping in Omaha that UP is going to implement a new timekeeping system (computer) next month. UP has sent a handful of conductors to computer training, and some of the more senior conductors have complained that UP is trying to squeeze two (2) years of training into two (2) days. The UP has moved payroll and General Chairperson Downey personally has been short for two pay periods in a row, the most recent being a $661.99 shortage (see enclosed voucher). Many UTU represented employees have complained of shortages and were told UP policy was not to afford them vouchers, according to General Chairperson Downey.

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In my view this is either a violation of the "usual manner" under Section 3 First(i) of the Act [45 U.S.C. § 153 First(i)] and/or once again, early merger implementation, as I stated in my earlier correspondence to you, with respect to which I have still not received a reply. Moreover,
recently General Chairperson Downey reported that an employee was noticed for disciplinary investigation over this computer training. I am most anxious to receive a reply with respect to that matter, which I discussed earlier in the week with Dick Meredith.

Also, related to premature implementation, it has also been brought to my attention that cars are being moved via over the road trains and also being switched and then delivered to an industry in the El Paso Terminal containing the commodity "copper concentrate" (Hazardous Commodity Code 4966326). All such cars appear to originate "west of El Paso." In transit, these cars have dropped copper concentrate in the track bed of the mainline, along the tracks on the main line, and in and around tracks in the El Paso Terminal. In addition, the material which is dropped on the property of this railroad presents a walkway hazard, becomes airborne when employees get on or off moving equipment, becomes part of the soil and substrate in periods of rain, is inhaled and ingested by the employees, and also comes in contact with the skin of the employees. The significant quantities of the commodity cause it, when airborne, to come in contact with the on and off duty points of the employees, the lunch areas, inside of locomotives, and automobiles. As part of Finance Docket No. 32760, the Union Pacific was required to file an Environmental Impact Statement (EIS) and further to supplement the same periodically to inform the Surface Transportation Board (STB) of ongoing compliance. In light of this requirement, this dangerous situation should be addressed and remedied as soon as possible.

These incidents, in addition to the matters addressed in my previous letters, must cease. As I have mentioned, I will have to consider filing for a cease and desist order at the Surface Transportation Board if these incidents continue to occur. I will need a written response in fairly short order to this and my previous correspondence, or else we must prepare a request for such an order because of the legitimate inquiries and demands of the General Chairpersons.

Sincerely,

Clinton J. Miller, III
General Counsel

cc: C. L. Little, International President
    B. A. Boyd, Jr., Assistant President
    R. W. Earley, Vice President-Administration
    P. C. Thompson, Vice President (Fax)
    M. B. Futhey, Vice President (Fax)
    C. L. Crawford, General Chairperson (Fax)
    L. W. Parsons, General Chairperson (Fax)
    C. W. Downey, General Chairperson (Fax)
    D. L. Hollis, General Chairperson (Fax)
    R. J. Rossi, General Chairperson (Fax)
    W. E. Biedenharn, Director-Membership Services
    R. D. Meredith, General Director-Employee Relations Planning (Fax)
July 17, 1997

Mr. G. N. Garrison
Superintendent
Union Pacific Railroad
24125 Aldine-Westfield Road
Spring, Texas 77373

Dear Mr. Garrison:

I would like to communicate to you in the strongest terms that this office does not agree with your officer’s actions of the last two weeks. Your officers are insisting on initiating an early implementation of the UP/SP Merger Implementing Agreement. I have, in past letters, and will in this present letter give examples of your officers flagrant violations of the STB’s restriction on merging these two railroads prior to there being an implementing agreement. The sad part of this is, as bad as you want this implementing agreement, you are allowing your officers to take action that is in danger of killing any chance this agreement has of being ratified.

I have received reports that the transfer job out of Lloyd Yard, LHR-02, is being sent to Englewood Yard to get the automobiles for Westfield. There are jobs on the SP at Englewood that are being run Conductor Only under our UP Crew Consist Agreement. They are sending transfer jobs from Settegast Yard to Englewood Yard and being required to switch out their pick ups in the SP yard. Last weekend they were using UP crews on SP trains out of Englewood Yard in the directional flow eastbound. This was a flagrant violation that almost kept the Organization from agreeing with the directional flow temporary agreement. I told Mr. Olin during negotiations that the field officers could not and would not live up to the agreement which does not allow mixing and matching UP/SP crews and trains. He assured me that the field officers could restrain themselves. Mr. Malone assured me the field officers would restrain themselves. Both of them were wrong.

I have requested one time already that UTU International file a “cease and desist” order with the STB over this division’s violations of the STB’s restrictions on merging these railroads.
Now, the violations are occurring so fast and in such numbers it is hard to keep up with them. I am forwarding to the International office a copy of this letter again requesting they take action with the STB to stop your officers since apparently you are unable to do so. There is no sense in allowing your officers to kill an agreement that would be beneficial to both the Carrier and the Organization. If this agreement fails to ratify, then it will just be that much longer before the Carrier can realize the benefits of this merger.

I must insist that you take some action to control your officers. I ask that you advise this office of what actions you are taking and what actions are being required of your officers as it relates to adherence to the STB restrictions. I ask for your answer at your earliest opportunity.

Sincerely,

Larry W. Parsons, Sr.
General Chairman

LWP/djm

cc: Mr. Clint Miller, Chief Counsel, UTU
    Mr. Charles Malone, General Manager-UP
    Mr. A. T. Olin, General Director-UP
    Mr. Mark Payne, Superintendent-UP
    All Local Chairpersons, UTU/Locals 524, 756, 937, 1205, 1458
July 19, 1997

Mr. A. T. Olin  
General Director Labor Relations Operating South  
Union Pacific Railroad  
1416 Dodge Street, Room 332  
Omaha, Nebraska 68179

Dear Mr. Olin:

There have been further violations of the temporary agreement dated June 24, 1997, under which directional flow traffic was allowed between Houston and Beaumont.

UP crews are still being used on SP trains. As pointed out in several discussions and letters this should not be allowed and cannot be tolerated.

The Union Pacific is sending HB&T crews from Settegast Yard and requiring them to do switching on their pickups before hauling what is supposed to be transfer work back to Settegast. I also understand that the Carrier has instituted Conductor Only Hump Yard assignments at Englewood Yard on the SP, I suppose under my Crew Consist Agreement, but that is a violation to be handled by Mr. Rossi's Committee.

Our temporary agreement stated our UP agreements would be adhered to. There was particular discussion that DeQuincy crews, in exchange for permitting this agreement to be implemented, would be paid Belt Time or ITD/FTD in line with our UP agreements. You and I discussed this and agreed that this item and the protective periods were the two main selling points to get this agreement signed. Needless to say, Timekeeping is not paying one penny of either Belt Time or ITD. These crews are running all over Houston just as we agreed they would and just as we discussed, it is taking long hours to get off the UP and through Englewood Yard. This is causing an increase in ITD. We gave you an agreement and you need to live up to what you promised in exchange for that agreement. Two employees to check on this are C. M. LaFargue and R. L. Redden.
July 19, 1997

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Union Pacific Railroad
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Omaha, Nebraska 68179

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The Carrier is running the LHR-02, which is a transfer hauling job from Lloyd Yard at Spring, down to and out on the SP railroad. They are sometimes going as far as Englewood Yard to get their cars. This crew is not even covered by the temporary agreement of June 24, 1997 and definitely should not be going on the SP for anything!

Another problem is a conflict between Ms. Alexander in your office and my Local Chairman J. P. Clem concerning the Carrier’s blanking of certain assignments on the Baytown Sub. The Organization agrees that the Carrier has the right to blank assignments as long as they do it in the prescribed manner under our agreements. The Carrier is supposed to give 24 hour notice of a job assignment being blanked. In times past, we have given a certain amount of leeway in the application of this rule and allowed the notice to be valid as long as the Carrier notifies the crew prior to their tying up the day before the one being blanked. The Carrier should be able to tell 12 hours in advance when an assignment does not need to work. However, when an employee shows up for work and is held for several hours before the Carrier releases them, the Carrier has lost the option to "blank" the job. One thing to remember is these men sometimes have performed service on the ground but are also Footboard Yardmasters and during the wait for the Carrier to find an engineer have marked lists, PICL’ed cars, directed traffic, and other parts of their assignments preparatory to switching cars with the engineer. These are items they would normally do whether they had an engineer or not. I would also like to point out that these assignments are covered by the protective period under the temporary agreement and it is probably a moot point to blank the job since the Conductor has protection under items 9 and 10 anyway.

Please research these incidents and advise this office at once of the handling and resolution of them. These are the exact items and the type of items that concerned me during discussions of the allowance of the temporary agreement. These are the very incidents that you assured me either would not happen or that you would stop immediately if they did. They have now happened and I am holding you to your promise to stop them.

Sincerely,

Larry W. Parsons, Sr.
General Chairman

LWP/djm

cc:  Mr. G. N. Garrison, Superintendent, UPRR
     Mr. Charles Malone, General Manager, UPRR
     Mr. C. L. Crawford, General Chairperson, UTU
     Mr. R. J. Rossi, General Chairperson, UTU
     Mr. C. J. Miller, III, General Counsel, UTU
Mr. M. B. Futhey, Jr., Vice President, UTU
Mr. P. C. Thompson, Vice President, UTU
Local Chairpersons/Secretaries: UTU/524, 756, 937, 1205 & 1458
Mr. A. L. Polvadore, Local Chairperson, UTU
Mr. L. L. McBride, Local Chairperson, UTU
Mr. D. D. Dodsen, Local Chairperson, UTU
July 19, 1997

Mr. A. T. Olin  
General Director Labor Relations Operating South  
Union Pacific Railroad  
1416 Dodge Street, Room 332  
Omaha, Nebraska 68179

Dear Mr. Olin:

On July 17, 1997 I had a conversation with Superintendent Gregg Garrison in reference to my letter of that date listing several violations that are occurring in the Houston area pertaining to the UP/SP Merger. In the course of the discussion, we came to the item concerning the use of DeQuincy UP crews being used to man SP trains out of Englewood Yard when operating eastbound out of Houston under the temporary agreement allowing directional traffic. You can imagine my surprise when I was told that I had nearly shut down the area with the threat of a strike if the Carrier had used any Officer crews on the Fourth of July weekend. You can imagine my further surprise when Mr. Garrison informed me that he was under instructions from Labor Relations that this use of UP crews was still to be done prior to the use of such officer crews.

I am sure you will remember our conversations on July 2nd which covered this same topic. You and I both know that I was very adamant that the temporary agreement was explicit in it’s restriction on the use of UP crews to man SP trains and visa versa. I was very emphatic that the members of my Lodge were upset with me to a certain extent for signing the temporary agreement and that the only reason I had done so was the fact that I had the personal assurances of both yourself and General Manager Charles Malone that this mixing and matching of crews would not happen!! You and I, in our conversations of July 2nd, discussed at length about the BLE wanting to use craft crews in preference to officer crews and you expressed surprise that I was taking a different tack. I explained to you that this sort of action by the Carrier in direct contradiction to what is allowed in our temporary agreement would jeopardize not only this temporary agreement but the proposal out for ratification on the Houston Hub itself.
Mr. Garrison also expressed surprise by my insistence on the Carrier using officer crews and assured me that he was under instructions from all of his superiors (I can only assume this includes Mr. Malone) to use officer crews only in the last ditch circumstance. Someone is lying in UP management, and I want to know who. I am getting sick and tired of being run in circles between your group of Labor Relations officers and field officers under Mr. Malone. There seems to be either absolutely no communication between these two groups or else there is total collusion between the two groups to play games of “who me” or “I didn’t know that” in an effort to circumvent the various agreements. I was plain to you and Mr. Malone during talks to establish this temporary agreement that our biggest fears were you would mix and match crews and that you would run crews past Beaumont on different railroads. I was plain to you in our conversations on July 2nd that you could do anything you wanted to with the BLE or officer crews but I wanted you to do what you and Mr. Malone promised me and adhere to what the temporary agreement required. As you know, the conversations concerning the temporary agreement were on a conference call which included UTU Vice Presidents Futhey and Thompson and Mr. Malone. This conversation was being done under the threat of General Counsel for the UTU Clint Miller filing with the STB for a “cease and desist” order because of threats by the Carrier to implement the temporary agreement without our consent.

I must insist that instructions be given to the Carrier officers in the field and that some proof of this be shown to me so that I can be comfortable that you and the carrier are going to live up to the agreements that have been made and will live up to the agreements that we are attempting to make. We have attempted for the last two years or more to convince this Carrier they were desperately short of employees. I do not know nor am I responsible for what has occurred on the SP. Nor am I responsible for any crew shortages on the SP. That shortage and crew supply should be handled with Carl Crawford and his Committee. When you violate the agreement and use my crews on SP trains, it simply runs my Committee out of men and what follows is an appropriate increase in the agreement violations such as those that occur with the RT46 Pool both in Houston and Livonia. I need to know what actions are being taken as soon as possible so that I can accurately assess what actions I need to take to protect my agreements.

Sincerely,

Larry W. Parsons, Sr.
General Chairman

LWP/djm

cc: Mr. G. N. Garrison, Superintendent, UPRR
    Mr. Charles Malone, General Manager, UPRR
Mr. C. L. Crawford, General Chairperson, UTU
Mr. R. J. Rossi, General Chairperson, UTU
Mr. C. J. Miller, III, General Counsel, UTU
Mr. M. B. Futhey, Jr., Vice President, UTU
Mr. P. C. Thompson, Vice President, UTU
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Mr. A. L. Polvadore, Local Chairperson, UTU
Mr. L. L. McBride, Local Chairperson, UTU
Mr. D. D. Dodsen, Local Chairperson, UTU
July 03, 1997

Clinton J. Miller III
General Council
14600 Detroit Avenue
Cleveland, Ohio 44107

Dear sir:

For your review documents showing that the Union Pacific is using Southern Pacific crew in areas that they do not have the right to do so at this time.

The first problem area is Yermo, California, the away from home terminal for UP LA freight crews. The SP crews are handling trains from Yermo to Mojave. These are trains that UP crews would normally handle.

The second problem area is LA/San Pedro. San Pedro is a branch line that runs twenty miles from LA to the ports at the harbor. The SP crews are handling unit coal trains and intermodal trains that UP crews normally handle. They are handling these trains to and from the port facilities with no apparent pattern.

These issues are difficult to track as the Up does not show these moves on the UP computer system as they show all their other trains. They are doing a very good job of hiding these trains and separating the SP crews from the UP crews.

Enclosed are documents showing this is happening. Of special note is copy of instructions issued by the carrier as to how they want the crews to be co-mingled at the San Pedro area. We have no agreements that would allow for the carrier to operate crews this way.

Yours for handling as you deem necessary.

Sincerely,

J.P. Walker
Road Local Chairman
UTU #1422
16246 Annatto Court
Chino Hills, Ca. 91709

cc: R.E. Carter
JUL 10 97 16:06 FROM HOBART TO PARAMOUNT PAGE 882

4. CSRLA-17 | IVANPAH 6/17/97 0923

5. CSVLB-07 | ON SPOT 6/15/97
CSVLB-11 | ON SPOT 6/17/97 1200, BAY RIDGE=15 TO UPFLA

2. CSVLB-11 | WILL RUN OUT OF YERMO 6/17/97 VIA SP HOJAVE SUB CALL THRU

3. CSVLB-11 | WILL RUN OUT OF YERMO 6/17/97 VIA SP HOJAVE.
4. CSRLB-12 | YERMO N/P
5. CSVLB-06 | YERMO N/P

6. CSVLB-12 | IVANPAH 6/17/97 1312P
7. CSRLB-13 | BASIN 6/17/97 0606P

LONG TERM NOTES

1. DOLORES YARDMASTERS IT IS YOUR JOB TO READ AND UNDERSTAND THIS REPORT. IF YOU NEED HELP WITH IT TALK TO KENT OR BILL. IT SHOULD BE UPDATED BY THE DOLORES TRAINMASTER TWICE DAILY.

2. IT IS CRITICAL THAT DOLORES, UPFLA AND YERMO INTERFACE ON THE MOVEMENT OF ALL COAL TRAINS. THE DOLORES YARDMASTER WILL BE HELD RESPONSIBLE FOR CALLING TRAINS OUT OF UPFLA. THAT MEANS THAT:

A. UPFLA YARDMASTER PLEASE CALL DOLORES YARDMASTER AND LET HIM KNOW WHEN A COAL LOAD IS GETTING CLOSE, WHAT THE SYMBOL IS AND WHEN IT WILL ARRIVE AT UPFLA. DOLORES YARDMASTER PHONE # IS 8-490-7912.

B. DOLORES YARDMASTER CAN THEN CHECK THIS TURNOVER AND DECIDE WHEN TO CALL CMS FOR A CREW TO TAKE THE TRAIN FROM UPFLA TO WHEREVER IT NEEDS TO GO. IF THE THE DOLORES YARDMASTER IS NOT SURE, THEN CHECK WITH A TRAINMASTER AT DOLORES TO GET IT CLEAR. CMS PHONE # 8-997-3245 FOR UP CREWS.

1. IF THERE ARE NO UP CREWS RESTED IN TIME THEN USE AN SP CREW. IF YOU DO USE AN SP CREW, THEN BRING THE TRAIN OUT OF UPFLA VIA REDONDO.

2. IF YOU USE A UP CREW THEY NEED A THREE (3) HR. CALL, AND WILL RUN OUT OF UPFLA VIA HOBART. CALL UP CREWS WITH A BRAKEMAN.

C. DOLORES YARDMASTER WILL ALSO PATCH (DOG CATCH) ALL TRAINS THAT ARE SOUTH OF REDONDO OR HOBART. IF YOU NEED TO PATCH A UP CREW IT NEEDS TO BE DONE APPROX. 5 HRS BEFORE CREW IS ON THE LAW. 3 HR CALL PLUS 2 HRS TRAVEL TIME TO DELIVER NEW CREW AND RETURN DEAD CREW TO UPFLA.
1. WHEN A TRAIN IS HEADED BACK
2. WHAT TIME THE CREW IS DEAD ON THE LINE
3. WHAT THE MT SYMBOL IS.

<table>
<thead>
<tr>
<th>PHONE NUMBERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOLORES 8-490-7012</td>
</tr>
<tr>
<td>CMS-UP 8-997-3252</td>
</tr>
</tbody>
</table>

1. SP110/SP122/CNW6675 ARE TO BE USED TO SHUTTLE TRAINS
LONG TERM NOTES

1. DOLORES YARDMASTERS IT IS YOUR JOB TO READ AND UNDERSTAND THIS REPORT. IF YOU NEED HELP WITH IT TALK TO KENT OR BILL. IT SHOULD BE UPDATED BY THE DOLORES TRAINMASTER TWICE DAILY.

2. IT IS CRITICAL THAT DOLORES, UPELA AND YERMO INTERFACE ON THE MOVEMENT OF ALL COAL TRAINS. THE DOLORES YARDMASTER WILL BE HELD RESPONSIBLE FOR CALLING TRAINS OUT OF UPELA. THAT MEANS THAT:

A. UPELA YARDMASTER PLEASE CALL DOLORES YARDMASTER AND LET HIM KNOW WHEN A COAL LOAD IS GETTING CLOSE, WHAT THE SYMBOL IS AND WHEN IT WILL ARRIVE AT UPELA. DOLORES YARDMASTER PHONE #: IS 9-490-7012.

B. DOLORES YARDMASTER CAN THEN CHECK THIS TURNOVER AND DECIDE WHEN TO CALL CMS FOR A CREW TO TAKE THE TRAIN FROM UPELA TO WHEREVER IT NEEDS TO GO. IF THE THE DOLORES YARDMASTER IS NOT SURE, THEN CHECK WITH A TRAINMASTER AT DOLORES TO GET IT CLEAR. CMS PHONE #: 8-977-3245 FOR UP CREWS.

1. IF THERE ARE NO UP CREWS RESTED IN TIME THEN USE AN SP CREW. IF YOU DO USE AN SP CREW, THEN BRING THE TRAIN OUT OF UPELA VIA REDONDO.

2. IF YOU USE A UP CREW THEY NEED A THREE (3) HR. CALL, AND WILL RUN OUT OF UPELA VIA HOBART. CALL UP CREWS WITH A BRAKEMAN.

C. DOLORES YARDMASTER WILL ALSO PATCH (DOG CATCH) ALL TRAINS THAT ARE SOUTH OF REDONDO OR HOBART. IF YOU NEED TO PATCH A UP CREW IT NEEDS TO BE DONE APPROX. 5 HRS BEFORE CREW IS ON THE LAW. 3 HR CALL PLUS 2 HRS TRAVEL TIME TO DELIVER NEW CREW AND RETURN DEAD CREW TO UPELA.
1. WHEN A TRAIN IS HEADED BACK
2. WHAT TIME THE CREW IS DEAD ON THE LAW
3. WHAT THE MT SYMBOL IS.

PHONE NUMBERS

DOLORES 8-490-7012   UPELA 8-725-2111   YERMO 8-254-1283   COAL DESK 8-436-7502
CMS-UP 8-997-3252   KAISER 310 514-2084   METRO 935-8497   LAXT

SP119/SP122/CNW8675 ARE TO BE USED TO SHUTTLE TRAINS
Track Warrant.

6002 SP DETOUR TRAINS MURRAY TO MOLKAI

7000 14 SP 798 WEST at BARSTOW CA YERMI

Track Warrant No. of / / No. of / / is/are void.

Proceed from to on trk
Proceed from to on trk
Work between and on trk

Not in effect until 

This authority expires at

Not in effect until after arrival of 
at

Hold main track at last named point.

Do not fouled limits ahead of

Clear main track at last named point.

between and make all movements

at restricted speed. Limits occupied by train.

between and make all movements

at restricted speed. Limits occupied by men or equipment.

Flag protection not required against following trains on the same track.

0 track bulletins in effect
- 5043 5045 5209 5803 5819 5838 501 500 8281 8311

Other specific instructions

Track condition messages delivered
Rain message delivered
Items marked 16 18
OK 23:45:44 Dispatcher OMR

its reported clear at By ___________________________
YERMO YARD T'JRN'OVER

2/00HR. 3
O<>-?.4-
[203x709]SVi (ISE DELAY YERM

104
408
407
405
404
403
402

CSVLB-14 NO/POWER N/WKD
AKSIA 21 N/PWR 3 B/O W/E 1 B/O E/E
CSRLA 20 N/WKD
LN57-24 NO/POWER N/WKD N/CKD
CSRL 13 NO/POWER YD AIR
2CSRLA19 WITH POWER

NO. MAIN
SO. MAIN

AKSIA13 FIL I/B FORD TRAINS

LAGGETT

********** NEW YARD **********

201
202
203
204
205
206
207
208

LZN59 24 T/S 97 CARS N/WKD N/CKD
MHKYR 22 55 CRS N/WKD N/CKD MYRA 25
MYROL-24 C/F 2215
LZN56 24 T/S 42 CARS W/K( N/CKD
MAY 24 T/S 68 CARS N/WKD N/CKD
LZN57X23 ADD PWR(HLPR) W/KD N/CKD
LZN57 25 SET N/PWR N/WKD N/CKD
MYRLA 24 C/F 2145

103
521

FR#1
FR#2

F/R Pkt

PWR STG

********** SWITCHERS AT YERMO **********

E/F SWT 2126E-2114W
W/E SWT SF7365E-3920W
W/E SW ENG GO TO F/R ON 2ND SHIFT

********** POWER NOTES **********

********** VICTORVILLE HELPERS **********

1ST HELPER 6308E-SF8254W
2ND HELPER NONE
3RD HELPER NONE

1) DUVALL/VALENTINE
2) FULKERSON/SINKO
3) PATIN/DOSSMAN

********** PHONE NUMBERS **********

ATSF HOTLINE 1-847-995-5950
CTN MECHANIC 1-909-873-3125
SP CREW CALLED 8-812-5528
SP TRK WARRANTS 8-812-5854
SP REROUTE 8-812-7748

**MOJAVE WARRANTS ATS F 1-708-995-6712**

CLBBG-21 WORKS AT YERMO!!

********** HAZARDOUS NOTES **********

********** LA-YERMO CREW (ZB CX650 RT51 W T**

01 FERRARI OK
02 ARMSTRONG OK
03 MARSHALL OK
04 LUETH OK
05 SMITH OK
06 NAVA OK
07 FERALT 2100
08 WICKS 2145
09 MALONE ???
10 FRAZIER ???
11 GREEN CIB 14 1315
12 EMPEY CIB 20 1630
13 SALAZAR ILASC 24 2000
14 ROBINSON LZN5624 2055
15 MARTIN ILAGI 24 2200
16 ??? AIAKC 25 2330

********** ADDITIONAL NOTES **********
OUTBOUND CALL SHEET

TRAIN-ID: 150AMJ 0Z
POOL: BY BAK/YERMO
CALL DATE AND TIME: 06/04/97 - 1430
DIVISION: LOS ANGELES
TERMINAL DEPARTING: BAKERSFIELD
SCHEDULED TO DEPART:

* IF DEADHEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINE DH AND SVC *

<table>
<thead>
<tr>
<th>R/</th>
<th>NAME</th>
<th>EMP-SSA-NBR TURN</th>
<th>CALL ON DUTY</th>
<th>DEAD TIME</th>
<th>DATE</th>
<th>TIME</th>
<th>DATE</th>
<th>TIME</th>
<th>HN'T</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>CK GEORGE</td>
<td>545-72-7964 MU136</td>
<td>1307 0602 1430 0603 0230</td>
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<tr>
<td>O</td>
<td>CF MACIAS</td>
<td>571-96-6011 MU138</td>
<td>1307 0602 1430 0603 0230</td>
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<td>L</td>
<td>RL SCHAEFER</td>
<td>560-44-8574 MU138</td>
<td>1307 0602 1430 0603 0230</td>
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<td>VACANT TURN</td>
<td>MU136</td>
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</tbody>
</table>

UNITS:

LOADS:  
EMPTIES:  
TONS:  
FEET:  

COMMENTS: OFFICER SPECIAL TO YERMO...DH TO BA ON ARRIVAL

**NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT, THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY.**
OUIHUI Reid CALL SHEET

TRAIN-ID: 545606APB16
POOL: BY BAK/ YEMMO
CALL DATE AND TIME: 06/16/97 - 1445
DIVISION: LOS ANGELES
TERMINAL DEPARTING: BAKERSFIELD
SCHEDULED TO DEPART:

** IF DEADHEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINE DH AND SVC **
** COMBINATION DEADHEAD & SERVICE **
** NOT MEAL NOT AVAILABLE -- BRING LUNCH **

R/
CC X NAME EMP-SSA-NBR TURN CALL ON DUTY DEAD
-- -- --------------- ------------- -------------

EN X PT GUERRERO 571-51-5721 MU137 1317 0618 1445 0619 0245
CO X BJ PRICE 568-50-6752 MU137 1317 0618 1445 0619 0245
B1 VACANT TURN MUI37
B2 VACANT TURN MUI37

UNITS:

LOADS:

EMPTY:

TONS:

FEET:

TELEMETRY DEVICE:

COMMENTS: LCRSL612, CMG SVC, D/H TO SANDBORN, P/U TAKE TO MOJAVE, D/H TO BAK, THANKS....

NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT, THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY.

IND
Train-ID: 1CCSRB 12

Pool: LA L.A.-INDIO

Call Date and Time: 06/19/97 - 1440

Division: LOS ANGELES

Terminal Departing: LOS ANGELES

Scheduled to Depart: 1440

If Deadhead is in connection with Hrs of SVC Relief, combine DH and SVC **

Combination Deadhead & Service **

Hot Meal Not Available -- Bring Lunch **

R/ X NAME EMP-SSA-NBR TURN

1 R SD COUSINO 569-58-1023 LA293 1243 0619 1440 0620 0240
2 R WL GARTH 567-62-1223 LA276 1236 0619 1440 0620 0240

Units:

Loads:

Empties:

Tons:

Feet:

Comments: Od LA, DH to E. LA-UP. Take Train to Metro Long Beach

No job is so important, no service so urgent, **

That we cannot take time to perform all work safely. **

---
OUTBOUND CALL SHEET

TRAIN-ID: 526AVAPB22
POOL: BY BAK/YERMO
CALL DATE AND TIME: 06/22/97 - 1635
DIVISION: LOS ANGELES
TERMINAL DEPARTING: BAKERSFIELD
SCHEDULED TO DEPART: 1635

** IF DEADHEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINE DH AND SVC **

<table>
<thead>
<tr>
<th>R/</th>
<th>NAME</th>
<th>EMP-SSA-NBR TURN</th>
<th>CALL ON DUTY DEAD TIME</th>
<th>DATE</th>
<th>TIME</th>
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<th>TIME</th>
<th>DATE</th>
<th>TIME</th>
<th>HAH'T</th>
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</thead>
<tbody>
<tr>
<td>EN X DA ARELLANO</td>
<td>557-60-1250 MU137</td>
<td>1513 0622 1635 0623 0435</td>
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<tr>
<td>CO X BA FENA</td>
<td>555-70-1095 MU137</td>
<td>1513 0622 1635 0623 0435</td>
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UNITS:

LOADS: |
EMPTIES: |
TONS: |
FEET: |

COMMENTS: 1 CSRLA 19 TAXI TO YERMO
TRAIN TO BA 8 HRS REST

** NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT,
THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY. **
** OUTBOUND CALL SHEET **

<table>
<thead>
<tr>
<th>TRAIN-ID</th>
<th>51BAVAPB22</th>
</tr>
</thead>
<tbody>
<tr>
<td>POOL</td>
<td>BY BAK/YERMO</td>
</tr>
<tr>
<td>CALL DATE AND TIME</td>
<td>06/22/97 1630</td>
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<tr>
<td>DIVISION</td>
<td>LOS ANGELES</td>
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<tr>
<td>TERMINAL DEPARTING</td>
<td>BAKERSFIELD</td>
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<tr>
<td>SCHEDULED TO DEPART</td>
<td>1630</td>
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</tbody>
</table>

** IF DEADHEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINE DH AND SVC **

<table>
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<tr>
<th>R/</th>
<th>CC X</th>
<th>NAME</th>
<th>EMP-SSA-NBR</th>
<th>TURN</th>
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<th>DEAD TIME</th>
<th>DATE TIME</th>
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<th>DATE TIME</th>
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<tr>
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<td>FJ PT GUERRERO</td>
<td>571-51-8721</td>
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<td>1505 0622</td>
<td>1630 0623</td>
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** UNITS: **

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</table>

** COMMENTS: **

1 CSVLB 14 TAXI TO YERMO

TRAIN TO BA 4 HOURS OFF

** NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT, **

** THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY. **

---

END
Track Warrant

3903 SP DETOUR TRAINS BAGGOTT TO MINAVE

Track Warrant No. of / / No of / / is/are void.

Proceed from ___________ to ___________ on ___________ trk
Proceed from ___________ to ___________ on ___________ trk
Work between ___________ and ___________ on ___________ trk

Not in effect until ___________

This authority expires at ___________

Not in effect until after arrival of ___________
at ___________

Hold main track at last named point.

Do not foul limits ahead of ___________

Clear main track at last named point.

Between ___________ and ___________ make all movements
at restricted speed. Limits occupied by train.

Between ___________ and ___________ make all movements
at restricted speed. Limits occupied by men or equipment.

Flag protection not required against following trains on the same track.

10 track bulletins in effect
- 5043 5045 5209 5803 5819 5830 501 500 8281 8311

Other specific instructions

Track condition messages delivered
Train message delivered
items marked 16 13
OK 23.45.44 Dispatcher OMR

Hts reported clear at ___________ By ___________
OUTBOUND CALL SHEET

TRAIN-ID: 52BAVAPB22
POOL: BY BAK/YERMO
CALL DATE AND TIME: 06/22/97 - 1635
DIVISION: LOS ANGELES
TERMINAL DEPARTING: BAKERSFIELD
SCHEDULED TO DEPART: 1635

** IF DEADHEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINE DH AND SVC **

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<tbody>
<tr>
<td>X</td>
<td>EN DA ARELLANO</td>
<td>557-60-1250</td>
<td>MU137</td>
<td>1513</td>
<td>0622</td>
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<td>0623</td>
<td>0435</td>
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</tbody>
</table>

UNITS:

LOADS:
EMPTIES:
TONS:
FEET:

TELEMETRY DEVICE:

COMMENTS: 1 CSRLA 19 TAXI TO YERMO
TRAIN TO BA 8 HRS REST

NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT,
THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY.

END
OUTBOUND CALL SHEET

TRAIN-ID: 5Z8AVADB24

POOL: BAK/BAKMO
CALL DATE AND TIME: 06/24/97 - 2020
DIVISION: LOS ANGELES
TERMINAL DEPARTING: BAKERSFIELD
SCHEDULED TO DEPART: 2020

** IF DEADHEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINE DH AND SVC **
** THIS IS A DEADHEAD TRAIN **
** HOT MEAL NOT AVAILABLE -- BRING LUNCH **

R/
CC X  NAME  EMP-SSA-NBR TURN  CALL ON DUTY  DEAD  TIME  DATE  TIME  DATE  TIME  DATE  TIME
-- -------------- -------------- -----------  ----  -------  -----  -------  -----  -------  -----  -------
EN X DA ARELLANO  557-80-1250 MU136  1855 0624  2020 0625 0820 1855 0624  2020 0625 0820
C0 X DC ROSS  376-42-5377 MU137
B1  VACANT TURN  MU137
B2  VACANT TURN  MU137

UNITS:
LOADS:
EMPTY:
TONS:
FEET:

TELEMETRY DEVICE:

COMMENTS: COMBO SCR DH TO YERMO ON CONT TIME OR 4 HRS OFF
BACK ON 2CSRLA 19, HAVE A GOOD NIGHT & A SAFE TRIP  CORRECTION

** NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT, **
** THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY. **

END
### SCHEDULED TRAIN SUMMARY... LAST 2 EVENTS

**TRAIN/JOB:** CSKTA 22 CTASK 18  
**ORIG STA:** SKYLINE UT UW/20  
**TYPE-THRU:**  
**CONDUCTOR:** T BROUGH  
**ENGINEER:** J ROBBINS  

<table>
<thead>
<tr>
<th>ST LOCOMOTIVE ACTL</th>
<th>COMP</th>
<th>PICKUP SETOUT RECVD</th>
<th><em>NEXT ASSIGNMENT</em> SPCDAAS</th>
<th><em><strong>OK NOTES</strong></em> SPCDAAS</th>
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<tr>
<td>CD 1N1Y NUMBER</td>
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<tr>
<td>UP 000163 4390 468/7 F UWW/20</td>
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<td>UP 007047 4390 468/7 U UWW/20</td>
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<td>SP 000332 4390 468/7 U UP/076</td>
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</tbody>
</table>

**TOTALS:** 13170 14061  
**HP/TTON:** (SCHED TONS) = 1.3   
**(PROJ TONS) = 1.3**

---

**LOADS MTYS GR-TONS LENGTH**  

<table>
<thead>
<tr>
<th>LOAD CNTY/ST</th>
<th>STA/YD</th>
<th>MO-DA-yr-time</th>
<th>TIM DIF</th>
<th>LOADS MTYS</th>
<th>GR-TONS</th>
<th>LENGTH</th>
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<tbody>
<tr>
<td>A BASIN</td>
<td>CA CX616</td>
<td>06-24-97-0856</td>
<td>17'11&quot;</td>
<td>78</td>
<td>0 11076</td>
<td>4434</td>
</tr>
<tr>
<td>A YERMO</td>
<td>CA CX650</td>
<td>06-24-97-1034</td>
<td>16'44&quot;</td>
<td>78</td>
<td>0 11076</td>
<td>4434</td>
</tr>
</tbody>
</table>

---

C YERMO  
D YERMO  
A LENWOOD  
S LENWOOD  
OM

---

**SCHED PROJ P VAR REQ GS REQD**  
**TONS TONS M %% UTT GD II-PWR**  
**11076 11076 0.7 CS 7753**

---

**END TRAIN UNITS:** UPRQ 021107 WK  
**UR STATS 7610S OMTYS 11083 TONS 4434 FT WO AT YERMO CA CX650**  
**LAST AEI SITE 320 CX649 E YERMO**  
**CONSIST VALIDATED BY AEI**  
**AEI CAR COUNT 081**

---

**LOADS MTYS GR-TONS LENGTH**

---

H: John,
this is a Coal Train
that Just Left Yermo with
a S.P. Crew
6.24.97

Bill  
1335
Time
** IF DEADHEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINE DH AND SVC **
** THIS IS A DEADHEAD TRAIN **
** HOT MEAL NOT AVAILABLE -- BRING LUNCH **

<table>
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<tr>
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<td>CO X DC ROSS</td>
<td>376-42-5377 MU137</td>
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<tr>
<td></td>
<td>B1 VACANT TURN</td>
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**NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT, THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY.**

END
OUTBOUND CALL SHEET

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POOL: BY BAK/YERMO
CALL DATE AND TIME: 06/25/97 - 0600
DIVISION: LOS ANGELES
TERMINAL DEPARTING: BAKERSFIELD
SCHEDULED TO DEPART:

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OMBINATION DEADHEAD & SERVICE **
OT MEAL NOT AVAILABLE -- BRING LUNCH **

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ENTS: 1CSRLA21, D/H TO YERMO WORK BACK CONT TIME TO MOJAVE, THANKS.....

NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT, **
THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY. **
OUTBOUND CALL SHEET

TRAIN-ID: S18VAD30

POOL: Bakersfield

CALL DATE AND TIME: 06/30/97 - 0700

DIVISION: Los Angeles

TERMINAL DEPARTING: Bakersfield

SCHEDULED TO DEPART:

IF DEADHEAD IS IN CONNECTION WITH HRS OF SVC RELIEF, COMBINE DH AND SVC

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01 X G. MATHERLY 224-68-8142 BY130 0630 0700 0630 1900

10 X R. HOFFMAN JR 548-68-8171 BY130 0630 0700 0630 1900

VACANT TURN BY130

VACANT TURN BY130

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COMMENTS: DH TO YERMO FOR 1LZM5729 TO MOJAVE

NO JOB IS SO IMPORTANT, NO SERVICE SO URGENT,

THAT WE CANNOT TAKE TIME TO PERFORM ALL WORK SAFELY.
August 4, 1997

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St. N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

This letter is to request leave to file with the Board the Comments of the National Industrial Transportation League ("League") in the above proceeding one business day after they were due, that is, on Monday, August 4, 1997, rather than on Friday, August 1, 1997. Due to an administrative error in delivering the filing to the Board, the Comments of the League arrived at the offices of the Board after 5:00 P.M. on August 1, and therefore were not filed on that day.

No party will be prejudiced by this request, since copies of the League's Comments were served via first class mail on all parties of record on August 1, and in fact copies of those Comments were hand-delivered to counsel for the Union Pacific Railroad Company and counsel for the Burlington Northern Santa Fe Railroad Company on August 1, to permit those parties maximum time to review the League's comments and to respond by the due date for replies. To minimize the effect of the late filing on the Board, these Comments are being filed on the morning of August 4.

We very much regret any inconvenience this has caused.

Sincerely,

NICHOLAS J. DIMICHAEL

cc: All parties of record
BEFORE THE
SURFACE TRANSPORTATION BOARD

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

UNION PACIFIC CORPORATION, et al.

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION, et al.

[OVERSIGHT]

COMMENTS

submitted on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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Frederic L. Wood
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(202) 371-9500

Attorneys for The National Industrial Transportation League
BEFORE THE
SURFACE TRANSPORTATION BOARD

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

UNION PACIFIC CORPORATION, et al.

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION, et al.

[OVERSIGHT]

COMMENTS

submitted on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

INTRODUCTION

In accordance with the provisions of Decision No. 1 in this proceeding (served May 7, 1997), these Comments are submitted on behalf of The National Industrial Transportation League ("League"). The Board has instituted this oversight proceeding pursuant to the terms of the conditions imposed on approval of the control and merger by UP of SP.1 UP/SP at 146-47.

In order to develop information for assessing the effectiveness of the merger and its conditions, the League conducted a survey of the members of its Railroad Transportation Committee. The survey requested information on the

1 Abbreviations used in these comments are the same as those used in Decision No. 44 in Docket No. 32760, Union Pacific Corp., et al.—Control and Merger—Southern Pacific Rail Corp., et al.(served Aug. 12, 1996) at 254 ("UP/SP").
effect of the merger, and on the implementation and effectiveness of the conditions imposed by the Board in \textit{UP/SP} to protect competition from harm.

The results of the survey indicate two things: (1) there has been a significant deterioration in the quality of rail service provided in the western United States by the merged BNSF and UP/SP systems; (2) it is still too soon to evaluate the effectiveness of most of the conditions imposed to allow BNSF to replicate the competition lost because of the merger of SP into UP.

\textbf{COMMENTS}

A compilation of the NITL confidential survey of the members of its Rail Transportation Committee is attached to these comments.\textsuperscript{2} The survey focused on two major areas: the benefits of the merger, and the implementation of the conditions. Each of those areas is discussed below.

\textbf{Service Improvements from the Merger Are Not Yet Evident}

As indicated in the responses to the questions in sections A and B of the survey, for many shippers there has been a significant deterioration in the quality of service on both UP/SP and on BNSF. For many others, there has yet to be any improvements. The expected benefits to service from the mergers promised by the applicants are not yet evident. One of the major benefits the Board expected as a result of this transaction was that the financial resources of UP would be available to improve the physical plant of SP, thus improving the service levels to shippers on the SP. \textit{UP/SP} at 114-116. Some improvements in recent months have been noted by some of the survey respondents.

\textsuperscript{2} The responses to the survey have been tabulated and the results provided in numerical form where appropriate. Where narrative responses have been provided, relevant excerpts have been included.
It is clear from the results of the survey, as well as from a review of the quarterly reports from UP/SP and BNSF, that it is still too soon to evaluate the effectiveness of the conditions imposed by the Board to ensure the replacement of the competition lost because of UP’s acquisition of SP. One particular point from the survey responses highlights that conclusion. None of the respondents to the survey have as yet been able to take advantage of the competitive alternatives provided by either the new facilities/transload condition or the build-in/build-out condition. See survey sections E and F. These conditions clearly require longer lead times for planning and implementation before any such opportunities can be realized. See BNSF July 1, 1997 Quarterly Report (“Quarterly Report”), Rickershauser VS at 14.

BNSF, in its Quarterly Report, has raised particular concerns about UP’s use of Guideline #9, the contract termination option, adopted by the Board in Decision No. 57, at 12. This cancellation option, as indicated by some respondents to the survey, has been an impediment to utilization of the contract reopener condition. See responses to survey question D.3. BNSF has requested that Guideline #9 be removed so that the contract reopener condition can be effective. BNSF Quarterly Report at 10-12. The League strongly supports that request.

One of the main concerns that the League, and other parties, had about the trackage rights operations by BNSF under the BNSF Settlement Agreement in

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3 It has only been just over 10 months since the UP’s control of SP was consummated. The Board had originally indicated that it would wait until October 1 of this year before initiating the first oversight proceeding, subject to holding a proceeding prior to October 1 “if circumstances warrant.” UP/SP at 147. Waiting until October 1, 1997, before commencing this proceeding might have enabled the League and other parties to have the benefit of additional experience and traffic data to present a more comprehensive picture to the Board.
UP/SP was whether there would be sufficient traffic and revenue available to BNSF to enable it to be a viable competitor to the combined UP and SP. Those concerns were based on the expectation that, at best, BNSF would be able to generate only minimal traffic to support its operations over the trackage rights lines. See, e.g., NITL Comments NITL-9 at 31-39. These concerns were addressed by the Board, in part, by adding broad-based conditions to ensure that "BNSF will have sufficient traffic to compete effectively." UP/SP at 106, 145-146. BNSF’s quarterly reports indicate that, in the two principal corridors where BNSF received trackage rights, traffic volume has slightly exceeded the League’s predictions on one but falls woefully short on the other. The League believed that such a traffic volume, which was significantly below that predicted by the BNSF, would not permit BNSF to compete vigorously with the UP. NITL Comments, NITL-9, at 37-39. Specifically, the NITL forecasted, even accepting UP/SP’s adjustments, that BNSF would be able to move 22,853 loaded cars per year in the Houston to Memphis corridor. NITL Brief, NITL-19 at 26. Summarizing the Train Volume Reports in Att. 14 to the BNSF Quarterly Report shows that BNSF is moving traffic in that corridor at an annualized rate of 26,300 loaded cars. In the Central Corridor, the League had forecast an annual volume of loaded cars of 29,700. NITL Comments, NITL-9, Crowley VS at 62. The Train Volume Reports in Att. 18 of the BNSF Quarterly Report show an annualized volume of only 11,144 loaded cars.

This analysis shows that there is reason to be concerned about the economic viability and competitiveness of BNSF’s trackage rights operations, with its limited access to shippers and lack of traffic density, notwithstanding the Board’s efforts to assure sufficient traffic for BNSF. Removal of the Guideline #9 option would be a useful step in opening up additional opportunities for BNSF to compete effectively and on a level playing field with UP. Another point affecting
the contract reopener condition revealed in the responses to the survey is the surprising lack of notice provided by UP about the right of shippers at 2-to-1 points to obtain a modification of existing contracts under this condition. See survey question D.1.

CONCLUSION

The expected improvements in service from the UP/SP merger (and the prior merger of the BNSF) have not yet occurred. Recent experience with other mergers have indicated that there is likely to be a considerable period of time before the process of integrating the operations of the two merging carriers yields substantial benefits. Moreover, the ability of BNSF to ameliorate the competitive harm that would have occurred if UP had been permitted to merge with SP without conditions remains to be seen. A useful step would be the removal of Guideline #9 under the contract reopener condition. Clearly there are reasons for the Board and the parties to continue to closely monitor the BNSF’s capability to compete for traffic against the combined UP and SP systems.

Respectfully submitted,

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Frederic L. Wood
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Suite 750
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(202) 371-9500

Attorneys for The National Industrial Transportation League

August 1, 1997
RESULTS OF CONFIDENTIAL NITL SURVEY OF RAIL TRANSPORTATION COMMITTEE MEMBERS

A. UP Operations Post Merger--In General

1. Do you have a facility located anywhere on the lines of the Union Pacific or the former Southern Pacific to which rail service is provided by the now-merged UP/SP?

57 Yes 11 No

2. If the answer to Question No. A-1 is "yes," how many facilities do you have, and what is the nature of these facilities?

1 customer; 2 bulk storage; dozens of customer warehouses; 1 specialty chemicals; 72 fertilizer receipt; 1 factory, 1 warehouse/distribution; 1 refinery; 2 mining plants; 10 refineries or chemical plants; 2 manufacturing plants; 2 major production; 4 transfer; 3 wood treating; 2 lumber/plywood manufacturing; 5 chemical manufacturing; 1; 4 warehouses; 1 manufacturing serving 7 terminals, 1 distribution; 1 switching for refinery; 4 manufacturing/warehousing; 12 chemical manufacturing; 3 manufacturing; 2 bulk terminals; 10 chemical; 5 manufacturing; 7 mines/smelters/refineries; 2 manufacturing; 3 transload; 1 GSA contract; 7 refineries/chemical/plastics; 1 production, 4 corn starch processing; 5 liquid bulk transfer; 1 chemical manufacturing, 1 plastics manufacturing; 5 raw material supply; 1 ore shipping; 1 rice milling; 4 manufacturing (interchange with private railroads); 3 manufacturing; 1 warehouse; 7 grain elevators, 1 beef processing plant, 6 warehouses, 4 fertilizer plants, 6 feed mills, 1 petroleum refinery, 1 chemical plant; 1 ferrous metals processing/management; 2 warehouses, 1 warehouse/manufacturing; 3 chemical manufacturing; 1 chemical manufacturing; 5 petroleum refining; 4 chemical manufacturing; 1 fertilizer production, 1 warehouse; 2 major chemical manufacturing; 3 chemical manufacturing; 2 refineries; 4 plants; 30 manufacturing; 2 plywood/lumber mills, 2 newsprint mills; 6 cement/sand and gravel production plants/terminals; 3 bulk commodity; 5 paper and pulp manufacturing/converting; 1 manufacturing; 3 bulk material receiving; 2 manufacturing unspecified.

3. Has UP/SP rail transportation service to these facility(ies) identified in question No. A-2 since the merger of the UP and SP gotten better, gotten worse, or remained about the same? Please explain the basis for your answer.

8 Gotten better 28 Gotten worse 25 Remained about the same

[Total greater than the 55 responses in Question A-1 because of existence of multiple facilities]

Explanation: Still room for improvement; backlogs of cars in major cities, SP customer service very bad; still bad; SP not fully integrated with UP, poor communication and operating practices between KCS, SP, UP, ATSF; bad in Iowa after UP took over CNW; still poor; still poor service at SP-served facility; many problems with SP service; cars billed but not moved, more lost cars, longer transit times, car storage issues; transit longer; information tracking worse; plant switching very erratic; excellent; car supply increased; lost billing, misrouting, worse customer service, excessive transit times; wrong interchanges, severe yard congestion; some the same, some worse; still poor where SP served; service in Houston area atrocious; service worse but pricing better;
California to Portland and Texas to California terrible; worse on both loaded and empty moves, requires much shipper input; very responsive, working with shipper on suggested improvements, better customer service; unit trains from Nebraska to California improved; transit times and consistency improved for one plant, SP Customer Service Center increasingly ineffective and unresponsive; cars sit for days due to "no manpower"; closed Phoenix yard--must travel farther and cars not weighed at origin; delays of 4-5 extra days Sacramento to Stockton, labor conflicts between UP and SP crews; changed internal routing; manifest traffic second to TOFC traffic, line congestion, lack of power; inconsistent transit time; power is main restraint, consolidation process still underway; originally served by CNW/not affected by sale; harder to get equipment moved, especially empties at quarter end; erratic service, unilateral changes to service plans, poor communications; decreased switching performance, increased dwell times on departures, increased number of "lost cars", confusion with computer systems, decline in accurate/timely response from National Customer Service Center; ex-SP service went from bad to worse, does not meet expectations, ex-UP service acceptable most of the time; better service due to company-to-company efforts and not merger; service to west coast about the same, service to gulf coast has longer transit times and more mishandling of cars; increased transit times, interchange with railroads slow, lost cars, billing errors, wrong or no CLMs; no improvement; suitable equipment less available; congestion in Houston area has caused service delays; about 30+ days for a car to make a round trip; service has deteriorated, have converted to truck transport; from UP origin transit to major gateways essentially unchanged, from SP origins transit time to major gateways about 25% longer, from either origin to Houston transit times have increased about 50%, some shipments to Houston taking 2 to 3 weeks

B. BNSF OPERATIONS POST MERGER-- IN GENERAL

1. Do you have a facility located anywhere on lines owned by the BNSF, to which rail service is provided by BNSF? (NOTE: the questions in this section B are not asking about facilities actually located on lines owned by UP/SP over which BNSF received trackage rights in the UP/SP merger -- for facilities directly served by these "trackage rights" lines, see section C below)

46 Yes 21 No

2. If the answer to Question No. B-1 is "yes," how many facilities do you have, and what is the nature of these facilities?

1 customer; origin lumber reloads, shipping origins; 1 specialty chemicals; 3 refineries or lube plants; 1 manufacturing plant; 2 corn processing; 2 transfer; 2 wood treating; 2 lumber/plywood manufacturing; 1 manufacturing serving multiple terminals, 3 distribution; 1 switching for refinery; 3 manufacturing/warehouse; 10 chemical manufacturing and 2 customer; 1 manufacturing, 2 bulk terminals; 5 chemical; 2 manufacturing; 1 manufacturing, 1 mining; 1 refinery; 1 liquid bulk transfer, 1 dry bulk transfer; 2 chemical manufacturing; 4 raw material supply; 2 mining/manufacturing; 2 manufacturing; 2 grain elevators, 2 lube oil blending plants, 3 pork & beef processing plants, 7 feed mills, 7 warehouses, 6 fertilizer plants; 2 warehouses, 1 warehouse/manufacturing; 1 transloading; 3 petroleum refining; 1 chemical manufacturing; 1 fertilizer production; 2 chemical manufacturing; 1 refinery; 2 plants; 17 manufacturing; 2 paper mills; 1 bulk commodity; 2 paper and pulp manufacturing/lumber manufacturing; 1 mine, 1 refinery; 4 bulk materials; 3 unspecified.

3. Has BNSF rail transportation service to these facility(ies) since the merger of the UP and SP gotten better, gotten worse, or remained about the same? Please explain your answer.

1 Gotten better 30 Gotten worse 21 Remained about the same

[Total greater than 46 responses in Question B-1 because of existence of multiple facilities]
Explanation: Service east of the Mississippi River not affected; penalized by KCS, UP, and SP operating practices; satisfactory; poor trip planning, cars on wrong trains, increased travel time due to improve 7/5; new staff and non-interacting computers; car supply sporadic; billing and routing problems, held-up movements, internal BNSF problems; worse in all areas, including administration; transit longer, poor internal communications and operations; poor before, terrible after; car supply better; information services terrible, lost cars, no communication, defensive employees, no cooperation; communication, power to move trains; severe imbalance of power, lost equipment; incompatibility; miscellaneous service issues; worse on both loaded and empty moves, requires much shipper input; Aurora, IL service has completely fallen apart; reliability and transit times deteriorated; Kansas City yard congestion, poor internal communications, lack of motive power, infighting between ATSF and BN staff are all major problems; computer misidentifies car status; worse transit times, far more delays and misrouted cars; since rail volume is small, service not an issue; BNSF remain service focused, consolidation process still underway; harder to get equipment moved, especially empties at quarter end; periods of poor service recently improved; unreliable switching performance, increased transit time, lack of adequate locomotive power; problems across the board: service/operations, information, and customer service; initially got worse, some improvement in last two months; equipment problems: either not enough power or insufficient car supply; switching failures; response to price inquiries has slowed but overall service is stable; difficulty on car supply; lack of rested crews and empty cars, delays last spring of 10-14 days; untimely delivery.

4. Does BNSF rail service since the UP/SP merger to or from your facilities located on the BNSF-owned lines utilize, for at least part of the movement, BNSF service on (a) the UP/SP lines over which BNSF received trackage rights in the UP/SP merger proceeding; or, (b) track that BN purchased from UP as a result of the merger proceeding? That is, has traffic to or from your facilities located on BNSF-owned lines been re-routed over the UP/SP lines over which BNSF received trackage rights or purchased from UP?

16 Yes 23 No 12 Don’t know

5. If the answer to question No. B-4 is "yes," please indicate whether the trackage rights used by BNSF over which your traffic now moves involves the Central Corridor (California to Colorado) or the Texas-Missouri corridor, or both.

3 Central Corridor 7 Texas-Missouri corridor 5 Both

6. Has BNSF rail transportation service to your facility(ies) that has been re-routed at least in part over BNSF trackage rights lines, gotten better, gotten worse, or remained about the same since the merger of the UP and SP? Please explain your answer.

3 Gotten better 8 Gotten worse 4 Remained about the same

Explanation: Customer service poor, many cities have backlog; computer problems; new staff and non-interacting computers; recently improving; service to Utah through Cheyenne and Denver improved; transits through central corridor five days longer with BN than UP; unit trains about the same but single-car shipments worse; service initially poor but more consistent lately; trackage rights have improved rates somewhat but overshadowed by inconsistent service.
C. BNSF OPERATIONS TO FACILITIES SERVED ON TRACKAGE RIGHTS LINES

1. Does your company presently operate any facilities that are physically accessed by a UP/SP rail line over which BNSF obtained the right to serve you via trackage rights granted in the STB decision? That is, are you a "2-to-1" shipper? If the answer is "No," go to section D.

   22 Yes  40 No

2. If the answer to Question No. C-1 is "yes," how many facilities do you have, and what is the nature of these facilities?

   1 factory, 1 distribution; 1 refinery; 1; 1 chemical manufacturing; 1; 2 chemical manufacturing; 1 transload, 1 warehouse; 1 refinery, 1 plastics, 1 chemical; 1 production; 2 bulk transfer, 1 liquid bulk customer; 1 plastic manufacturing; 1 raw material supply; 1 rice milling

3. If the answer to question No. C-1 is "yes," please indicate whether the location of your facility(ies) is on the Central Corridor (California to Colorado) or the Texas-Missouri corridor, or both.

   7 Central Corridor  12 Texas-Missouri corridor  3 Both

4. Since the merger, has BNSF called or visited you to discuss possible BNSF transportation to your facilities using the trackage rights granted to BNSF in the merger?

   26 Yes  11 No

5. If the answer to question No. C-4 is "yes," has BNSF given you a proposal or proposals for transportation service to or from your facility(ies)?

   24 Yes  2 No

6. If the answer to question No. C-5 is "yes," have you accepted BNSF's proposal(s)?

   11 Yes  15 No

7. If the answer to question No. C-6 is "yes," please explain the reasons why you accepted BNSF's proposal(s).

   Explanation: lower cost; price/service; attractive pricing; competitive, plus good influence on Gulf Coast shipments; price, acceptable service level; to develop competitive alternative to combined UP/SP

8. If the answer to question No. C-6 is "yes," has the rail transportation service provided by BNSF over the trackage rights to your facilities been adequate to meet your rail transportation needs?

   2 Yes  2 No  1 BNSF service not yet begun

   If your answer to question No. C-8 is either "yes" or "no," please provide an explanation or a description of the service and its adequacy or inadequacy:

   very bad but improving; service is not "good" but as offered; moving raw materials-transit times inadequate, local delivery subcontracted to UP/SP; proposal not
competitive; cannot comment yet; confusion about who provides plant switching services; transit delays to interchange (4-5) days, equipment unavailability with BN

9. If the answer to QUESTION No. C-6 is “no” (that is, you have NOT accepted a proposal from BNSF), please explain in detail the reason or reasons why you did not accept BNSF’s proposal.

Explanation: concerns about service; rates not competitive enough to warrant change; rates not competitive with current ones; BN has ignored trackage rights opportunities despite requests, BN says pays too high rates to UP; UP offered economic incentives to retain business; BNSF could not provide service plan for traffic lane; UP/SP able to meet price with better service

D. CONTRACT MODIFICATION CONDITION

1. Have you been notified by UP/SP that your company has the right to obtain a modification of any rail transportation contracts with UP and/or SP at all facilities which BNSF obtained the right to serve under the trackage rights condition?

22 Yes 34 No

2. At any facility: (1) served by UP/SP which BNSF obtained the right to serve by trackage rights, and (2) where the UP and/or SP had one or more rail transportation contracts with your company, have you obtained a reopening or modification of any contract with the UP in order for BNSF to compete for the traffic covered by the contract? If the answer is “no,” please provide an explanation why you have not obtained a reopening or modification of any one or more of the contract(s).

7 Yes 36 No

Explanation: BNSF got one contract due to “2-to-1” ruling; no visits from UP representative for 18 months; no notification; concerns about service; no need; reopener request denied; no shipments at this time; do not know; single-line service/previously contract; BN has not had the time, also service is bad; reopener not required for awards to BNSF; no need due to structure of UP contracts, BNSF’s rates unattractive; not approached by either company; current UP/SP contracts do not exclude alternate carriers; UP has focused on shipper-owned facility and ignored supplier locations, UP refused to provide list of stations subject to BNSF trackage rights.

3. Have the ten guidelines adopted by the STB for implementation of the contract modification condition facilitated the process of seeking and/or obtaining a modification of any contract described in question No. D-2?

7 Yes 25 No

Explanation: UP’s right to cancel makes for large financial hurdles; do not know; shipper believes guidelines reduced BNSF apprehension to quote and promoted willingness to strike agreements; “2-to-1” provisions used to eliminate destinations from UP/SP contracts

E. NEW FACILITIES / TRANSLOAD CONDITION

1. Have you placed in service any new facilities (e.g. new plant, loading or unloading siding or industrial track, transload facility) located on or near a line of the UP over which BNSF obtained the right to serve by means of trackage rights? If the answer is “no,” go to Part F.

0 Yes 64 No
2. If the answer to question No. E-1 is "yes," have you successfully obtained rail transportation service at any new facility (as described in question E-1 above) from BNSF? If the answer is no, please provide an explanation for the lack of success.

   _ _ Yes   _ _ No

3. Are you planning to place in service within the next year any new facilities (e.g. new plant, loading or unloading siding or industrial track, transload facility) located on or near a line of the UP over which BNSF obtained the right to serve by means of trackage rights?

   6 Yes   12 No (1 under review, 1 not sure)

F. BUILD-IN / BUILD-OUT CONDITION

1. Have you made a decision to construct or have you actually constructed any new railroad track to connect to a line of the UP over which BNSF obtained the right to serve by means of trackage rights? If so, please describe the line that you have constructed or are planning to construct

   0 Yes   62 No

2. If the answer to question No. F-1 is "yes," have you successfully obtained access to BNSF by means of any build-out or build-in described in the answer to question F-1?

   _ _ Yes   _ _ No

G. RECIPROCAL SWITCHING FEES

1. During the UP/SP merger proceeding, the UP and SP indicated that they would be reducing their reciprocal switching fees to other railroads to the level of $130 to $150 per car. Has this occurred?

   13 Yes   11 No   41 Don't know

2. If the answer to question No. G-1 is "yes," has the reduction in reciprocal switching fees been reflected in the amount that you pay for rail transportation? Please explain:

   6 Yes   7 No

Explanation: Only on new contracts; UP kept the reductions instead of passing them on; no reciprocal switching points; contract being renewed--expect reductions
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing COMMENTS OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE ("NITL") has been served via first class mail, postage pre-paid to following addresses on the attached list on the 1st day of August, 1997:

[Signature]
Shannon Harris
Mr. Burunda Prime-Jones  
Rohm and Hass Company  
Independence Mall West  
Philadelphia, PA 19106

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Zuckert, Scout, Rasenberger  
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Washington, D.C. 20006

Mr. Martin W. Bercovici  
Mr. Terrence D. Jones  
Keller & Heckman  
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Bracewell & Patterson  
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McCarthy, Sweeney, et al.  
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Mr. Michael F. McBride  
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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, SPCS CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

COMMENTS OF
SIERRA PACIFIC POWER COMPANY
AND IDAHO POWER COMPANY

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Counsel for Sierra Pacific Power Company
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Dated: August 1, 1997

[Stamp: AUG 0 5 1997]
BEFORE THE
SURFACE TRANSPORTATION BOARD

________________________________________
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

COMMENTS OF
SIERRA PACIFIC POWER COMPANY
AND IDAHO POWER COMPANY

In accordance with Decision No. 44 in this oversight proceeding, Sierra Pacific Power
Company and Idaho Power Company (together "SPP/IDPC"), Parties of Record in this
proceeding, submit the following comments on the extent to which the conditions imposed by the
Surface Transportation Board ("Board") on its approval of the merger of Union Pacific Railroad
Company and Southern Pacific Lines have effectively addressed the competitive harms to
SPP/IDPC—a "2-1" shipper in the merger proceeding—they were designed to address.

I. INTRODUCTION AND SUMMARY OF COMMENTS

SPP/IDPC actively participated in the proceeding which culminated in the Board's issuance
of Decision No. 44 in Docket No. 32760. In that proceeding, SPP/IDPC submitted extensive
comments, evidence and briefing materials which expressed SPP/IDPC's concerns that the merger
of the Union Pacific Railroad Company ("UP") and Southern Pacific Lines ("SP") (together
referred to as "UP/SP"), despite the presence of the trackage rights granted by UP and SP to the
Burlington Northern and Santa Fe Railway Company ("BNSF"), would eliminate the rail-to-rail
competition enjoyed by SPP/IDPC at their jointly owned North Valmy Station in north central
Nevada. Prior to the merger, the North Valmy Station enjoyed head-to-head, single line rail
competition between UP and SP from numerous coal mines in Colorado and Utah. In particular,
SPP/IDPC argued that this competition would be eliminated after the merger based upon the following general reasons:

- The traffic base available to BNSF for movement across the Central Corridor under the trackage rights agreement it signed with the merger applicants would be insufficient to justify BNSF vigorously competing for SPP/IDPC’s coal traffic to North Valmy;
- BNSF underestimated the operating plan and infrastructure necessary to effectively operate in the Central Corridor;
- The economic rents that BNSF would have to pay UP/SP under the trackage rights agreement to operate over the Central Corridor would place it at a competitive disadvantage; and
- The Utah Railway Company (“URC”) settlement agreement with UP and SP was meaningless without BNSF established as a viable competitor for coal traffic in the Central Corridor, and in any event would be in two-line service which would not effectively compete with UP/SP single line service from the affected mines.¹

Based on these concerns, SPP/IDPC requested relief in the form of (1) trackage rights granted to a carrier selected by SPP/IDPC sufficient to provide single line service from mines in Utah and Colorado formerly served by SP to North Valmy, and (2) a compensation level for such trackage rights at no more than 1.48 mills per gross ton mile. The Board rejected this request.

Since the Board’s approval of the merger, however, SPP/IDPC’s actual experience in trying to work within the parameters established by the Board in Decision No. 44 and subsequent related decisions has demonstrated to SPP/IDPC that the potential problems they identified in the merger proceeding have unfortunately become actual problems post-merger. The quarterly status reports submitted by UP/SP and BNSF pursuant to Decision No. 44 support this conclusion. In short, the Board’s approval of the merger of UP and SP as conditioned has not resulted in meaningful competition between UP/SP and BNSF for the coal transportation to the North Valmy Station.

In light of the apparent failure of the merger conditions to replace the rail competition at North Valmy that existed prior to the merger, SPP/IDPC requests the Board to seriously consider re-examining whether the conditions should be modified to incorporate SPP/IDPC’s original requests for relief and/or otherwise enhance the ability of BNSF to be a viable competitor with UP/SP for North Valmy’s coal traffic.

II. BNSF Has Not Demonstrated That it is a Viable Competitor for the Transportation of Coal to the North Valmy Station

A. Summary of SPP/IDPC’s Bases for Their Request for Relief in the Merger Proceeding

SPP/IDPC submitted argument and evidence in the merger proceeding which attempted to demonstrate to the Board that simply conditioning its approval of the UP/SP merger upon adoption of the trackage rights settlement agreement negotiated between the merger applicants and BNSF would not alleviate the competitive harm caused to SPP/IDPC at North Valmy. In general, SPP/IDPC attempted to show the Board that the rights granted to BNSF under the agreement, and the compensation requirement under the agreement, were insufficient to establish BNSF as an effective competitor for this traffic. SPP/IDPC argued that traffic on the Denver/Salt Lake/Stockton route would be too low to entice BNSF to develop its operations over the route. Furthermore, the compensation level required to be paid by BNSF for use of the track overcompensated UP/SP, resulting in doubly harming SPP/IDPC by (1) raising the pricing floor for rates offered by UP, and (2) rendering the BNSF a non-viable competitive alternative.

SPP/IDPC also attempted to demonstrate that simply conditioning approval of the merger upon adoption of the settlement agreement entered into between UP and SP and URC during the pendency of the merger proceeding would not alleviate the competitive harm at North Valmy either. In particular, SPP/IDPC argued to the Board that, in addition to reducing the number of mines available for competitive rail service to North Valmy from 25 to 5, a URC-BNSF two-line haul under the terms of the two agreements would not be able to compete with a single line UP/SP haul from comparable Utah mines.

In rejecting SPP/IDPC’s request for relief, the Board stated:

It is true, of course, that, post-merger, SPP/IDPC will have only one single-line option (UP/SP) whereas now its has two (UP and SP); but the difference between single line service and joint line service is less important in the coal unit train context; and the URC-BNSF joint-line routing should be quite competitive, especially in consideration of the new coal sources opened to URC under the URC agreement.

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2 SPP/IDPC Comments at 16-20; Verified Statement of Thomas D. Crowley at 20-42.

3 SPP/IDPC Comments at 20-21; Crowley V.S. at 43-47.
Decision No. 44 at 187. In rejecting SPP/IDPC’s arguments and claims for relief, the Board’s statement implicitly acknowledged that the only potential competition to the merged railroad could come from Utah mines, which are the mines closest to the North Valmy Station, and presumed that the URC-BNSF joint line service would pose an effective competitive threat to UP/SP single line service from these mines. As explained below, this has not turned out to be the case.

B. The Board’s Assumptions Regarding the Merger Conditions as They Relate to the North Valmy Plant Have Proven to be Incorrect

At the time of the merger proceeding, SPP/IDPC’s coal transportation to North Valmy was covered by a Staggers Act contract with UP which had been entered into after a competitive bidding process involving SP and UP. That contract, designated ICC-UP-C-2623, had an expiration date of June 30, 1997, and covered the transportation of coal purchased by SPP/IDPC from two mines—The Southern Utah Fuel Company (“SUFCO”) mine near Sharp, Utah and the Black Butte Coal Company mine in the Hanna Basin of Wyoming—for which SPP/IDPC have long-term coal supply contracts. The Black Butte mine is served exclusively by UP/SP and UP/SP rail service from the Sharp loadout is the most economically feasible means of transporting coal from the SUFCO mine to North Valmy. See attached Verified Statement of Jeffery W. Hill at 1-2.

Consequently, subject to the minimum tonnage obligations under SPP/IDPC’s coal contracts, which do not expire for some time, SPP/IDPC was in a position to explore the purported competitive opportunities presented by BNSF post-merger soon after approval was given to the merger. As explained in the attached verified statement of Mr. Hill, Director of Fuel Management and Operations Support for Sierra, in 1996, SPP/IDPC initiated a strategy which included (1) reducing the amount of coal purchased under the existing long-term coal contracts through the exercise of SPP/IDPC’s rights under those contracts and (2) seeking alternative, lower cost coal.

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4 The Board also mentioned the possibility of truck-BNSF movements as a result of other conditions placed on the merger. However, it has been SPP/IDPC’s experience to date that the few potential truck-BNSF hauls are even less competitive with UP/SP single line moves than the URC-BNSF dual line movements.

5 SPP/IDPC demonstrated that the Colorado, New Mexico, and Powder River Basin mines served by BNSF were too far way to present a viable competitive threat under the trackage rights agreement, and that in any event, the quality of coal from most BNSF origins was incompatible with the boilers at North Valmy due to its lower heating value. SPP/IDPC Comments at 17-18.

6 SPP/IDPC Comments at 7-8.

7 This expiration date of the contract was eventually extended by UP/SP and SPP/IDPC to July 31, 1997 while the parties attempted to negotiate a new contract. Hill V.S. at 3.
which would be transported at rail rates established by competition between UP/SP and URC-BNSF. *Id.* at 2.

Accordingly, in May of 1997 SPP/IDPC sent bid solicitations to UP/SP, BNSF, and URC which, in essence, were designed to result in a contract with UP/SP for deliveries of the coal contract minimum tons from the Sharp, Utah loadout of the SUFCO mine to North Valmy, and should have resulted in competitively priced contracts for tons in excess of that minimum from Utah mines that were served by UP/SP and/or URC-BNSF. *Hill V.S.* at 2. However, neither of these outcomes occurred. Instead, UP/SP as incumbent carrier, reacted to SPP/IDPC’s effort to seek competitive rates for the movement of incremental coal tonnages to the North Valmy Station by insisting that any contract to replace ICC-UP-C-2623 must cover, for all practical purposes, all of the coal shipped to North Valmy, not just the SUFCO minimum obligation tonnages which must be shipped via UP/SP. *Hill V.S.* at 2. Obviously, agreement to this prerequisite to contracting would have meant that any attempt by SPP/IDPC to seek competitive rates from BNSF for tonnages over the minimum coal obligation to be shipped by UP/SP from the SUFCO mine would have been foreclosed for the length of the new contract with UP/SP. As it turned out, UP/SP’s steadfast refusal to enter into a contract for anything less than essentially all of the tons shipped to North Valmy, and the expiration of ICC-UP-C-2623 on July 31, 1997, forced SPP/IDPC to request UP/SP for common carrier rates for the transportation of the SUFCO coal contract minimums from the Sharp, Utah loadout to North Valmy pursuant to 49 U.S.C. § 11101.8 The common carrier rate established by UP in response to this request are the subject of a rate complaint which is pending before the Board in Docket No. NOR-42012. *Hill V.S.* at 4.

Thus, in order to be able to test the viability of BNSF as a competitor to UP/SP in the Central Corridor generally and for North Valmy’s incremental coal traffic specifically, SPP/IDPC were forced to request common carrier rates from UP/SP for delivery of the SUFCO coal contract minimum tonnages to North Valmy—and then commence a rate reasonableness proceeding at the Board. Even more dismaying to SPP/IDPC is that to date BNSF has shown either a lack of desire, or as SPP/IDPC believes, a lack of ability, to be a serious competitor with UP/SP for the transportation of coal to North Valmy. As explained in the attached verified statement of Mr. Hill, the contract rates for URC-BNSF dual line service received in response to SPP/IDPC’s solicitations were significantly above the UP/SP single-line contract rates from comparable Utah

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8 As explained in the Hill Verified Statement, SPP/IDPC has taken steps to reduce eliminate their obligation to purchase coal from the Black Butte mine.

9 SPP/IDPC did not foreclose shipping all or substantially all of its coal via UP/SP from mines that only it served, but was unable to negotiate contract terms with UP/SP that justified this approach. *Hill V.S.* at 3.
mines, which rates themselves were significantly above the 180% jurisdictional threshold at which the Board may consider the reasonableness of rail rates. While discussions with BNSF after its initial response to SPP/IDPC’s rate solicitation produced a minor reduction in the dual-line rates, the final dual-line URC-BNSF rates were still substantially above the UP/SP single line rates and nowhere near what would be considered “competitive.” In short, SPP/IDPC’s actual post-merger approval experience demonstrates that the Board’s expectation that the single line competition between SP and UP at North Valmy prior to the merger would be adequately replaced by URC-BNSF dual-line hauls resulting from the settlement agreements has not been fulfilled by real-world application of the merger conditions. Instead, BNSF has shown it lacks the inclination or, more likely the ability, to compete effectively with UP single-line service for the movement of coal from Utah mines to North Valmy. Unless and until this situation changes, the North Valmy Plant will be, for all intents and purposes, captive to the UP/SP.

III. THE RAILROADS’ QUARTERLY REPORTS VALIDATE SPP/IDPC’S CLAIMS IN THE MERGER PROCEEDING

SPP/IDPC maintain that the BNSF’s present inability to effectively compete with UP/SP single-line service to the North Valmy Station is due to the causes set forth in its Comments, which have been summarized above in these comments. This belief finds support in the railroads’ quarterly status reports. Because the first three reports submitted by UP/SP and BNSF were vague and not particularly informative, and are in any event largely subsumed within the “detailed” status reports required by the Board to be filed on July 1, 1997, SPP/IDPC’s discussion of the reports is confined to the July 1, 1997 reports.

The BNSF Quarterly Status Report

The July 1, 1997 status report submitted by BNSF supports SPP/IDPC’s claim that the trackage rights agreement will restrict BNSF’s ability to establish itself along the track upon which the North Valmy Station is located. For example, the text of the BNSF report, the purpose of

10 The URC-BNSF rates were marginally below comparable URC-UP/SP joint rates. However, the lower UP/SP single line rates are the benchmark BNSF must exceed.

11 See SPP/IDPC Comments at 18. Notwithstanding BNSF’s present inability to compete, pending further action by the Board to modify the merger conditions in the manner suggested herein, SPP/IDPC is committed, as it must be in the new era of electricity restructuring, to reestablish competitive rail service at North Valmy. As such, it is highly likely that SPP/IDPC will, at least in the short term, contract for some transportation services from URC-BNSF with the hope that established BNSF service, combined with additional Board action regarding the terms of such access to North Valmy, will eventually result in true competition between UP/SP and BNSF for this service. However, this short term economic loss to SPP/IDPC would be unnecessary if the merger conditions had truly established BNSF as a viable competitor to UP/UP for the North Valmy Traffic.
which was for BNSF to “provide more detailed information regarding its efforts to be an effective competitor to the applicants,” says nothing about BNSF’s efforts to compete in the area of Central Corridor which contains the North Valmy Station. The verified statement of Peter J. Rickershauser attached to the report demonstrates that no traffic moved over the Denver/Salt Lake City/Stockton line(s) upon which the North Valmy Plant is located prior to October 1996 (Rickershauser v.S., Map 1), and vaguely states that “[o]n February 10, we increased the frequency of our Denver-Salt Lake Service.” Id. at 4. This statement later indicates that train service in the Central Corridor is currently five days per week from Denver to Provo, and three days a week from Provo to Stockton.

This frequency of BNSF trains operating over the Central Corridor (less than one train per day) is less than that estimated by SPP/IDPC in their Comments and evidence presented to the Board in the merger proceeding in support of SPP/IDPC’s claim that the trackage rights agreement would not result in a supportable traffic base for BNSF. UP/SP’s July 1, 1997 Report confirms the facts set out in the BNSF’s Report.

Moreover, while there is a great deal of discussion of general marketing efforts in the verified statement of Mr. Rickershauser, there is little evidence of positive results of this marketing on the customers located along the Denver/Salt Lake City/Stockton line. For example, he states that, as of the date of its report, BNSF was operating daily merchandise train service in all of the major trackage rights corridors “except the I-5 Corridor . . . and in the Central Corridor.” Id. at 17-18. Daily merchandise service, which does not include coal service, is to start “as quickly as possible.” Id. at 18. Indeed, the only discussion of note regarding competition in this area is of how BNSF was unable to compete with UP/SP for coal transportation from the mines of Cyprus Amax Coal Company in Utah to Los Angeles, California. Id. at 13-14.

Similarly, the verified statement of Ernest L. Hord attached to the BNSF report contains a general discussion of BNSF’s operation efforts and expectations in the Central Corridor, but

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12 (F.D. 32, 60 (Sub.-No. 21) Decision No.1 at 6).

13 BN does, however, reference its inability to establish its own team tracks in the Salt Lake City area. BNSF Report at 12.

14 See SPP/IDPC Comments at 18; Crowley v.S. at 24-25 (projected traffic levels would equate to an average of approximately one loaded train per day).

15 See UP/SP Report at 93 (traffic over Central Corridor is stated in terms of 176,777 gross tons for the month of May, 1997, which, assuming 105 tons per car and 75 cars per train equates to 22.4 trains per month, or .75 trains per day).
contains little specific information about the amount and type of traffic BNSF has moved and expects to move in the future. See Hord V.S. at 16.

This meager discussion of how BNSF has fared in the Central Corridor after the merger provides a clear signal that the conditions are not operating as the Board expected they would.

*The UP/SP Quarterly Report*

As for UP/SP’s July 1 Report, it too says very little of substance about BNSF’s ability to effectively compete with UP/SP in the Central Corridor, particularly its ability to compete via joint-line movements with the URC. In addition, UP/SP’s numerous sweeping statements, such as “BNSF has been aggressively competing for the ‘2-1’ business, quoting very competitive rates and bidding on all major contracts” (UP/SP Report at 96), are tempered by (1) the fact that the details of most major contract solicitations are strictly confidential between the shipper and the individual competing carriers; and (2) the concrete evidence to the contrary presented to the Board by SPP/IDPC with these Comments.

Moreover, nearly every one of the examples cited by UP/SP to demonstrate that competition has occurred with BNSF in the Central Corridor involved competition between BNSF and UP/SP *single line service*. In contrast, the inability of *dual-line service* to pose a competitive threat in the Central Corridor, particularly for coal, is demonstrated convincingly by the verified testimony of Mr. John E. West, III of URC, who states “we have not interchanged *any* coal to BNSF as of this date.” This is consistent with SPP/IDPC’s Comments and requests for relief: only single line BNSF service at reasonable compensation levels can provide real competition to UP/SP single line service in the Central Corridor.

Finally, the UP/SP’s broad, largely unsupported statements regarding the extent to which BNSF has successfully competed for business in the Central Corridor and its ability to constrain UP/SP single-line pricing are belied by the basic fact that the railroads both concur that total BNSF operations over the Central Corridor at the present time amount to less than one train per day.

**IV. CONCLUSION**

For SPP/IDPC, the UP/SP merger, as conditioned by the Board ostensibly for the purpose of preserving the ability of SPP/IDPC to obtain competitively priced rail transportation to North

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16 See e.g. UP/SP Report at 101-102 (Gent-Steel); Confidential Appendices A and B.

17 Verified Statement of John E. West, III at 2, attached to UP/SP July 1 Report.
Valmy has resulted in: (1) no contract for the tons which must be shipped to North Valmy via UP/SP because of current long term coal contracts and because UP/SP rail service originating at the Sharp, Utah loadout is the most economically feasible means of transporting this coal; (2) significantly above-market rate quotations from both UP/SP and BNSF for coal in addition to these minimums; and (3) a wide disparity between the URC-BNSF joint-line rates and single-line UP/SP rates. Thus, the merger conditions have not provided a substitute for the competition that existed at the North Valmy Station prior to the merger. SPP/IDPC believes that the factors outlined in their Request for Conditions and Comments submitted in the merger proceeding are directly responsible for the lack of competition from BNSF for the North Valmy coal traffic. Moreover, the lack of concrete evidence in the railroads’ quarterly status reports of BNSF competition and presence in the Central Corridor supports this contention.

JPP/IDPC has little expectation that the merger conditions imposed by the Board will eventually result in meaningful competition between BNSF and UP/SP for its traffic. For the reasons expressed in these comments, SPP/IDPC therefore urges the Board to consider modifying the merger conditions to increase the ability of BNSF to effectively compete with UP/SP for the North Valmy coal traffic. Specifically, SPP/IDPC requests that Board adopt the conditions originally proposed by SPP/IDPC in the merger proceeding, which were:

1. to order the merged carrier to provide another carrier selected by SPP/IDPC with trackage rights enabling that carrier to transport coal to the North Valmy Station in single line service from all mines in Colorado and Utah which were served by SP Lines; and

2. to require that the merged carrier provide such trackage rights at a compensation level at no greater than 1.48 mills per gross ton mile for the movement of coal from all mines in Colorado and Utah which were served by SP to the North Valmy Station, adjusted quarterly beginning in the first quarter of 1996 based on changes in the RCAF-A and after that time.

Respectfully submitted,

[Signature]
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Counsel for Sierra Pacific Power Company and Idaho Power Company

Dated: August 1, 1997
CERTIFICATE OF SERVICE

I hereby certify that I have on this 1st day of August, 1997, served a copy of the foregoing COMMENTS OF SIERRA PACIFIC POWER COMPANY AND IDAHO POWER COMPANY by first-class mail or by hand-delivery, upon all parties of record.

Aimee L. DePew
My name is Jeffery W. Hill. I am the Director of Fuel Management and Operations Support for the Sierra Pacific Power Company in Reno, Nevada ("Sierra"). I am the same Jeffery W. Hill whose verified statement was included with the Request for Comments and Conditions Submitted on Behalf of Sierra Pacific Power Company and Idaho Power Company in Finance Docket No. 32760 on March 29, 1996 ("Comments"). My background, qualifications and job description are set forth in my prior affidavit and are incorporated herein by reference.

The purpose of this verified statement is to provide an explanation of the efforts Sierra and Idaho Power Company ("Idaho") (together "Sierra/Idaho") have taken to obtain competitively priced rail transportation to our jointly owned North Valmy Station since the Board’s issuance of Decision No. 44 in Finance Docket No. 32760.

As explained to the Board in Sierra/Idaho’s Comments, at the time of the Board’s consideration of the merger application, coal was delivered to the North Valmy Station by the Union Pacific Railroad Company ("UP") from two mines located in the Hanna Basin of Wyoming and in the Uinta Basin of Utah, respectively. As explained in my prior verified statement, Sierra/Idaho is required to purchase tons of coal annually from the Southern Utah Fuel Company ("SUFCO") mine near Sharp, Utah and certain tonnages from the Black Butte Coal Company mine in the Hanna Basin for approximately the same period
of time. The Black Butte mine and Sharp, Utah loadout facility serving the SUFCO mine are now exclusively served by UP/SP. Moreover, UP/SP rail service from the Sharp loadout provides the most economically feasible means of transporting coal from the SUFCO mine to North Valmy. I note that since the merger proceeding, Sierra/Idaho have elected to reduce or eliminate altogether their tonnage obligations under the Black Butte contract through the exercise of contractual rights and other measures.

My prior verified statement also set forth in detail the history of the competition between UP and Southern Pacific Lines ("SP") which culminated in the Staggers Act contract in effect with UP at the time of the Board's consideration of the merger application. This contract had an expiration date of June 30, 1997, but was later extended by the parties to July 31, 1997, when it expired under the circumstances I next describe.

Despite Sierra/Idaho's grave doubts that the conditions placed by the Board on its approval of the merger of UP and SP would preserve the single line competition between these carriers prior to the merger, we nevertheless were determined to explore the possibility of UP/SP and the Burlington Northern and Santa Fe Railway Company ("BNSF") competing for the transportation of coal to the North Valmy Station which was not subject to the contract SUFCO coal minimums. In addition, during 1996 Sierra/Idaho had initiated a strategy which called for reducing the amount of coal taken under our current coal contracts to the contract minimums (or in Black Butte's case, exercising contract rights to reduce contract obligations) and seeking lower priced coal from alternative mine sources. Depending on the location of such alternative mines, this coal could be transported at rail rates established by competition between UP/SP and BNSF, in conjunction with the Utah Railway Company ("URC").

Because we suspected that this process might take time, we first exercised our right under the rail contract with UP/SP to request a one-year extension of that contract. Unfortunately, UP/SP rejected this request, and instead submitted a contract proposal which would have required Sierra/Idaho to use UP/SP to deliver virtually all of the coal to North Valmy for five years. Because this initial offer was so far afield of what Sierra/Idaho was considering, we did not formally respond to it. On May 22, 1997 Sierra/Idaho sent bid solicitations to UP/SP, BNSF, and URC by which we sought (1) a contract proposal from UP/SP for the contract minimum tons purchased from the SUFCO mine, and (2) competitive contract proposals for varying terms (1-3 years) from Utah, Colorado, and Wyoming mines served by UP/SP in single line service, and Utah mines served by UP/SP and BNSF in conjunction with URC. As we explained in our Comments in Finance Docket No. 32760, the Uinta Basin mines are closest to North Valmy and therefore present the best opportunity for competitive rail rates. We also asked
UP/SP for a 90-day extension of the contract from June 30, 1997 for the purpose of negotiating a new contract, but this request was refused. An extension of the contract term for the month of July was later agreed to.

Unfortunately, however, our rate solicitations did not evoke competitive action on behalf of either carrier. Absent further action by the Board, or an agreement between Sierra/Idaho, UP/SP, BNSF and URC that the exact terms of the railroads’ responses may be disclosed to the Board under a Highly Confidential designation, I can only describe the railroads’ responses in general terms. For its part, UP/SP responded to our request for a contract covering the minimum tons from the SUFCO mine by reiterating its prior condition that any contract to replace the parties’ existing contract must cover, for all practical purposes, all of the coal shipped to North Valmy for a time period roughly commensurate with the SUFCO coal contract. Moreover, Sierra/Idaho’s consultant’s analysis of the single line rate offered by UP/SP for the movement from the SUFCO mine—which was the lowest rate offered for service from Utah mines—concluded that this rate exceeded what would be considered rate levels set by head-to-head rail competition in a competitive market. He also concluded that the rate exceeded the jurisdictional threshold at which the Board could examine the reasonableness of the rate had it been offered in the form of a common carrier rate.

UP/SP refused to budge from its stance that any contract for the SUFCO contract minimum tons must include a requirement that Sierra/Idaho ship virtually all of the coal shipped to North Valmy Station via UP/SP or URC-UP/SP. While we did not necessarily object to shipping all or substantially all of North Valmy’s coal via UP/SP only, we were unable to negotiate contract terms with UP/SP that justified this approach. Consequently, Sierra/Idaho was forced to choose between shipping by contract virtually all of North Valmy’s coal via UP/SP at a well-above market rail rate, or foregoing a contract with UP/SP for the tons required to be shipped from the SUFCO mine and transporting it by common carrier rate. To accept UP’s offer as conditioned would have resulted in Sierra/Idaho foregoing any opportunity to explore the ability of BNSF to provide competitive service while the contract with UP/SP was in effect.

UP/SP’s refusal to enter into a contract for anything less than essentially all of the tons shipped to North Valmy at what Sierra/Idaho considered to be excessive rates, and the impending expiration of the existing contract on July 31, 1997, forced Sierra/Idaho to request common carrier rates for this service pursuant to 49 U.S.C. § 11101, which we did on July 22, 1997. The common carrier rates established by UP/SP in response to this request are substantially above the expiring contract rate and any rate offered by UP/SP from Utah mines in response to Sierra/Idaho’s May 22 solicitation. Because Sierra/Idaho is convinced that the common carrier
rate easily exceeds the maximum reasonable rate for this movement under the Board’s procedures, we have filed a Complaint with the Board in Docket No. NOR-42012 seeking prescription of the maximum reasonable rate for this movement, as well as reparations.

Shipping the SUFCO tons by common carrier rate, although obviously not Sierra/Idaho’s preference, does enable Sierra/Idaho to pursue coal in excess of its SUFCO coal contract minimum under competitively established rail rates and transportation terms. However, while I am again at this time precluded by confidentiality restrictions from disclosing the exact rates which were proposed by the UP/SP and URC-BNSF that would cover these tons, I can state that the URC-BNSF dual-line rates from Utah mines were far from being competitive with the UP/SP single line rates, which were themselves excessive. Indeed, the average difference between the initially offered joint-line URC-BNSF rates and UP/SP single-line rates from comparable Utah mines was approximately \( \frac{50}{100} \) per ton for mines other than the SUFCO mine. The URC-BNSF joint-line rates were more than \( \frac{50}{100} \) per ton higher than the UP/SP single line rate from the SUFCO mine.

The URC-BNSF rate proposals were slightly reduced during the parties’ discussions, but these reductions did not appreciably reduce the large differential between the URC-BNSF joint line rates and the UP single line rates. Thus, while discussions with BNSF after its initial response produced a minor reduction in the joint-line rates, the final joint-line URC-BNSF rates were still well above the UP/SP single line rates, which themselves were well above competitive market rates.

In short, it is clear to Sierra/Idaho that the railroad competition we enjoyed prior to the UP/SP merger is no longer present. Based on the rates we received for transportation of coal via the URC-BNSF routings approved by the Board in Decision No. 44, it can only be concluded that BNSF either does not wish to, or feels it cannot, compete with the UP single line movements for Sierra/Idaho’s traffic under present circumstances. We have therefore asked the Board in this proceeding to consider modifying the merger conditions to adopt the relief we requested in the merger proceeding.

Notwithstanding the above, Sierra/Idaho must, in today’s environment of electric industry restructuring, re-establish viable rail competition to North Valmy. We are therefore strongly considering moving some coal under the higher URC-BNSF rates with the hope that this traffic perhaps will help increase the level of competition to North Valmy to pre-merger levels. However, we are not optimistic that this can be accomplished without further action by the Board.
VERIFICATION

STATE OF NEVADA  )
COUNTY OF WASHOE  )

Jeffery W. Hill, being first duly sworn, deposes and says:

That he is Director, Fuel Management and Operations Support for Sierra Pacific
Power Company; that he has read the foregoing Verified Statement of Jeffery W. Hill before
the Surface Transportation Board in Finance Docket No. 32760 (Sub-No. 21) and knows and
understands the contents thereof; that there are good grounds to support this Statement; and
that the same is true of his own knowledge, except as to those matters therein stated upon
information and belief and as to those matters he believes them to be true.

Subscribed and sworn to before me

this 31 day of July, 1997.

Jeffery W. Hill

CONNIE D. SILVEIRA
NOTARY PUBLIC
Millennium Petrochemicals Inc. (formerly known as Quantum Chemical Corporation) ("Millennium"), thanks the Board for the opportunity to participate in this proceeding and to comment on the effect which of the merger has had on competition and the implementation of the conditions imposed on the merger by the Board. It is Millennium's intent with these comments to give the Board an impression of the impact of the merger and the conditions imposed upon the merger has had on a bulk shipper such as Millennium.

I. Introduction

A. Statement of Interest

Millennium is a major international chemical company, with leading market positions in a broad range of commodity, industrial, performance and specialty petrochemicals. With major manufacturing facilities in LaPorte, Texas, Port Arthur, Texas, Chocolate Bayou, Texas, Morris, Illinois and Clinton, Iowa, Millennium manufactures polyolefins, polymers and acetyls.\(^1\) From

\(^1\) Polyolefin products include ethylene, propylene and hydrocarbon-rich by-product streams; polymer products include high density polyethylene, low density polyethylene, linear low density polyethylene and polypropylene; acetyl products include vinyl acetate monomer, acetic acid, methanol and synthetic ethanol.
minor manufacturing facilities in Crockett, Texas, Heath, Ohio and Fairport Harbor, Ohio. Millennium produces specialty polymers for the wire and cable industry and polymer color concentrates. Ethanol is manufactured at Millennium's Tuscola, Illinois facility and denatured at Millennium's plants in Anaheim, California and Newark, New Jersey. Millennium maintains five regional distribution centers located in Gary, Indiana, Baytown, Texas; Ackerman, Georgia, Finderne, New Jersey; and San Bernardino, California. Each Millennium manufacturing facility ships the majority of its products in bulk by rail and each regional distribution center receives nearly all of its inventory via rail. Millennium ships an annual average of 23,000 rail cars from all facilities; it ships an annual average of 14,000 rail cars from points served by the merged UP/SP.

Millennium is an active member, *inter alia*, of the Chemical Manufacturers Association ("CMA"), the Society for the Plastics Industry ("SPI") and the National Industrial Transportation League ("NITL"). Millennium participated in the UP/SP merger proceedings (Finance Docket No. 32760), both through its participation in trade organizations, such as the CMA, SPI and NITL, and in its own right.

### B. Purpose of Oversight Proceeding Comments

Millennium makes this comment with the intent of giving the Board an impression of how the UP/SP merger and the conditions imposed upon that merger are working from the perspective of a bulk commodity shipper which is affected each and every day by the merger. Millennium also wishes to use this opportunity to recommend to the Board actions which it believes the Board should take in order to implement the objectives of its Decision No. 44 approving the merger.
II. Comments

A. Summary

Millennium wishes to bring to the Board's attention two issues arising post-merger which threaten the meaningful implementation of Decision No. 44. The first issue is the severe degradation of rail service in the Gulf coast region of Texas post-merger. The other issue is the effective failure of the conditions imposed upon the merger by the Board to maintain effective rail-to-rail competition in the Gulf coast region. Shippers such as Millennium, which depend upon efficient and cost-effective rail transportation from their manufacturing facilities to their customers, have experienced a severe and costly degradation of rail service in the Gulf coast region of Texas since the approval of the UP/SP merger. This degradation of service comes despite pre-merger assurances from the UP and SP that the merger would result in improved service and reduced costs to shippers. The second issue is that the access granted to the Burlington Northern/Santa Fe ("BNSF") in order to maintain rail-to-rail, or intramodal, competition has failed to produce the intended result. This failure of BNSF to be an effective competitor is due, in part, to a dearth of storage-in-transit facilities, which are vital to offering competitive rail service for shippers such as Millennium. BNSF's ability to accept new traffic in the Gulf Coast region made available by the Board's conditions on the merger has been hampered by its inability to obtain adequate storage-in-transit within the region. Even if storage-in-transit were not a problem, the BNSF is hampered from being an effective competitor by uncertainty over how to implement the Board's conditions regarding the BNSF's right to serve new facilities along trackage rights lines.
The first year of the merger has been lost vis-à-vis intramodal competition, especially in the Gulf coast region. Millennium believes that in order to make up for this past year, that the Board should extend the oversight period one additional year. In addition, Millennium believes that the Board should adopt the recommendation of the CMA and SPI and order the UP/SP and the BNSF to provide certain specified metrics in their quarterly reports to the Board in order to aid meaningful analysis of the implementation of the merger and the conditions placed upon the merger.

B. Comments on the Degradation of Rail Service Post-Merger

In its July 1, 1997 quarterly report to the Board, the UP/SP readily admits that rail service in the Texas Gulf coast region has degraded. Finance Docket No. 32760 (Sub-No 21), UP/SP 303 at 11 - 14. While the UP/SP tries to minimize the extent of the service problems (and even tries to claim that they are a continuation of "chronic problems in the Houston terminal that had plagued the SP for years"), the impact of these service problems is significant to shippers. The BNSF, likewise, admits that storage-in-transit has been a problem, although it claims that the recently concluded agreement with the UP/SP regarding additional capacity at the Dayton SIT facility and other recently negotiated agreements for additional SIT capacity should alleviate the problem.\(^2\) Finance Docket No. 32760, BNSF-PR-4 at 26.

Prior to the merger, the average loaded transit time for rail cars leaving Millennium's Gulf coast manufacturing facilities\(^3\) was 11.6 days. Verified Statement of Michael Dunn at 1.

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\(^2\) There is some apparent confusion in footnote 1 to the BNSF's quarterly report. On page 27, the BNSF states, "The Dayton SIT facility together with access we recently negotiated to 50% of the Sjolander SIT facility..." (Emphasis added.) This statement gives the impression that the BNSF has agreements for additional SIT capacity at two facilities. The Dayton SIT facility and the Sjolander SIT facility are, to the best of Millennium's knowledge, one and the same facility.

\(^3\) Millennium's Gulf coast facilities include LaPorte (Strang), Chocolate Bayou, and Port Arthur (Williams), Texas.
average transit time for the same facilities has increased by 50%. *Id.* This increase in transit times not only disrupts delivery schedules, but has an immediate and unrecoverable economic impact on shippers such as Millennium. Millennium estimates that since the merger was approved, it has had to expend $200,000 per month in additional freight expenses⁴ which are directly attributable to the UP/SP's degraded service; specifically, the dramatic increase in transit times on outbound shipments from the Gulf coast facilities. Dunn *VS.* at 2.

These service problems also disrupt the flow of empty rail cars returning to the manufacturing facilities⁵. Presently, Millennium has one plant operating with less than one day's supply of empty rail cars. *Id.* Anecdotally, Millennium is aware of empty rail cars not moving from storage in Galveston for nearly 30 days and in Eagle Lake, Texas for twenty-eight days when the supply of empty cars at manufacturing facilities fifty miles away was dangerously low. *Id.* It has been opined to Millennium personnel by UP/SP customer service personnel that rail service in the Gulf coast region is the worst it has been in twenty-eight years. Dunn *VS.* at 2-3.

These impacts of the merger, namely the increased transit times, the additional freight expenses, and the slow return of empty rail cars to the manufacturing plants, have had an adverse economic effect on shippers such as Millennium. Any benefits which the UP/SP can claim from this first year of the merger have been more than offset by the adverse impacts which implementation of the merger have been placed on shippers, especially those in the Gulf coast region.

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⁴ "Additional freight expense" includes the cost of expedited bulk hopper truck deliveries in lieu of rail car deliveries, rail car diversion and off-loading to bulk hopper truck, rail car utilization and inventory carrying costs.

⁵ Because Millennium produces products 24 hours a day, seven days a week at its manufacturing facilities, it is crucial that there be an adequate supply of empty hopper rail cars on hand in order to load and temporarily store the products being produced. The alternative to loading empty rail cars is to scale back production or to shut down the plants entirely. Both alternatives would result in severe economic losses to Millennium and, in the case of the shut down of a plant, would entail unnecessary risk of property damage and/or personal injury during the restart process. Generally, four to seven days supply of empties is the minimum requirement.
C. Comments on Effectiveness of Conditions to Maintain Rail-to-Rail Competition

1. The Goals

In its Decision No. 44, the Board reiterated the general policy that the focus when evaluating a consolidation of two carriers serving the same market should be on retaining effective intramodal competition. Finance Docket No. 32760, Decision No. 44 at 101. Further, the Board expressed the opinion that the merger would not diminish rail-to-rail competition for shippers formerly served separately by the SP and the UP (i.e. the 2-to-1 points). Id. at 121. The Board then imposed conditions upon the merger which were intended, *inter alia*, to ameliorate or prevent any harm to intramodal competition which the merger might engender. *Id.* at 144 - 156.

The BNSF was given certain trackage rights in order to fill the competitive vacuum created by the loss of the SP at 2-to-1 points. *Id.* at 145. In addition, the Board also granted the BNSF the right to serve new facilities located post-merger on former SP lines over which it had trackage rights. These new facilities included transload facilities.

While the Board strove to preserve rail-to-rail competition after the merger in its Decision No. 44, effective competition has been constructively thwarted by circumstances arising from implementation of the merger and the conditions imposed upon the merger in two areas: storage-in-transit ("SIT") and uncertainty over BNSF's rights to serve new facilities along its trackage rights.

2. Storage-in-Transit

In Decision No. 44, the Board recognized the importance of SIT to service of bulk commodity shippers, especially plastics shippers in the Gulf coast region. Decision No. 44 at 151.
Consequently, the Board imposed a condition upon the merger granting the BNSF access to all former SP SIT facilities on economic terms no less favorable than the terms of UP/SP's access. *Id.* at 152.

The reality facing shippers such as Millennium is that storage-in-transit is a major problem for outbound shipments and inbound empty rail cars. It is interesting to note that the UP/SP and the BNSF did not finalize an agreement for BNSF access to the former SP Dayton, Texas SIT facility until April 28, 1997, nearly nine months after the merger was approved. Finance Docket No. 32760, BNSF-PR-4 at 26. In the interim, shippers such as Millennium who may have wanted to or did utilize the BNSF found their inbound and outbound rail cars either pushed to SIT facilities remote from the Gulf coast region or hopelessly mired in overcrowded SIT yards such as Dayton. *Dunn vs.* at 2. The Dayton SIT facility, in particular, has been pushed beyond its capacity based upon information Millennium is receiving. Not only must the Dayton yard now handle BNSF's SIT requirements, but also former UP traffic which previously did not have access to this facility. Without access to adequate SIT capacity, BNSF will never be a viable competitor in the Gulf coast region, especially to commodity plastic shippers. The UP/SP and the BNSF knew, or should have known, prior to approval of the merger that the SIT infrastructure in the Gulf coast region was inadequate for the BNSF to be a viable competitor to the UP/SP and that the BNSF would remain a non-viable competitor until more SIT capacity was in place.

Millennium brings to the Board's attention that neither the UP/SP nor the BNSF have provided any quantitative measurement of SIT utilization or capacity for areas where the BNSF is intended to replace the SP as a competitor, nor have they provided any quantitative data on any impact which SIT utilization or capacity may have on implementation of the merger or the
conditions upon the merger. It should be incumbent upon the UP/SP and the BNSF to report SIT utilization and capacity in order for the Board, and participants in this proceeding, to evaluate in a meaningful way whether or not the conditions in Decision No. 44 regarding SIT access are being implemented.

3. **New Facilities Along Trackage Rights**

Both the UP/SP and the BNSF, as well as the CMA and SPI in their joint comments (Finance Docket No. 32760 (Sub-No. 21), CMA-2/SPI-3) recognize that the UP/SP and the BNSF have yet to agree upon a protocol for implementing the Board's condition that BNSF be granted the right to serve new, post-merger facilities along trackage rights granted to it along former SP lines. For a shipper such as Millennium, this failure of the UP/SP and the BNSF to come to agreement on implementation of this condition "freezes" its long-term strategic planning regarding rail transportation. The BNSF has not been able to effectively use the rights granted under this condition since the merger was approved. Thus, any harm to competition which this condition was intended to ameliorate or prevent has neither been ameliorated or prevented. In effect, the Board's intention to preserve and foster intermodal competition has been constructively thwarted. Millennium believes that the Board should intervene if the UP/SP and the BNSF cannot quickly come to agreement regarding implementation of this condition.

III. **Conclusion**

In summary, Millennium concludes that one year has passed without the Board's Decision No. 44, approving the UP/SP merger and imposing conditions upon the merger, achieving its intended results. Consequently, competition has suffered in the Gulf coast region of Texas from
the withdrawal of the SP as a rail competitor. In addition, shippers in the Gulf coast region have been made to bear a heavy burden in implementation of the merger in the form of severely degraded rail service. In order to put the process "back on the tracks" and to start realizing the intent of Decision No. 44, Millennium urges the Board to adopt the recommendation of the joint comment of the CMA and SPI that certain specified metrics be included in future quarterly reports submitted by the UP/SP and the BNSF. In addition, Millennium urges the Board to extend the oversight period an additional one year to compensate for the time which has been lost since the merger was approved.

Respectfully submitted,

Michael P. Ferro  
Millennium Petrochemicals Inc.  
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Cincinnati, Ohio 45249  
(513) 530-6808  
(513) 530-6562 FAX  
Attorney for Millennium Petrochemicals Inc.

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Suite 500 West  
Washington, DC 20001  
(202) 434-4100  
Of Counsel for Millennium Petrochemicals Inc.
CERTIFICATE OF SERVICE

I, Kimberly L. Bigley, a secretary at the law firm of Keller and Heckman, LLP, hereby certify that a copy of the foregoing Comments of Millennium Petrochemicals, Inc. (MPI-2) was served by first-class mail, postage prepaid, on this 1st day of August, 1997, upon all Parties of Record in this proceeding.

Kimberly L. Bigley
July 31, 1997

VERIFIED STATEMENT
OF
Michael Dunn

My name is Michael Dunn, Manager of Rail Procurement for Millennium Petrochemicals Inc. ("Millennium"), 11500 Northlake Drive, Cincinnati, Ohio 45249. I am responsible, among other things, for negotiating rates for rail transportation of Millennium's products. I work in close coordination with Millennium's Manager of Distribution Logistics and Manager of Transportation Load Planning. I am, therefore, familiar with the problems which Millennium has been experiencing in the Texas Gulf coast region since the merger of the Southern Pacific Corporation ("SP") into the Union Pacific Railroad Company ("UP"). I also serve on the steering committee to the Rail Task Group of the Distribution Committee of the Chemical Manufacturers Association, so I am familiar with the proceedings in Finance Docket No. 32760 and the merger oversight proceeding in Finance Docket No. 32760 (Sub-No. 21). I have reviewed the quarterly reports of the UP/SP and the Burlington Northern and Santa Fe Railway Company (BNSF) in the oversight proceeding. Finance Docket No. 32760, BNSF-PR-2 and UP/SP-303.

Millennium tracks its outbound shipments of rail hopper cars and keeps statistics on the number of days it takes for these rail cars to move from origin to destination. These statistics aid Millennium in optimizing the routing of rail car shipments to its customers, in planning production, in inventory control and in rail car fleet management. I have reviewed historical data on transit times of outbound shipments of rail cars from Millennium's manufacturing facilities in the Gulf coast region of Texas. Prior to the UP/SP merger, the average transit time was 11.6 days. Presently, the average transit time for the same routings has increased by 50%.
is seeing frequent aberrant transit times on some routings, such as 26 days from LaPorte (Strang), Texas to Baytown, Texas. (In this case, the car was stored in East St. Louis, Illinois after leaving Strang.)

Due to the increase in the transit times of loaded rail cars outbound from the Gulf coast region, Millennium has had to take extraordinary measures in order to meet delivery commitments made to customers. Such extraordinary measures include expedited shipping of bulk hopper truck loads of product in lieu of rail car shipment and diverting rail car shipments to team tracks and off-loading the product into bulk hopper trucks. These extraordinary measures result in additional freight charges to Millennium (generally referred to within Millennium as "additional freight expenses") which usually cannot be passed through to the customer. Since the merger was approved, Millennium has incurred approximately $200,000 per month in additional freight expenses as a direct result of the deteriorated rail service within and originating from the Gulf coast region.

Millennium also tracks the number of empty rail cars ("empties") on-hand at each of its manufacturing facilities. Since the manufacturing facilities require a certain number of empty rail cars each day in order to ship and to temporarily store the day's production, the gross number of empties on-hand is usually expressed in terms of the number of days supply of empties. At times, supplies of empties at Gulf coast plants have been less than what is considered an adequate reserve of empties. On occasion, plants have prepared to, or have actually had to, scale back production in order to adjust production to the supply of empties on hand. In the meanwhile, Millennium has learned of its empties sitting in storage in Galveston, Texas for thirty days and in storage in Eagle Lake, Texas for twenty-eight days. I am told by UP customer service personnel,
that, in their opinion, the situation with transit times, storage-in-transit and empties being returned is the worst it has been in twenty-eight years!
COUNTY OF HAMILTON

STATE OF OHIO

VERIFICATION

§

§

§

Michael Dunn, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Michael Dunn

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

My commission expires: 

MICHAEL P. FERRO, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date, Section 147.03 O.R.C.
August 1, 1997

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

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and twenty-five copies
of Comments of the Capital Metropolitan Transportation Authority (CMTA-2). Also
enclosed is a 3.5 inch disk that contains the text of this pleading in Wordperfect 6.0 format.

I would appreciate your date-stamping the enclosed receipt copy of the filing and returning
it with the messenger for our records.

Very truly yours,

Bracewell & Patterson, L.L.P.

Monica J. Palko

Enclosures
BETORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

FINANCE DOCKET
NO. 32760 (Sub-No. 21)

COMMENTS OF THE
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

The Capital Metropolitan Transportation Authority ("Capital Metro") files these Comments in response to Decision No. 1 in the above-referenced proceeding, in which the Surface Transportation Board ("the Board") requested comments regarding implementation of the conditions imposed upon the merger of the rail carriers controlled by Union Pacific Corporation and the rail carriers controlled by Southern Pacific Rail Corporation.

Through Decision No. 44 of Finance Docket 32760, as a condition to the merger, the Board granted Capital Metro the right to choose an interchange point for Giddings-Llano shippers to interchange with The Burlington Northern and Santa Fe Railway Company ("BN/Santa Fe"). Decision No. 44, STB Finance Docket No. 32760, p. 182 (August 6, 1996). Capital Metro selected Elgin as this interchange point, and the Board accepted Capital Metro's decision. Decision No. 69, STB Finance Docket No. 32760, p. 5 (March 7, 1997). BN/Santa Fe's interchange of Giddings-Llano traffic via Elgin began only in March of this year. The Burlington Northern and Santa Fe
Railway Company's Quarterly Progress Report, p. 4 (April 1, 1997); Applicants' First Quarter 1997 Progress Report with Respect to Merger Conditions, p. 12 (April 1, 1997). Because this interchange service is still in its preliminary and formative stages, Capital Metro is unable to determine the effectiveness of such interchange to allay concerns regarding the merger's anticompetitive impact. Capital Metro notes generally, however, that such interchange has occurred, and that Capital Metro's rail operator, Longhorn Railway, and BN/Santa Fe personnel have been working together to establish the Elgin interchange as a viable option for Giddings-Llano shippers.

During the course of investigating the status of the BN/Santa Fe interchange via Elgin, it has come to Capital Metro's attention that some Giddings-Llano shippers have, since the merger, had substantial difficulty obtaining an adequate number of rail cars to service their operations. Exhibit A, Responses to Question Nos. 5 and 9. At least two shippers also consider that Union Pacific service has significantly deteriorated post-merger. Id. Capital Metro understands that Longhorn Railway is filing comments that address these issues in more detail.

Respectfully submitted,

Monica J. Palko, Esq.
Albert B. Krachman, Esq.
Bracewell & Patterson, L.L.P.
2000 K Street, N.W., Suite 300
Washington, D.C. 20006
(202) 828-5800

August 1, 1997
CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Comments of the Capital Metropolitan Transportation Authority to be served by first class mail, or more expeditious manner, on all Parties of Record in Finance Docket No. 32760 (Sub. No-21), this 1st day of August, 1997.

[Signature]

Monica J. Palko
GIDDINGS-LLANO SHIPPER SURVEY

In August of 1996, the Surface Transportation Board ("the Board" or "STB") approved the control and merger of the Southern Pacific Railroad by the Union Pacific Railroad. Through its decision granting this approval, the Board imposed certain conditions intended to retain shipping competition and to prevent the Union Pacific from exercising monopoly control. To retain competition on the line, the Board imposed a condition that the Burlington Northern Railroad would interchange with Giddings-Llano freight traffic. This interchange began in March of this year via Elgin.

The Board has now initiated a follow-up proceeding intended to determine the effectiveness of the conditions the Board imposed. Capital Metro is contacting you to develop information needed to determine whether it would be necessary or helpful to file comments in the proceeding.

Please return this survey by July 21, 1997 to Justin Augustine, Capital Metro General Manager, in the enclosed envelope or fax it to him at (512) 385-0474.

Thank you for your time and assistance.

1. What is the name and address of your facility or business?

   Pioneer Concrete of Texas, Inc.
   Burnet Quarry
   P. O. Drawer B
   Burnet, Texas 78611
   (512) 756-8255

2. What commodity do you ship, in what quantities, and at what frequency?

   The Pioneer Quarry produces construction materials, these consist of primarily concrete and asphalt aggregates. Pioneer has a weekly standing order of 125 cars. These are 100 ton hoppers and Gons.
3. What is the title or position of the person(s) completing this survey?
   Lee Curwell
   Area Manager Denver Commercial

4. Before you received this survey, were you aware that both Union Pacific and Burlington Northern
   interchange with Giddings-Llano freight traffic?
   Yes ☑ No __
   (a) If yes, whom did you become aware that Burlington Northern
       interchanges with Giddings-Llano traffic?
       March of 1997
   (b) If yes, from whom did you learn that Burlington Northern interchanges with
       Giddings-Llano traffic?
       Dan Chatham of the Longhorn Railway Company
   (c) If yes, has any Burlington Northern representative contacted you to discuss
       possible transportation to or from your facility?
       Russ Sumbly of the Burlington Northern

5. In your opinion, has the level, quality and cost value of Union Pacific rail transportation service
   improved, remained the same, or deteriorated since the merger on September 11, 1996?
   Please explain.
   The level of service on the Union Pacific has deteriorated. For example, in previous train
   movements from the Pioneer Burnet Quarry to a large construction market like Houston, a
   single train movement would take one week travel time. Currently that same train movement
   takes at least three (3) weeks. Of the 875 cars requested since June 16th we’ve received 305.
   The Union Pacific has notified Pioneer of an equipment shortage.

6. Has any of your freight been interchanged by the Burlington Northern since it began to
   interchange with Giddings-Llano traffic in about March of this year?
   Yes ☑ No __
   (a) If so, were you pleased with the service and price ordered? Why or Why not?
       Yes ☑ No __
       Yes, the rates were fair and the service has been sufficient.

7. Has anyone contacted you regarding the potential— or need—to construct or improve rail track or
   track crossovers in order to facilitate interchange with the Burlington Northern?
   Yes
8. Has rail transportation service, whether via Union Pacific or Burlington Northern (although through Longhorn Railway initially), been adequate to meet your needs? Why or why not?

   Yes [X] No

   Though the B.N.S.F. service has been sufficient, the B.N.S.F. lines don’t service the major consumers in Houston. Pioneer Aggregates must continue to rely on the Union Pacific Railroad.

9. Please provide any additional comments below.

   Pioneer Concrete has notified the S.T.B of similar problems with other rail served quarry operations around the state.
   We would appreciate Capital Metro assistance in requesting the S.T.B to address the Rail Transportation service problems being observed.
GIDDINGS-LLANO SHIPPER SURVEY

In August of 1996, the Surface Transportation Board ("the Board" or "STB") approved the control and merger of the Southern Pacific Railroad by the Union Pacific Railroad. Through its decision granting this approval, the Board imposed certain conditions intended to retain shipping competition and to prevent the Union Pacific from exercising monopoly control. To retain competition on the line, the Board imposed a condition that the Burlington Northern Railroad would interchange with Giddings-Llano freight traffic. This interchange began in March of this year via Elgin.

The Board has now initiated a follow-up proceeding intended to determine the effectiveness of the conditions the Board imposed. Capital Metro is contacting you to develop information needed to determine whether it would be necessary or helpful to file comments in the proceeding.

Please return this survey by July 21, 1997 to Justin Augustine, Capital Metro General Manager, in the enclosed envelope or fax it to him at (512) 385-0474.

Thank you for your time and assistance.

1. What is the name and address of your facility or business?

CAPITOL AGGREGATES, LTD.
(DELTA OPERATIONS)
P.O. BOX 99
MARBLE FALLS, TEXAS 78654

2. What commodity do you ship, in what quantities, and at what frequency?

CRUSHED STONE
APPROX. 1200 CARS/YEAR
AS DEMAND DICTATES, HEAVIEST MARCH TO SEPTEMBER
3. What is the title or position of the person(s) completing this survey?  
(Optional)

SALES REPRESENTATIVE

4. Before you received this survey, were you aware that both Union Pacific and Burlington Northern interchange with Giddings-Llano freight traffic?  

Yes X No 

(a) If yes, when did you become aware that Burlington Northern interchanges with Giddings-Llano traffic?  

JANUARY 1997

(b) If yes, from whom did you learn that Burlington Northern interchanges with Giddings-Llano traffic?

DON CHEATHAM

(c) If yes, has any Burlington Northern representative contacted you to discuss possible transportation to or from your facility?  

NO - I CONTACTED THEM
5. In your opinion, has the level, quality and cost value of Union Pacific rail transportation service improved, remained the same, or deteriorated since the merger on September 11, 1996? Please explain.

DETERIORATED BADLY - BOTH SERVICE AND EQUIPMENT AVAILABILITY.

6. Has any of your freight been interchanged by the Burlington Northern since it began to interchange with Giddings-Llano traffic in about March of this year?

Yes ____ No X ____

(a) If so, were you pleased with the service and price offered? Why or why not?

Yes ____ No ____
7. Has anyone contacted you regarding the potential – or need – to construct or improve rail track or track appurtenances in order to facilitate interchange with the Burlington Northern?

WE HAVE BEEN KEPT UP TO DATE THRU CONVERSATIONS WITH DON CHEATHAM.

8. Has rail transportation service, whether via Union Pacific or Burlington Northern (although through Longhorn Railway initially), been adequate to meet your needs? Why or why not?

Yes ___ No ___

SEE #3 LONGHORN IS DOING THE BEST THEY CAN WITH THE INTERCHANGE SERVICE THEY GET.

9. Please provide any additional comments below. If you need more room, please use the back of this survey or attach additional pages.

WITH THE LEVEL OF SERVICE THE UP RAIL ROAD IS GIVING AT THIS TIME, AND THE CAR UTILIZATION AND AVAILABILITY AS IT IS, IT IS IMPOSSIBLE TO KEEP RAIL CUSTOMERS SUPPLIED IN A TIMELY MANNER. SERVICE ON UP IS THE POOREST I HAVE EVER SEEN.
August 1, 1997

Via Hand Delivery

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

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

Dear Secretary Williams:

Enclosed for filing is an original and twenty five copies of TM-2, Comments of The Texas Mexican Railway Company, filed in the above-reference proceeding. Also enclosed is a 3 1/2" computer disk containing the filing in Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0.

Should you have any questions regarding this, please call.

Sincerely,

Richard A. Allen

Enclosure
BEFORE THE
SURFACE TRANSPORTATION BOARD

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Co.
-- Control and Merger --
SPCSL Corp. and The Denver and Rio Grande Western Railroad Co.

Finance Docket No. 32760 (Sub-No. 21)
(UP/SP Oversight)

COMMENTS OF
THE TEXAS MEXICAN RAILWAY COMPANY

Pursuant to the Surface Transportation Board's ("Board")
Decision No. 1, served May 7, 1997, in the UP/SP Oversight proceeding, the Texas Mexican Railway Company ("Tex Mex") hereby submits its comments with regard to the effects of the merger on competition and implementation of certain conditions imposed to address competitive harms.

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I. INTRODUCTION & SUMMARY

UP/SP, Decision No. 44, served August 12, 1996, granted the application of Applicants UP\(^2\) and SP\(^3\) for prior approval of the merger of the UP and the SP railroad systems subject to certain conditions designed to ensure continued rail competition in the western United States. Among other conditions imposed on the merger, the Board granted three conditions which are the subject of today's comments by Tex Mex: (1) the Tex Mex trackage rights; (2) the BNSF\(^4\) conditions; and (3) the oversight conditions.

To the extent that anything can be determined at this early date, by all accounts, the Tex Mex trackage rights conditions and the BNSF conditions are not fully accomplishing their intended purposes. Congestion and inefficiencies are resulting in limitations and delays for BNSF and Tex Mex operations in Texas, which in turn affect Tex Mex's ability to compete. These problems will have to be addressed. The record simply is not sufficient, though, for the Board to make any reasonable determination as to whether the conditions imposed by the Board

\(^2\) The Union Pacific Corporation, Union Pacific Railroad Company and the Missouri Pacific Railroad Company (now merged into the Union Pacific Railroad Company), collectively are referred to herein as "Union Pacific."

\(^3\) Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grand Western Railroad Company collectively are referred to herein as "Southern Pacific" and, together with Union Pacific, collectively are referred to herein as "UP/SP."

\(^4\) The Burlington Northern and Santa Fe Railway Company is referred to herein as "BNSF."
are effective in replacing other competition lost through the merger of the UP and the SP. The Board should clarify that discovery is available in this proceeding, and appoint an administrative law judge to adjudicate disputes, in order to ensure that the next round of reports and comments provide the Board with a firmer ground on which to make any determinations.

II. THE RELEVANT CONDITIONS

For purposes of these comments, Tex Mex focuses on only three of the conditions the Board imposed to address the anticompetitive aspects of the UP/SP merger. Those conditions, the Tex Mex trackage rights conditions, the BNSF conditions, and the oversight conditions, are described generally below.

A. The Tex Mex Trackage Rights Condition.

The Board conditioned its approval of the UP/SP merger in part on the grant to Tex Mex of trackage rights from its lines to Houston over the "Flatonia Route" -- which extends over UP/SP lines from Corpus Christi and Robstown to Houston through Flatonia -- and from Houston to a connection with KCS\(^\text{\textsuperscript{\textregistered}}\) at Beaumont. Tex Mex may carry any traffic under the rights with one significant restriction -- the traffic must have a prior or subsequent movement over the Tex Mex lines. UP/SP, Decision No. 44, slip. op. at 13, 23-33. The central purpose of granting trackage rights to Tex Mex was to "ensure the continuation of an

\(^\text{\textsuperscript{\textregistered}}\) The Kansas City Southern Railway Company is referred to as "KCS."

-3-
effective competitive alternative to UP's routing into the border crossing at Laredo." Id. at 149.

B. The BNSF Conditions.

The BNSF Conditions grew out of several aspects of the merger proceeding -- the BNSF Settlement, the CMA Agreement, and the evidence submitted by dozens of parties concerned about the loss in competition which would occur when UP absorbed SP. In brief, these conditions, which included contract modification and new facility access conditions to enhance the trackage rights BNSF was to get, were granted in order to ensure that BNSF could "replicate the competition that would otherwise be lost when SP is absorbed into UP." UP/SP, Decision No. 44, slip op. at 145.

Of relevance to these comments, the trackage rights that BNSF received included trackage rights over the "Algoa Route" which runs from Algoa (just south of Houston) to Brownsville parallel to the Gulf Coast via Corpus Christi and Robstown, where BNSF connects with Tex Mex. Because most of the traffic BNSF interchanges with Tex Mex is interchanged at Corpus Christi or Robstown, it is over this route that most BNSF-Tex Mex traffic flows.

C. The Oversight Condition.

The final condition of importance to these comments is the oversight condition. The Board instituted a five-year oversight proceeding "to examine whether the conditions . . . imposed have effectively addressed the competitive issues they were intended
to remedy." UP/SP, Sub-No. 21 ("UP/SP Oversight"), Decision No. 1, served May 7, 1997, comments of Chairman Morgan, slip op. at 8. The Board specifically "retain[ed] jurisdiction to impose additional remedial conditions if, and to the extent, [the Board] determine[s] that the conditions already imposed have not effectively addressed the competitive harms caused by the merger." UP/SP, Decision No. 44, slip op. at 146.

Initially, the Board planned to begin the oversight proceeding on or about October 1, 1997. UP/SP, Decision No. 44, slip op. at 147. It left open "the possibility, however, that the proceeding would begin earlier "[i]f the circumstances warrant. . . ." In an order served on May 7, 1997, the Board did begin the proceeding early, asking the parties to submit comments by August 1. UP/SP Oversight, Decision No. 1, slip op. at 2. These comments are submitted on behalf of Tex Mex in response to the Board's request.

III. ALTHOUGH THE UP AND BNSF REPORTS ARE LACKING, WHAT INFORMATION IS AVAILABLE RAISES SERIOUS CONCERNS.

The UP/SP Oversight proceeding only recently began its 5-year term, and one very basic problem has come to light. Both UP/SP and BNSF are required by the Decision No. 44 to submit on a quarterly basis implementation progress reports to help the Board determine whether the conditions imposed are effective in addressing the competitive problems they were meant to address. UP/SP, Decision No. 44, slip op. at 146-47. The Board simply
does not have sufficient information in which to make that
determination.

Faced with admonitions from the Board and discovery requests
from parties, UP/SP and BNSF submitted more detailed progress
reports on July 1, 1997 than either had previously. To a limited
degree, UP/SP also responded to discovery. BNSF refused to
respond to discovery at all.

The more detailed progress reports, however, are still not
sufficient to determine whether certain conditions are fulfilling
their stated purpose. They do, however, raise serious concerns.

For example, UP/SP claims that the contract modification
condition has been effective despite the fact that only six
shippers with eight contracts (of the 930 contracts open to
modification) have contacted UP since the merger to ask whether
UP would terminate their contracts if the shipper took advantage
of the contract modification condition. UP/SP-303 at 86. UP/SP
informed the shippers as to four of the eight contracts that
UP/SP would terminate the contract if the shipper took advantage
of the contract modification condition. UP/SP-303 at 86. While
to UP/SP this "suggest[s]" that 2-to-1 shippers are "satisfied
with the existing contractual arrangement," id., it more likely
supports BNSF's concern that the contract modification condition
is fundamentally flawed and gives UP/SP substantially more power
to retain business than was intended under the condition.\^6

BNSF-PR-4 at 11.

As another example, both UP/SP and BNSF claim that BNSF’s traffic over its trackage rights has grown over time. More relevant is whether this growth in BNSF traffic over its trackage rights is new or rerouted traffic, originating and terminating at captive or competitive points, and traffic for which SP and UP competed prior to the merger and for which the BNSF conditions were put into place to protect.\^7

The burden is clear. UP/SP and BNSF must submit sufficient information to permit the Board to determine that the protective conditions are effective in addressing the specific competitive concerns they were imposed to address. Chairman Morgan explained it best when she wrote that:

The conditions that the Board has imposed require the applicants and BNSF to report periodically to demonstrate to the Board that the protective conditions are in fact working. The Board will not depend upon shippers and affected parties to do its monitoring.

\^6\ UP/SP responded to discovery requests concerning the few 2-to-\^2\ shippers who inquired of UP/SP concerning the contract modification condition. Not evident from the UP/SP response were the volumes and revenues involved in the contracts it said it would terminate if the shipper exercised its election under the contract condition. See HC06-0001 through HC06-0030 (submitted as Appendix A in the Highly Confidential Appendix submitted herewith). As noted above, BNSF did not respond to any discovery requests concerning the contract modification condition.

\^7\ Again, UP/SP did respond to certain discovery requests with regard to BNSF traffic traversing the BNSF trackage rights lines. BNSF refused to provide anything in response to discovery. The UP/SP-provided evidence is not sufficient to make any determinations with regard to the issues described in the text.
UP/SP, Decision No. 44, slip op. at 240 (separate comments of Chairman Morgan). So far, the information UP/SP and BNSF have provided to the Board is not sufficient to meet their burden.

Of course, some evidence is not available now and only will be available over time. For example, UP/SP estimates that BNSF is carrying only 20% of the total universe of traffic it believed would be available. UP/SP-303 at 94. Yet to be determined is whether BNSF is able to capture additional traffic and whether BNSF, by operating over trackage rights at 2-to-1 points and over 2-to-1 corridors, can replace the competition that was lost when UP acquired SP.

BNSF's failure to respond to discovery is significant. Although UP/SP agreed to provide traffic tapes to other parties to the oversight proceeding, BNSF refused. The traffic tapes provided by UP/SP were not useful for two reasons: 1) many fields were either not there or did not contain the information in a way that would have permitted complete analysis; and 2) without the BNSF tapes, any analysis would necessarily have been lacking. There simply was not sufficient time to compel discovery and conduct an analysis for inclusion in these August 1st comments. Tex Mex asks the Board to recognize explicitly the availability of discovery and appoint an administrative law judge to adjudicate any discovery disputes that may arise in the future of this proceeding.
IV. SERIOUS PROBLEMS REMAIN WITH THE TEX MEX AND BNSF CONDITIONS WHICH MAY REQUIRE ADJUSTMENTS IN THE FUTURE.

UP/SP's and BNSF's progress reports would make it appear that Tex Mex generally has done well under the conditions the Board has imposed and that BNSF is operating effectively over its South Texas trackage rights. UP/SP-303 at 108-109; BNSF-PR-4 at 8-9. Although Tex Mex's traffic has improved from the period before the merger when SP was experiencing major service problems, and although Tex Mex is providing service on its trackage rights on the Flatonia route (approximately 15 trains southbound and 11 trains northbound for the months October 1996 through June 1997), serious problems remain with regard to the Tex Mex and BNSF trackage rights conditions in South Texas. If these problems persist and cannot be resolved, the Board may need to make appropriate adjustments to the Tex Mex and BNSF conditions.

The major problems relate to traffic congestion and delays. As set forth in the attached verified statement of Allen W. Haley, Jr., Tex Mex's Superintendent of Transportation, Tex Mex has been experiencing severe delays to its trackage rights operations over the Flatonia Route. Examples of these delays are detailed in a letter dated July 10, 1997 from Tex Mex President Larry Fields to Mr. A.L. Shoener, UP's Executive Vice President - Operations, attached as Exhibit A to Mr. Haley's verified statement. Overall, Mr. Haley states that in the past four months, the average transit time of Tex Mex cars from Beaumont to
Corpus Christi have gone from approximately 36 hours to more than 72 hours. As Mr. Haley reports, UP personnel have acknowledged to Tex Mex that these delays are attributable to UP traffic congestion. An article in the July 26, 1997 Houston Chronicle, attached as Exhibit B to Mr. Haley's statement, also describes the severe rail congestion currently in the Houston area, which one shipper attributes mainly to "the complexity of operating a newly merged rail system in a market such as Houston."

Nevertheless, as stated in Mr. Fields' July 10, 1997 letter, UP's customer service personnel have told complaining Tex Mex customers, falsely, that the delays are the fault of TFM, the newly established Mexican railroad that now operates the Mexican rail line between Laredo and Mexico City and that is Tex Mex's corporate sibling.²

Mr. Haley also reports that UP/SP's congestion problems have also adversely affected BNSF's trackage rights operations on the Algoa route. Recently, UP has limited BNSF to one train a day in each direction on that route, citing traffic congestion problems as the reason. This restriction significantly limits the amount of traffic BNSF can carry over that line and the amount of traffic BNSF can interchange with Tex Mex at Corpus Christi or Robstown.

These delays have greatly increased the cost of Tex Mex's trackage rights operations and greatly impaired the quality of

⁷ To date, Mr. Fields has received no response to this letter.
service provided to shippers by those operations. Mr. Haley reports that as a result of the delays to Tex Mex's trains, in the past four months Tex Mex's car hire costs and crew costs have tripled and fuel use has nearly tripled. These effects, in turn, substantially reduce the ability of Tex Mex to compete effectively with UP over the trackage rights contrary to the STB's purpose in granting those rights to Tex Mex as a condition of the UP/SP merger.

These problems have accentuated the serious competitive disadvantage placed on Tex Mex as a result of the traffic restriction imposed by the Board on Tex Mex's trackage rights in Decision No. 44. As discussed in the attached verified statement of Mr. Glenn Turner, Tex Mex's Regional Sales Manager in Houston, the amount of rail traffic originating or terminating in Mexico constitutes a minor part of the total rail traffic for most potential Tex Mex customers in Houston. In trying to solicit the Mexican traffic of those customers, however, Tex Mex has been at a substantial competitive disadvantage to UP/SP and BNSF, and especially to UP/SP, by not being able to bid for their non-Mexican traffic as well. Based on his 39 years marketing rail services in the Houston, Beaumont and South Texas area, Mr. Turner is confident that this disadvantage has cost Tex Mex a substantial amount of traffic between Houston and Mexico that it would otherwise have obtained and has made it much more difficult for Tex Mex to compete for that traffic.
In sum, although Tex Mex's overall traffic has increased since the merger and Tex Mex is providing service via its trackage rights operations, Tex Mex has achieved those results by, in effect, swimming upstream. Serious problems remain with respect to both the Tex Mex and the BNSF trackage rights conditions in South Texas that have impaired the ability of both to compete effectively with UP/SP for traffic to and from Mexico. Tex Mex will continue to try to work with UP/SP and with BNSF to resolve the problems associated with traffic congestion and delays to Tex Mex and BNSF trains.

If they cannot be resolved, the Board may need to make appropriate adjustments in the conditions to ensure that there is effective competition to UP/SP in the markets served by Tex Mex.
CONCLUSION

Because it is too early to determine whether the conditions imposed by the Board in Decision No. 44 are fulfilling their stated purpose and because serious problems remain with respect to the Tex Mex trackage rights and the BNSF Conditions in South Texas that may require the Board to make adjustments to them if they are not resolved, it is essential that the Board continue this oversight proceeding, continue to require periodic reports by UP/SP and BNSF, and continue to give interested parties an opportunity to provide input to the Board. In order to make that input meaningful, the Board should also clarify that discovery is available in this proceeding and to appoint an administrative law judge to adjudicate discovery disputes.

Respectfully submitted,

Richard A. Allen
John V. Edwards
Bianca C. Bennett
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

Counsel to The Texas Mexican Railway Company
VERIFIED STATEMENT
OF
ALLEN W. HALEY, JR.

My name is Allen W. Haley, Jr. I am employed by The Texas Mexican Railway Company ("Tex Mex") as the Superintendent of Transportation. I have been employed in that capacity since December of 1996. My office is located at 1200 Washington Street in Laredo, Texas. I have had an active career in the railroad business that has lasted over twenty years. A summary of my experience appears in the verified statement I submitted on behalf of Tex Mex in TM-23, Tex Mex's responsive application filed in Finance Docket No. 32760.

I am presenting this verified statement in connection with the Comments of the Texas Mexican Railway Company in the Oversight Proceedings with regard to the implementation of the Board's decisions in the UP/SP merger.

In recent months, UP/SP operations and congestion have caused Tex Mex trains to experience severe delays while operating over the trackage rights Tex Mex was granted in the UP/SP merger proceeding. Many of these delays are detailed in a letter dated July 10, 1997 from Larry Fields, Tex Mex's president, to Art Shoener, UP's Executive Vice President - Operations, which I attach as Exhibit A to this statement. Overall, in the last four months the average transit time for Tex Mex trains between Corpus

\[1\]

Christi to Beaumont has gone from approximately 36 hours to more than 72 hours.

UP/SP personnel have acknowledged to Tex Mex that these delays are caused by UP traffic congestion. The serious congestion in the Houston area was recently reported in a July 26, 1997 article in the Houston Chronicle, which I attach as Exhibit B. As reported in that article, one shipper attributes the congestion mainly to "the complexity of operating a newly merged rail system in a market such as Houston."

These delays have greatly increased Tex Mex's costs and reduced its ability to provide competitive service via its trackage rights. In the past four months, Tex Mex's fuel costs and crew costs with respect to its trackage rights operations have tripled and its fuel use has almost tripled.

UP/SP traffic congestion has also adversely affected trackage operations of the Burlington Northern and Santa Fe Railway Company ("BNSF") over the UP/SP route between Algoa, Texas (just south of Houston) and Brownsville via Corpus Christi and Robstown, where BNSF connects and interchanges traffic with Tex Mex. Citing congestion that route, UP/SP has recently limited the number of trains BNSF is able to move over that route to only one train per day in each direction. This UP/SP restriction results in a serious limitation on the amount of traffic BNSF can carry over that line which BNSF can interchange with Tex Mex at Corpus Christi or Robstown.
Verification

I, Allen W. Haley, Jr., declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed this 25th day of July 1997.

Allen W. Haley, Jr.
Superintendent of Transportation
July 10, 1997

Mr. A. L. Shoener  
Executive Vice President-Operations  
Union Pacific Railroad  
1416 Dodge Street, Room 1206  
Omaha, NE  68179

Dear Mr. Shoener:

The Tex Mex has been suffering severe delays to our trains over the trackage rights between Beaumont and Robstown, Texas, for several months now. However, in the past 30 days, these delays have gotten much worse.

EXAMPLES:

On June 5th, 1SMXM-04 spent 10 hours in the siding at Harlem, TX, due to UP congestion.
On June 5th/6th, 1SMXM-05 spent 4 hours at Huffman, 9'50" at Harlem, and 6 hours at Flatonia due to UP congestion.
On June 27th, 1MXSHM-26 spent over 3 hours in Houston's Englewood Yard (N-3).
On July 1st, Tex Mex operated a Loram rail grinder out of Beaumont destined to Laredo. This rail grinder can only operate during daylight hours but can run maximum track speed. On July 1, it operated a total of 162 miles in 18 hours (9 mph avg. velocity). On July 2, the rail grinder operated 50 miles in 12 hours (4 mph avg. velocity). On July 3, the rail grinder operated 51 miles in 18 hours (3 mph avg. velocity). The Tex Mex used 6 train crews to run this rail grinder between Beaumont and Corpus Christi, TX.
On July 3rd, 1SMXM-02 spent over 7 hours at Placedo due to congestion on the Brownsville Subdiv. And waited over 3 hours for Union Pacific track bulletins.
On July 6th, 1SMXM-06 spent over 8 hours in Houston trying to get on the "old SP", 3'45" at Eagle Lake, 1'35" at Glidden, and 3'25" at Weimar. It took 5 train crews to get this train from Beaumont to Corpus Christi.

There have been numerous occasions when local UP personnel have refused to allow the Tex Mex their trackage rights through (Houston) Settegast Yard. The most recent refusal was on July 2nd causing a delay to traffic interchanged to the Tex Mex from the PTRA.

These extraordinary delays increase Tex Mex's operating costs and impair the quality of service of our trackage rights operations so as to render Tex Mex less competitive and frustrate the STB's mandate in requiring those trackage rights as a condition to your merger. To the extent that UPSP is experiencing operating difficulties not foreseen in your pre-merger
projections, delays incidental to those difficulties should be borne equally by your company and Tex Mex, your trackage rights tenant.

We are receiving numerous telephone calls from customers of both the Union Pacific Railroad and The Texas Mexican Railway Company inquiring about service interruptions. The Tex Mex had two shutdown cars for Bayer on a 1MSXHM-02 AT Corpus Christi, Texas, that we were not able to run out of Corpus across the Brownsville Subdivision for over 24 hours due to congestion on the UP. When the traffic manager for Bayer called the UP’s Customer Service Center in St. Louis to inquire as to why the UP was refusing Tex Mex trains, she was told that the UP’s congestion problems were caused by interchange problems with (TFM) Mexico. She was told that the UP had over 4,000 cars backed up and Mexico wasn’t taking cars which was causing a severe service interruption.

We both know that UP’s problems cannot be ascribed to Tex Mex or TFM and consider statements to that effect from your Customer Service Center to any customer shipping goods to Mexico to be gross impropriety which may constitute business liability. We informed customers that the start up of TFM was going smoothly and was exceeding everybody’s expectations, including those expectations of some officials on the UP. I also told them that there had been a series of service interruptions on the UP that was hampering the ability of both the Tex Mex and the UP to get traffic to Laredo.

I hope that you’ve been made aware that the Tex Mex is withholding our traffic to cross into Mexico so that the UP can cross additional cars to help relieve the congestion caused by your Devine, Texas, derailment. The Tex Mex has also offered to allow the UP to detour trains over our railroad between Laredo and Robstown.

The best approach to UP’s current operating problems is our continued cooperation in the manner described above. Your delays result in our delays. Trying to shift the blame where it doesn’t belong is not a constructive approach to the problem. Therefore, I also ask that you personally see to it that your people are instructed not to attempt to deflect shippers’ concerns for those delays either to Tex Mex or TFM with slanderous allegations of the character made to Bayer.

Sincerely,

LARRY D. FIELDS
Traffic report

Trains head into and out of the Englewood Yard, a Union Pacific facility in the northeast part of Houston. Heavy rail traffic has swamped such yards in recent weeks and made it hard for the traffic to enter and exit the city.
Plants deal with rail bottleneck

By NELSON ANTUSH
Houston Chronicle

It is the railroad equivalent of something any Houston motorist can understand -- congestion.

The Union Pacific Railroad, which since last September has owned Southern Pacific, has for about the past two weeks been having difficulty getting rail cars into and out of the city.

That's in part because it lacks the facilities and manpower to handle the traffic brought about by the increased business in the petrochemical market.

It is basically the only rail line serving the nation's largest petrochemical complex, scattered through cities such as Galena Park, Deer Park, Pasadena and Baytown.

Hardest hit are the plants that rely on tank cars or hopper cars to transport their products to customers.

For example, Texmark Chemicals, a relatively small plant on Clinton Drive in Galena Park, will be forced to shut its facility in a week if it can't get tank cars to ship its chemicals to customers, said Chief Financial Officer Vaughan Counts. That is how long it will take to fill storage tanks on the property, he said.

Texmark's leased tank cars returning from customers are being diverted to places like Beaumont and Louisville because the rail yards in Houston are full, said Counts. The company makes a chemical that is the primary ingredient in resins.

It prefers not to ship by truck because that is considerably more expensive, plus many of its customers are set up to receive shipments only by rail. In Galena Park, there are no rail lines other than Union Pacific, Counts said.

A spokesman for one of the largest plastics companies here, who preferred not to be identified, said the problem "has definitely hampered movement of product in and out of Houston."

The rail line concedes there is a problem. Union Pacific spokesman Mark W. Davis in Omaha, Neb., described the situation in Houston as the result of growth. Business volume grew steadily in the last six weeks, to the point of affecting service starting two weeks ago.

"This is pure boom business in the Houston market. The petrochemical business has just taken off," Davis said.

An example is plastic pellets, being produced in such amounts that the rail yards handling them immediately became full, he said.

The company was caught short in two areas, Davis said. There is a shortage here of locomotives, and of crew members such as engineers and conductors to operate the trains.

Union Pacific has offered crew members from across the nation the opportunity to come here to work, Davis said. New hires are being trained. Members of management with proper training are filling in, he said.

The company is looking at ways to bring in more locomotives without hurting shippers in other parts of the country. There is no shortage of cars, as happened with grain several years ago, just the ability to handle them.

A special management team has been assigned to Houston to move rail ship-ments in, out and through the city. They are working literally around the clock to relieve the congestion, Davis said.

The company owns several yards in the area, including the big Englewood Yard off Loop 610 northeast of downtown.

Since the merger with Southern Pacific, Union Pacific is the largest rail company in the nation. Other major companies such as Burlington Northern also serve Houston but don't have tracks to the petrochemical plants, said Burlington spokesman Richard Ruesack of Fort Worth. Burlington also owns the Santa Fe railroad.

The plastic company official said that while shipments are up, they are not extraordinary. The biggest factor is the complexity of operating a newly merged rail system in a market such as Houston, he suggested.
VERIFIED STATEMENT
OF
S. GLENN TURNER

My name is S. Glenn Turner. I am employed by the Texas Mexican Railway Company ("Tex Mex") as the Regional Sales Manager. My office is located at 501 Crawford Street in Houston, Texas. Prior to my employment with Tex Mex, I was employed by the Southern Pacific Rail Corporation, where I served as Regional Account Manager. I have had an active career of over 39 years marketing rail services in the Houston, Beaumont and South Texas area.

I am presenting this verified statement in connection with the Comments of Tex Mex in the Oversight Proceedings with regard to the implementation of the Board's decisions in the UP/SP merger. This verified statement discusses the serious difficulties Tex Mex has had in marketing its rail services in the Houston area as a result of the traffic restriction imposed by the Board on Tex Mex's trackage rights in Decision No. 44.

I began work as Tex Mex's Regional Sales Manager in December of 1996. Since then, my job has been marketing Tex Mex's services, primarily to shippers in the Houston area. In doing so, the fact that Tex Mex can only carry traffic with a prior or subsequent move over Tex Mex's lines has caused significant problems. The reason for this is simple. For the majority of potential Tex Mex customers in Houston, the amount of rail traffic originating or terminating in Mexico comprises only a minor part of their total rail traffic. Tex Mex has been at a
substantial competitive disadvantage with UP/SP and BNSF in trying to solicit the Mexican traffic of these customers. The fact that UP/SP and BNSF can offer to handle all of the inbound or outbound traffic of these customers gives them a significant marketing advantage over Tex Mex, which can only offer to handle their traffic to and from Mexico (or points on Tex Mex's line between Laredo and Corpus Christi). That is so because many customers prefer to have a single carrier handle all of their business and because UP/SP and BNSF can offer lower rates on a customer's Mexican traffic if the customer agrees to give them all of the customer's traffic. Based on my many conversations with actual and potential Tex Mex customers in the Houston area, as well as my long experience with the rail transportation market in this region, I am quite certain that this disadvantage has cost Tex Mex a substantial amount of Houston-Mexico traffic that it would have otherwise obtained, and has significantly hindered Tex Mex's ability to compete for that traffic.
VERIFICATION

I, S. Glenn Turner, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.
Executed this 30th day of July, 1997.

S. Glenn Turner
Regional Sales Manager
The Texas Mexican Railway Company
CERTIFICATE OF SERVICE

I, Bianca C. Bennett, certify that on August 1, 1997 I have caused to be served by first class mail, postage prepaid, or by more expeditious means a true and correct copy of the foregoing TM-2, Comments of The Texas Mexican Railway Company, on all parties that have appeared in STB Finance Docket No. 32760 (Sub-No. 21):

Dated: August 1, 1997

Bianca C. Bennett
August 1, 1997

Mr. Vernon A. Williams
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 21)
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20006


Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding are the original and twenty-six copies of KCS-2, The Comments Of The Kansas City Southern Railway Company. Please date and time stamp one of the copies for return to our offices. Included with this filing is a 3.5 inch Word Perfect, Version 5.1 diskette with the text of the pleading.

Sincerely yours,

William A. Mullins
Attorney for The Kansas City Southern Railway Company

cc: Robert K. Dreiling, Esquire
All Parties of Record
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 PROCEEDING

COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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August 1, 1997
INTRODUCTION

In UP/SP, Decision No. 44, the Surface Transportation Board ("STB" or "Board") approved, subject to various conditions, the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company).
As one of the conditions to its approval of the merger, the Board imposed a five year oversight condition to "examine whether the conditions we imposed have effectively addressed the competitive issues they were intended to remedy" and the Board specifically reserved jurisdiction over the merger in order to change, modify, or impose additional remedial conditions if the Board found during the course of its oversight proceedings that "the conditions already imposed have not effectively addressed the competitive harms caused by the merger." To that end, the Board directed both UP and BNSF to submit quarterly progress reports and provided that it would begin the first oversight proceeding on or about October 1, 1997.

The present oversight proceeding was initiated by the Board in Finance Docket No. 32760 (Sub-No. 21), Decision No. 1, served May 7, 1997, to "take comments from interested persons on the effectiveness and implementation" of the conditions imposed in Decision No. 44. See UP/SP, Oversight Proceeding, Decision No. 1 at 3. The Kansas City Southern Railway Company ("KCS") was a party to the principal proceeding in Finance Docket No. 32760 and on May 9, 1997, KCS notified the Board of its intent to participate in the oversight process. KCS hereby submits its comments.

The Board has made it clear that "[t]he competition to be provided by BNSF will be one of the key matters to be considered in the oversight proceedings." UP/SP, Decision No. 44 at 147. If the competition provided by BNSF does not sufficiently address the competitive harms

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2 Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company are referred to collectively as "Union Pacific" or "UP."

3 See UP/SP, Decision No. 44 at 146-147 and Condition No. 6.
resulting from the UP/SP merger, the Board has reserved jurisdiction to impose additional remedial conditions. Id. at 146. Setting aside for the purposes of these comments KCS’s arguments regarding the efficacy of the conditions imposed in Decision No. 44, KCS believes that there has not been development and disclosure of meaningful data on which to measure BNSF’s competitiveness vis-à-vis the newly merged system. This is due in part to the limited time that has elapsed since control was authorized. Indeed, BNSF indicated, in its July 1 quarterly progress report, that it did not start running its first trackage rights trains until October 8, 1996 and it was only on January 16, 1997 that BNSF began to run trackage rights trains on the Houston-Memphis-St. Louis corridor. Both UP and BNSF admit that there are many unresolved problems that have prevented them from fully implementing the conditions imposed by the Board. However, the lack of meaningful data is also due to the failure of UP and BNSF to present specific corridor-market share data or in BNSF’s case, to provide access to traffic tapes in a timely manner.

I. THERE ARE SIGNIFICANT IMPLEMENTATION AND OPERATIONAL PROBLEMS THAT PREVENT BNSF FROM BEING AN EFFECTIVE COMPETITOR

KCS does not dispute that some benefits are occurring as a result of the merger. In fact, KCS predicted some of these benefits during the merger proceeding. While KCS acknowledges these benefits, none of them address the significant issues which KCS has consistently argued in this proceeding: (1) shippers will face operational and competitive problems in the Houston area and the Houston-Memphis-St. Louis corridor; and (2) the fact that UP could divest themselves of

In other words, KCS should not be deemed hereby to waive its argument that BNSF’s trackage rights do not make it an effective competitor or that the Board’s proposed conditions are either ineffective or unlawful. These issues have been preserved for appeal in KCS’s Petitions.
one of the two parallel lines in those areas without harming, in any way, the benefits that are occurring in this merger. The Board should not ignore these issues.

To the limited extent that UP and BNSF have provided information in their progress reports and in discovery responses, that information indicates that there are still significant obstacles to BNSF becoming an effective competitor to UP. Additionally, UP itself appears to be experiencing significant post-merger congestion problems, and these problems only worsen BNSF’s and Tex Mex’s ability to provide effective competition to UP.

A. Significant Implementation Problems Prevent Effective Competition

In its progress report, UP describes those areas in which it has cooperated with BNSF in implementing the prescribed conditions (UP/SP-303 at 78-87) and, to the extent that cooperation has occurred, we can credit the Board’s decision to maintain an oversight of UP’s post-merger activities as an important contributor. On the other hand, BNSF describes numerous areas in which UP has thrown up road blocks in the way of implementation and notes the potential need to invoke arbitration or Board intervention to resolve many disputes.\(^5\) Thus, at pages 3 through 4 of its most recent progress report, BNSF signals its problem in this regard when it states “however, even more vigorous competition is possible, and BNSF is committed to take whatever steps are necessary – including invoking arbitration or seeking the Board’s intervention, as appropriate – to continue to improve its ability to compete with UP for business on these lines.” (BNSF-PR-4 at 3-4).

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\(^5\) Not only has BNSF stated that there are many unresolved issues, but UP also points to two areas where they see disputes that may require STB resolution: (1) the definition of “new facility;” and (2) the specification of the UP/SP lines where BNSF is entitled to serve new industries and transloads. (UP/SP-303 at 79).
More specifically, BNSF states that the Board should re-examine and eliminate Guideline 
#9 from the contract reopener condition, which guideline provides UP the right to terminate the 
entire contract if a shipper seeks to reopen and re-negotiate a current contract it has with UP or 
SP. BNSF states that:

This guideline has the effect of allowing UP to take away from the shipper any 
advantages on the remaining portion of the business for which the shipper may 
have bargained in the original contract as the price for electing to take advantage 
of the contract reopener condition ... that Guideline #9 has provided UP with 
undue leverage to retain business under existing contracts at '2-to-1' points that 
would otherwise have been open to competitive bidding by BNSF.

Id. at 11.

BNSF also identifies (a) “the process to be used in locating new industries at ‘2-to-1’ 
points and along trackage rights lines,” (b) “[a]ccess to former UP or SP customers at New 
Orleans through reciprocal switch,” which has not been permitted by UP, and (c) UP’s failure to 
provide BNSF property and track at Salt Lake City with which to establish a team track, as 
additional areas where BNSF may, “if necessary, seek resolution through the Board or the 
arbitration process.” (Id. at 12-13). Additional problems pointed out in the Verified Statements 
of Peter J. Rickershauser and Ernest L. Hord, contained in BNSF-PR-4, include: (a) BNSF’s 
rates are higher than the rates formerly offered by SP, (V.S. Rickershauser at 13); (b) now that 
BNSF is operating over UP between Temple and Eagle Pass, instead of on prior SP trackage 
using haulage with BNSF crews, BNSF has been plagued with severe service disadvantages, 
(V.S. Hord at 5); (c) no directional flow has yet been established between Houston and 
Memphis/St. Louis, (V.S. Hord at 8); and, (d) BNSF has been continually hampered by 
“problems with shipments moving via haulage or reciprocal switch on UP, particularly on the 
former SP side.” (V.S. Hord at 22). Thus, given these unresolved issues, the short time frame
between consummation of the merger and the beginning of this oversight proceeding, and the fact that BNSF has only recently been able to implement all of the trackage rights, the issue of whether or not BNSF is truly being an effective competitor to UP/SP cannot be fully answered at this time.

The West Lake Charles area also remains a potential post-merger issue. At least to those points that were former KCS/UP routings that competed against former SP routings and would now constitute a UP/SP competitive bottleneck situation, KCS has always maintained, and the Board agreed, that an unconditioned merger would eliminate one of the two independent routings from that area, thereby creating a “2-to-1” problem for such shipments. Nonetheless, it is unclear whether West Lake Charles is a “2-to-1” facility and therefore subject to the contract reopener condition. KCS believes that the Board should continue to review this problem and should perhaps request comments from the parties as to the best way to resolve these issues. In no event, however, should the Board apply the contract reopener provision to those routings from the Lake Charles area that would not be affected by a UP/SP bottleneck.

B. Significant Congestion Problems Prevent Effective Competition

UP’s congestion problems in the Houston area, which UP fails to acknowledge in its quarterly report, are bottlenecking the nation’s largest petrochemical complex and creating serious operational problems. The merged rail system of UP and SP is now the only rail line

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6 KCS is aware that Montell USA, Inc. has filed a Petition with the Board for determination of West Lake Charles as a “2-to-1” point. By discussing the issue herein, KCS is not waiving its right to respond to Montell’s Petition in a separate pleading.

7 As noted in KCS’s Petition To Reopen, KCS-65, V.S. Grimm, the amount of such “2-to-1” traffic is miniscule compared to the entire amount of volumes shipped from the Lake Charles area. KCS continues to believe, and is pursuing this issue in its appeal, that the Board had no authority to grant BNSF access to all of the Lake Charles area traffic in order to remedy
serving many of the petrochemical companies in Houston. According to recent press accounts, chemical plants in the Houston area, such as Texmark Chemicals, are close to being forced to close their doors based on UP’s inability to ship chemicals to customers. Nelson Antosh, Plants deal with rail bottleneck, Houston Chronicle, July 26, 1997, at B1, attached hereto as Exhibit A. UP claims the problem is caused from a shortage of locomotives and crew members in the area that is being exacerbated by the huge increase in business; however, a chemical company official was cited as inferring that the problem was caused by the complexity of the recently approved UP/SP merger and the difficulties resulting therefrom. Id. This congestion has caused problems throughout the UP system and has created some operational difficulties for both Tex Mex and BNSF. See Exhibit B, Letter To Mr. A.L. Shoener, UP’s Executive Vice President, from Larry Fields, President of The Texas Mexican Railway Company.

II. UP AND BNSF HAVE FAILED TO PROVIDE SUFFICIENT INFORMATION TO THE BOARD OR TO THE COMMENTING PARTIES

In addition to these many unresolved issues and the lack of a meaningful time frame by which to judge BNSF’s performance, there is simply a lack of information provided in the quarterly progress reports and in answers to discovery to provide the Board with the data necessary for the Board to make a meaningful judgment on whether or not its conditions “have effectively addressed the competitive issues they were intended to remedy.” In Decision No. 1 initiating this oversight proceeding, the Board indicated that it was not satisfied with the detail provided by either UP or BNSF in their respective progress reports filed since service of the competitive harm caused to the small amount of “2-to-1” traffic that would be affected by the merger.
Decision No. 44. The Board stated that “we fully expect that the information presented by applicants in their July 1 progress report will be more extensive, including specific details of how each condition has been met.” Id. With respect to BNSF’s earlier progress reports, the Board stated “we expect that BNSF will provide more detailed information regarding its efforts to be an effective competitor to the applicants.” Id.

Although both UP and BNSF, in their respective July 1 progress reports (UP/SP-303 and BNSF-PR-4) make a concerted effort to portray BNSF as an aggressive competitor, neither party even mentions the pertinent measuring stick—the fact that the absence or existence of competition is most often demonstrated by relative “market share.” It is not sufficient for either UP or BNSF simply to show the increase in BNSF’s through trains, cars, or tonnage over trackage rights segments in the nine month period during which the conditions have been in effect or to only provide examples of movements in specific corridors. Those numbers and examples speak nothing of how BNSF competes with UP in those markets. Neither do the measurements provided by UP and BNSF show how BNSF’s traffic volumes compare to SP’s prior to the merger. The closest the progress reports come to a discussion of market share is UP’s indication that, by March 1997, BNSF reportedly had reached “in the range of 20% of

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8 Applicants and BNSF each filed quarterly progress reports with the Board on October 1, 1996, January 2, 1997, April 1, 1997, and July 1, 1997.

BNSF’s estimate during the merger proceeding of a $1 billion total universe of available traffic” and “[q]uite simply, there is no reason why BNSF cannot ultimately reach 50%, or even more, of the entire available universe of traffic.” (UP/SP-303, at pp. 94-5).

The somewhat loose 20% figure cannot be interpreted as a relevant “market share,” as modest as it may be. The relevant market share or market shares in this instance apply to those competitive markets where harm will result from the merger and where remedial conditions were imposed by the Board. The “universe of available traffic,” to which UP refers, includes more than those markets where the Board determined the merger will result in reduced competition. Similarly, the 50% market share, which UP envisions BNSF ultimately achieving, not only utilizes an irrelevant market, but is so obviously speculative and not based upon any empirical evidence as to deserve no evidentiary weight. In short, there is no evidence of how BNSF compares to UP in those corridors that saw a reduction from “2-to-1.” More pertinently, neither UP nor BNSF has told the Board in their progress reports how each compares to the other.

As noted above and as previously pointed out by the Board, the quarterly progress reports filed by the UP and BNSF failed to provide meaningful information regarding whether and/or how the Board imposed conditions had been met. Therefore, on June 17, 1997, KCS, along with 12 other parties,10 served Consolidated Information and Discovery Requests on both BNSF and UP. To date, BNSF has failed to provide written responses, or to produce any documents, or to even produce their traffic tape(s) in response to any of these discovery requests. UP sent written responses to these requests on July 2, 1997 along with producing a traffic tape, which is now in

10 These parties included The Texas Mexican Railway, Department of Transportation, Department of Justice, Public Service of Colorado, Capital Metro Transit Authority, Intermountain Power Agency, Texas Attorney General, Railco, National Industrial Transportation League, and Southwest Grain Company.
the process of being analyzed. UP placed additional responsive documents and additional
documents are still being placed in the depository by UP. However, there is information and
documentation outstanding from both BNSF and UP/SP, although mainly BNSF, which is
needed to effectively evaluate the competitive issues requested in this oversight proceeding. 11

III. CONTINUED OVERSIGHT IS NECESSARY TO ASSURE ADEQUATE COMPETITION

Due to the many unresolved issues, the lack of meaningful data to provide a comparison
of BNSF’s and UP’s market shares in the relevant corridors, and the apparent congestion and
service problems that UP seems to be experiencing in the Houston area, the Board needs to
continue its vigilant use of its oversight process and its continuing jurisdiction. Based upon the
knowledge the public has gained so far, it is clear that the Board should continue Condition 6,
calling for 5 year oversight by the Board “to examine whether the conditions imposed by the
Board have effectively addressed the competitive issues they intended to address.” Conditions 6
and 9, which basically require BNSF to conduct trackage rights in the key corridors, i.e.,
Houston-New Orleans, Houston-Memphis and the Central corridor, also should be continued.
Failure by BNSF to do so should “result in termination of BNSF’s trackage rights and
substitution of another carrier or in divestiture.” Decision No. 44 at 146, n. 178.

KCS agrees wholeheartedly that these conditions should be monitored by the Board.
However, as currently worded, these conditions rely on the self-serving reporting of the party
being policed and do not provide a trigger for the invocation of Board action. Therefore, in order
to avoid future situations whereby the Board needs to basically order UP to provide “more

11 A brief discussion of these discovery issues and a sampling of the type of information
that has not been produced is attached hereto as Exhibit C.
extensive [information], including specific details of how each condition has been met," and to
tell BNSF that the Board “expect[s] that BNSF will provide more detailed information regarding
its efforts to be an effective competitor to the applicants,” (Decision No. 1 at 6), the Board should
develop clear, objective standards by which the Board and the public could judge BNSF’s
competitive ability utilizing its trackage and other rights.

KCS suggests the following five step proposal, which if adequately complied with by UP
and BNSF, will provide a complete picture from which the Board can draw its conclusion. If the
information provided is inadequate or incomplete, then the Board and/or other parties should be
entitled to request more information.

First, the market share should be the parameter against which effectiveness of
competition should be measured. This means that the standard of “successful performance” of
BNSF’s trackage rights as an effective competitive substitute for the pre-merger SP ownership of
the former SP parallel and competing track is the attainment of a BNSF market share equal to or
greater than SP’s pre-UP/SP merger market share. [Hereinafter referred to as “The Standard”].

Second, certain key shippers or shipper groups should be asked to voluntarily provide the
Board the railroad market share data which each shipper (or shipper member) gives to UP and
BNSF, respectively, from certain origin/destination pairs where BNSF is operating via its
trackage rights. This would help to assess effectiveness of rail-to-rail competition over each of
the key corridors. Disaggregated information so submitted would be treated by the Board with
high confidentiality.

Third, traffic tapes from both UP and BNSF containing the information necessary for the
Board to assess market shares should be provided quarterly to the Board on the same schedule as
the quarterly progress reports.
Fourth, the Board should make an “effectiveness of competition” finding within 30 days after the filing of each quarterly report. This finding should address the effectiveness of BNSF’s competition in each of the three key corridors, i.e., Houston-New Orleans, Houston-Memphis and the Central Corridor. BNSF would be given a reasonable “market development time” from the date of the consummation of the merger, (for example, a two year period) to obtain “The Standard.” Failure of BNSF to obtain “The Standard” within this period would call for Board action to impose additional remedial action to require attainment of “The Standard.” This action could include termination of BNSF’s trackage rights and substitution of another carrier or divestiture.

Fifth, the continued failure, within a specified period (perhaps three years) after the merger consummation date, of BNSF to attain “The Standard” over a specific corridor in spite of the Board’s efforts to resolve the competitive problem would be proof that the Board should require UP to divest one of the two parallel lines in that corridor in a market-driven procedure.

This mechanism would produce the following benefits: it (a) would assure shippers that pre-merger levels of competition will be maintained because competition is essential if shippers are to be protected from UP’s newly acquired market power; (b) would require BNSF and UP to prove, through their actions, that the BNSF Settlement Agreement, as modified by the Board in Decision No. 44, will provide effective competition for all markets; (c) would utilize objective criteria not susceptible to the subjective arguments that might be leveled against cost or rate level data or self-fulfilling comments; (d) would utilize market share data kept by shippers and railroads in the ordinary course of business; (e) would permit shippers to maintain the confidentiality of information through the possibility of reporting at the industry association level; (f) would shield individual shippers from retaliation since umbrella groups will do the
reporting; (g) would minimize the reporting costs per shipper; (h) would eliminate reliance upon BNSF’s self-policing and reporting; (i) would provide the Board with a cost effective mechanism by which it could conduct its oversight process, eliminating the need of the Board to constantly warn, or otherwise chastise, UP and BNSF for the lack of meaningful information; and (j) would eliminate the need for interested parties to gain information through the discovery process, eliminating the chance of continued disputes over the scope of information to be provided.

By way of example, one area under this mechanism that the Board would be better educated as to the exact nature of BNSF’s competitive ability is the Memphis to St. Louis corridor. The Memphis to St. Louis corridor is conspicuously absent from BNSF’s self-reporting documents because BNSF has entered into interline routing agreements with the Illinois Central for handling traffic that BNSF would have otherwise moved over the former SP/SSW lines between Memphis and St. Louis. However, while IC does serve both Memphis and St. Louis and thus it appears on the surface that the BNSF-IC interline agreement is an effective substitute for BNSF trackage rights, IC does not serve the “2-to-1” points on the old SP/SSW between those two cities. Thus, those “2-to-1” shippers are not benefiting from the fact that BNSF was granted access over the old SP/SSW route between Memphis and St. Louis. The Board should not view the BNSF-IC interline agreement as a substitute for lost SP competition on the Memphis to St. Louis corridor. Instead, BNSF’s unwillingness to utilize its Memphis to St. Louis trackage rights suggests that continuation of monitoring by the Board is imperative to protect shippers requiring service to or from certain points, such as Memphis and St. Louis. In addition, the Board should consider BNSF’s unwillingness to utilize these Memphis to St. Louis trackage rights as authority to consider alternative competitors or other means to increase
competition over that corridor. Adoption of the proposed mechanism would allow the Board to analyze this problem and determine whether or not such an alternative would be desirable.

CONCLUSION

The evidence currently available indicates to KCS that trackage rights are a cumbersome and difficult means by which to preserve competition over a broad geographic region. As recognized by Norfolk Southern and CSX in the current Conrail transaction, ownership is always preferable to trackage rights. Due to the numerous unresolved and disputed issues with respect to BNSF’s trackage rights and to the lack of meaningful market share data, the Board should continue its oversight of the operations of both UP and BNSF to insure that the competitive harms resulting from the merger are alleviated by the conditions imposed in Decision No. 44. In effecting this oversight, the Board should adopt the five step program outlined above, or another similar program in order to provide for a meaningful, objective assessment of the efficacy of the conditions. At a minimum, both UP and BNSF should be required to produce current traffic tapes in a timely manner for subsequent oversight proceedings.

Respectfully Submitted,

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Attorneys for The Kansas City Southern Railway Company
It is the railroad equivalent of something any Houston motorist can understand - congestion.

The Union Pacific Railroad, which since last September has owned Southern Pacific, has for about the past two weeks been having difficulty getting rail cars into and out of the city.

That's in part because it lacks the facilities and manpower to handle the traffic brought about by the increased business in the petrochemical market.

It is basically the only rail line serving the nation's largest petrochemical complex, scattered through cities such as Galena Park, Deer Park, Pasadena and Baytown.

Hardest hit are the plants that rely on tank cars or hopper cars to transport their products to customers.

For example, Texmark Chemicals, a relatively small plant on Clinton Drive in Galena Park, will be forced to shut its facility in a week if it can't get tank cars to ship its chemicals to customers, said Chief Financial Officer Vaughan Counts. That is how long it will take to fill storage tanks on the property, he said.

Texmark's leased tank cars returning from customers are being diverted to places like Beaumont and Lewisville because the rail yards in Houston are full, said Counts. The company makes a chemical that is the primary ingredient in resins.

It prefers not to ship by truck because that is considerably more expensive, plus many of its customers are set up to receive shipments only by rail. In Galena Park, there are no rail lines other than Union Pacific, Counts said.

A spokesman for one of the largest plastics companies here, who preferred not to be identified, said the problem "has
definitely hampered movement of product in and out of Houston."

The rail line concedes there is a problem. Union Pacific spokesman Mark W. Davis in Omaha, Neb., described the situation in Houston as the result of growth. Business volume grew steadily in the last six weeks, to the point of affecting service starting two weeks ago.

"This is pure boom business in the Houston market. The petrochemical business has just taken off," Davis said.

An example is plastic pellets, being produced in such amounts that the rail yards handing them immediately became full, he said.

The company was caught short in two areas, Davis said. There is a shortage here of locomotives, and of crew members such as engineers and conductors to operate the trains.

Union Pacific has offered crew members from across the nation the opportunity to come here to work, Davis said. New hires are being trained. Members of management with proper training are filling in, he said.

The company is looking at ways to bring in more locomotives without hurting shippers in other parts of the country. There is no shortage of cars, as happened with grain several years ago, just the ability to handle them.

A special management team has been assigned to Houston to move rail shipments in, out and through the city. They are working literally around the clock to relieve the congestion, Davis said.

The company owns several yards in the area, including the big Englewood Yard off Loop 610 northeast of downtown.

Since the merger with Southern Pacific, Union Pacific is the largest rail company in the nation. Other major companies such as Burlington Northern also serve Houston but don't have tracks to the petrochemical plants, said Burlington spokesman Richard Russack of Fort Worth. Burlington also owns the Santa Fe railroad.

The plastic company official said that while shipments are up, they are not extraordinary. The biggest factor is the complexity of operating a newly merged rail system in a market such as Houston, he suggested.

GRAPHIC: Photo: Trains head into and out of the Englewood Yard, a Union Pacific facility in the northeast part of Houston (color); Ben DeSoto / Chronicle
July 10, 1997

Mr. A. L. Shoener
Executive Vice President-Operations
Union Pacific Railroad
1416 Dodge Street, Room 1206
Omaha, NE 68179

Dear Mr. Shoener:

The Tex Mex has been suffering severe delays to our trains over the trackage rights between Beaumont and Robstown, Texas, for several months now. However, in the past 30 days, these delays have gotten much worse.

EXAMPLES:

On June 5th, 1SHMXM-04 spent 10 hours in the siding at Harlem, TX, due to UP congestion.
On June 5th/6th, 1SHMXM-05 spent 4 hours at Huffman, 9'50" at Harlem, and 6 hours at Flatonia due to UP congestion.
On June 27th, 1MXSHM-25 spent over 3 hours in Houston’s Englewood Yard (N-3).
On July 1st, Tex Mex operated a Loram rail grinder out of Beaumont destined to Laredo. This rail grinder can only operate during daylight hours but can run maximum track speed. On July 1, it operated a total of 182 miles in 18 hours (9 mph avg. velocity). On July 2, the rail grinder operated 50 miles in 12 hours (4 mph avg. velocity). On July 3, the rail grinder operated 51 miles in 18 hours (3 mph avg. velocity). The Tex Mex used 6 train crews to run this rail grinder between Beaumont and Corpus Christi, TX.
On July 3rd, 1SHMXM-02 spent over 7 hours at Placedo due to congestion on the Brownsville Subdiv. And waited over 3 hours for Union Pacific track bulletins.
On July 6th, 1SHMXM-06 spent over 8 hours in Houston trying to get on the "old SP", 3'45" at Eagle Lake, 1'35" at Glidden, and 3'25" at Weimar. It took 5 train crews to get this train from Beaumont to Corpus Christi.

There have been numerous occasions when local UP personnel have refused to allow the Tex Mex their trackage rights through (Houston) Settegast Yard. The most recent refusal was on July 2nd causing a delay to traffic interchanged to the Tex Mex from the PTRA.

These extraordinary delays increase Tex Mex’s operating costs and impair the quality of service of our trackage rights operations so as to render Tex Mex less competitive and frustrate the STB’s mandate in requiring those trackage rights as a condition to your merger. To the extent that UPSP is experiencing operating difficulties not foreseen in your pre-merger
projections, delays incidental to those difficulties should be borne equally by your company and Tex Mex, your trackage rights tenant.

We are receiving numerous telephone calls from customers of both the Union Pacific Railroad and The Texas Mexican Railway Company inquiring about service interruptions. The Tex Mex had two shutdown cars for Bayer on a 1MSXHM-02 at Corpus Christi, Texas, that we were not able to run out of Corpus across the Brownsville Subdivision for over 24 hours due to congestion on the UP. When the traffic manager for Bayer called the UP’s Customer Service Center in St. Louis to inquire as to why the UP was refusing Tex Mex trains, she was told that the UP’s congestion problems were caused by interchange problems with (TFM) Mexico. She was told that the UP had over 4,000 cars backed up and Mexico wasn’t taking cars which was causing a severe service interruption.

We both know that UP’s problems cannot be ascribed to Tex Mex or TFM and consider statements to that effect from your Customer Service Center to any customer shipping goods to Mexico to be gross impropriety which may constitute business liability. We informed customers that the start up of TFM was going smoothly and was exceeding everybody’s expectations, including those expectations of some officials on the UP. I also told them that there had been a series of service interruptions on the UP that was hampering the ability of both the Tex Mex and the UP to get traffic to Laredo.

I hope that you’ve been made aware that the Tex Mex is withholding our traffic to cross into Mexico so that the UP can cross additional cars to help relieve the congestion caused by your Devine, Texas, derailment. The Tex Mex has also offered to allow the UP to detour trains over our railroad between Laredo and Robstown.

The best approach to UP’s current operating problems is our continued cooperation in the manner described above. Your delays result in our delays. Trying to shift the blame where it doesn’t belong is not a constructive approach to the problem. Therefore, I also ask that you personally see to it that your people are instructed not to attempt to deflect shippers’ concerns for those delays either to Tex Mex or TFM with slanderous allegations of the character made to Bayer.

Sincerely,

LARRY D. FIELDS
DETAILS REGARDING SPECIFIC DISCOVERY DISPUTES

As stated in the main text of KCS’s comments, Consolidated Information and Discovery Requests were served on BNSF on June 17, 1997. BNSF’s only response was in the form of a letter from counsel stating that (1) a “great deal” of responsive information is contained in the July 1 Fourth quarterly progress report; and (2) that a formal response will not be forthcoming since discovery is not authorized or appropriate at this time. A letter was sent, albeit not by KCS, to BNSF’s counsel which expressed the disappointment in BNSF’s failure to produce, in a significant and meaningful manner, information necessary to assess the efficacy of the competitive conditions imposed in the UP/SP merger approval. At a minimum, the requesting parties sought the immediate production of BNSF’s 100% traffic tapes for analysis. It is KCS’s understanding that BNSF has finally agreed to produce these tapes. However, their promised date of delivery is not until after the close of the comment deadline.¹

As noted above, BNSF stated in their July 2, 1997 letter that a “great deal” of the requested information was contained in the July 1 quarterly report. However, upon comparison of BNSF’s July 1 Report with the discovery requests, most of the requested discovery is still missing. For example, most of the crucial information is still needed in order to generate a direct

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¹ It is KCS’s understanding that BNSF has recently promised that their traffic tapes will be produced on Monday, August 4, 1997. Of course obtaining the traffic tapes after the August 1 filing deadline provides no ability to analyze those tapes and comment on that analysis. Accordingly, due to this factor and others, on July 22, 1997, KCS and others requested an extension of the August 1 filing deadline. By decision dated July 25, 1997, the Board denied this request. Surely the Board cannot expect parties to provide a meaningful analysis of UP’s and BNSF’s competitive picture when the tools needed to conduct such an analysis are not even available and parties have been stonewalled in their attempts to get this information.
comparison of BNSF’s traffic volumes in those parallel corridors where they were given trackage rights with UP’s traffic volumes in those same corridors and to also compare these BNSF’s volumes to the pre-merger volumes held by SP in those same corridors. A significant portion of this information may be obtained off of the 100% traffic tapes. However, as previously noted, BNSF has failed to produce these tapes.

Specific examples summarizing the information requested by KCS and the other parties, and still needed to fully analyze the competitive conditions in order to effectively comment in these oversight proceedings, but which BNSF has failed to provide, include: (a) information and documentation on the traffic which UP and BNSF have bid against each other since the merger; (b) information on the “2-to-1” shippers which BNSF has not solicited for traffic since the merger; (c) identification and description of the traffic moved by BNSF in specific geographical corridors or origin/destination pairs which are at issue; (d) identification of traffic and shipments moved by Utah Railway acting as BNSF’s agent; (e) the number of the Salt Lake City Southern Railway customers who cannot be reached by BNSF; (f) information on the plans and discussions of BNSF’s opportunities for build-ins, new facilities or transloads; and (g) identification of all post-merger requests for common carrier rate quotations.

Again, as noted above, some of this information might be obtainable from BNSF’s 100% traffic tapes. However, not only has BNSF failed to formally respond to the discovery requests, BNSF has stated that the traffic tapes will not be available until after the deadline for comments has passed. Obviously, once the traffic tapes are received, additional time will be needed to

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2 This information would be particularly helpful in light of the fact that BNSF has stated that they only contact approximately 80% of the potential “2-to-1” customers. See BNSF -PR-4, V.S. Rickershauser at 12.
download and analyze the information contained on the tapes. Furthermore, as BNSF is just now producing its traffic tapes, which will finally allow a meaningful comparison of BNSF’s and UP’s market shares, the Board should allow parties sufficient time to analyze those tapes and provide the results to the Board. As an alternative, the Board should consider beginning another oversight proceeding within the next six months in conjunction with a mandate to both UP and BNSF to produce the most current tapes or the Board itself should request the 100% traffic tapes and conduct its own analysis of the competitive situation.

As noted above, UP did provide written responses to the Consolidated Discovery Requests, as well as producing their 100% traffic tape. However, some information is still missing. Examples summarizing the information and/or documentation requested from UP which has not been provided include: (a) identification of traffic, in excess of $250,000 annual revenues, where UP and BNSF have bid against each other since the merger; (b) identification of traffic and shipments moved by Utah Railway acting as BNSF’s agent; (c) identification of traffic which UP competed with Utah Railway; (d) identification of all post-merger requests for common carrier rate quotations; and, (e) information on traffic and/or train movements or stoppages via the Moffat Tunnel and via the Tennessee Pass.

In addition, even some of UP’s formal written responses to the discovery responses do not fully answer or provide the necessary information. For example, although UP provides some examples in UP’s Confidential Appendices of traffic which BNSF and UP have obtained as the result of bidding, these are only self-serving examples which cannot provide a complete and accurate picture of the competition between UP and BNSF. Likewise, UP’s response to the Consolidated Information and Document Requests regarding Utah Railway are insufficient.
UP’s response that Utah Railway is a “potential competitor” is in blatant opposition to UP’s minimal disclosure that Utah Railway has only moved 12 trains. Finally, in response to the discovery requests regarding traffic via the Moffat Tunnel and via the Tennessee Pass, UP states that these requests are premature since the shift in traffic only began on July 1, 1997.
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY" (KCS-2) was served this 1st day of August, 1997, by hand-delivery, overnight delivery, or first-class mail in a properly addressed envelope with adequate postage thereon addresses to all known parties of record.

William A. Mullins
Attorney for The Kansas City Southern Railway Company
Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Enclosed herewith please find the original and 25 copies of the Comments of the United States Department of Transportation in the above-referenced proceeding. I have also enclosed a computer diskette containing these Comments in a format readable by WordPerfect 7.0.

Respectfully submitted,

Paul Samuel Smith
Senior Trial Attorney

cc: Parties of Record

Enclosures
COMMENTS OF THE
UNITED STATES DEPARTMENT OF TRANSPORTATION

Introduction

The Surface Transportation Board ("STB" or "Board") has instituted this proceeding to implement the oversight condition it imposed in Finance Docket No. 32760, the merger of the Union Pacific ("UP") and Southern Pacific ("SP") railroads (collectively, "UPSP"). Decision No. 1, served May 7, 1997 ("Decision"). The Board specifically sought comments on the effects of the merger and on the implementation of the conditions used to address the transaction's competitive harms. Id. at 2. The United States Department of Transportation ("DOT" or "Department") commends the Board for its timely initiation of the formal oversight condition. Like the STB and many other parties, DOT is very interested in ensuring that the conditions either serve their intended purposes or are modified accordingly.

To evaluate a rail consolidation, the Department in almost every case since the Staggers Act has assessed the information, evidence, and argument presented by other private and public parties before expressing its position on the merits. We will follow this approach as well for our general assessment of the
implementation of the UPSF merger, and particularly of the efficacy of the conditions imposed by the Board. To date, however, the only record evidence provided has been submitted by the UPSP and Burlington Northern Santa Fe ("BNSF") railroads in their quarterly reports. Accordingly, DOT intends to file its substantive views in its reply comments on August 20, once we have reviewed all the initial submissions. Nevertheless, there are two areas of concern that we wish to raise at this time.

**Safety Must Be the Highest Consideration**

The Department considers it appropriate that in this merger, as in others, approval has been conditioned on various safety-oriented conditions as well as on compliance with "all applicable FRA rules and regulations in conducting rail operations on the merged system." Decision No. 44, Appendix G, item 13. The Federal Railroad Administration ("FRA"), an operating administration of DOT, is responsible for overseeing the safety of railroad operations. FRA has performed interim safety assessments of UP and SP operations since the STB's approval of the merger. Preliminary findings, outlined below, raise concerns about the difficulties inherent in ensuring high levels of safety as operations the size of UP and SP are combined.

In any consolidation, once the requisite approval has been granted the applicants understandably wish to realize the efficiencies projected in their operating plan as soon as possible. However, this goal cannot be reached at the expense of maintaining a safe railroad. Particularly when the consolidation covers two rail systems as extensive as those of the Union Pacific and the Southern Pacific, it is imperative that there be a fundamental commitment to safety throughout the new entity, with unified safety plans and programs over the entire system. Integration of operations and services should proceed only when management is confident that safe and uniform operating practices have been implemented.

This merger in particular presents additional safety challenges because of the extensive trackage rights granted to the Burlington Northern Santa Fe. As with the integration of operations on the UP and SP, full integration of roughly 4,000 miles of trackage rights into the BNSF system must be accompanied by consistent and well-understood safety practices and programs in the interests of an accident-free environment.
UPSP reports that safety on both UP and SP lines has improved since the merger was approved, and specifically with respect to employee injuries and derailments. See UP/SP-303 at 60. DOT agrees that this improvement is a significant achievement, particularly with respect to the former SP lines. However, the preliminary results of FRA investigations of the UP and SP during this same period, which are outlined below, provide additional perspective on the nature of implementing such a challenging consolidation. FRA is working with UPSP management to address the problems identified in this review, and UPSP has taken additional steps on its own to resolve these issues. UP management has cooperated forthrightly with FRA on its Safety Assurance and Compliance Program on addressing every safety issue brought to its attention.

Specifically, the FRA has identified problems in the following areas:

1. **Train Control Systems and Operating Practices.** The transition may be affecting safety procedures on higher density tracks that are not signaled (and thus are subject to train orders or Track Warrants), as evidenced by two recent collisions on such tracks, both entailing significant fatalities. Additionally, FRA has identified instances in which emergency braking units (so-called "End-of-Train" devices) have not been operational in areas with significant grades.

2. **Training and Quality Control at Central Dispatch Center.** FRA conducted a dispatching audit the week of June 22, 1997, at UPSP’s consolidated Harriman Dispatch Center in Omaha, Nebraska. Errors in the transmission and acknowledgment of messages were commonplace -- almost 80% of the orders monitored contained one or more errors. The audit also found problems with the level of dispatcher experience and training levels, among other areas.

Dispatching shortcomings may have also contributed to various incidents since the merger was approved, including one of the two fatal accidents cited above.

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1/ On June 22, 1997, in Devine, Texas, there was a collision of two opposing UP trains; four fatalities (two crew members, two stowaways) resulted. On July 2, 1997, in Delia, Kansas, a fuel tank fire and spill was caused by a side collision between two UP trains; one fatality (crew member) resulted and evacuation was required.

2/ On December 4, 1996, a UP coal train was separated (uncoupled) by an act of vandalism. The rear powered section traveled over 43 miles, with no one on board, trailing the head power and trailing cars by up to 11 miles over numerous public and private road crossings. The Omaha Dispatch Center was unable to detect the separated train. Fortunately, no highway grade crossing collisions occurred. On June 30, 1997 a UP commuter passenger train standing at a
Heavy workloads and long working hours in this crucial facility may also pose safety risks. Through its Safety Assurance and Compliance Program, FRA is working with UPSP to address the concerns raised in the audit.

3. **Train Inspection and Hazardous Materials Defects.** Since approval of the merger FRA inspectors have documented increased power brake-related safety problems at UPSP, particularly on routes between Chicago and the West Coast. On other routes FRA has also found numerous instances of improper or missing documentation and/or labeling of hazardous materials shipments, situations that could pose problems for safe transport of such shipments and lead to improper procedures in the event of an accident. Poor or absent coordination of hazardous materials documentation between UPSP and BNSF has been found in at least one area in which BNSF operates on the UPSP lines via trackage rights.

4. **Hours-of-Service for Train Crews.** Excessive work hours and/or continuous loss of rest for crews in their off-duty periods can profoundly affect their performance and judgment, with attendant safety risks. Although the directional traffic flows promoted during the merger proceeding do indeed promise real efficiencies, the manner in which they are implemented may affect safety. For example, on crew districts without common initial or final release points, crews can be required to "commute" significant distances from one point to another, which can contribute significantly to employee fatigue and jeopardize safe operations. FRA is still studying the specifics of UPSP's operations in this regard. Moreover, since approval of the merger, UPSP has adopted a system of record-keeping in this area that could pose difficulties for compliance with hours-of-service-laws. 49 C.F. R. Part 228. We are continuing efforts to resolve this matter with the carrier.

The results of these investigations have prompted the FRA to intensify its review of safety within the merging UPSP during the next six months. We will work with the railroad to determine whether these are relatively isolated instances or whether there are institutional or systemic obstacles to ensuring that

(footnote continued from previous page) station came "face-to-face" with a coal train. The dispatcher ran the coal train on the same track that the commuter train was using; both trains managed to stop before a collision occurred.
safety receives the highest priority throughout such a large and complex organization, particularly during the consolidation process. Once this effort is completed, we will apprise the Board of relevant findings and of any remedial actions that appear appropriate.

At this time the Department believes that the concerns noted herein are sufficient grounds to consider means by which the Board could augment or assist FRA efforts to ensure the safest possible integration of merging railroads. The combined resources and authority of the STB and DOT could conceivably enhance safety during such a difficult period more than either single agency could do alone. We suggest that other interested parties may wish to address this point, and we may offer more specific recommendations for the Board in subsequent filings.

**Competitive Conditions**

In its brief in this consolidation, the Department expressed its view that trackage rights, even as enhanced by various agreements between the Applicants and other parties, were inadequate to provide sufficient competition to the merged UPSP. DOT-4 at 34-39. In Texas, where UP and SP competed along parallel corridors, DOT supported the sale of one of the lines as the best way to provide protection for shippers. In the Central Corridor, where unique circumstances militated against divestiture of a parallel line, DOT recommended that the proposed trackage rights be augmented with conditions that would further strengthen the BNSF's ability to compete. Id. at 39-41. The Board declined to order divestiture of the Texas corridors, choosing instead to order trackage rights with unprecedented conditions to preserve competition in the affected areas of Texas and the Central Corridor. Decision No. 44 slip op. at 156-164. The unique nature of some of those conditions, crafted by the Board to address the singular competitive circumstances of the merger, has led to disputes between UPSP and the Board and between UPSP and BNSF, not all of which have been resolved.

Too little time has elapsed since the merger was approved for a thorough evaluation of the effectiveness of the trackage rights conditions. Nevertheless, by this time there should be general agreement on the specifics of the traffic for which BNSF is entitled to compete. While we can understand the natural desire of UPSP not to cede traffic to the BNSF without vigorously trying to maintain its customer base, DOT believes it is imperative that UPSP recognize that the
conditions imposed by the Board deliberately go beyond traditional considerations, such as whether a particular customer is classified as a 2-to-1 shipper based on switching tariffs. The STB has emphasized that the pivotal conditions in this proceeding, such as its "new facilities" and "transloading" conditions, were imposed for two purposes: (1) to replicate pre-merger competitive options, and (2) to enable BNSF to attain sufficient traffic density to conduct effective operations. See Decision No. 44, slip op. at 106; Decision No. 61, slip op. at 9-10. Only when both these purposes are served can a potential loss of competition be mitigated in the circumstances of this case. Id.

For these reasons the Department supports the request of BNSF that UPSP provide it with a clear determination on the shippers at 2-to-1 points to which BNSF has access rights. BNSF-PR-4, V.S. of Rickerhauser at 11. Indeed, since the Board's merger analysis primarily addressed 2-to-1 "points" and traffic in 2-to-1 "corridors" rather than 2-to-1 "shippters" [see Decision No. 44, slip op. at 121-124, 133; Decision No. 61, slip op. at 10; Decision No. 57 at 3-5), DOT suggests that the Board revisit the terms of the traffic rights agreements to consider providing BNSF access to all shippers at 2-to-1 points, regardless of whether a shipper was closed or open to switching under a tariff in place at the time of the merger. BNSF direct service is already restricted to 2-to-1 points; to further restrict access to selected shippers at those points may undermine BNSF's ability to develop the traffic base necessary to be an effective competitor.

Reciprocal switching in New Orleans appears to be a related problem. BNSF-PR-4 at 12, V.S., Rickerhauser at 25. DOT understands that UPSP has denied BNSF access to shippers that were open to UP and SP reciprocal switching before the merger. Presumably, UPSP's rationale is that, because there are eastern and/or midwestern railroads on the switching tariff in addition to UPSP, these shippers are still served by more than one railroad. However, to the extent that routes to the West are restricted under a new switching tariff to a single carrier, UPSP, it appears that UPSP has effectively created a 2-to-1 situation. We urge the Board to inquire into this problem and to take remedial action as necessary.

Finally, there still appears to be debate about what constitutes a "new facility," both in the context of 2-to-1 points and the transloading condition. See BNSF-PR-4, V.S. of Rickerhauser at 11. DOT believes such matters should be resolved on a functional basis, i.e., if newly rail-served or newly established as a
transloading operation, a facility should be considered "new" regardless of whether a building or structure was already in place on the property. We believe the STB should rule on this issue in such a way that allows BNSF access to the maximum number of shippers.

Conclusion

The safety of operations on the combined UPSP and on the newly extended BNSF is of paramount concern. Troubling incidents have occurred that warrant an investigation in order to determine the full extent of problems associated with the merger or its conditions. The Department will notify the Board of its findings and recommendations at the conclusion of this effort.

Although it is premature to evaluate definitively the competitive efficacy of the enhanced trackage rights imposed in this proceeding, it is clear by now that continuing disputes over the application of some conditions have delayed the onset of competitive service. We will closely monitor developments on this point, and we urge the Board to respond expeditiously to requests to clarify the implementation of the conditions that it has adopted.

Respectfully submitted,

Rosalind A. Knapp
Deputy General Counsel

August 1, 1997
CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be mailed a copy of the foregoing Comments of the United States Department of Transportation in Finance Docket No. 32760 (Sub-No. 21) on all Parties of Record by first class mail, postage prepaid.

[Signature]

Paul Samuel Smith

August 1, 1997
August 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 supporting verified statements from Sea-Land Service, Inc. and the Tennessee Valley Authority that Applicants received after filing their July 1 Report on Merger and Condition Implementation (UP/SP-303). Applicants are submitting these statements to supplement the supporting verified statements of shippers, public bodies and railroads that they filed in their July 1 Report.

Sincerely,

Arvid E. Roach II
Attorney for Union Pacific Corporation, Union Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company and St. Louis Southwestern Railway Company

Enclosures

cc: All Parties of Record
My name is Charles G. Raymond, Senior Vice President and Chief Transportation Officer of Sea-Land Service, Inc., with world headquarters located at 6000 Carnegie Boulevard, Charlotte, NC 28209.

Sea-Land is the largest U.S.-based ocean carrier providing both liner and intermodal services and is a leader in the global transportation industry. Sea-Land, which is a wholly owned subsidiary of CSX Corporation, headquartered in Richmond, Virginia, is one of the largest providers of transportation solutions in the world. In order to accomplish this, Sea-Land operates more than 100 container ships and approximately 210,000 containers globally. We service more than 120 ports in 80 countries and territories on five continents. The majority of our rail intermodal cargo utilizes our major port complexes at Long Beach and Oakland, California, Tacoma, Washington and Vancouver, British Columbia. Major tradelanes extending from these ports include markets in the Midwest, Gulf, Southeast and East Coast areas, and are primarily served via a combination of daily and dedicated doublestack trains. Historically Sea-Land has utilized UP in the Pacific Southwest (PSW) and BNSF in the Pacific Northwest (PNW). Due to Sea-Land's extensive intermodal network, a high volume of cargo utilizing
West Coast ports must be interchanged with Eastern railroads at Midwest and Gulf gateway points.

Sea-Land has seen initial benefits as a result of the UP/SP merger. Although the merger is still in its early stages, Sea-Land has seen improvements in the basic components required to provide rail transport services namely, an adequate supply of locomotives, crews and doublestack cars. Shorter routes, comprised of track segments from both the SP and UP, should eventually result in improved transit times and a higher level of service consistency for our traffic. We look forward to the introduction of new doublestack service offerings that will enhance the overall Sea-Land service products that we provide to our customers. We have been especially pleased with the improvement in communication we have experienced since the merger. The merged UP/SP has been more responsive to Sea-Land’s needs than the SP Railroad was prior to the merger.

Sea-Land has always welcomed stronger competition between UP/SP and BNSF. Both carriers have a broad route structure, giving us two viable competitive alternatives for our major tradelanes extending from the PSW and PNW ports to markets in the Midwest, Gulf, Southeast and East Coast areas. Following their mergers, both carriers are in a position to provide us with competitive pricing proposals. As we have historically shown in the marketplace, we will continue to evaluate all of our intermodal carriers and tender our cargo to those that provide to Sea-Land the greatest customer-value. BNSF’s new access to the New Orleans gateway and improvements via the Memphis gateway have the potential to improve service, due to the fact that it gives us a new alternative for cargo moving from our PSW ports through the New Orleans gateway and into the Southeast. BNSF has been aggressive in its effort to win traffic over the New Orleans gateway. The stronger competition between UP/SP and BNSF is not
limited to our New Orleans gateway traffic. For example, in response to a new competitive rate and service offering, we recently diverted to UP/SP some containers moving from Tacoma, Washington to Memphis, Tennessee, which we previously moved via BNSF.

In Sea-Land’s experience, the shift from three carriers (including a marginal SP) to two well-matched carriers following the merger has initially resulted in stronger competition, improved communication and increased service options for our traffic.

At this point in time, Sea-Land is pleased with the progress of the merger. We expect and will require further benefits (including important service consistency and product improvements) as UP/SP fully implements its capital expenditure program and further integrates the operations of UP and SP. We feel this action by the UP is a business imperative, given the fact that we must provide to our customers a market-competitive level of service.

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on June __, 1997.

Charles G. Raymond
VERIFIED STATEMENT
OF
W. Gary Quinn
ON BEHALF OF
TENNESSEE VALLEY AUTHORITY

My name is W. Gary Quinn, and I am the Manager, Fuel Development for the Tennessee Valley Authority (TVA), 1101 Market Street, LP5G, Chattanooga, TN 37402-2801. I have been employed by TVA for 4-1/2 years in this position and as Manager, Fuel Transportation. As such, I have participated in business transactions and negotiations with the Union Pacific Corporation and the Southern Pacific Rail Corporation, both prior and post merger.

TVA is the largest producer of electric power in the United States, providing electricity to over seven million individuals and over 65 industrial customers. TVA is also the largest single utility buyer of coal in the US, purchasing approximately 40 million tons of coal annually for use in eleven coal-fired power plants. Recently, TVA has purchased increasing amounts of coal from sources in the western United States. In the first four months of 1997, TVA purchased nearly 2.3 million tons of Colorado/Utah coal, compared with approximately 1.5 million tons during the same period of 1996. Therefore, TVA is greatly interested in the progress of the ongoing merger of the Union Pacific Corporation (UP) and the Southern Pacific Rail Corporation (SP).

We are pleased with the progress the two railroads have made in implementing the merger and with the early benefits to TVA that have resulted. Following the merger, the dependability of deliveries to TVA of western coal shipments improved immediately. We have also experienced a greater availability of equipment as a result of the merger. Prior to the merger, SP often had shortages of railcars and locomotives, which affected our service.

TVA’s options for coal sources have increased significantly as a result of the merger. TVA now has single-line service from both Colorado and Utah coal sources as well as from Hanna Basin and Powder Basin coal sources to multiple river transfer facilities, which gives TVA options not available before the merger. The increase in the number of facilities with single-line access to a range of coal sources has given TVA the flexibility to blend coals from various sources more easily, which enables us to take advantage of the most efficient fueling options. This has been accomplished while maintaining the aggressive pricing instituted by SP for TVA. We have been pleased with our new ability to develop a comprehensive transportation package for western coals as a result of the merger.

Although some minor problems arose in the context of the recent computer system cutover, those problems are being addressed. Those difficulties do not detract from the fact that, from TVA’s perspective, the merger of UP and SP generally has proceeded quite smoothly.

The merger of UP and SP is generating the service improvements that TVA, the UP and SP promised would result from the merger. There is no basis, at this point, for altering the terms of the merger approval, which could jeopardize the significant benefits that have been achieved and
the additional significant benefits that are expected as the implementation of the merger continues.

I, W. Gary Quinn, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed July 30, 1997

[Signature]
W. Gary Quinn
Manager, Fuel Development
Tennessee Valley Authority
VIA HAND DELIVERY

August 1, 1997

Dear Secretary Williams:

Enclosed is an original and 25 copies of the Response of Cyprus Amax Coal Sales Corporation to the July 1, 1997 Applicant's Report on Merger and Condition Implementation and Request for Relief.

We also enclose a Certificate of Service together with a 3.5 inch diskette formatted in Wordperfect 5.1.

Enclosures

cc: All Parties of Record
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

RESPONSE OF CYPRUS AMAX COAL SALES CORPORATION
TO JULY 1, 1997 APPLICANTS’ REPORT ON
MERGER AND CONDITION IMPLEMENTATION
AND REQUEST FOR RELIEF

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Attorneys for
Cyprus Amax Coal Sales Corporation

August 1, 1997
Cyprus Amax Coal Sales Corporation ("Cyprus Amax"), on behalf of itself and its operating affiliates, by its attorneys, hereby responds to the July 1, 1997 Applicants' Report on Merger and Condition Implementation.

**Introduction**

Despite the good faith efforts of this Board, the Union Pacific ("UP"), the Southern Pacific ("SP") (hereinafter the merged entity shall be referred to as the "UP/SP"), the Burlington Northern/Santa Fe ("BNSF"), the Utah Railway and Cyprus Amax, the merger of the Applicants has resulted in the elimination of effective competition with respect to the westbound shipment of Cyprus Amax coal from Provo, Utah to the seaports of southern California. Cyprus Amax therefore requests this Board to take such action as it deems appropriate to restore such competition.

**Statement of Facts**

For many years, Cyprus Amax has operated the Star Point Number 6 coal mine (commonly referred to as the "Plateau mine") near Price, Utah. In the past five years, total sales from this mine have increased from approximately 1.4 million tons to over 3 million tons of coal annually. This growth reflects the rise of export sales to certain Pacific Rim countries, most notably Japan, Korea and Taiwan. Export sales from the Plateau mine have grown from under 300,000 tons to almost 2 million tons annually during this period.

Experts predict that the Pacific Rim steam coal export market will grow substantially over the next decade, and the
Energy Department forecasts annual U.S. coal exports to Asia will grow from 10 million tons in year 2000 to 24 million tons in year 2010. (Statement of Richard J. Barber, independent economic consultant, Railroad Merger Application, Vol. 3, p. 404). However, this market is "intensely competitive, with lower cost Australian coal the leading contender in end-markets and U.S. production factor on the margin that is highly sensitive to transportation cost." (Statement of Richard B. Peterson, Senior Director, Interline Marketing of UP, Railroad Merger Application, Vol. 2, p. 286.) Typically, rail costs account for approximately 38% of the cost of Utah coal delivered to southern California ports for export.

The reserves of the Plateau mine are nearly exhausted. Cyprus Amax is about to begin production at a newly developed nearby mine, Willow Creek, in which Cyprus Amax has invested approximately $135 million. The Willow Creek mine will have an initial production capacity of 5 million tons per year -- as opposed to Plateau's 3 million tons. Over 3 million tons of Willow Creek’s capacity are targeted for the Pacific Rim export market. If Cyprus Amax loses economical access to that market, the domestic market will not be able to absorb this additional tonnage at profitable price levels. The projected growth of the Pacific Rim export coal market and Cyprus Amax's investment in its new Willow Creek mine means that the availability of reliable, dependable and cost efficient westbound rail service is vitally important to Cyprus Amax, and to other Colorado and Utah coal exporters.
The Pre-Merger Situation

For many years prior to 1995, Cyprus Amax shipped its Utah coal bound for the ports of Long Beach and Los Angeles via the UP line through Las Vegas. Over time, the timeliness and reliability of the UP service deteriorated. Loading times were missed, trains were delayed in transit, and trains did not meet arriving vessels in a timely fashion. As a result, when coal was not available to load on vessels, Cyprus Amax incurred substantial demurrage charges. The UP refused to reimburse Cyprus Amax for these demurrage charges and failed to improve its service despite many promises to do so.

In 1995, Cyprus Amax shifted its business to the SP. Although the northern SP route was 470 miles longer than the UP route, the SP priced its service competitively. The SP also gave Cyprus Amax better shipping terms, including: (1) a rolling four week shipment commitment of 154,000 net tons, (2) its agreement to reimburse Cyprus Amax for demurrage charges incurred at southern California ports that were the fault of the SP, and (3) an extra 24 hours to unload trains that the SP delivered to port on major holidays. Throughout 1995 and into 1996, the SP provided service that was far superior to the service that the UP previously had provided, including both timeliness and faster cycle times. The SP's more efficient service lowered the total delivered cost of U.S. export coal and helped keep U.S. coal competitive in the Pacific Rim market.
The UP/SP Merger

Under the terms of the UP/SP merger and settlement agreements reached with the BNSF and Utah Railways as part of the merger proceedings, the BNSF received trackage rights over the old SP line to Long Beach and Los Angeles and access to the Plateau and Willow Creek mines via the Utah Railway. The UP/SP has identical access to the Cyprus Amax mines. 1

The Post-Merger Situation

The merger shifted Cyprus Amax's westbound coal traffic from the old SP to the newly formed UP/SP, and the UP/SP now transports Cyprus Amax westbound coal over the UP route that runs through Las Vegas. However, service on the UP/SP has slipped to the levels that existed prior to Cyprus Amax shifting its business to the SP in 1995. In addition, the UP/SP has informed Cyprus Amax that it will: (1) not offer the favorable shipping terms which the SP provided; (2) not allow Cyprus Amax to use its own rail cars as opposed to cars owned by the UP/SP; and (3) next year, for the first time since 1981, not allow its rail rates to float proportionately downward should the F.O.B.T. price of export coal decline from current fiscal year levels. 2

1/ The Utah Railway has always exclusively originated the transport of Plateau coal and it obtained exclusive access to Willow Creek as a result of the referenced settlement agreements. Both the UP/SP and the BNSF have a westbound interchange with Utah Railway at Prcvo, Utah.

2/ Rail contracts for the shipment of Utah coal to Long Beach and Los Angeles typically are negotiated prior to the final establishment of export coal prices for the then current Japanese fiscal year, which begins on April 1.
Faced with declining service, less advantageous shipping terms and potentially higher rail rates from the UP/SP, Cyprus Amax solicited a bid for the 1997 fiscal year from BNSF. Although the BNSF expressed great interest in the Cyprus Amax business, its quoted rates out of Willow Creek and Plateau were not even close to being competitive. The BNSF has informed Cyprus Amax that it cannot be competitive operating over the old northern SP route, and it also has informed the Board of this fact. (Verified Statement of Peter J. Rickershauser, pp. 13-14, BNSF Quarterly Progress Report, BNSF-PR-4, July 1, 1997).

The UP/SP has informed Cyprus Amax that it is aware that the BNSF is not a viable competitor for the Cyprus Amax westbound export coal business. Apparently as a result, the UP/SP has not been responsive to Cyprus Amax's service complaints and also felt free to announce its new pricing policy which could result in significantly higher rail rates for westbound coal shipments. In addition, because of several statements made by UP/SP personnel, Cyprus Amax is concerned that its mere filing of this response may lead the UP/SP to take some form of retaliatory action against Cyprus Amax.

3/ Cyprus Amax will provide the respective quotes of the UP/SP and the BNSF to this Board upon request if the Board believes such information would be helpful to it. Should the Board so request, Cyprus Amax would respectively request that appropriate procedures be implemented so that the other parties to this proceeding, including their outside counsel and consultants, not be privy to such information.

4/ Cyprus Amax hopes that its concerns regarding such reprisals are unwarranted and that the UP/SP will so affirm.
The Requested Relief

Cyprus Amax hereby respectfully requests this Board to take whatever actions it deems appropriate to restore competition to the westbound coal shipments between Provo, Utah and the ports of Los Angeles and Long Beach, California. Such actions might include granting the BNSF trackage rights over the UP/SP line through Las Vegas, taking steps to reduce BNSF’s cost structure in providing service over the old SP northern route to California, or yet other forms of relief. Cyprus Amax stands ready, willing and able to work with this Board and the railroads to arrive at a workable solution to this problem. It does not seek to gain extra-competitive advantages, nor is it asking this Board to do anything that would jeopardize the positive aspects of this merger. It only seeks the reestablishment of competition in the market for westbound coal shipments out of Provo, Utah, and the right to seek such relief without fear of reprisals.

Respectfully submitted,

CYPRUS AMAX COAL SALES CORPORATION

By: Mark L. Yeager
One of Its Attorneys

Mark L. Yeager
McDERMOTT, WILL & EMERY
227 West Monroe Street
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(202) 778-3300
CERTIFICATE OF SERVICE

I hereby certify that I have on this 1st day of August, 1997, caused to be mailed upon all parties of record on the service list a copy of the foregoing Response of Cyprus Amax Coal Sales Corporation by first-class mail, postage prepaid.

Mary C. Chapin

Mary C. Chapin
VIA COURIER

Mr. Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001

Re: 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)

Dear Secretary Williams:

Enclosed for filing in the above-captioned case is an original and twenty (25) copies of the
Comments of The International Paper Company, designated as document IP-19. We have also
enclosed an additional copy to be date-stamped when filed and returned to us.

Also enclosed is a 3.5" WordPerfect 6.1 disk containing the text of IP-19.

Very truly yours,

Edward D. Greenberg

Enclosures
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]

____________________________________

COMMENTS OF THE INTERNATIONAL PAPER COMPANY

____________________________________

Dated: August 1, 1997

Edward D. Greenberg
GALLAND, KHARASCH & GARFINKLE, P.C.
1054 - 31st Street, N.W.
Washington, DC 20007
(202) 342-5277

Counsel for The International Paper Company
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]

VERIFIED STATEMENT OF CHARLES E. McHUGH

My name is Charles E. McHugh and I am Manager, U.S. Distribution Operations for The
International Paper Company (referred to as "IP"). I previously submitted a verified statement in the
underlying merger proceeding involving UP and SP (see Verified Statement of Charles E. McHugh,
submitted as part of the Comments of IP, filed March 29, 1996 (the "March 29 Statement"); IP-11).
I am submitting these comments in response to the Board's Decision No. 1 in this oversight
proceeding, served May 7, 1997, to address the issue of whether the conditions imposed by the Board
on the merger are effective in addressing the anticompetitive effects of the merger.

PREFATORY STATEMENT

In the March 29 Statement and in the other submissions filed on behalf of IP, we pointed out
that the company was heavily dependent on rail transportation at numerous points that were
competitively served by both the UP and SP rail systems. In particular, we pointed out that IP had
two large mills that were situated at the so-called "2-to-1" points of Camden and Pine Bluff,
Arkansas in the Houston-Memphis Corridor that together accounted for approximately 15,000 rail shipments in 1995 alone. As the Board will undoubtedly recall, IP was extremely active in the underlying merger proceeding because of its concern that the announced settlement agreement between the BNSF and the UP/SP might not be an effective alternative for the loss of the existing competitive services offered by the then separate UP and SP rail systems. Given the importance of rail competition and our concerns about the practicability and viability of the BNSF alternative initially proffered by the Applicants, we spent a great deal of time during the discovery phase of the hearing to ascertain whether the BNSF would be able to fill the vital role of providing a competitive alternative to UP/SP service at Camden and Pine Bluff.

Notwithstanding the assurances of the BNSF—namely, that the trackage rights accorded it under the original Settlement Agreement would be all that was required to permit it to compete as vigorously for IP's business as had both the UP and SP—we concluded that this would not be the case. We came to these conclusions primarily due to our belief that the trackage rights accorded BNSF in this particular corridor would not permit it to make the necessary investment to operate effectively and efficiently, that BNSF had neither the experience nor interest in serving our mills, that it did not have sufficient facilities or assets (i.e., cars) to handle the needs of these large mills, that it could not compete price-wise for this business, and that it would largely operate between the end points of Houston and Memphis without providing any effective service at points along the line. It was for this reason that IP called for divestiture of the SSW lines and all rail-related facilities between Houston and Memphis, rather than merely giving BNSF trackage rights.

The STB nonetheless found, in its Decision No. 44, served August 12, 1996, that the conditions imposed would be sufficient to ameliorate the anticompetitive effects caused by the merger, that the trackage rights accorded BNSF over the Houston/Memphis Corridor would be
sufficient to make it a viable and aggressive competitor, but that the STB would retain oversight over "the competition provided by BNSF (Decision 44, at 147).

The following facts address the degree to which BNSF has provided competition to UP/SP at Pine Bluff and Camden, Arkansas for IP's business.

I. Pre-Merger Competitive Situation

In the years leading up to the merger, the SP and UP were aggressive, head-to-head competitors for IP's rail business at the Camden and Pine Bluff facilities. As I pointed out in the March 29 Statement, IP required both the UP and SP to submit responsive bids for all competitive rail business (i.e., that business was not local to one of the carriers) that addressed both price and service parameters. (March 29 Statement, at 14-17.) After weighing the competing bids of UP and SP and giving full consideration to their service performance for the preceding years, IP awarded its competitively served traffic to UP and SP for the years 1993 through 1995 as follows:

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<th>Year</th>
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<tr>
<td></td>
<td>UP</td>
<td>SP</td>
</tr>
<tr>
<td>1993</td>
<td>35%</td>
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<tr>
<td>1994</td>
<td>36%</td>
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<tr>
<td>1995</td>
<td>52%</td>
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II. Post-Merger Performance of BNSF at Pine Bluff

Shortly after the STB issued Decision No. 44, IP sent a Request for Proposal ("RFP") to the UP/SP and BNSF with respect to the movement of a product called bleached board which is manufactured at Pine Bluff, Arkansas. As relevant to this discussion, this product is sent primarily
to liquid packaging facilities in the Conrail territory and various points in Arkansas and Tennessee
and is used in the manufacture of containers for products, such as milk and juices, suitable for human
consumption. Accordingly, a railroad's ability to move the large rolls of this bleached board
commodity in clean boxcar equipment is essential. Although responses on this bid were due on
September 27, 1996 (which is the date the UP responded), the BNSF responded three days late and,
at that, bid on less than one-third of the routes for which traffic was moving. Nor did BNSF's
response address the transit time standards required by the RFP. Two weeks later, BNSF
supplemented its bid by addressing two additional routings, so that they ultimately bid on seven of
the 17 joint line routings for which we had requested bids, but again failed to address the important
service issues.

On November 4, 1996, I met with Messrs. Hord and Rickershauser of BNSF—the same two
gentlemen that filed statements on July 1, 1997—to discuss the BNSF's initial offer in response to
our RFP and explained that BNSF was substantially non-competitive from a rate perspective. I also
criticized the BNSF's failure to address the issue of car supply, the transit standards and the operating
plans were are required by the RFP. As a result, on November 11 BNSF submitted amended rates,
transit standards for volume moves and an operating plan. In addition, the BNSF provided a one-
page sheet reflecting the car supply that would be available to service the Pine Bluff traffic. I have
attached that one-page sheet as Exhibit 1 to this statement.

On November 25, 1996, IP awarded BNSF with 28% of IP's outbound rail tonnage from Pine
Bluff. This award represented the right for BNSF to handle 1,200 carloads annually.\textsuperscript{1} Although we

\textsuperscript{1} The UP/SP's Progress Report incorrectly states that IP awarded 1,300 cars to BNSF at Pine
Bluff. \textit{See} Confidential Appendices to Applicant's Report on Merger and Condition Implementation,
UP/SP-304, at Appendix B5.
could have awarded BNSF 45% of the outbound tonnage from this facility (or 1,900 carloads), we were somewhat hesitant to do so since this was BNSF's initial attempt to serve this facility and we needed some experience to rate their service before relying more heavily upon that carrier. This award of business was to be effective commencing on December 1, 1996 and involved traffic destined to various liquid packaging facilities in Conrail territory and points local to BNSF in Arkansas and Tennessee.

In mid-December 1996, representatives of the BNSF met with our staff at Pine Bluff to discuss the BNSF's new role and how they planned to serve that facility. For our part, we discussed our needs and in particular, due to the handling characteristics for these large rolls of bleached board, how our customers preferred either double-door boxcars or 12-foot single door boxcars. A similar discussion concerning our need for these types of boxcars was held a week earlier with another representative of the BNSF. At these meetings, the BNSF representatives indicated--for the first time--that BNSF did not have an abundance of these car types; nonetheless, they conveyed their belief that BNSF could supply some quantity of double-door cars and would be able to supplement this with a sufficient quantity of 12-foot single-door boxcars. They further advised that the BNSF was investigating its ability to lease, buy or rehabilitate additional double-door boxcars to satisfy IP's needs.

In January of this year, BNSF advised us that they could not supply any double-door boxcars, although they did have a fleet of the alternative 12-foot wide single-door boxcars that would be acceptable to our customers. IP's Pine Bluff facility accordingly ordered 20 of these boxcars per

1/ (...continued)

Parenthetically, this award simply means that BNSF had the ability to handle 1,200 cars, assuming it could do so. As noted below, BNSF could not do so and has actually handled less than 10% of the business it was awarded.
week. Rather than send us 20 of these cars, the BNSF sent 80 of them. However, instead of the normal loading capacity of 152,000-153,000 pounds per car, these cars could not hold more than 134,000-140,000 pounds. Assuming the BNSF actually handled the 1,200 cars allotted to that carrier, this light loading problem would have caused a freight penalty of $542,500 per year. This is of course a major service deficiency attributable to BNSF.

Moreover, most of the cars BNSF did provide were rusty and did not possess the necessary anchor plates that were essential to secure the loads. Consequently, IP was required to reject 65 of the cars due to their poor condition. Even so, the BNSF's service was very poor, in that we experienced severe damage to the rolls of bleached board that were shipped, substantial monetary penalties because of the light loading of the cars and excessive transit delays due to BNSF's inability to promptly move or track the shipments.

Throughout February, March and April of this year, we held a number of meetings and discussions with BNSF personnel concerning its inability to meet their boxcar commitments or otherwise satisfy IP's service requirements. Initially, BNSF claimed that it had never committed to provide double-door boxcars. However, as is evident from the attached Exhibit 1, its amended response to our RFP (which was submitted on November 11, 1996) identified the various cars that would be available to support any business that would be awarded to the BNSF. And, 464 of the cars that appear on that list are in fact double-door boxcars. In any event, IP's original RFP that was provided to the BNSF specifically stated our preference for double-door boxcars, specifying that 70% of the fleet used to service this mill should consist of that type of equipment. At no time during its responses to the bid did BNSF indicate that this was unattainable. Nonetheless, and notwithstanding its earlier commitment that 464 double-door boxcars were available to serve the Pine Bluff mill, BNSF's representatives now claimed that there had been no such understanding.
In May of this year, we again had a comprehensive business review with BNSF officials to discuss the Pine Bluff situation. At this point, they agreed to talk with "their people" about buying, leasing or reassigning the double-door boxcars both we and our customers need at Pine Bluff, and promised to respond by the end of May. And, on May 30, 1997, William E. Nordberg, a BNSF Vice President, did respond, essentially refusing to provide any of the equipment promised in their response to the RFP. (See Exhibit 2.) After alleging that there had been some "misunderstanding" of the BNSF's equipment commitments, he contended—incorrectly—that their "existing fleet did not contain any surplus double-door equipment." Contrary to other assertions in his letter, the BNSF never stated—until Mr. Nordberg's letter—that it could not supply the double-door cars. Nor had BNSF stated, until the May 30 letter, that the economics of the contract would not justify leasing or buying this equipment. Regardless, at this point the BNSF took the position that if IP would reopen the bid, they would make "a new proposal, using economics that would justify the investment in or reallocation of double-door equipment."

This raises several obvious points. First, IP never dictated what the transportation price should be when it issued the RFP; instead, we merely specified the traffic that was available, the equipment that was desired, and the service parameters that were required. The pricing of its bid was up to BNSF, and the BNSF was supposedly intending to compete with the UP/SP for this business. Second, it is now apparent that the BNSF has concluded that it cannot compete economically with the UP/SP for service at this mill, and therefore was asking us to agree to pay a premium for BNSF service.

In any event, although BNSF was awarded the opportunity to handle 1,200 cars from the Pine Bluff facility, and should have handled at least 650 carloads during this time frame, it in fact was only able to handle 57 cars—less than 10% of the total it was awarded. As a consequence of BNSF's
inability to supply the necessary cars, IP was compelled to tender these shipments instead to the 
UP/SP at a substantial freight cost and service penalty.

As I outlined in great detail in the March 29, 1996 Statement, the service provided by the 
railroads is equal to pricing in importance to IP. (Statement, at 12-17.) And, aside from the 
provision of inadequate supply of clean and acceptable boxcars, one of the most important service 
deliverables that a railroad can provide pertains to on-time transit. By and large, IP and its customers 
are relatively indifferent to how long it takes for a railroad to move a car; the critical issue is whether 
they are able to deliver the car when they say they will. I have attached, as Exhibit 3 to this 
Statement, several graphs showing the on-time transit performance at the Pine Bluff mill for the SP 
and UP respectively in 1996, and for the UP only for the first six months of 1997. Despite our 
request, we have received no transit performance statistics from the BNSF and have not received any 
SP reports since December of 1996. In any event, these figures can be compared to the performance 
statistics reflected in my March 29 Statement at 16-17. The results have not been very encouraging.

III. Post-Merger Performance of BNSF at Camden

On May 20, 1997, IP sent both UP/SP and BNSF an RFP seeking bids covering the 
competitive traffic that was available out of its Camden mill, and asked that the carriers' bids be 
returned to us by June 23, 1997. This amounts to 2,400 cars annually of kraft paper, moving 
generally throughout the United States.

On June 2, I made follow-up calls with both the UP/SP and BNSF to check on their progress. 
At that time, Dave Kiehn, who was the Account Manager--Forest Products assigned to this project 
by the BNSF, advised that he was still working on the bid. Late in the afternoon on June 23 (the due 
date), I again called Mr. Kiehn to ask where the BNSF bid was. He advised me that he was still
waiting for additional information, but that the complete bid package would be prepared by Friday, June 27. Because of our concerns about this matter, I made additional calls to BNSF officials, including Mr. Nordberg, attempting to ensure that the BNSF would be able to produce a bid. Unfortunately, BNSF did not deliver anything on June 27. Accordingly, on Monday, July 1, I called Mr. Kiehn but was advised he was on vacation. After enlisting the assistance of Mr. Nordberg, Mr. Kiehn eventually left me a voice message advising that BNSF was still unsure about its operating plan and that he was still waiting for concurrences from various connecting carriers.

On Monday, July 7, I received a partial rate offer from BNSF, but was advised by Mr. Kiehn to expect the complete package by Friday, July 11. When we received nothing further on July 11, I again called Mr. Kiehn, this time on Monday, July 14. He then advised me that he was still working on an operating plan and, again, waiting for concurrences. On this occasion, he promised that he would have the complete bid package prepared by Wednesday, July 16.

Unfortunately, July 16 came and went, again without any bid from the BNSF for the Camden business. On July 17, I contacted Mr. Kiehn early in the morning and advised him that any rate offers he wanted to be considered in the bid had to be in our office by noon. I also told him that the operating detail and transit standards had to be in our office by the end of the day. Regrettably, we received no response of any kind from the BNSF in response to that inquiry.

As a result, we had no choice except to award the entirety of the Camden business to UP. On July 28, we finally received a response from BNSF containing a rate offer and providing transit standards for a number of the routings that had been included in the RFP. However, that offer was still missing an operating plan concerning how the business was to be switched at the Camden Mill and contained no car supply assurances whatsoever. In any event, the information that was supplied,
a month and a half later than the required bid date, came in after the business had already been awarded to the UP/SP.

Accordingly, BNSF has handled no cars into or out of our Camden facility, with the UP/SP now handling 100% of all traffic at that location.

I have attached, as Exhibit 4, the "on-time transit performance" statistics for 1996 and the first six months of 1997 pertaining to railroad operations out of the Camden Mill. As was the case with Pine Bluff, we received no SP performance data for 1997. And, since the BNSF elected not to compete for this business at all, there is no performance data for that carrier.

IV. Conclusion

From the foregoing, it is difficult to conclude that the BNSF has been able to provide effective competition to the UP/SP at least with respect to the rail service needs of IP at Pine Bluff and Camden, Arkansas.
VERIFICATION

I, Charles E. McHugh, do verify that the foregoing is true and correct to the best of my knowledge, information and belief.

[Signature]
Charles E. McHugh

STATE OF TENNESSEE )
COUNTY OF SHELBY )

Subscribed and sworn to before me by Charles E. McHugh this 30th day of July, 1997.

[Signature]
Janice A. Wetsells
Notary Public

My Commission Expires September 15, 1998

My commission expires: ____________________
**PINE BLUFF, AR**

**B. Controlled Equipment Series**

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**Total 1774**

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**Total 1496**

<table>
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<th>BNSF Series</th>
<th>Description</th>
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<th>Number of Cars</th>
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<td>&quot;  &quot;  &quot;</td>
<td>A402</td>
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<td>A405</td>
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**Total 1194**

**Grand Total 4464**

*Double Door Boxcars*
May 30, 1997

Mr. Charlie E. McHugh
Manager U.S. Distribution Operations
International Paper
International Place II
6400 Poplar Avenue
Memphis, TN 38197

Dear Charlie,

This letter is in accordance with our commitment to respond to you, formally, on BNSF's plans to provide equipment and service to your mills in Arkansas. We feel there may be a misunderstanding of what equipment BNSF has committed to deliver to handle this traffic.

In BNSF's September '96 meeting with IP to discuss the upcoming Pine Bluff bid for traffic, BNSF expressed our desire to participate in this business. We stated that we would be able to supply 70 ton, single door paper grade cars, but our existing fleet did not contain any surplus double door equipment. Consequently, when the '96-'97 bid package was resubmitted (our initial bid was rejected as non-competitive), BNSF's bid was based on an equipment base of 75%-80% foreign 70 ton single door, cushioned boxcars, with the remainder to be supplied from BNSF's paper fleet. Although we had stated BNSF could not supply double door cars, the business awarded to BNSF was for approximately 60% double door and 40% single door equipment. Through the first five months of this year very little traffic (50 cars) has moved to the proposed single door destinations and we have been unable to meet your requirements for double door equipment. We remain willing and able to supply single door equipment for this business as needed, however, we cannot economically justify leasing or building new double door equipment for this business.

If IP would like to reopen the bid for the Pine Bluff traffic, BNSF would be willing to submit a new proposal, using economics which would justify the investment in or reallocation of double door equipment.

Although our lack of supply of double door cars will keep us from handling large volumes of traffic from the Pine Bluff mill, we do have a sufficient quantity of single door cars suitable for the Camden mill for which we have just received the 1997-1998 bid
package. Based on a quick look over this package, we estimate BNSF would be able to handle approximately 58% of this traffic. Given this share, and a percentage of the single door traffic out of Pine Bluff, IP would be able to maintain or improve the same competitive rail share numbers as were experienced pre-UP/SP merger.

BNSF wants to participate in your business. We are working very hard to make the service in the Houston to Memphis lane high quality. As you know, we have added a Superintendent position in Pine Bluff for the sole purpose of overseeing all traffic handled in this corridor and now have two merchandise trains daily, each direction operating through Pine Bluff between Texas and the Memphis gateway.

By working together, I believe we will be able to make this a long term successful arrangement. We would appreciate your response to this letter, which will enable us to go forward with a clear understanding of your business needs and requirements of BNSF.

Respectfully,

William E. Nordberg

cc: Matt Rose  
    Peter Rickershauser  
    Teresa Perkins  
    David Klein
Southern Pacific Transportation
On-Time Transit Performance - Pine Bluff
1996

<table>
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<tr>
<th>Month</th>
<th># Of Cars</th>
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<tr>
<td>Jan</td>
<td>211</td>
</tr>
<tr>
<td>Feb</td>
<td>210</td>
</tr>
<tr>
<td>Mar</td>
<td>205</td>
</tr>
<tr>
<td>Apr</td>
<td>231</td>
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<tr>
<td>May</td>
<td>248</td>
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<tr>
<td>Jun</td>
<td>260</td>
</tr>
<tr>
<td>Jul</td>
<td>241</td>
</tr>
<tr>
<td>Aug</td>
<td>N/R</td>
</tr>
<tr>
<td>Sep</td>
<td>N/R</td>
</tr>
<tr>
<td>Oct</td>
<td>248</td>
</tr>
<tr>
<td>Nov</td>
<td>218</td>
</tr>
<tr>
<td>Dec</td>
<td>185</td>
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</tbody>
</table>

75% IP Standard
Union Pacific Railroad
On-Time Transit Performance - Pine Bluff
January - June 1997

Months - # Of Cars

Jan-337 Feb-362 Mar-312 Apr-327 May-353 Jun-347

76 75% IP Standard

Jan - 337  Feb - 362  Mar - 312  Apr - 327  May - 353  Jun - 347
38  57  59  66  72
Union Pacific Railroad
On-Time Transit Performance - Camden
1996

%  
90  
80  
70  
60  
50  
40  
30  
20  
10  
0  

75% IP Standard

Jan-22  Mar-23  May-17  Jul-43  Sep-40  Nov-22  85
Feb-16   Apr-7  Jun-28  Aug-10  Oct-44  Dec-21

Months - # of Cars
Southern Pacific Railroad
On-Time Transit Performance - Camden
1996

75% IP Standard

%  
80
75
70
65
60
55
50
45
40

Jan - 179  Mar - 126  May - 201  Jul - 163  Sep - 209  Nov - N/A
Feb - 147  Apr - 120  Jun - 222  Aug - 205  Oct - 249  Dec - 121

Months - # of Cars

49  63  57  70  55  65.8  64  46
Union Pacific Railroad
On-Time Transit Performance - Camden
January - June 1997
CERTIFICATE OF SERVICE

I certify that on this 1st day of August, 1997 I caused a copy of the foregoing Comments of The International Paper Company to be served by first-class mail, postage prepaid, on all parties of record in this proceeding.

Edward D. Greenberg
July 31, 1997

Via Federal Express - Overnight Delivery Service

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

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

Dear Mr. Secretary:

Enclosed for filing in the above referenced proceeding are the original and twenty-five copies of the Comments of Champion International Corporation.

Sincerely,

Richard E. Kerth

cc: All parties of Record
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

COMMENTS OF CHAMPION INTERNATIONAL CORPORATION

Richard E. Kerth
Transportation Manager -
Commerce & Regulatory Affairs
CHAMPION INTERNATIONAL CORP.
101 Knightsbridge Drive
Hamilton, OH 45020
(513) 868-4974

July 31, 1997
Pursuant to the provisions of Decision No. 1, served May 7, 1997 and published that day in the Federal Register at 62 FR 25014, Champion International Corporation (hereinafter referred to as "Champion") hereby comments on the competitive effects of the merger and the implementation of conditions imposed to address competitive harms. Champion did not anticipate, prior to the May 27, 1997 filing notification deadline, the need to participate or offer further comments in these oversight proceedings. On July 17, 1997, however, Champion was compelled to file a Motion for Leave to Participate in these Oversight Proceedings because rail service in East Texas had deteriorated to unacceptable levels and on-going efforts to resolve those problems were not effective. Between early June and our July 17th filing, Champion facilities in East Texas, (viz. at Sheldon, Texas our newsprint manufacturing operations; at Camden, Texas and Corrigan, Texas plywood and lumber manufacturing operations), were consistently experiencing an inadequate supply of empty railroad equipment to ship our products to customers. In addition, local operating problems and traffic congestion between New Orleans and Houston and between Houston and Pine Bluff (Arkansas) have interrupted the flow of inbound raw materials and chemicals to our facilities and outbound finished product to customer (in available cars). Champion experienced a potential production interruption

Champion International Corporation is a party of record in Finance Docket No. 32760. See Decision No. 44, Finance Docket No. 32760, Service Date: August 12, 1996 at page 76 and page 193.
when raw materials were not delivered for five (5) days to our newsprint manufacturing facility in Sheldon (Houston), Texas.

In comments filed December 19, 1995, Champion indicated that SP’s service had a history of inadequacy but allowed that the merger may result in improved service. We also expressed concern that the merger may cause certain problems, particularly service on the Houston - Fair Oaks line may deteriorate further if applicants used that line for southbound traffic and if BNSF puts its own overhead trains on that line. Champion requested the Board to condition the merger by granting BNSF access to all Class III railroads and their customers who are dependent on the Houston-Fair Oaks Line to counter-balance the service problems from added traffic. The Board denied the conditions sought by Champion indicating that customers on the Houston to Fair Oaks line were rail-served exclusively by SP pre-merger and would be rail-served exclusively by UP/SP post-merger and ruled that there was no reason to believe the new post-merger traffic flows would cause service problems.²

Acute, on-going service problems have effected Champion operations located on the Houston to Fair Oaks Line. Champion has experienced continuing boxcar shortages since June 1st forcing us to utilize three (3) trucks for every order moved from rail to truck. Compounding the shortage, we rejected nineteen (19) cars between June 1, 1997 and July 18, 1997 because: (a) 9 cars were loaded with cargo but delivered to us as empties; (b) 7 cars were the wrong size and could not accommodate our shipment size; (c) 2 cars were bad ordered for door problems; and (d) 1 car was dirty (smelled so bad that we could not clean it). Our normal car order for the seven week period cited is 175 cars; during this period Champion received 138 cars or 78% of our order.

The UPSP has changed their operation for supplying cars to shippers on this line. UPSP no longer blocks cars for setout in Houston and provides no local train. Cars for Moscow, Texas (setout 45210 which serves Champion at Camden, TX) are taken through Moscow, Texas to Lufkin, Texas. At Lufkin, the cars are blocked and brought back to Moscow, thus adding two days to delivery time. On several occasions, the cars designated for Camden, Texas (setout 45210) were delivered to setout 45240 (Corrigan, TX) or setout

² See Decision No. 44, Finance Docket No. 32760, page 193
45200 (Leggett, TX). It then takes an additional day or two to have the UPSP move the cars to the correct setout.

Loaded cars are not being moved by UPSP in a timely manner. Shipments made by Champion’s Camden, TX facility were switched from the mill to Moscow, TX by the Moscow, Camden & San Augustine RR (“MC&SA”) on July 11 where the shipments were delivered to the UPSP. The UPSP did not pick up these cars until July 16 -- 5 days after delivery. Our customers were inconvenienced by this action because their loads arrived 5 days later than necessary.

Champion’s newsprint manufacturing facility located in Sheldon, (Houston) Texas has experienced similar problems. Champion has filled all available plant warehouse space with orders because the UPSP could not furnish empty cars. At the same time, loaded cars sat for days waiting for the UPSP to move the cars toward our customers. Information flowing from the local UPSP representatives has been non-existent or incorrect. UPSP’s representatives in Omaha attempted to correct these deficiencies but their efforts could be categorized as a “Band-Aid approach to a severed artery.”

On July 16, 1997, we faced a likely production disruption as the UPSP could not deliver raw materials, chemicals, and sufficient empty cars to the facility. Champion’s Director of Transportation, Gerald M. Loomis, placed a personal phone call to Jerry Davis, President and Chief Operating Officer of the UPSP for his personal intervention. Mr. Davis took swift action and averted a shutdown.

On Saturday, July 19, 1997, Champion and officials of the UPSP met at the Sheldon, Texas facility to establish final resolutions to these problems. Since that date, accurate and timely information is provided to Champion regarding UPSP’s ability to provide adequate equipment for loading. The Sheldon facility has been set up to receive six (6) day service without interruption. Empties from the Pine Bluff line are now being handled through Dayton instead of Houston and availability has improved significantly.

Despite these improvements and well intended efforts, outbound loads are still experiencing significant delays of 3 to 5 days between our Sheldon mill and the Englewood yard. Congestion in Englewood stills accounts for additional time lost. We are hopeful that UPSP will continue to focus on these service deficiencies.

Further, Champion remains concerned that a reoccurrence of these problems will occur as BNSF increases the number of scheduled BNSF trains operated weekly over UPSP.
lines, particularly, the line between New Orleans (UPSP line from Iowa Junction) and Houston; between Houston and Pine Bluff; between Houston and Brownsville (on the Mexican border); and between Houston and Eagle Pass (on the Mexican border). In its fourth Quarterly Progress Report\(^3\), the Burlington Northern Santa Fe Railway Company ("BNSF") indicates they have acquired a significant contract from Exxon for traffic from the Gulf Coast (plants in Baytown and Mount Belvieu, Texas) on the UPSP's Baytown Branch. That business, expected to begin moving in August, is projected at 4,000 carloads which may increase train congestion and service problems in Houston if operations and services are not coordinated properly. BNSF has committed to various capital projects including an operating track at Dayton, TX and construction of a 8,500 foot siding at Iowa Junction, LA. which, in due time, may allow more efficient handling of additional BNSF freight traffic. We are concerned that additional BNSF traffic will begin moving before completion of these projects. As BNSF continues to increase market share and marketing efforts to attract new customers to locate in this region, the infrastructure must support the timely and efficient movement of rail traffic.

Champion anticipated minor service disruption as UP and SP operations in Houston were combined and as BNSF began operating trains on the UPSP lines. We did not anticipate that these disruptions would escalate to the degree described herein. UPSP has worked earnestly at resolving our immediate problems and to restore service to meet our expectations since mid July. We continue to hold them to the commitments made in our joint July 19 meeting and action plan.

Champion does not seek any supplemental order(s), modification of any decision, or the imposition of additional remedial conditions. We do, however, urge the Board to continue oversight for the full five (5) year period.

Respectfully submitted,
CHAMPION INTERNATIONAL CORPORATION

Richard E. Kerth

CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of July, 1997, served a copy of the foregoing comments upon counsel of record for the Applicants by first class mail, and all other parties of record, by first class mail, postage prepaid, in accordance with the Board’s Rules of Practice.

Richard E. Kerth

Richard E. Kerth
copy to:

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