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Our records show that UP has been ready, willing and able to pick up trains and cars from PTR A since April.

It is ironic to me that KCS and Tex Mex want to expand the PTR A because of UP's congestion earlier this year. As my example shows, one of the reasons that UP sometimes gets congested is that PTR A sends its problems to its member roads. I am not criticizing PTR A for doing that. Expanding the PTR A is not going to solve that problem, though. Instead, it would make the problem worse, because PTR A would control more of the trackage in Houston and have even more ability to force the line-haul carriers to deal with its congestion on their lines and in their yards.

C. The KCS/Tex Mex Operating Plan For PTR A

I carefully studied the KCS/Tex Mex Operating Plan for the PTR A. I reviewed it in light of my thirteen years of experience as General Manager of the PTR A. I took a hi-rail trip over the entire south side of the PTR A from North Yard through Manchester Junction to Barbours Cut. I discussed the plan and its effects with PTR A and former SP operating officers in the area.

In my opinion, the KCS/Tex Mex Operating Plan would fail on the first day that PTR A tried to use it. It is so unreasonable and unworkable that, in my opinion, no one familiar with the PTR A would even attempt to use it. If PTR A tried to follow this operating plan, it would cause a service crisis in the Houston terminal that would exceed anything we saw last fall or winter.

The biggest problem with this plan is that it requires PTR A's North Yard and Pasadena Yard, as well as UP's Strang Yard, all of which are already operating at

capacity three or four days per week, to absorb huge increases in switching. As we say in this part of the country, "That dog won't hunt."

The KCS/Tex Mex Operating Plan for the north side of the Houston Ship Channel is completely unworkable because of the limited capacity at North Yard and it would cause service to deteriorate because of the additional interchanges and intermediate switching. The KCS/Tex Mex Operating Plan for the south side of Houston Ship Channel is much worse. It would collapse on the first day. If PTR A tried to continue to use it, Houston service would implode.

1. South Side of the Houston Ship Channel

My Map 3 is a detailed sketch of UP and PTR A trackage in the area south of the Houston Ship Channel. It shows how UP and PTR A are intertwined all the way along the Ship Channel. It also shows the former SP tracks that cover the east end of this area and extend south through Strang Yard to the Bayport Loop. The map shows SP's line south from Strang headed for Galveston, but the line is out of service where two bridges are missing at Seabrook and Kemah, Texas. One important thing about this network of PTR A and UP tracks is that every car entering or exiting it must pass through Manchester Junction shown on the far west side of the Map 3.

KCS/Tex Mex want to open access to all UP-served industries along the tracks in the Strang and Bayport Loop area. There are dozens of them. My Map 1 shows the basic outline of these former SP tracks. My Map 2 is a photograph of the Bayport Loop, showing how many industries we serve in that area.

Before discussing the KCS/Tex Mex Operating Plan, I will provide a tour of this area, using Map 3. Immediately east of Manchester Junction is PTRAs Manchester Yard. This yard has about 22 tracks, although some of them are cut at the east end of the yard. Manchester's usefulness as a switching yard is also limited by the fact that a Houston city street, Central Avenue, cuts through the east side of the yard. PTRAs cannot keep that road blocked on any of Manchester's tracks. The longest track in Manchester Yard is only 30 to 35 cars long, which also makes it a poor switching yard.

This yard can hold about 750 cars and serves a number of large industries, including Occidental Chemical and Rhone-Poulenc, Lone Star Cement, a large elevator, Arco Chemical and Westway. PTRAs also uses Manchester to hold cars for Pak Tank, PTRAs second largest customer, which takes up to 110 cars per day. Manchester has been full most of the time in the last year.

Between Manchester Junction and Sinco Junction, PTRAs and UP use both lines, with UP's known as the Scenic line. UP serves a number of industries in this the Sinco area, so there is a lot of local switching which blocks the mainline, plus ten or more through trains each day. In my opinion, the UP trackage between Manchester Junction and Sinco Junction should be double-tracked in order to handle existing levels of switching and through traffic.

From Sinco Junction to Pasadena Junction, PTRAs and UP again have two parallel tracks, but both are owned by PTRAs. Through trains usually stay on the south track, and the north track provides access to and from Pasadena Yard. That track is also



used as the switching lead for the yard. East of Pasadena Junction, UP trains stay on the south PTR A track (the "cutoff") to Deer Park Junction, while PTR A uses its mainline track through Pasadena Yard and beyond.

Pasadena Yard is an extremely busy yard that desperately needs additional capacity. PTR A has been trying to figure out how to add capacity to the yard, but it will be a struggle. The only option is to build more tracks east of the yard, but the Port does not own all the land in this area. In addition, chemical pipelines are everywhere under this land, which makes construction of a railroad difficult, if not impossible.

Pasadena Yard has 14 tracks and a capacity of less than 1,000 cars. Pasadena's tracks are about 45 to 70 cars long. It is busy 24 hours a day, with yard engines working both ends of the yard. It originates 10 or 11 industry switching jobs, as well as two BNSF trains, a UP train, and several transfer runs to BNSF and UP yards. All movements to and from Pasadena on the west end create a serious operational problem for the yard, because any inbound or outbound movement prevents switching at that end of the yard. This is a real problem for switching productivity. With 400 or even 500 more cars moving through the yard in each direction on an average day, Pasadena Yard has trouble keeping up with its switching obligations. It frequently gets congested.

Pasadena serves a number of very large shippers, including Mobil, Phillips, Ethyl, Solvay, Occidental, Enron, Airtex, Shell (the largest petrochemical plant on PTR A), Lubrizol and Rhom and Haas. Most of the industries switched out of Pasadena Yard are on the PTR A mainline east of the yard. This track is heavily used,

single track, and has no excess capacity. In fact, PTR A must switch industries on this line in waves, with the first going furthest from the yard, the second closer and so forth, because there is not enough capacity on the line to have meets and passes. More shippers usually prefer to be switched on the second or third shift (evening and night), so industry switching is concentrated on those shifts, although a few shippers will accept daytime service.

Because it is so short of capacity, Pasadena Yard must be "turned over" three times per day, once on each shift. For most of the day, Pasadena receives inbound traffic, (mostly empty cars) and switches it for the 10 or 11 industry jobs. At night, it handles most of its outbound traffic. There is not enough time or space for Pasadena to switch all of the outbound traffic, so the industry jobs perform some field blocking, grouping cars for BNSF and UP on industry or mainline tracks.

At Deer Park Junction, UP's mainline to Strang turns south toward that yard. PTR A's mainline continues east past some of the industries I mentioned to Dow Road, where it becomes a UP track. PTR A has operating rights over the UP track to Barbours Cut. The UP trackage in this area is known as the HL&P Lead. In addition to Houston Light & Power, this track serves Quantum, Dow Chemical, Witco, DuPont and other shippers. PTR A has rights to serve all of these shippers except three, which SP served before PTR A operated in the area. Movements between the HL&P Lead and Strang Yard are awkward because the trackage does not permit a direct movement from one to the other.

East of the HL&P Lead is additional PTRRA trackage to the Barbours Cut port facility. The Port of Houston is expanding this facility and hopes to make it into one of the nation's leading container seaports. To handle the high priority intermodal trains that this would require, the Port plans to add double-track to the UP mainline between Barbours Cut and Strang. No construction has begun, but construction should begin soon and last a year. Then, in a later phase, PTRRA and the Texas Department of Transportation will add another track from Strang to Deer Park Junction. This would leave a stretch of single track from Deer Park Junction to Pasadena Junction.

At Strang, UP operates a 13-track switching yard with a standing capacity of approximately 750 cars. UP supports approximately 25 industry jobs per day from this yard. They serve the HL&P Lead, industries west of Strang, industries south of Strang at LaPorte, and the huge petrochemical industrial park known as the Bayport Loop. UP brings between 400 and 500 cars per day in to Strang Yard and an equal number of cars leave. The yard operates as an inbound yard half the day and an outbound yard half the night. Like Pasadena, Strang is short on capacity. One of the very highest priority capital investment projects on the entire UP system for 1998 is to add additional trackage at Strang. When business gets heavy at Strang, UP is forced to store cars on the line toward Barbours Cut. It stages inbound trains almost daily until outbound trains leave.

When Strang operates as an inbound yard, the cars are switched into all 13 of Strang's bowl tracks, and the yard makes industry jobs for the various areas served out of the yard. Several of the tracks have to be reswitched in order to reblock the cars



for particular industries. In all, Strang blocks cars for more than 72 industries. When Strang functions as an outbound yard as industry jobs bring cars back into Strang, the cars are switched into the 13 tracks for outbound trains.

Strang runs trains each day directly to North Little Rock, Livonia, Englewood and Settegast. We make blocks for these trains that avoid en route switching at other yards. The North Little Rock train carrier blocks for Spring, Texas, where we have a SIT yard, Little Rock and the A&S at East St. Louis, which avoids switching at North Little Rock. The Livonia train carries a CSX block as well as the Livonia traffic, with the CSX block going through to New Orleans without switching. The Settegast train carries a separation for West Colton, that goes all the way to California without switching.

KCS/Tex Mex think that PTR A should operate this entire area, using Pasadena Yard as an inbound yard for all traffic and Strang Yard as an outbound yard for all traffic. This will not work. Pasadena Yard is already full to overflowing, as I have already explained. KCS/Tex Mex may think that if outbound switching were removed from Pasadena, the yard would have enough capacity to handle Strang's inbound business, an extra 400-500 cars per day. They are wrong. If PTR A were to try to switch at Pasadena Yard the 400 to 500 inbound cars that Strang handles, Pasadena would break down. It is not physically possible for Pasadena to build the ten or eleven industry jobs that it makes today, and also to switch traffic the dozen additional separations that Strang makes for 72 industries. It just isn't possible to create blocks for 25 Strang switch engines and ten or eleven PTR A switch engines on only 14 tracks,

especially when most shippers want to be switched during the same hours, but that is what KCS/Tex Mex are proposing.

Strang Yard would not function as a 24-hour outbound yard, at least without extensive and severe delays. Strang fills up with outbound cars on most days while handling only 400 to 500 outbound cars. If all the outbound traffic from Pasadena Yard, another 400 or more cars, were brought to Strang, there would be no place to put them.

KCS/Tex Mex might think that Strang could run twice as many trains, but their plan is not designed that way, and it would not work. PTR A would have to clear the yard twice a day. To do that, it would have to send trains to every destination twice a day. That would be very inefficient for the road-haul carriers and would cause a great deal of congestion throughout the Houston terminal. As an example, KCS/Tex Mex propose to operate one manifest train a day from Strang to Beaumont. To keep the yard from overflowing, Tex Mex would have to operate two trains a day to Beaumont. The trains would be very short and uneconomical to operate and they would cause more congestion all the way through Houston. The same is true for BNSF and UP trains.

The KCS/Tex Mex plan also would destroy the bypass blocking arrangements UP uses to avoid additional switching and expedite traffic out of Strang. PTR A is required to make equal numbers of blocks for all member roads. If Strang had to make trains for Tex Mex, BNSF and UP existing blocks would be consolidated. The A&S block that goes to North, the CSX block for Livonia, and the West Colton block via Settegast would disappear and those cars would have to be reswitched en route. As a



result, UP would have to do more switching at Livonia, North Little Rock, Englewood, and Settegast.

It is ironic to me that KCS/Tex Mex propose an operating plan that reduces UP's use of Strang Yard for switching and requires more switching at other Houston yards. KCS and Tex Mex are very critical of UP for having attempted to do that last spring. That experiment failed for UP, and it would fail for PTR A.

## 2. North Side of the Houston Ship Channel

PTRA's North Yard primarily serves the north side of the Houston Ship Channel. PTR A's north-side line extends about 16 miles east from North Yard to the Jacintoport area and the Cargill grain elevator. The PTR A also uses a much shorter line from North Yard that crosses the UP Clinton Branch to serve PTR A's Elevator Storage Yard and the City Docks area.

North Yard is a very busy, active yard. Under normal circumstances it is full three or four days every week, as shippers release more and more loaded cars. When that happens, PTR A has to restrict inbound traffic, because North Yard cannot handle it. Sometimes it is congested for much longer periods. We saw that happen in recent months.

In my opinion, whoever put together the KCS/Tex Mex PTR A operating plan knows nothing about North Yard. According to the statement provided by Mr. Slinkard and Mr. Watts, PTR A would add several additional groups of traffic to the current heavy switching load at North Yard. They expect North Yard to receive all of the traffic to and from industries on the HBT. That is about 8,000 cars per year

inbound and another 8,000 outbound. They also say that North Yard should handle all of the carload traffic (I assume they would exclude unit trains that can move directly to destination) for UP's Clinton Branch. That would add more than 10,000 additional cars per year. They also seem to expect North Yard to absorb the traffic going to and from industries on the GH&H and to switch the daily trains that run south and north on that line, although this is not very clear from the sketchy Operating Plan.

I can say with absolute certainty that North Yard cannot handle any one of these additional groups of traffic, let alone all three. It is just too busy today. If PTR A tried to serve the UP Clinton Branch, the GH&H and the HBT from North Yard, it would fail on Day One. Even if PTR A were to obtain use of Basin Yard and operate the yards jointly, the combined yards, often full today, could not handle the traffic.

Clinton Branch KCS/Tex Mex believe PTR A can serve the Clinton Branch from North Yard better than UP does today. They say that PTR A can deliver cars to shippers within 24 hours, which would be much faster than UP's dwell time of 41 hours that Mr. Slinkard and Mr. Watts use in their verified statement. They do not explain what PTR A would do to achieve this improvement. Their comparison is mistaken and they are just wrong.

PTR A tries to follow a policy of delivering every car to its customers within 24 hours. The 24 hours, though, begins on arrival of a car at PTR A's yard. It does not include the time that the line haul carriers spend switching cars at yards like Englewood or New South, or the time required for them to deliver cars to the PTR A

yard. So the 24-hour delivery time is about 24 hours short of the total time in the Houston terminal for most inbound cars.

I believe that the UP 41-hour dwell time that Mr. Slinkard and Mr. Watts mentioned is the total time a UP outbound shipment spends in Houston from the time a customer releases it to the time it leaves Houston on a train or is interchanged to a connection. The comparison is of inbounds to outbounds and part of a delivery to all of a departure. PTRAs service to the Clinton Branch would be no better than UP service today and more likely worse.

I would expect PTRAs to provide worse service to the Clinton Branch industries because UP serves those industries directly from Englewood Yard. Cars arriving at Englewood on inbound trains are switched into local trains that move directly to the branch. If PTRAs handles these cars at North Yard, Englewood will have to switch the cars into an interchange block and deliver it to North Yard, where PTRAs will have to switch it, and then deliver the cars. That will take longer.

Mr. Bill Slinkard and Mr. Watts say that consolidating the Clinton Branch into PTRAs would eliminate the conflicts between PTRAs's service to its Storage Yard and UP's Clinton Branch service. I am not aware of any conflicts. PTRAs movements to the Storage Yard get on the UP track and use it for less than 100 yards. We don't even bother with a dispatcher on that line. Whoever gets there first gets to go first.

GH&H. PTRAs operation of the GH&H would cause service to decline in the same way, even if North Yard could handle the traffic. UP serves the GH&H with a daily train from Englewood Yard to Galveston, plus a local between Houston and Texas



City. Northbound service is the mirror image of the southbound operation. If PTR A operates the Galveston train out of one of its yards in Houston, as the plan says, it will require an interchange movement from Englewood to the PTR A yard, where PTR A will have to switch the traffic and build the train. This will cause an extra day of delay in each direction. GH&H customers are better off with UP service as it is now.

The KCS/Tex Mex Operating Plan for PTR A would also break down because of the huge increase in the number of movements back and forth over trackage between North Yard, Pasadena and Strang. These tracks are already very heavily congested. Even if the Port of Houston eventually builds double-track from Strang to Pasadena Yard, it will use that capacity to handle intermodal trains to and from Barbour's Cut and their new facility at Bayport, which be priority movements. The KCS/Tex Mex Operating Plan would require all of the industry jobs that start in Pasadena and work industries in the Pasadena and HL&P area to travel to Strang. This would require a very awkward move at Strang because, as I explained, it is not possible to move directly from HL&P to Strang. Each job would have to turn from the HL&P Lead towards Barbour's Cut and then back up into Strang Yard. This back-up move is not only undesirable but it would shut down switching at Strang because the only way to back into Strang is over the switching lead and the hump. It also would require Strang to keep a track open for this kind of movement which would reduce Strang's already limited switching ability. All of the industry jobs that Strang now creates would also, in theory, be built at Pasadena Yard. Each one of them also would have to operate over the congested tracks between Pasadena Yard and Strang. Each one of them also would

have to perform a reverse move, either at Strang Yard or out the west end of Pasadena Yard through Pasadena Junction. This is a very undesirable move, which would not only shut down switching at the west end of Pasadena Yard, but all of those industry jobs would then have to traverse the trackage to the Strang area and pass through the yard toward the Bayport Loop and the Navigation Lead.

Every one of the two dozen or more industry jobs that depart Pasadena would end up at Strang. Some of the locomotives on inbound trains to Pasadena would have to traverse the same trackage, making light moves to Strang in order to pick up outbound trains. This would add movements on the highly-congested track.

The plan would also be very inefficient. All of the traffic generated by industries on PTR A in the Manchester-Pasadena-Deer Park area must pass west through Manchester Junction to reach the mainline railroads, UP, Tex Mex or BNSF. Under the KCS/Tex Mex Plan, however, every one of those cars would move in the wrong direction to Strang, and then reverse itself and go all the way back through Manchester Junction. While we do this for some cars from Sinco today, this is a lengthy round-trip that would cause a great deal of congestion and the track capacity is not adequate to do this without significant delays. PTR A might have to send cars to busy North Yard which would require extra switching there and, after interchange to UP or BNSF, in their yards.

HBT. The KCS/Tex Mex plan for PTR A to serve industries on the HBT is unworkable. Today, UP serves industries on the northern two-thirds of the HBT. It switches all industries north of the GH&H between Tower 30 and Congress Yard, except

for a few customers that BNSF serves on the north side of Houston. This is illustrated on my Map 1. BNSF serves all HBT customers south of the GH&H, in areas known as HBT Zones 1 and 2. If I take the KCS/Tex Mex Operating Plan seriously, they plan to handle all of that traffic out of North Yard. For reasons I have already explained, that will not work. North Yard cannot handle the traffic.

North Yard also is not well located to serve the HBT customers who are closer to Congress Yard and the Navigation Yard area, which is served off the HBT West Belt. It makes no sense to try to serve those customers from the East Belt, as this would require lengthy movements between North Yard and Congress Yard all the way around the terminal complex on heavily-used tracks. As I have already explained, any operating plan that requires traffic to move to PTR A requires a new and unnecessary interchange, which will delay traffic in both directions.

Under the KCS/Tex Mex plan, PTR A would not have yard space to support switching of industries that BNSF now serves in HBT's Zones 1 and 2. KCS/Tex Mex decided that PTR A should use all of the HBT yards on the UP side of the property, except Pierce Yard, but did not propose to take any of the HBT yards that BNSF uses to serve HBT customers. BNSF uses Old South Yard to switch most HBT traffic to and from HBT industries. PTR A would not have any yard space for this work, and there is no extra space in any of the HBT yards UP uses today. If PTR A does not use South Yard, it will have a difficult time serving these customers.

It makes even less sense to serve HBT customers in Zones 1 and 2 from North Yard. Those shippers are adjacent to the BNSF yards from which BNSF switches



them today. In fact, one HBT industry is inside BNSF's New South Yard. It appears that KCS/Tex Mex want PTRR to switch this plant.

UP's switching service for HBT customers, including the service we provided on cars interchanged to UP by BNSF and Tex Mex, was inadequate in November and for a number of weeks after. UP simultaneously adopted TCS on SP lines in the Houston area and transferred dispatching control of HBT tracks from the regional transportation center in downtown Houston to the joint BNSF/UP dispatching center at Spring, Texas. These transitions caused significant service failures during that period.

In my opinion, the problems that Tex Mex describes in the handling of its cars during that period are attributable to these transitions. Cars in UP's account, and shippers served by UP on HBT had similar experiences.

Those problems are far in the past. UP is providing much improved and consistent service to HBT shippers throughout the HBT zones where UP switches industries. UP has expanded the number of industry jobs on HBT trackage from nine before November to 11 today. UP is providing more frequent service on HBT's "Columbia Tap" line, where we had increased service from three days per week to five days per week. I believe our service today to HBT customers equals HBT's pre-merger service, although I am aware that we encounter difficulty serving one HBT customer due to the number of through movements on the mainline near that facility.

3. Underestimated costs of the plan

The KCS/Tex Mex Operating Plan grossly underestimates the difficulty of expanding PTRAs. The most obvious example of this, which I find very surprising, although the plan estimates that PTRAs would need 70 additional switchmen and 40 additional engineers, as well as 9 dispatchers and their supervisors, it completely ignores the need for other types of operating personnel to operate all of the SP trackage and yards. It does not provide for any additional signal maintainers, maintenance of way employees, mechanical employees to repair cars or clerical personnel to enter data in PTRAs's data system. There are no supervisors for any of these support people either. All of these types of employees will have to be found and trained. KCS/Tex Mex do not include any of the costs of these activities in their cost estimates.

Maybe KCS/Tex Mex think that by using the words "trackage rights" to refer to the PTRAs takeover, they can rely on UP to provide clerks (which we do not even have), signal maintainers, track workers and other personnel. These are not trackage rights, though. UP would have no reason to use the Bayport Loop or any of the industrial tracks, because there would be nothing for us to switch. I believe we would redeploy our personnel elsewhere and let PTRAs handle these tasks.

KCS/Tex Mex assume that PTRAs will be able to gradually buy locomotives over a period of more than a year and a half and that the member lines will supply locomotives to keep PTRAs running in the interim. UP cannot afford to do that. UP needs every locomotive it can find for its own business, and it will not make its locomotives available for PTRAs to take UP's business away from it and give it to other



carriers. KCS/Tex Mex also appear to assume that they can have all of UP's experienced switchmen and engineers. That also is not going to happen. UP has been hiring as quickly as it can throughout the Gulf Coast area. UP has jobs for these employees. In addition, the more experienced employees will stay at UP and exercise their seniority rights so that any employees who were willing to go to PTRRA would be the least experienced.

PTRRA is, in my opinion, likely to find itself operating all of the UP trackage in the middle of the nation's largest petrochemical manufacturing facility with inexperienced, newly-trained employees. These chemical plants and track networks are extremely complex, and the shipments are hazardous. I consider it quite unwise to try to mount a rail operation virtually from scratch with new and untested employees.

KCS and Tex Mex plan suffers from the same flaw when it comes to dispatching personnel. PTRRA does not have dispatchers today nor has it ever. The joint BNSF/UP dispatching center in Spring dispatches PTRRA's signaled lines. Yardmasters handle its existing operations in non-signaled territory. If PTRRA were allowed to take over all of the UP and SP tracks on the GH&H and in the Spring/Bayport Loop/Sinco area, it would not make sense for UP to try to dispatch that territory. PTRRA would have to learn how to do it with a new dispatching system and new employees. PTRRA will have to acquire an entirely new dispatching system and equipment, as well as dispatchers, and it will have to train all the employees to use the new equipment. This is a major task.

KCS/Tex Mex may assume that they can use the experienced dispatchers who are dispatching the UP trackage today, but UP needs those dispatchers. The FRA told us we need more dispatchers. We have been hiring and training dispatchers as quickly as we can. Training a dispatcher is a long-term process. It takes about six months to get a dispatcher ready to begin work, and most people agree that it takes two to five years for a dispatcher to become a good dispatcher.

#### 4. Effects on capital investment

UP has approved plans for lengthening the bowl tracks at Strang Yard and to add additional receiving and departure tracks. We are ready to go. The total cost of these tracks will be just over \$11 million. These expenditures of scarce capital monies probably will no longer be justified if this condition is granted. Each investment in capacity must be compared to other uses of that money, and the effect of losing so much business to competitors would reduce the return on these investments to a level where other investments are more attractive.

UP also plans to add storage tracks on the Clinton Branch. UP would have to reevaluate these plans if PTRRA takes over service on this branch. In fact, UP's entire investment program for the Gulf Coast would be cut back if UP has to open almost all of its exclusively-served businesses in the Houston area to BNSF and Tex Mex. Our return on investment definitely would decline, and many of these investments would no longer be justified.

I saw UP and other railroads behave the same way while I was managing the PTRRA. One of the reasons PTRRA is short on capacity today is that the member

railroads in Houston did not want to spend their scarce funds to build capacity on PTR, when it would benefit their railroad more to use the funds on their own lines. In addition, a capacity project on the PTR is an operating expense for the member roads and cannot be capitalized. It is therefore less attractive economically than an investment on their own railroads. In my opinion, a PTR takeover of UP's lines in Houston would condemn them to years of inadequate investment.

5. KCS/Tex Mex Houston North Request

KCS/Tex Mex request that the Board lift the restriction it imposed in the merger case on Tex Mex's Houston-Beaumont trackage rights so that Tex Mex would be permitted to originate traffic in Houston that was destined for points north (and interchanged with KCS at Beaumont) and terminate traffic at Houston that was received from KCS at Beaumont (so-called "Houston-north" traffic). Under the Board's Emergency Service Order, Tex Mex had the right to handle Houston-north traffic, and it used those rights to pick up (and deliver) Houston-north traffic using its Laredo-Beaumont trains. In February 1998, Tex Mex also established new Houston-Beaumont-Shreveport trains in conjunction with KCS for the sole purpose of handling Houston-north business. Those experiences, as well as KCS/Tex Mex's future operating plans, establish that Tex Mex's exercise of Houston-north rights would cause significant additional congestion in the Houston terminal.

Even if the only change in Houston operations were the expansion of Tex Mex's rights to include the handling of Houston's north traffic to and from the HBT and



PTRA shippers to which Tex Mex already has access, that expansion would have four adverse effects.<sup>1</sup>

First, Tex Mex's Houston-north operations would re-introduce entirely new and unnecessary additional train operations on the already-crowded trackage in the Houston terminal. Were Tex Mex permitted to handle Houston-north traffic – whether the traffic accessible to Tex Mex remained limited to PTRA and HBT-served shippers or was expanded, as KCS/Tex Mex request, to include the numerous UP shippers between Houston and Galveston that would be served by PTRA under KCS/Tex Mex's plan – Tex Mex would operate additional trains. However, these trains would not result in a one-for-one reduction in the number of UP and BNSF trains. Rather, Tex Mex's operations would splinter Houston-north traffic among three railroads, resulting in more total train movements. And those additional trains would be operated right through the heart of the most heavily-used parts of the Houston terminal, including UP's Settegast Yard and the East Belt. The congestion and interference these additional trains would create would not be avoided by a grant of Tex Mex's request to operate via Booth Yard. The route via Booth Yard route is equally congested and in any event still would require Tex Mex trains to operate over most of the East Belt, as shown on Map 5.

Second, some of Tex Mex's Houston-north traffic would undoubtedly continue to be handled by Tex Mex's Laredo-Beaumont or Corpus Christi-Beaumont through trains, or other trains that would interchange with PTRA via North Yard,

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<sup>1</sup> More serious effects would be caused by KCS/Tex Mex's other conditions, such as use of Booth Yard, which I address later.

adjacent to Basin Yard on the East Belt.<sup>2</sup> Without Houston-north rights, the only work Tex Mex's through trains would need to perform at Houston is to pick up or drop off Houston-Mexico or Houston-Corpus Christi traffic at Basin/North Yard. That operation can -- and should -- work reasonably well. Tex Mex's trains operate on the East Belt and interchange with PTRA at North Yard via UP's adjacent former-HBT Basin Yard.<sup>3</sup> As I explain further below, that operation is manageable when there is only one set of cars that Tex Mex's trains are either picking up or setting out. But if they were handling Houston-north traffic, the work these trains would have to perform at Houston would double, which would more than double the interference those trains cause to other operations on the East Belt. Instead of picking up southbound Mexican traffic at Houston with its Beaumont-to-Laredo trains and dropping off northbound Mexican traffic with its Laredo-to-Beaumont trains, all of Tex Mex's through trains would be attempting to pick up and set out at Houston. Trying to do both -- as was the case during Tex Mex's operations under the Emergency Service Order -- would lead Tex Mex trains to block the East Belt for longer periods of time. Performing a pick up and set out is more time consuming. In addition, it would be less likely that there would be room for the train to clear off the mainline while doing its work, because two separate tracks would have to be kept clear for Tex Mex's operations, which is not always possible given the

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<sup>2</sup> After Tex Mex established its Houston-Shreveport trains under its temporary Service Order rights, it continued to pick up and set out Houston-north traffic at Basin Yard using its Laredo-Beaumont trains.

<sup>3</sup> The congestion would only be magnified were the Board to grant Tex Mex rights to use Booth Yard, as I discuss below.

other demands on Basin Yard. There is no excess capacity at Basin Yard. As a result, were Tex Mex to re-establish Houston-north operations, the additional track at Basin Yard that would have to be devoted to receiving Tex Mex's Houston-north deliveries (or holding Houston-north cars awaiting pick-up by Tex Mex) would no longer be available to hold Tex Mex's train off the East Belt mainline while it performed its work.

Recent experience with Tex Mex's Houston-Beaumont train operations under the Emergency Service Order illustrates these problems, but represents only a tiny fraction of the additional congestion that would be created by the new KCS/Tex Mex plan. Tex Mex exercised its expanded Houston-north rights by adding an entirely unnecessary new train movement between Beaumont and PTR's Pasadena and Manchester yards. That train was almost always short, typically handling less than 20 loaded cars. Operating this train did not eliminate the operations of any pre-existing UP or BNSF trains. Instead, it caused increased congestion in the Houston terminal, especially at Settegast Yard and on the East Belt, which Tex Mex trains must traverse to reach UP's Beaumont subdivision between Houston and Beaumont. Additional Tex Mex operations through Settegast would pose a serious risk to the fluidity of all Houston operations, because UP must suspend most yard activity while Tex Mex trains are passing through the yard.

Even if Tex Mex might garner enough business as a result of its requests for permanent "Houston-north" rights (and access to UP-served shippers between Houston and Galveston) to permit it to operate longer trains, the net effect on the number of train movements in the Houston terminal would be the same: more train



movements that would cause additional, unnecessary congestion on trackage in the Houston terminal.

Third, in addition to the new Tex Mex train operations that would result from expansion of Tex Mex's trackage rights to include Houston-north traffic, the other railroads serving Houston – and, more importantly, switching Houston industries accessible to Tex Mex and making up trains – (especially PTRAs) would need to prepare additional blocks for delivery and pick up by Tex Mex's Houston-north operations. In addition to an inbound Tex Mex block from Mexico, and an outbound block for Tex Mex destined for Mexico, somewhere in Houston the railroads would have to assemble northbound Tex Mex cars and receive southbound Tex Mex cars (over and above the existing blocking performed for UP and BNSF trains). The railroads have been doing this while Tex Mex's rights were expanded under the Service Order, but it has placed additional burdens on their Houston operations. Were Tex Mex's expanded rights granted on a permanent basis, they would require additional switching, blocking and transfer moves, all of which place burdens on already-congested track and yard capacity. For example, PTRAs are already searching for ways to expand their yard capacity to handle existing operating demands in Houston.

6. Placedo-Algoa

For a long time, Tex Mex did not want to operate on UP's line between Placedo and Algoa, preferring instead to run through Flatonia, which is 70 miles longer. When we changed to using bidirectional operation on the Placedo-Algoa line on the line between Houston and Placedo to reduce congestion, Tex Mex resisted. Now it wants to

remain there permanently. We plan to return to bidirectional operation on this segment after we add a new siding at Angleton. Running bidirectionally on this line will save us those 70 miles on southbound trains and will help us to serve our customers better. The majority of our traffic on the Brownsville Subdivision is north of Placedo. When we start to run bidirectionally again, so will BNSF. We will allow Tex Mex to operate northbound over this segment until we resume bidirectional operations. Even with the new siding, the line will still be close to capacity and Tex Mex trains would cause unnecessary delay.

7. KCS/Tex Mex Wharton Branch Request

KCS/Tex Mex want the Board to compel UP to sell to Tex Mex UP's line between Rosenberg and Victoria, Texas (referred to as the "Wharton Branch"), most of which is out of service. UP and Tex Mex have agreed that UP will sell the line to Tex Mex, and they have agreed on a procedure to arbitrate the price.

Related to KCS/Tex Mex's request for a forced transfer of the Wharton Branch is a request that Tex Mex also be granted the right to use unspecified UP "terminal track" at Rosenberg. That request should not be granted. If KCS/Tex Mex are to acquire the Wharton Branch, they should be required to construct -- on their own right-of-way -- whatever new facilities they might need to accommodate Tex Mex's operations along that line.

Rosenberg is located approximately 37 railroad miles west of Houston, where UP's Houston-San Antonio Sunset Route mainline and BNSF's Galveston-Temple mainline cross at grade. That crossing is still controlled by a manned interlocking tower



(Tower 17). UP's Wharton Branch diverges from the Sunset Route just west of Tower 17.

Rosenberg is a very busy railroad point, seeing 55 or more through trains every 24 hours. In addition, both UP and BNSF serve local industry in and around Rosenberg and conduct interchange there. Rosenberg is also the center of UP's railroad operations in the surrounding area. For example, UP bases local train LXT46 at Rosenberg that serves shippers between Rosenberg and the BelAir Branch, and UP also stages empty cars and locomotive power for nearby rock shippers at its small yard in Rosenberg.

UP and BNSF make intense use of all of UP's facilities at Rosenberg. Just west of Tower 17 on the Sunset Route mainline is a mainline siding that is vital to that single-track mainline. In addition, UP has several short yard tracks adjacent to Tower 17, nestled in the southwest quadrant of the mainline crossing. UP makes constant use of all of these tracks for essential railroad operating purposes: to handle cars moving to and from local industries, to build a local train, for interchange with BNSF, to tie up locomotive power needed for UP's local and rock trains to and from nearby rock shippers, and from time to time to hold maintenance of way equipment needed for ongoing program maintenance in the area. UP's need for these facilities would be even greater if the Wharton Branch were sold to Tex Mex and used for through train operations, because UP routinely uses the first several miles of the Wharton Branch to stage empty equipment for nearby rock shippers, whose facilities lack sufficient room to hold all of the cars they need to handle their business. UP would

have to find other space for this staging in or near Rosenberg, so that prompt and timely delivery of the empty cars could be made when the shippers are ready to take them.

KCS/Tex Mex's apparent plan is to take over UP's Rosenberg facilities for their own use. Although KCS/Tex Mex are silent on the extent of their planned use of those facilities, their operating plan indicates that Tex Mex would originate a Rosenberg-Laredo manifest train there, and also base a Rosenberg-Edna-Rosenberg local turn at Rosenberg. There is no justification for KCS/Tex Mex's request. KCS/Tex Mex certainly do not need UP's facilities at Rosenberg. They only want them to avoid the need to invest in new facilities of their own adjacent to the Wharton Branch in the event they acquire that line. Indeed, KCS/Tex Mex say they plan to construct a new yard along that line. There is no reason why KCS/Tex Mex should not be required to perform all of the new operations their operating plan contemplates on new facilities constructed along Tex Mex's right-of-way.

Moreover, if Tex Mex did use UP's facilities at Rosenberg, it would displace UP's own operations there. UP does not have any room available for Tex Mex to use UP's facilities for any purpose. In addition, it is likely that Tex Mex's new operations – especially the plan to make up a Laredo manifest train – would interfere with mainline operations in ways that UP's and BNSF's current operations at Rosenberg do not, because there is not enough room on the auxiliary tracks at Rosenberg to build a substantial train. Nor is there anywhere in the vicinity of Rosenberg where UP could move its Rosenberg operations.

UP's many uses of its Rosenberg facilities could not be displaced without disrupting our operations and requiring us to make significant expenditures on new facilities elsewhere to replace the ones Tex Mex would use. As UP's recent service difficulties have demonstrated, UP does not have excess capacity in Rosenberg, or anywhere else nearby that could accommodate the proposed operations. Moreover, even if space were available elsewhere, UP's service to its shippers at and in the vicinity of Rosenberg would be adversely affected by the need to perform operations now performed at Rosenberg somewhere else on UP's system.

8. KCS/Tex Mex Request for Houston Yard

KCS/Tex Mex also ask that UP be ordered to transfer Booth Yard to Tex Mex. Booth Yard is unnecessary to KCS/Tex Mex's operations if Tex Mex's rights are not expanded to permit the handling of Houston-north traffic. Moreover, taking Booth away from UP would have adverse consequences for UP's ability to provide quality service to shippers in the vicinity of Booth, at Sinco and on the Columbia Tap line, and would cause ripple effects that would undermine the efficient operation of UP's vital Englewood and Strang facilities. Reducing the burden on those facilities was important to UP's successful recovery from its severe service problems in Houston.

It is important to understand that the only purpose served by ceding Booth Yard to Tex Mex would be to facilitate Tex Mex's handling of Houston-north traffic. Without the need to make up trains heading north, and receive trains arriving from the north, Tex Mex has no need for a yard of its own, much less a facility as large as Booth Yard. Without the need to handle Houston-north traffic, there is no question that the



facilities currently used by Tex Mex are adequate. Almost all of Tex Mex's trackage rights traffic is moving between Mexico and a connection with KCS at Beaumont. Tex Mex already has access to its own yards at Laredo and Corpus Christi, and KCS's Chaison Yard at Beaumont, to handle this traffic.

At Houston, Tex Mex's only operations involve the interchange of Mexican traffic with PTR A, as well as with UP and BNSF, for cars switched by them to/from shippers on HBT lines. Tex Mex uses Basin and PTR A's adjacent North Yard, to achieve interchange with these carriers. Basin Yard is well positioned for Tex Mex's purposes and is able to handle Tex Mex's interchange with PTR A efficiently, since it is adjacent to PTR A's North Yard, where PTR A is willing to deliver and receive all of its interchange with Tex Mex. Interchange between Tex Mex and PTR A via Basin/North Yard does not require additional transfer moves in the Houston terminal, as would be the case were Tex Mex to use Booth Yard or some other facility. Moreover, although Basin Yard does not have excess capacity, it does have room to handle Tex Mex's work without requiring Tex Mex trains to block the East Belt mainline - so long as the scope of the work these trains perform is limited. In addition, Tex Mex also has the right to originate and terminate trains at PTR A's Manchester Yard via Katy Neck were it to establish a Houston-Mexico service.

Tex Mex does not seem to dispute the fact that its northbound trains have no difficulty dropping off traffic from Mexico at Basin Yard. The same is true for Tex Mex's southbound trains, which would only be picking up traffic for Mexico unless Tex Mex's rights are expanded. Contrary to Tex Mex's testimony, there is no reason that

Tex Mex's southbound trains cannot pick up southbound cars efficiently at Basin/North Yard. There is no reason why Tex Mex trains need to perform the "double-reverse handling" described by witness Broussard. On the other hand, Tex Mex should consolidate all of its pick-ups and deliveries at Basin/North Yard, rather than attempting to pick-up or deliver cars at multiple locations on the East Belt, which causes unnecessary delays on the East Belt.

Tex Mex's complaint appears to involve a situation created by its expanded Houston-north operations. KCS/Tex Mex say that Tex Mex has hauled its southbound cars north to Beaumont in order to classify and block them, but this would not have been necessary unless Tex Mex had to separate its southbound traffic from Houston-north traffic. Moreover, PTRC could have provided Tex Mex with any blocking it required, as KCS/Tex Mex acknowledge. I understand that Tex Mex has identified in discovery the occasions on which it alleges such "double reverse" handling took place, and all of them were since October 1997, after Tex Mex began its temporary Houston-north Emergency Service Order operations.

During the period when Tex Mex had the right to handle Houston-north traffic, it might well have made the decision to route its very small volumes of Houston-south traffic in northbound trains via Beaumont for several reasons unrelated to the adequacy of Basin Yard. On a typical day, Tex Mex only originates a handful of cars - often only one or two - destined for Mexico or other points on Tex Mex's original line. Thus, it might make sense for Tex Mex not to let those few cars interfere with the handling of Tex Mex's much-more-significant Laredo-Beaumont traffic or, during the

Service Order period, Houston-north traffic. For example, to minimize the time its southbound trains spent at Houston, Tex Mex might have chosen to limit the work those trains performed at Houston to dropping off Houston-north traffic. Alternatively, Tex Mex might have opted not to pick up southbound cars in order to let its southbound trains take advantage of Tex Mex's alternative route through Houston via Chaney Junction, which does not pass Basin/North Yard or any other facility where Tex Mex might interchange directly with PTR A. However, contrary to Tex Mex's assertions, UP has not denied Tex Mex trains access to the East Belt or prevented them from interchanging at Basin/North Yard. The only incident of this sort that has ever occurred took place because of a blockage at Settegast Yard, which Tex Mex's East Belt trains must traverse. Dispatchers required a single Tex Mex train to operate over the West Belt instead of the East Belt in order to avoid much longer delays to Tex Mex's train had it been kept on the East Belt route.

A Tex Mex take-over of Booth Yard, moreover, would cause disruptions to UP's and PTR A's operations in Houston and undo progress that UP has made in improving service in the vital Englewood-Strang corridor. KCS/Tex Mex appear to misunderstand the nature of UP's use of Booth Yard. UP does not use Booth Yard to store cars, as KCS/Tex Mex suggest. Instead, UP makes intense and efficient use of Booth to build local trains for Sinco and the Columbia Tap and transfer moves for Basin and Englewood, to serve local industry in the vicinity of the yard, including a Texas Petrochemical facility; and to stage cars - primarily privately-owned tank cars - for shippers in the vicinity of Sinco. UP's ability to use of Booth Yard in this way has



provided valuable relief for UP's Englewood and Strang yards and been an important part of UP's service recovery efforts.

KCS/Tex Mex may have confused UP's use of Booth with that of PTRA, or HBT, the yard's previous operators. Several years ago, Booth Yard was operated by HBT. HBT made relatively little use of the yard and HBT - not UP - stub-ended several of the yard's tracks. Thereafter, in the early 1990's, PTRA leased the yard from HBT. PTRA used the yard primarily to store cars for PTRA's customers.

In 1997, after UP and BNSF jointly restructured HBT's operations, PTRA's lease of Booth Yard terminated and UP assumed the operation of the yard. Upon assuming control of Booth, UP immediately changed the yard's use. Booth was pressed into service as to support several locals and as an industry support and staging yard for traffic to/from the Sinco area, where there are numerous large-volume chemicals shippers that require prompt access to specialized private tank car equipment. Booth assumed those functions from Englewood and Strang Yard. By shifting those activities to Booth, UP was able to relieve the gridlock that had plagued Englewood and Strang, and at the same time achieve dramatic improvements in service for shippers in the Sinco area.

Contrary to KCS/Tex Mex's suggestion, Booth is not underutilized. On most days, every track is needed to perform the functions that have been assigned to this facility, and, in addition, at any given time the yard is holding 200 to 300 cars staged awaiting delivery to Sinco. KCS/Tex Mex argument that Booth is underutilized relies on meaningless snapshot data reflecting the number of cars sitting in the yard at specific

times. The number of cars sitting in a yard at any given time is not a measure of the intensity and efficiency of the yard's use. Such measures do not begin to take account of the manner in which Booth is used. The yard's ability to handle industry support movements and to accommodate the constant in-flow and out-flow of cars being staged for Sinco area shippers are not accounted for in raw numbers of standing cars.

If UP were displaced from Booth, the effect would be to disrupt UP's operations and degrade the level of service UP is now able to provide to Sinco shippers. UP would have no choice but to shift its local trains, industry support and staging functions of Booth to other yards nearby -- most likely Englewood and Strang. Those new burdens would use scarce capacity in those facilities and make it more difficult for them to handle the volume of traffic that they must in order to stay fluid. Moving the staging function to Englewood, Strang or elsewhere would also degrade the level of service UP is able to provide to Sinco shippers, by putting the specialized tank car equipment they need farther away from their plants.

KCS/Tex Mex's suggestion that a yard between Rosenberg and El Campo on KCS/Tex Mex's Wharton Line would be a substitute for Booth is laughable. The Wharton Line is 37 or more miles west of Houston. UP could not serve industry around Booth Yard, build local trains for Sinco and the Columbia Tap, or stage cars for its shippers in the vicinity of Sinco from a facility so far away without drastically impairing the level of service UP is able to provide to these shippers and significantly increasing UP's costs.



In addition, Tex Mex could not use Booth in the manner it apparently plans. Although KCS/Tex Mex tout their plan to reconnect several tracks to the yard's southbound lead, the yard cannot be switched from the south end. At its south end the yard connects directly to the Harrisburg Junction-Bridge 5-A mainline, at the north end of a single-track viaduct. There is thus no room to switch the yard without blocking mainline operations, which would not be tolerated. The mainline adjacent to Booth Yard is among the most heavily used in the entire Houston terminal, and that trackage could not be devoted to a yard switching lead for Tex Mex's sole benefit.

In addition, trains using the Harrisburg Junction-Booth Yard Lead route must traverse Booth Yard, as there is no other connection to the Booth Yard Lead from the mainline. This route is an important bypass of congestion on the busy. To avoid delays via the Bridge 5-A route, UP keeps a track open to accommodate those operations. Although KCS/Tex Mex do not appear to contemplate the need to leave a track open for this purpose, they would have to do so to preserve the use of this important escape valve by other railroads.

KCS/Tex Mex suggests that an advantage of Tex Mex's use of Booth Yard would be to remove its trains from the East Belt. But the route its trains would traverse to access Booth Yard is not significantly less congested than the East Belt. There are numerous bottlenecks on the route between T&NO Junction and the East Belt via the Booth Yard Lead. Moreover, Tex Mex trains using this route would still have to traverse much of the East Belt, between CP 279 and Tower 87, as well as UP's Settegast Yard, as shown on Map 5. In addition, if Tex Mex instead operated via Bridge 5-A and

Galena Junction, its trains would not only add traffic to one of the worst bottlenecks in all of Houston, but also traverse PTRAs North Yard, where they would cause severe disruption by requiring PTRAs to suspend switching activity there.

KCS/Tex Mex appear not to have explored all of the options available to them if they sincerely desire yard capacity to accommodate the Houston traffic. Tex Mex is entitled to handle under its existing trackage rights. In the merger case, Tex Mex asked for access to Glidden Yard, located on UP's Sunset Route, and the Board granted that access. Tex Mex has made no effort to use that facility for any purpose.

In addition, Tex Mex already benefits from PTRA's handling of Tex Mex cars using PTRAs own yard facilities - especially North Yard, Manchester Yard and Pasadena Yard. KCS/Tex Mex do not appear to question PTRAs ability to provide Tex Mex with perfectly satisfactory service. Access to Booth Yard would merely replace PTRAs functions with Tex Mex functions and in the process make the Houston terminal operate less efficiently for all the carriers that use it by forcing UP to shift its operations elsewhere.

Finally, if KCS/Tex Mex are sincerely dissatisfied with Tex Mex's access to Basin, Glidden and PTRAs own facilities, they should explore availability of underutilized BNSF yards in Houston, such as East Belt Yard, a three-track facility located on Tex Mex's East Belt route that BNSF has made little use of. Alternatively, KCS/Tex Mex should look into constructing a new yard on available property located elsewhere on the lines through Houston over which Tex Mex operate. One such location

is that of the former SP Chaney Yard, located just west of downtown Houston and adjacent to Tex Mex's alternative route through Houston.

9. Exchange of Beaumont-Houston Trackage

KCS/Tex Mex proposes to build segments of a second main track on UP's Lafayette Subdivision between Houston and Beaumont and swap that new track for UP's Beaumont Subdivision between Houston and Beaumont. From an operational standpoint, this is not a fair trade. KCS/Tex Mex want to give us stretches of track that we don't need, without any of the bridges. In exchange, it wants a complete, CTC-equipped mainline with five sidings. This condition would have a potentially devastating effect on our Settegast Yard, virtually trapping us in the yard. KCS/Tex Mex want to dispatch the Beaumont Subdivision track that passes the north end of Settegast Yard. We use that track to depart almost every train that leaves Settegast, many of which turn southwest and remain on this line for only a couple of miles. We also use it as a tail track to switch long cuts of cars in Settegast. This condition would require us to contact a KCS/Tex Mex dispatcher, who would be located far away and not able to be in close coordination with us, for every movement. This would be crippling and is totally unacceptable. If the Board decides, for some reason, to grant this condition, it should leave dispatching of at least the first few miles on both sides of Settegast Junction with UP.

I do not understand why KCS/Tex Mex would want to spend \$58 million to add capital on a line that, with directional operation, already has adequate capacity. Other than Amtrak trains that run against the flow of traffic, trains are not normally



delayed on this line. UP considered the possibility of adding additional second track on this segment in developing its Gulf Area investment plans, but we and our consultant, CANAC, decided that, except for segments near Houston and at Dayton, the money should be spent elsewhere to achieve much greater benefits.

KCS/Tex Mex should spend \$58 million on more useful projects. I recommend these:

- a. Double-track the Neches River Bridge in Beaumont, which is a major bottleneck for Amtrak, BNSF, KCS and UP;
- b. Add capacity on the KCS line between Beaumont and DeQuincy, Louisiana;
- c. Build a bypass route around Settegast Yard so Tex Mex trains will not have to operate through it and interrupt UP switching, which could be done inexpensively;
- d. For approximately \$5 million, help fund a third main track at New South Yard on the HBT East Belt, one of the major congestion points in Houston;
- e. For approximately \$12.7 million, help fund a second main track across Bridge 16, another major congestion point on the HBT East Belt; and
- f. Help fund the installation of CTC and upgrades on the Sunset Route between Tower 26 and West Junction, which would allow Tex Mex, BNSF grain, Amtrak and UP trains to run faster on increased capacity.

D. BNSF Condition Requests

1. Caldwell-Flatonia-San Antonio

BNSF has trackage rights over UP to San Antonio on the former MKT line from Taylor through Smithville to San Marcos, and then on the Austin Subdivision between San Marcos and San Antonio. The flow of traffic on both of these lines is extremely heavy. As a result, we offered BNSF the alternative option of operating between Temple, Texas, and San Antonio via Caldwell and Flatonia, Texas, on a temporary basis. BNSF has been operating on that route for months. BNSF complains that the route through San Marcos is congested, and wants to continue operating through Flatonia. It will not need to for much longer.

We are beginning to convert our Central Texas lines to directional running, which will increase southbound traffic on the Flatonia route and reduce traffic via the San Marcos route. In addition, we are expanding capacity the route BNSF negotiated in the settlement agreement. We will open the 17-mile segment of the former MKT at the end of October. We also plan to build a siding between San Marcos and Smithville at Rosanky, which will allow that line to handle more trains. We will also construct staging tracks at Laredo, which will allow us to reduce our use of the Austin Subdivision to stage trains for the 6-hour Laredo Bridge crossing windows.

With these changes, there will be no need for BNSF to continue operating through Flatonia. BNSF will be able to utilize its negotiated trackage rights on the Austin Subdivision between San Marcos and San Antonio. BNSF may fear that we are

going to operate this segment directionally, but the line will be bidirectional for rock traffic and for UP's important manifest trains to and from Laredo.

BNSF also complains that the weight limit on the San Marcos route is too low. It would cost BNSF approximately \$7 million to upgrade that line to handle 286,000-pound loads, and that is what it should be.

2. Caldwell-Flatonia-Placedo

Placedo, Texas, is a UP junction point north of Corpus Christi, the Tex Mex interchange at Robstown, and the Brownsville gateway to Mexico. When negotiating the Settlement Agreement, BNSF agreed to reach Placedo using its own Algoa line and UP's Brownsville Subdivision. Because we had been experiencing severe congestion on the Brownsville Subdivision last fall, we decided to institute directional running northbound on that line, with southbound trains routed in Flatonia. BNSF joined in the directional operation by running its trains south from Caldwell to Placedo through Flatonia. This kept BSNF trains from running against the flow of traffic.

Our long-term plan is to add a siding near Angleton, Texas, in order to eliminate a bottleneck and add enough capacity on the Brownsville Subdivision to reinstate bidirectional operations. We need to revert to bidirectional operations because our southbound trains must travel 70 extra miles to reach Placedo from Houston via Flatonia as compared to using the Brownsville Subdivision. Bidirectional running will allow us to run northbound trains directly from Placedo to Ft. Worth and Little Rock, bypassing HBT routes in central Houston. It will also allow us to serve our shippers on



the Brownsville Subdivision more effectively, with more than half the traffic on this line to and from the Algoa-Placedo segment.

We will continue to allow BNSF to operate to Placedo through Flatonia as long as directional running on the Brownsville Subdivision continues. Giving BNSF this right permanently would not help with congestion in Houston, though (in contrast to our plans). Instead, when BNSF stops running trains via Flatonia, it will route them over its Algoa line through Rosenberg. This line is well southwest of the Houston terminal and the Houston city limits. This was not a line that caused the service crisis.

### 3. Taylor-Milano

The 34.3-mile line between Taylor and Milano is operating near capacity, and is primarily a directionally-operated line for trains running northeast toward Little Rock. To add bidirectional BNSF trains to this line would create unnecessary delay and congestion. The southbound trains would be especially difficult to handle in the face of UP's primarily directional flow of traffic, causing interference with intermodal, automotive and manifest trains headed northeast on the line. This trackage rights proposal is unnecessary, because BNSF negotiated trackage rights via Smithville that it can use effectively as we relocate traffic off of that line and onto the parallel SP line via Flatonia.

UP's marketing personnel believe that BNSF's primary objective is to improve its route to the Silsbee and Beaumont area. These trackage rights would shorten BNSF's route to Silsbee by about 95 miles. We have many routes where we could improve our mileage by getting rights over BNSF, and we should negotiate those exchanges.

4. Neutral Switching Supervision

When we handle BNSF cars in haulage service, we receive the loaded cars from industries mixed in with the cars for UP. We pick them all up together. BNSF's cars and UP's cars move on the same trains on the Baytown Branch. We cannot favor our cars.

At the north end of the Baytown Branch, as shown on Map 8, each UP train leaving the branch comes to a location where the Sjolander Plastic Storage Yard is on the east side of our mainline and the BNSF's yard is on the west side of our mainline. Our train crew will then switch the cars to BNSF and Sjolander. All cars going into the Sjolander facility, whether ultimately for UP or BNSF movement, go into that yard. All cars for the BNSF are switched into its yard. Only then do the remaining cars go to UP's Dayton Yard. If anything, BNSF gets its cars in its yard a few minutes to an hour or two before UP's cars reach Dayton. There is no possibility that we favor the handling of our cars over BNSF's cars.

Service on the Baytown Branch is not what we want, and I am sure that BNSF is not happy about it either. The problem is not one that a "neutral switching supervisor" could do anything about. The problem is lack of capacity. UP's capacity studies identify this branch, which SP did not have enough money to improve, as one of the most urgent projects on the railroad. UP will begin double-tracking the line in 1999. BNSF, of course, is equally responsible for capacity on the line and could bring investment dollars to the table.

BNSF's operations are causing significant problems for us on the Baytown Branch. BNSF uses our limited joint capacity badly by building two to three trains per day at its yard south of Baytown Junction on our mainline. It does this because it does not have a switching lead at its yard. My map shows that the Sjolander yard right across the UP tracks has a switching lead which prevents that kind of interference. BNSF should construct a track, too. It is building three more yard tracks, which it needs.

When BNSF blocks the mainline, we cannot get trains off of the mainline. This hurts BNSF as much as it hurts UP, because those trains carry BNSF and UP cars alike.

#### 5. PTRA Operation of Clinton Branch

BNSF complains about the handling of grain trains to the Houston Public Elevator #2 on the Clinton Branch, and it proposes that PTRA take over all switching on the branch. Apparently this would include the switching of a large Ford automobile unloading facility. UP recently rebuilt that facility at a cost of some \$4.0 million after it had successfully persuaded Ford to divert its business from BNSF's Dearland, Texas, ramp to this exclusively-served UP ramp.

BNSF's complaints about grain service to the Houston Public Elevator do not make sense to me, and BNSF does not explain them. I have never received a complaint from BNSF about the handling of these grain movements. We have plenty of complaints about BNSF's handling of these movements, but I will get to those later.

The Port of Houston owns the public elevator on the Clinton Branch. BNSF has trackage rights over the SP mainline through Houston and down to the Clinton



Branch to handle unit grain trains. It turns trains over to UP at Gate 8, which is the west end of the branch, for delivery to the elevator.

If BNSF is suggesting that UP gives preference to its own grain movements over BNSF grain movements, it is wrong. Everyday at 2:00 p.m., the Houston Public Elevator has a conference call with UP and BNSF. It tells UP and BNSF which trains it wants in which order in order to fill the vessels that are coming to the elevator. UP cannot decide to send a UP train instead of a BNSF train. We have to follow the Port elevator's instructions.

The only service problem of which I am aware on the Clinton Branch is one that BNSF causes. BNSF is obligated to move its empty trains off this branch when we tender them. BNSF often does not do that. It leaves the trains sitting on our line, blocking our tracks, for long periods of time. BNSF also sometimes fails to leave its locomotives with its trains, as it should. This forces UP to send its own locomotives to move the BNSF train.

The Port's Executive Director says in a letter that UP sometimes leaves empty grain trains blocking the elevator tracks. That probably happened during the service crisis, but it would be a very unusual event if it happened after that. As I've explained, we have trouble with BNSF trains on the same score.

6. Any Route Through Houston

BNSF wants the right to operate over any track in the Houston area. Almost all of the affected lines, of course, would be UP lines.

As my Map 4 shows, BNSF already has trackage rights over almost every major track in Houston. On two of those routes, BNSF's rights are subject to restrictions, as a result of negotiations with SP. What BNSF wants, really, is to remove restrictions in trackage rights that it negotiated with SP. If BNSF wants to remove those restrictions, it should offer compensating arrangements to UP, instead of asking the Board to do BNSF's negotiating for it.

For example, BNSF has the right to operate unit grain trains over the SP mainline all the way from West Junction, past Eureka Yard to Bell Junction and down to the Clinton Branch. It uses those routes. BNSF now wants to have the restriction that it accepted in negotiations removed. If BNSF is going to be allowed to renegotiate that deal, UP wants to renegotiate it, too. There are many trackage rights we want from BNSF in the Gulf Coast Area and at other places, and I am sure we could work something out.

E. CMTA Request For BNSF Interchange At McNeil

The Capital Metropolitan Transportation Authority ("CMTA"), which owns a line of railroad between Giddings and Llano, Texas, that is operated by the Longhorn Railroad ("Longhorn"), wants BNSF to have trackage rights over UP's Austin Subdivision between Kerr/Round Rock, Texas, and McNeil, Texas, in order to interchange with Longhorn at McNeil instead of at Elgin. CMTA says that Longhorn has suffered traffic losses as a result of poor UP service and that interchange at McNeil with BNSF would be preferable to interchange at Elgin from Longhorn's perspective. CMTA's request should be rejected for several reasons.

First, Elgin is a perfectly satisfactory point of interchange between BNSF and Longhorn. CMTA contends that Elgin is undesirable because BNSF has not commenced through train operations via Elgin, as BNSF had originally planned. It is true that BNSF has thus far operated its Temple-San Antonio-Eagle Pass trains via Caldwell, and has served Elgin with a local train based at a Temple. However, whether or not BNSF continues to operate via Caldwell as it has been, the route of BNSF's through trains to/from Eagle Pass does not in any way affect the level of service BNSF is able to provide to Longhorn via an Elgin interchange. As Longhorn points out, BNSF has successfully handled a considerable amount of business with Longhorn via Elgin even without through train service via Elgin. It is not true that UP has "restricted" BNSF's local to 2 times per week on the former-MKT route between Temple and Elgin. UP has imposed no restrictions on the number of trains BNSF can operate on this line. The only business Longhorn says is difficult to handle via Elgin are long, 25-40 car cuts of rock traffic. BNSF's operation of through trains via Elgin would not make it any easier for Longhorn to interchange this traffic with BNSF, however, because BNSF would not be able to pick up or drop off cuts of that length using its through manifest trains. Instead, such operations would require a dedicated rock train or a local turn, just like BNSF now serves Elgin. For the same reason, UP interchanges with Longhorn at McNeil using a dedicated local turn based in Taylor (symbolized RTRTR) rather than its through trains.

The lack of any connection between CMTA's request and the routing of BNSF's through trains is easy to see if one understands that, if BNSF were granted the



right to interchange at McNeil as CMTA requests, its operations to and from McNeil would also consist of only a local and not involve any through trains. BNSF would simply convert its dedicated Temple-Elgin local into a Temple-McNeil local. As I explain below, congestion on the Austin Subdivision would preclude BNSF from using its existing Temple-Kerr local to serve both Kerr/Round Neck and McNeil.

CMTA and Longhorn also complain about the physical facilities at Elgin, which Longhorn says cannot readily accommodate the long cuts of cars Longhorn wants to interchange with BNSF. Ironically, Longhorn admits that it has been able to interchange 25-40 car cuts with BNSF at Elgin, although it says that doing so has been less convenient than it would like. Whether or not the existing facilities at Elgin are as extensive as Longhorn would prefer, however, CMTA and Longhorn ignore the fact that there is a simple solution to any inconvenience that the existing track configuration at Elgin might cause. Nothing prevents BNSF and Longhorn from constructing additional trackage adjacent to the Giddings-Llano line at Elgin to facilitate interchange of whatever volumes of traffic Longhorn and BNSF might want to exchange there. It appears that CMTA and Longhorn would rather have the Board grant Longhorn access to UP's interchange facilities at McNeil than pay for its own new facilities at Elgin.

Another motive for CMTA and Longhorn's desire to shift the point of interchange from Elgin to McNeil appears to be to avoid the need for Longhorn to operate its trains over the segment of its line between McNeil and Elgin, which is apparently in poor condition. CMTA apparently also desires to achieve this move to further its own desire to get freight traffic off of the Giddings-Llano line in the city

of Austin between McNeil and Elgin, where CMTA has long wanted to establish passenger operations. These concerns, however, do not justify creating a new BNSF interchange at McNeil, because the only non-UP interchange Longhorn would have had absent the UP/SP merger -- the long-out-of-service interchange with SP at Giddings -- would have required Longhorn to operate over the same McNeil-Elgin segment, plus an additional 30 miles of Longhorn trackage between Elgin and Giddings, much of which is still out of service.

Second, even if it somehow improved the effectiveness of Longhorn's interchange with BNSF, a shift of the BNSF-Longhorn interchange to McNeil would have significant disadvantages. Implementing a BNSF-Longhorn interchange at McNeil would cause severe operating problems. The interchange would be completely unworkable unless Longhorn and/or BNSF constructed additional interchange facilities at McNeil which would be no less costly than the construction of similar facilities at Elgin. But even with new facilities, BNSF's operations to/from McNeil would cause serious problems.

There are two primary operating problems. In order to serve a Longhorn interchange at McNeil, BNSF would have to establish a new train on UP's Austin Subdivision, which is among the most congested pieces of railroad on the UP system. BNSF would not be able to handle the Longhorn traffic by extending its existing Temple-Kerr/Round Rock local, because there would be too much rock traffic for one train to handle and time constraints, given conflicting train movements and the time spent working at both Kerr/Round Rock and McNeil, would prevent a crew from

completing its work within the hours of service. UP's own dedicated McNeil local originates at Taylor - which is much closer to McNeil than Temple - yet still routinely requires almost a full 12 hours, and sometimes more, to complete its 44-mile round trip, even without trying to switch Kerr/Round Rock. BNSF's Temple-McNeil round-trip would be 76 miles farther. Over two-thirds of this train's time is attributable to over-the-road train delay as opposed to time spent working at McNeil, on account of the very heavy traffic on this single-track mainline.

Moreover, BNSF's new operations on the Kerr-McNeil segment and the addition of a BNSF train between Kerr and Taylor would interfere directly with UP's operations, and very likely with Amtrak's *Texas Eagle*, which traverses this segment six times per week. UP recently re-scheduled its Taylor-McNeil local turn to operate at night so that it could avoid the worst freight train congestion on this line and provide service to Longhorn on a reliable basis. A BNSF train would have to operate at night too, for the same reason. However, even leaving aside the problem that would be caused by interference between UP's and BNSF's local trains switching at McNeil, which I will describe shortly, there simply are not sufficient operating windows on this portion of the Austin Subdivision to permit two locals to operate southbound against the predominant directional flow between Taylor and McNeil and then return to Taylor. The inevitable result would be that one of the two would get trapped out on the line, crippling UP's freight operations and also potentially interfering with Amtrak's *Texas Eagle*, which traverses this segment six times per week, often at night when it is running late.



The operating interference caused by a BNSF-Longhorn interchange at McNeil would be no less severe at McNeil itself. Even under ideal conditions, a BNSF local would require approximately one and a half hours to deliver and pick up cars at McNeil. During that time, UP's mainline - and perhaps Amtrak's *Texas Eagle* - would be blocked.

Equally important, there is no infrastructure at McNeil to support an interchange between Longhorn and two carriers. In order to facilitate its own interchange with Longhorn, UP has devoted a former mainline siding at McNeil to use as an interchange track. If Longhorn attempted to use that track to interchange with BNSF as well - which UP would not permit - the result would be gridlock. Such use would inappropriately usurp UP's siding for BNSF's benefit and prevent UP from using that siding either to carry out efficient interchange with Longhorn or to facilitate fluid mainline operations. If Longhorn did not use this siding to carry out interchange with BNSF, its interchange cars would have to be placed somewhere else on Longhorn's mainline, but this would require BNSF's local to spend still more time at McNeil and would make UP's own interchange with Longhorn much more cumbersome, thereby also delaying UP's local.

As a result, in order to carry out interchange at McNeil without causing gridlock at McNeil itself, Longhorn and BNSF would have to invest in new trackage of the sort they apparently do not wish to invest in at Elgin. Even if they did invest in new facilities at McNeil, however, that investment would still not avoid the severe operating

problems caused by introducing a new BNSF train on UP's Austin Subdivision between Taylor and McNeil.

Finally, the premise underlying CMTA's request for a new condition requiring interchange between BNSF and Longhorn at McNeil – that UP's service problems have hampered Longhorn's ability to serve its customers and remain viable – is not correct. Although congestion on the Austin Subdivision and elsewhere in Texas had from time to time interfered with UP's ability to meet all of Longhorn's demands for empty equipment during the depths of UP's service crisis, that crisis is over. In recent months, as UP has adjusted its operations in Texas to overcome its service problems, UP has been able to supply Longhorn with all the cars it has ordered, to switch Longhorn's interchange at McNeil on a routine and timely basis, and to move its loaded cars on schedule. Indeed, Longhorn has not been able to direct all the cars UP has delivered. On several occasions, Longhorn has returned empty cars to UP because it did not have space on its own line to hold them pending loading by on-line shippers.

F. Central Power & Light

UP serves Central Power & Light's ("CPL") Coleta Creek plant, located 16 miles south of Victoria, Texas. Our service to this facility has improved enormously, and our deliveries for the last 4 to 6 weeks have exceeded CPL's stated requirements. We met 114% of Coleta Creek's demand for Colorado coal in July, and 126% of their demand in August. We also approached Coleta Creek's demand for Powder River Basin coal in both July and August. For the first ten days of September we delivered coal at a pace equal to 144% of Coleta Creek's requirements for Colorado coal and 113% of its

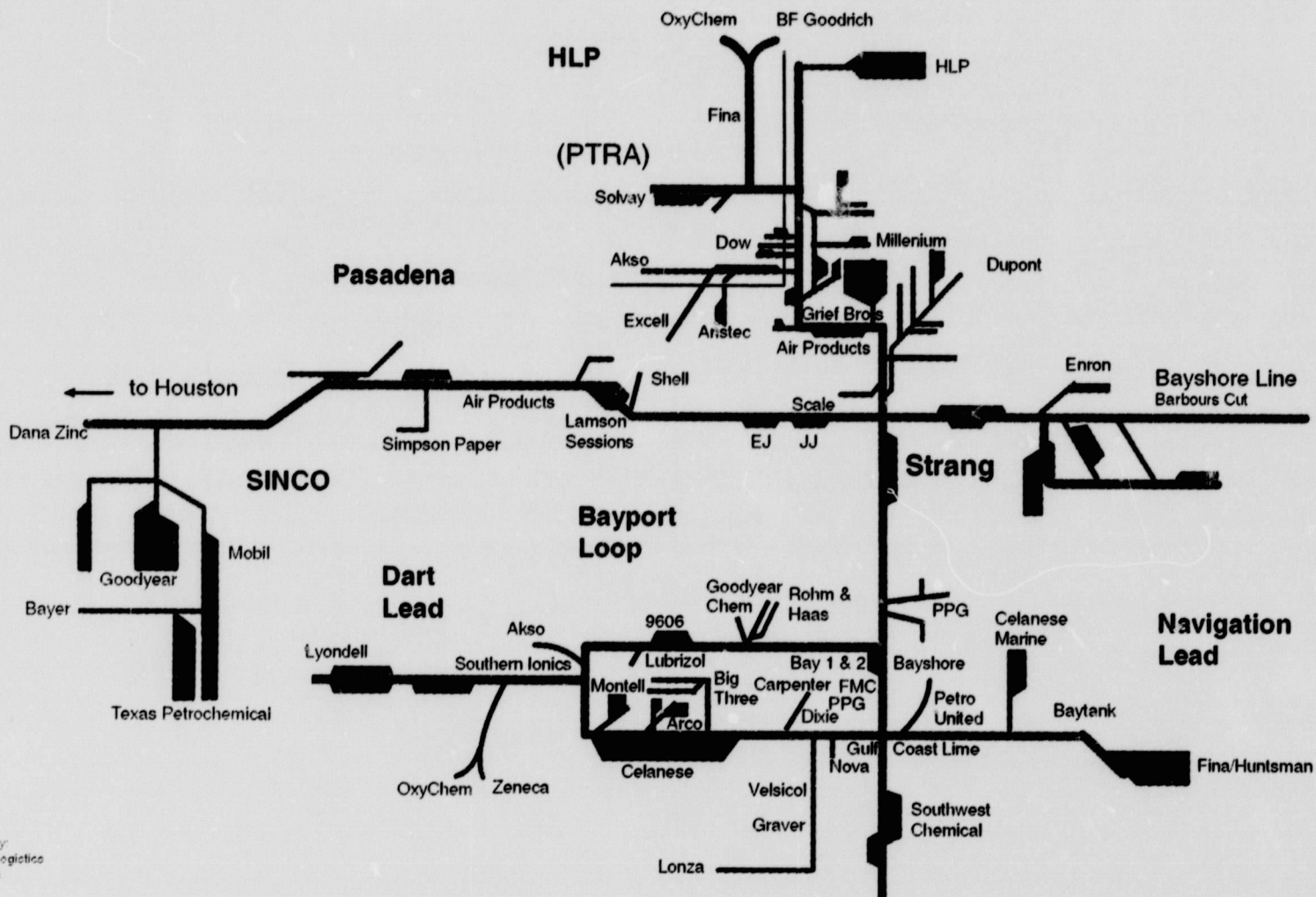
requirements for Powder River Basin coal. We are successfully working off the backlog of coal remaining from 1997, and we expect to meet CPL's unexpected demand for an additional 500,000 tons of Colorado coal.

In early August, we were notified that Coleta Creek was temporarily refusing to accept loaded trains for unloading. Plant personnel advised us that they were having difficulty burning Powder River Basin coal because the plant's precipitator was plugged and they could not shut the plant down to clean it. We agreed to allow CPL to switch two of the three trains it had in Powder River Basin service to Colorado service to deliver extra Colorado coal in order to keep the plant operating.

BNSF access to this plant could reduce coal deliveries, not increase them. We have had trouble at other Texas utility plants where both UP and BNSF have access. At LCRA's plant in Halstead, and at the Elmendorf power plant near San Antonio, we often have to use our own crews to remove empty BNSF coal trains in order to bring our own trains in. Also, because BNSF permanent trackage rights require it to run southbound on the Brownsville Subdivision and west to Victoria, its trains would arrive at the line to Coleta Creek facing the wrong direction. The trains would have to go 14 miles west to the siding at Thomaston in order to run the engines around the train and bring it to Victoria. They would have to do the same thing to move empty trains to Placedo. This would cause severe delays to Tex Mex and UP trains on the line.



# Bayport Area



HANDLEY MAP 2

ENRON

LA PORTE

PPG

PETROLITE

GOODYEAR

MATHESON  
GAS

ROHM & HAAS

LUBRIZOL

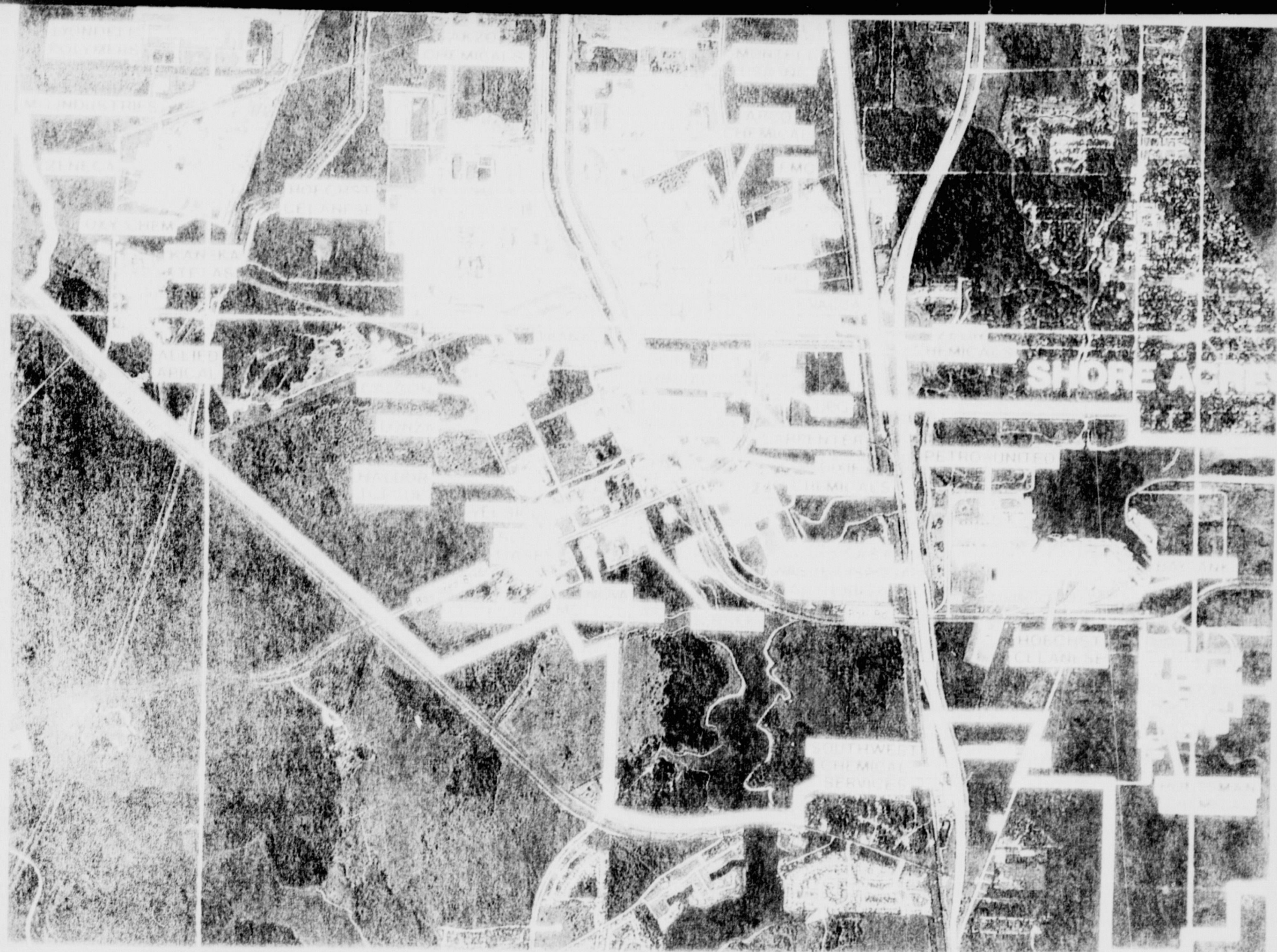
CHUSEI

EURECAT

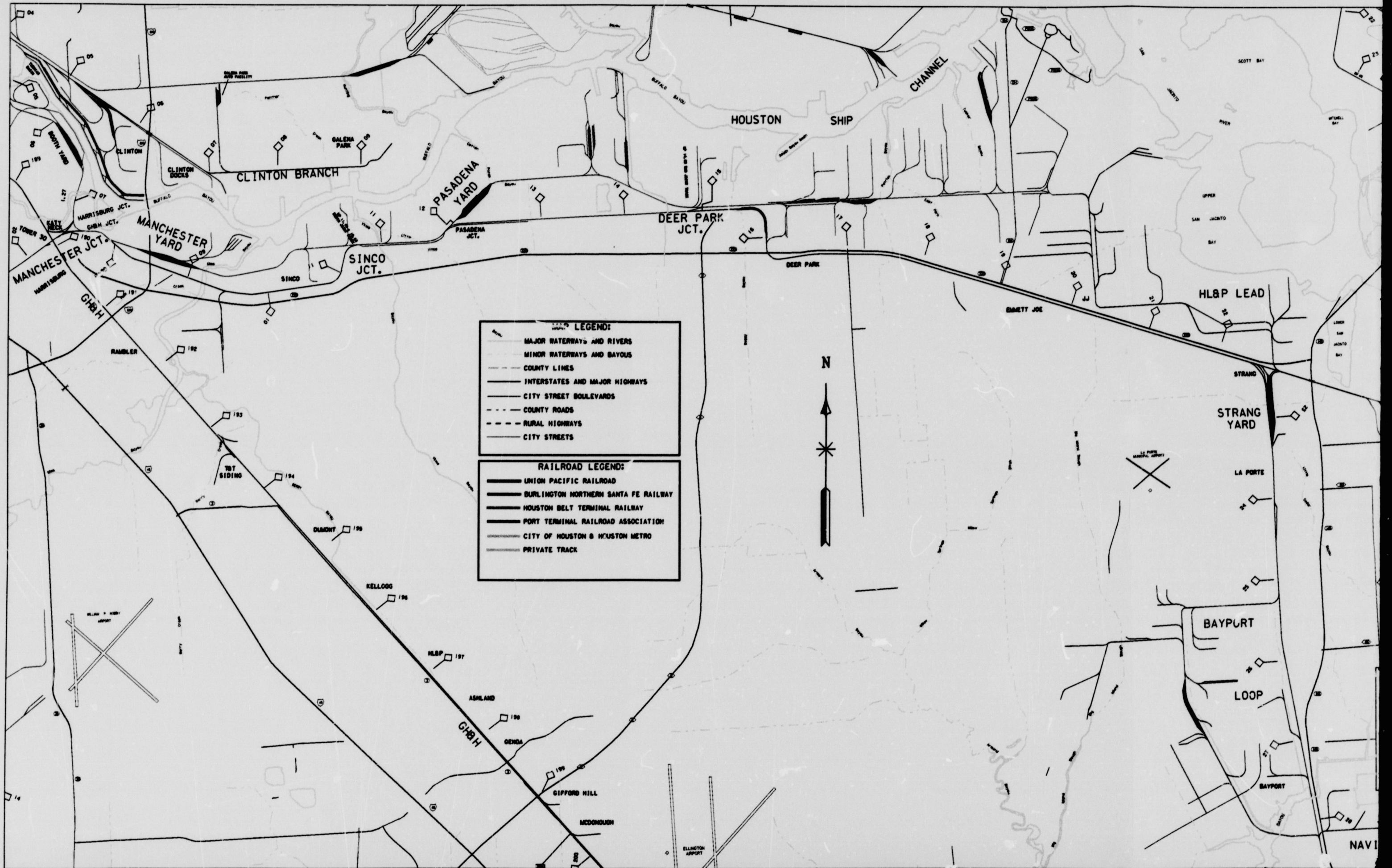
SOLIDERNIONICS

State Hwy 146









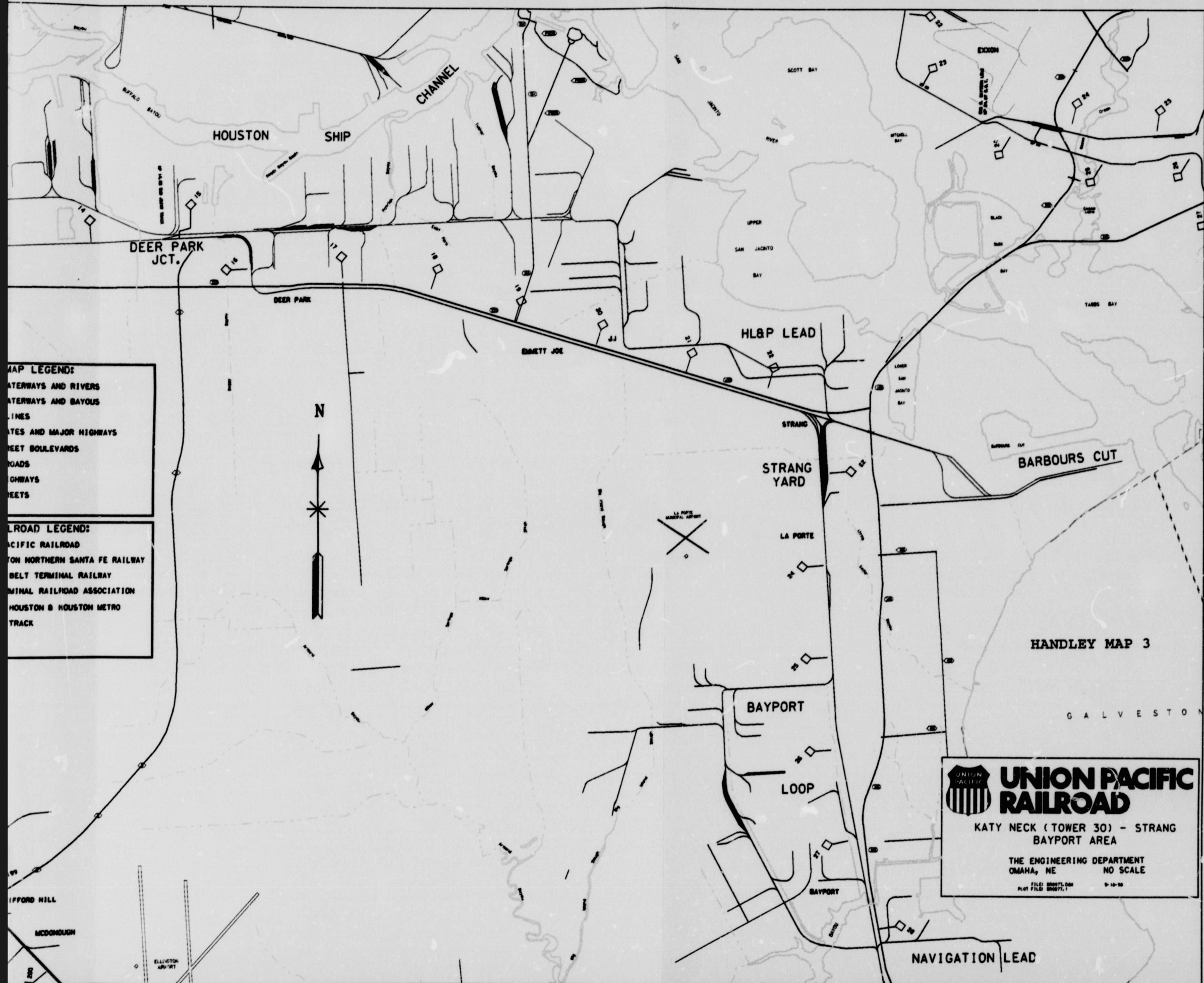


**MAP LEGEND:**

- WATERWAYS AND RIVERS
- WATERWAYS AND BAYOUS
- RAIL LINES
- STRAIGHTS AND MAJOR HIGHWAYS
- STREET BOULEVARDS
- ROADS
- HIGHWAYS
- STREETS

**RAILROAD LEGEND:**

- UNION PACIFIC RAILROAD
- HOUSTON NORTHERN SANTA FE RAILWAY
- BELT TERMINAL RAILWAY
- MINIMAL RAILROAD ASSOCIATION
- HOUSTON & HOUSTON METRO TRACK

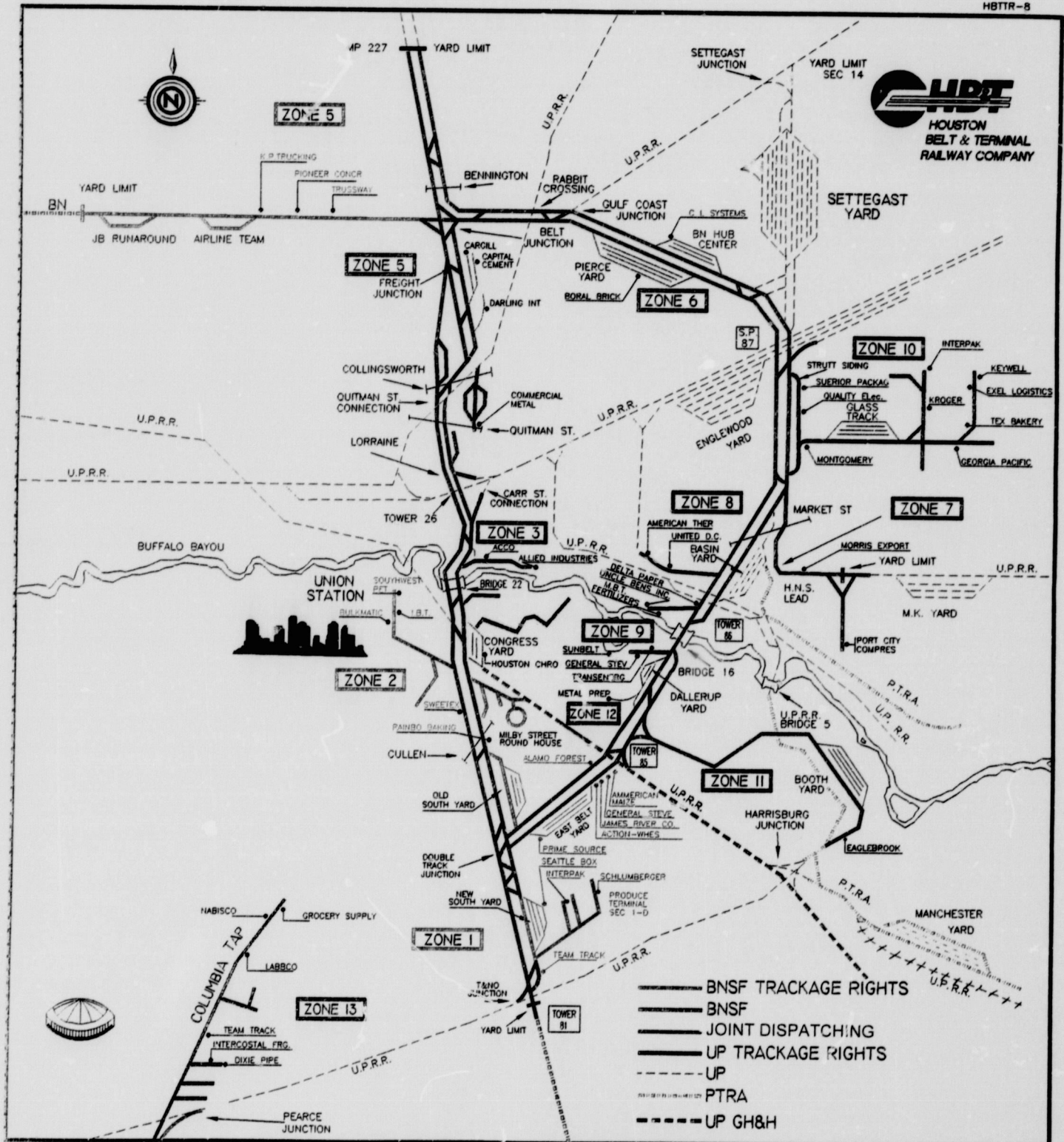


**UNION PACIFIC RAILROAD**

KATY NECK (TOWER 30) - STRANG BAYPORT AREA

THE ENGINEERING DEPARTMENT  
OMAHA, NE NO SCALE

FILED 500772.DWG  
PLOT FILED 500772.1 9-16-90







# UNION PACIFIC RAILROAD

TBNO JCT. (TOWER 811)  
TO  
SETTEGAST YARD

THE ENGINEERING DEPARTMENT  
OMAHA, NE NO SCALE

FILE: 00000.00-  
PLOT FILE: 00000.1

### MAP LEGEND:

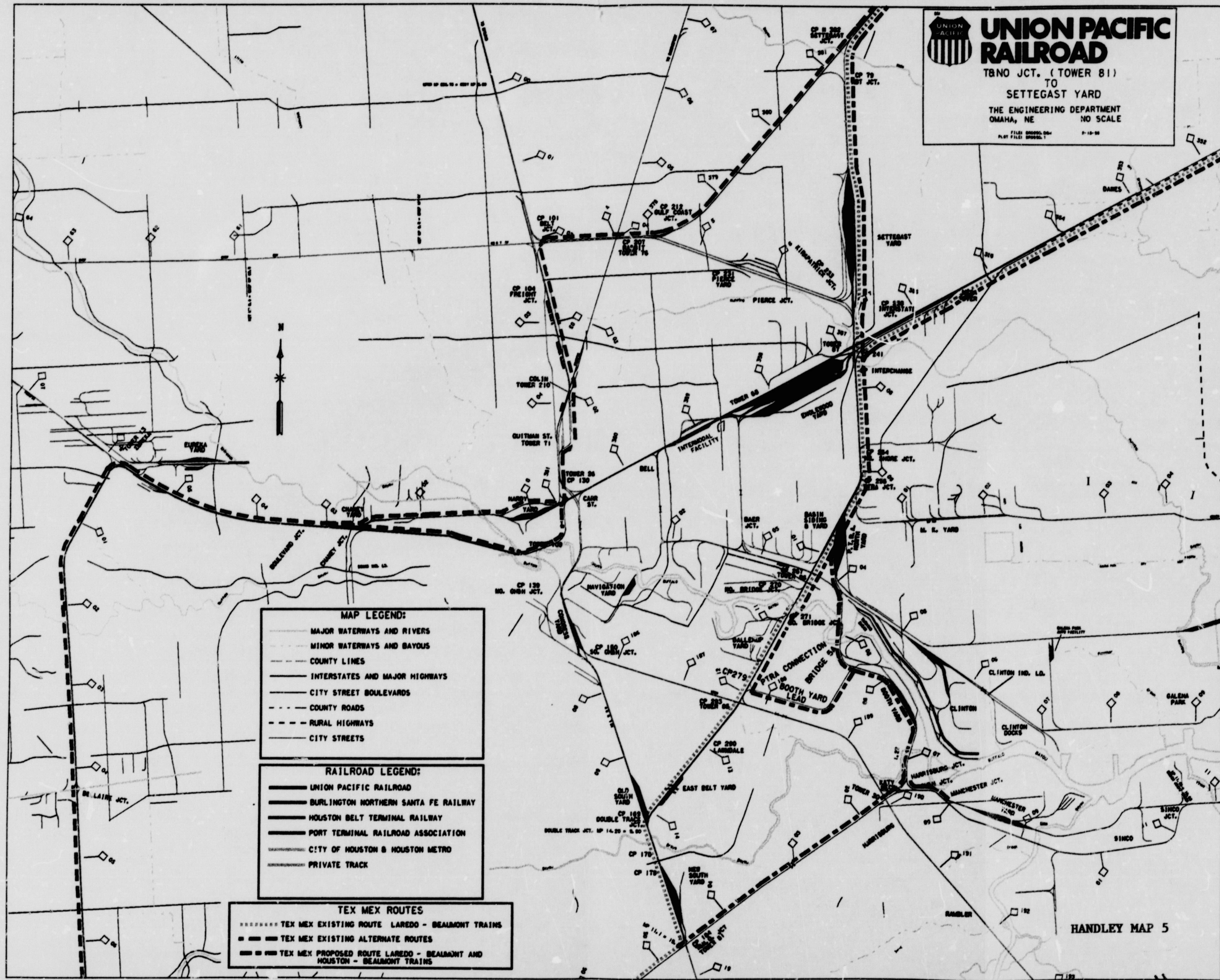
- MAJOR WATERWAYS AND RIVERS
- MINOR WATERWAYS AND BAYOUS
- COUNTY LINES
- INTERSTATES AND MAJOR HIGHWAYS
- CITY STREET BOULEVARDS
- COUNTY ROADS
- RURAL HIGHWAYS
- CITY STREETS

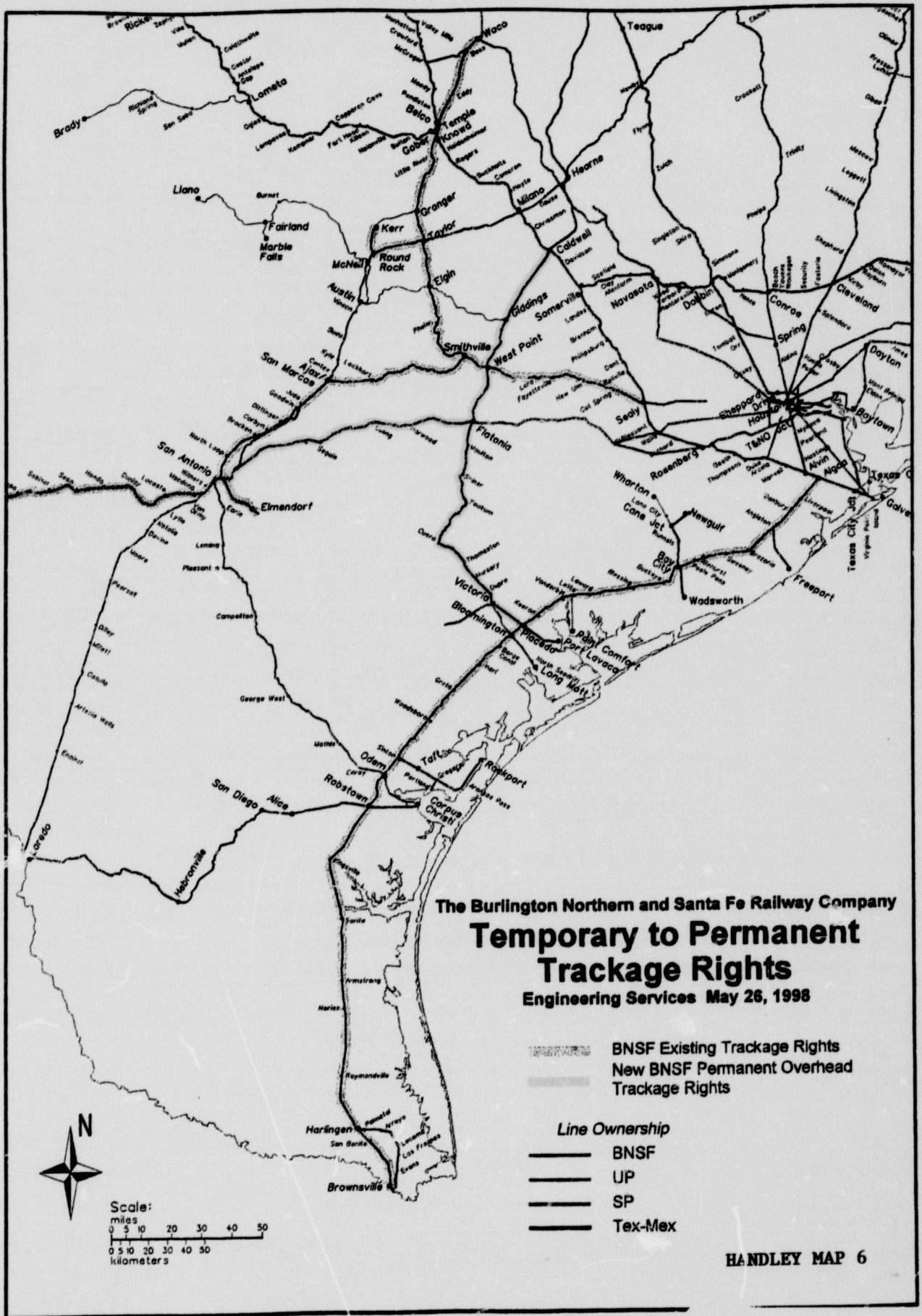
### RAILROAD LEGEND:

- UNION PACIFIC RAILROAD
- BURLINGTON NORTHERN SANTA FE RAILWAY
- HOUSTON BELT TERMINAL RAILWAY
- PORT TERMINAL RAILROAD ASSOCIATION
- CITY OF HOUSTON & HOUSTON METRO
- PRIVATE TRACK

### TEX MEX ROUTES

- TEX MEX EXISTING ROUTE LAREDO - BEAUMONT TRAINS
- TEX MEX EXISTING ALTERNATE ROUTES
- TEX MEX PROPOSED ROUTE LAREDO - BEAUMONT AND HOUSTON - BEAUMONT TRAINS





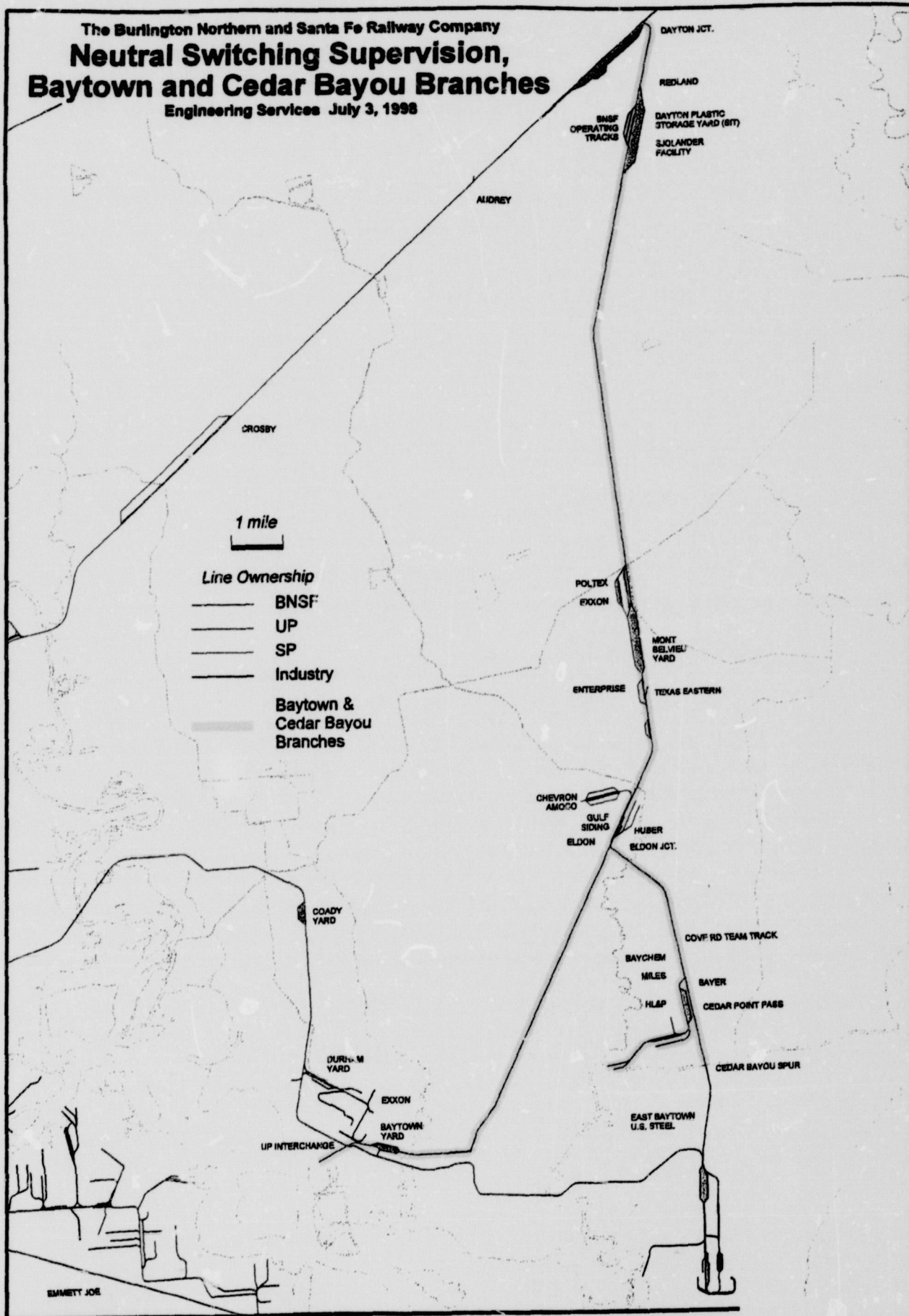


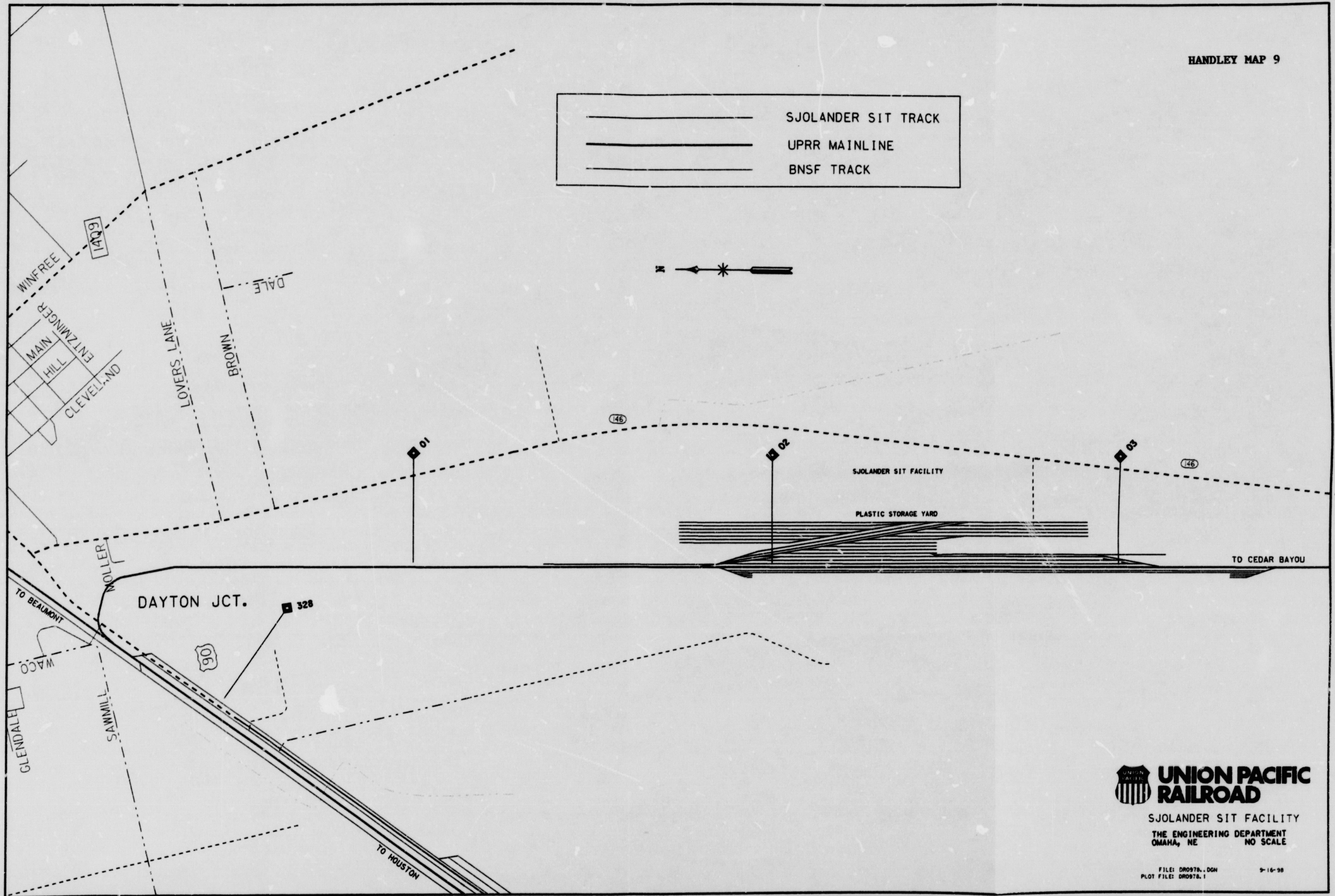
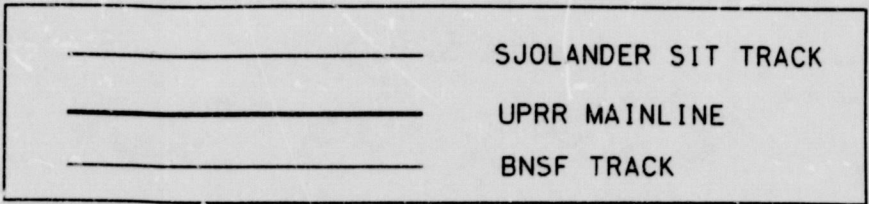




STB FD 32760 (Sub 26) 9/18/98 B 191210V3 3/4

The Burlington Northern and Santa Fe Railway Company  
**Neutral Switching Supervision,**  
**Baytown and Cedar Bayou Branches**  
 Engineering Services July 3, 1998





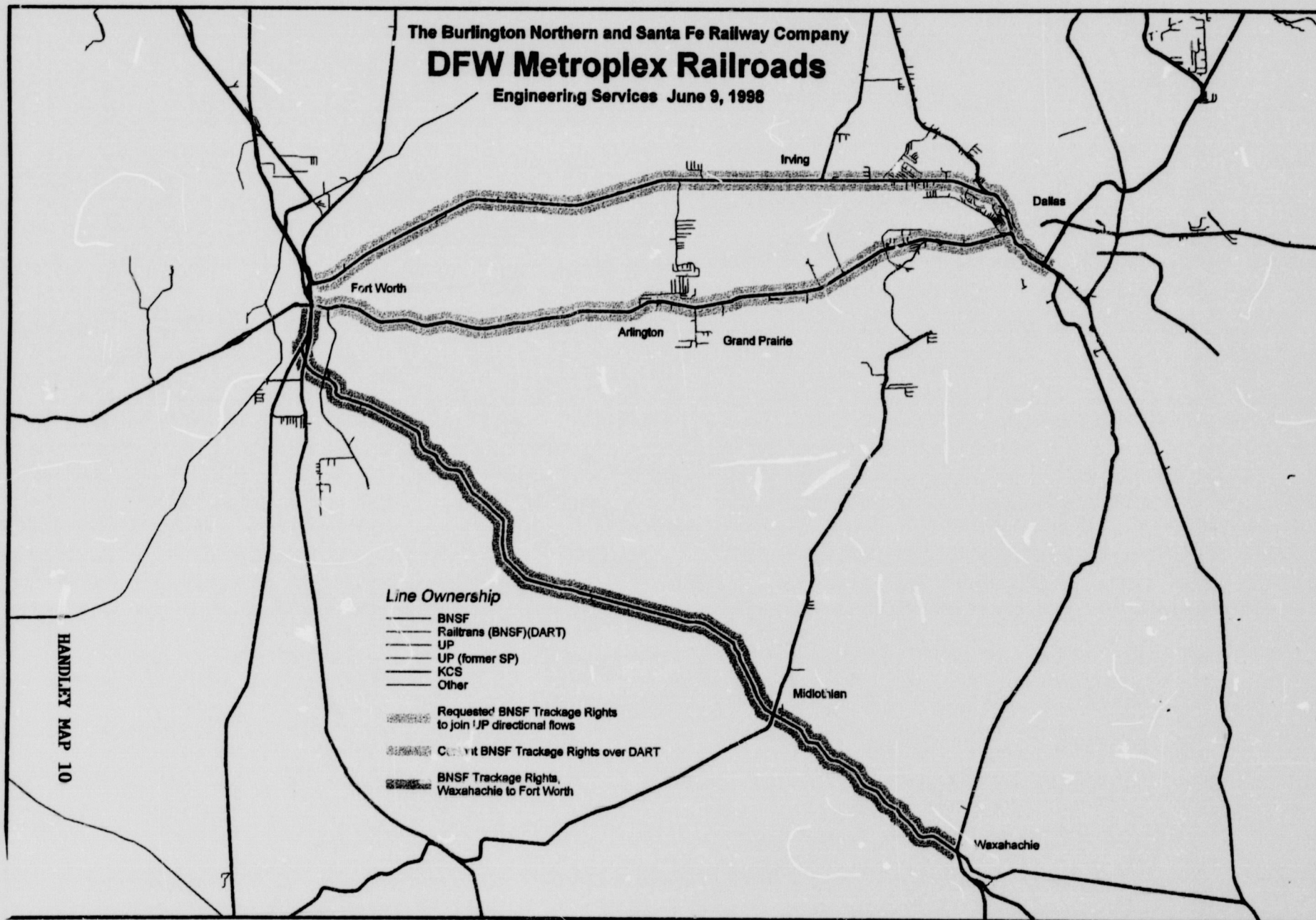
**SJOLANDER SIT FACILITY**  
THE ENGINEERING DEPARTMENT  
OMAHA, NE NO SCALE



The Burlington Northern and Santa Fe Railway Company

# DFW Metroplex Railroads

Engineering Services June 9, 1998



MAP 8

HANDLEY MAP 10





# BNSF TRACKAGE RIGHTS HOUSTON METROPOLITAN AREA

##### PERMANENT TRACKAGE RIGHTS - UNRESTRICTED  
 ##### PERMANENT TRACKAGE RIGHTS - RESTRICTED  
 ##### TEMPORARY TRACKAGE RIGHTS - DIRECTIONAL OPERATIONS ONLY  
 ##### HB&T - (JOINTLY OWNED/OPERATED UP/BNSF)  
 ##### TEMPORARY HAULAGE RIGHTS  
 \_\_\_\_\_ UNION PACIFIC RAILROAD  
 \_\_\_\_\_ H.B.T. (U.P. & BNSF)  
 \_\_\_\_\_ P.T.R.A.  
 \_\_\_\_\_ BNSF

DIRECTIONAL RUNNING	LOCATION	UP AGREEMENT			RESTRICTIONS UNLESS OTHERWISE NOTED, TENANT CANNOT SET OUT/PICK UP, INTERCHANGE, PERFORM INDUSTRY WORK OR ENTER/EXIT TRACKAGE BETWEEN TERMINI
		OWNER	AGMT	DATE	
	BETWEEN ROSENBERG & YAND JCT. SPL. - BETWEEN WEST JCT. & BASF Siding VIA EUREKA PASSENGER OR FREIGHT MAIN & ALL MAIN & BEAR JCT. SPL. - WEST JCT. TO PASSENGER DEPOT VIA EUREKA	UP	PR0628	3/0/20 5/7/18	TRACKAGE RIGHTS ENTRY/EXIT AT WEST JCT. (SEE 1A & B BELOW) TRACKAGE RIGHTS, UNIT CHAIN TRAINS ONLY, USABLE ONLY WHILE OPERATING ON THE RIGHTS BETWEEN ROSENBERG AND YAND JCT.
	BETWEEN YAND JCT. & PIRA JCT. AT GRIM JCT.	UP	PR0007	1/1/74	TRACKAGE RIGHTS, PASSENGER TRAINS ONLY.
	BETWEEN OUTMAN ST. & BASF Siding	UP	PR0007	6/5/74	TRACKAGE RIGHTS, USABLE ONLY WHEN OPERATING ON RIGHTS BETWEEN ROSENBERG & YAND JCT.
	BETWEEN ALGOA & PLACED	UP	2402	1/2/76	TRACKAGE RIGHTS, BETWEEN END OF FORMER SP OWNERSHIP (VICINITY OF KATY NECK GRIM JCT.)
	BETWEEN PLACED & BROWNVILLE INCLUDING ODEM & CORPUS CHRISTI	UP	PR0034	1/1/76	TRACKAGE RIGHTS, UNIT CHAIN TRAINS ONLY
	BETWEEN CALLED & PLACED	UP	PR160	6/1/76	TRACKAGE RIGHTS, DIRECTIONAL ONLY.
	BETWEEN CALLED & PLACED	UP	PR160	6/1/76	TRACKAGE RIGHTS
	BETWEEN CALLED & PLACED	UP	203506	2/5/91	TRACKAGE RIGHTS, DIRECTIONAL ONLY.
	BETWEEN CALLED & PLACED	UP	PR163	6/1/76	TRACKAGE RIGHTS, RIGHT TO ENTER/EXIT AT TOWER 84 AT DAYTON & SETOUT/PICKUP @ DAYTON.
	BETWEEN CALLED & PLACED	UP	PR2238	6/7/76	TRACKAGE RIGHTS, DIRECTIONAL ONLY.
	BETWEEN CALLED & PLACED	UP	PR156	6/1/76	TRACKAGE RIGHTS
	BETWEEN CALLED & PLACED	UP	PR156	6/1/76	TRACKAGE RIGHTS
	BETWEEN CALLED & PLACED	UP	PR2518	10/2/91	TEMPORARY RAILAGE RIGHTS, BNSF CREW & OCCUPANTS.
	BETWEEN CALLED & PLACED	UP	PR156	6/1/76	TRACKAGE RIGHTS
	BETWEEN CALLED & PLACED	UP	PR156	6/1/76	TRACKAGE RIGHTS
	USE OF ALL PIRA MAIN TRACKAGE & OLD A NEW SOUTH YARDS	PIRA	CL0440	1/25/20	NO MOVEMENTS TO BE SWITCHED NORTH AND EAST OF FORMER CHAIN TRACKAGE EXCEPT BETWEEN OLD A NEWLINE BETWEEN UP & O A NEWLINE VIA 34 WEST MAIN & GLE JCT.
	USE OF ALL PIRA TRACKAGE EXCEPT INDUSTRIES	PIRA	4806	6/30/21	USAGE RESTRICTED TO NON-INDUSTRIAL MOVEMENTS WITH PIRA. ANY OTHER MOVEMENTS INVOLVING INDUSTRIES TO BE SEPARATE AGREEMENT.

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DGN FILE: Q:\DR\DR0954.DGN  
PEN TABLE: DR0954.PEN

MAP 2 OF 2  
AUGUST 17, 1998





Verified Statement of Professor Jerry Hausman

1. My name is Jerry A. Hausman. I am a MacDonald Professor of Economics at the Massachusetts Institute of Technology in Cambridge, Massachusetts, 02139.

2. I received an A.B. degree from Brown University and a B. Phil and D. Phil. (Ph.D.) in Economics from Oxford University where I was a Marshall Scholar. My academic and research specialties are econometrics, the use of statistical models and techniques on economic data, and microeconomics, the study of consumer behavior and the behavior of firms. I teach a course in applied industrial organization to graduate students in economics and business at MIT each year. I also have extensive experience in analyzing economic issues presented in antitrust proceedings. I was a member of the editorial board of the Rand (formerly the Bell) Journal of Economics for the past 13 years. The Rand Journal is the leading economics journal of applied microeconomics and regulation. In December, 1985, I received the John Bates Clark Award of the American Economic Association for the most "significant contributions to economics" by an economist under forty years of age. I have received numerous other academic and economic society awards. My curriculum vitae is attached to this statement.

3. I have significant experience in analyzing regulated industries. I have published numerous academic research papers regarding the regulation and performance of regulated industries. I have submitted numerous declarations to regulatory agencies in the U.S. and abroad and have appeared as a witness in regulatory proceedings in various industries. I have testified before Congress on policy towards regulated industries. I also have significant experience in merger analysis. I have frequently appeared before the Department of Justice and Federal Trade Commission to present economic analyses of mergers under investigation. I have also presented invited seminars on merger analysis before both agencies and before the Australian antitrust agency and the American Bar

Association. I have published numerous academic research papers regarding the economic analysis of mergers. I have previously appeared as a witness in two merger cases in Federal District Court in Washington, D.C.

4. I have been asked by Union Pacific Railroad (UP) to consider the question whether following the merger of UP with Southern Pacific (SP) the service problems encountered by the merged railroad are due to the exercise of market power created by the merger. In doing my analysis I have read numerous submissions to the Surface Transportation Board (STB) by intervenor railroads, customers, and economists, and by UP. I have also considered public financial reports by UP and various other public information that discusses the service problems.

#### I. Summary and Conclusions

5. The definition of market power is commonly agreed to in the application of the antitrust law and by economists. Market power is the ability to raise price above the competitive level for a significant period of time. Degrading the quality of a product or service, while maintaining a constant price, holding other factors equal, could be an exercise of market power.

6. An increase in market power can arise from a merger in two ways. The first increase in market power can be the result of "coordinated interaction" in which a group of firms in a market reduces competition and increases prices. The other increase in market power can arise from "unilateral effects" in which the merged firm is able to exercise market power, even though competing firms are attempting to maximize their profits, while acting independently.

7. I am unaware of any claims that an increase in market power has arisen because of the UP/SP merger through coordinated interaction. All of the data and submissions to the STB indicate that all railroads are competing independently and attempting to maximize their profits. The outcome since the merger is inconsistent with the exercise of coordinated interaction market power.



8. The key question is whether the service problems were caused by an exercise of unilateral market power by UP. A firm exercising market power attempts to restrict supply to increase its price, or alternatively to decrease quality at the same price. The goal is to increase the firm's profits. All of the market data demonstrate that the service problems have not been the result of the exercise of market power by UP. UP has suffered losses of hundreds of millions of dollars due to the service problems. Furthermore, the market value of the company has decreased by more than 40%. Thus, current profits and expected future profits have decreased significantly following the merger. The outcome has been the opposite of what would be expected to occur from a successful exercise of market power by UP. The economic data are inconsistent with a unilateral exercise of market power by UP.

## II. Definition and Ability to Exercise Market Power

### A. Definition and Goal of Exercising Market Power

9. Common agreement exists on the definition of market power. Market power is the ability to maintain prices above competitive levels for a significant period of time in a profitable manner. This definition is used in the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (MG), April 1992, ¶ 0.1. The same definition is found in economics textbooks and in law review articles that discuss principles of antitrust.<sup>1</sup>

10. A firm with market power can also lessen competition by reducing product quality or service, while holding price constant. (MG, fn.6) Reducing product quality at the same price is similar to raising price, because in terms of units of quality per dollar charged, the price of quality has increased.

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<sup>1</sup> See e.g. D.W. Carlton and J.M. Perloff, Modern Industrial Organization, Scott, Foresman, 1990, p. 8, and W. Landes and R. Posner, "Market Power in Antitrust Cases", Harvard Law Review, 94, 1981, p. 937.

11. Firms attempt to exercise market power in order to increase their profits. The goal of a firm is to maximize shareholder value, which is the present discounted value of future expected profits. Thus, if a firm attempts to raise price or degrade quality and demand decreases sufficiently to reduce overall profits, the attempted exercise of market power is unsuccessful because profits will have decreased, and typically the value of the firm will also decrease.

**B. Increased Ability to Exercise Market Power Following a Merger**

**(1). Coordinated Interaction**

12. A merger may lead to decreases in competition through coordinated interaction (MG, ¶ 2.1). The MG defines coordinated interaction as "action by a group of firms that are profitable for each of them only as a result of the accommodating reactions of the others." A cartel is an example of coordinated interaction in which a group of firms agrees to raise price or allocate customers. When one of the cartel members increases its price above competitive levels, only if other cartel members accommodate this action by raising their price or by not competing for the firm's customers will the attempted price increase be successful. Otherwise, customers will switch their demand from the firm raising its price to other firms still offering the competitive price. When customers switch their demand, the first firm will be forced to return its price to competitive levels. However, in the presence of a cartel, customers have no other suppliers to turn to so that the exercise of market power will be successful.

13. For coordinated interaction to be successful, the firms must reach terms that are profitable to all of the firms involved. Furthermore, detection and punishment of cheating must be effective. Thus, overall a high degree of coordination is typically required for the successful exercise of profitably raising price above competitive levels.

14. I am not aware of any claims that the UP/SP merger has led to coordinated interaction by railroads in the areas served by the UP. BNSF has rapidly increased the

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volume of traffic over UP facilities pursuant to its rights gained as terms of the UP/SP merger.<sup>2</sup> Tex Mex has also significantly increased its volume over UP facilities. This increased output by a competing firms would be extremely unlikely to occur if coordinated interaction between UP and BNSF were ongoing. Furthermore, a number of competing railroads have made submissions to the STB asking for various conditions to be placed on the UP, so that the competing railroads could gain a competitive advantage, compared to the current situation. Firms that were successfully coordinating their actions would be extremely unlikely to engage in this type of behavior. Thus, I conclude that the UP/SP merger has not led to an exercise of market power through coordinated interaction among railroads.

## (2) Unilateral Effects

15. The MG identifies a second reason for a possible increase in market power following a merger, unilateral effects. (MG, ¶ 2.2) In a situation where service is relatively undifferentiated (MG, ¶ 2.22) the merged firm may find it profitable to increase prices by reducing its output.<sup>3</sup> Unilateral effects are profitable if a significant proportion of the merged firm's customers are unable to find economical alternative sources of supply. If competing firms are able to increase their output sufficiently to counteract the output reduction of the merged firm, the unilateral action of attempting to increase prices will be unsuccessful. The decrease in output at the competitive price to the merged firm will cause profits to decrease so that the merged firm will be unsuccessful in its attempt to increase both prices and profits.

16. A decrease in quality while holding prices constant can be an exercise of market power. The units of service will decrease with decreasing quality, so the price per unit of service will increase. In a successful exercise of market power, this decreased quality will arise from decreased input costs and will lead to increased profits for the firm. Thus, the expected signs of the exercise of increased market power by UP following

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<sup>2</sup> See UPRR 2<sup>nd</sup> Annual Merger Report, Part II, Section B, Subsection 2, filed July 1, 1998.

its merger with SP would be decreased quality of service, decreased costs, and increased profits. I now turn to an examination of these economic factors.

### III. Economic Data Regarding the Possible Exercise of Market Power by UP Following the Merger

17. Significant service problems have occurred since the merger of UP and SP. These service problems have been severe at times, and the STB instituted temporary emergency measures to attempt to reduce the severity of the problems. However, recently the service problems have become significantly less severe, and the STB adopted an order on July 31, 1998 lifting its Emergency Service Order in the Texas-Louisiana Gulf Coast region. While service levels have not totally returned to normal, UP expects them to do so

18. Following the merger UP's service levels did decrease. The question to be answered is whether the decrease in service levels came from an exercise of merger-created market power by UP or from other factors.

19. For the decrease in service levels to be an exercise in market power, UP's costs would need to decrease. Otherwise, the reduced service levels, which at best will keep demand at the same level or, more likely, will lead to decreased demand, cannot lead to higher profits, the goal of exercising market power.<sup>4</sup> However, UP's actions in response to the service problems have led to increased costs, not the decreased costs that would be expected if market power were being exercised. UP's actions include hiring more train and engine employees, relocating its maintenance of way activities, rerouting traffic and using haulage arrangements, paying additional overtime, leasing locomotives,

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<sup>3</sup> Landes and Posner, op. cit., discuss the exercise of unilateral market power in the undifferentiated product situation in their article.

<sup>4</sup> UP has made significant payments to customers, in excess of \$100 million to settle claims arising out of its service problems.



running special trains, and transferring traffic to competing railroads.<sup>5</sup> Overall UP reports that it had higher costs associated with system congestion and costs associated with service recovery efforts.<sup>6</sup> UP's total operating expense calculated on either a per carload or per revenue ton mile basis increased by approximately 27.5% in the second quarter of 1998 compared to second quarter of 1997.<sup>7</sup> Thus, the first necessary condition for finding an exercise of market power, decreased costs associated with decreased service levels, is absent from UP's actions. The service problems are associated with higher costs, rather than the lower costs expected if the merger had allowed UP to exercise market power.

20. The second necessary condition for an exercise of market power by UP would be an increase in UP profits. The goal of an exercise of market power is increased profits. Again, the market data are contrary to an exercise of market power by UP. UP reports that the estimated decrease in revenue for the three months ended June 30, 1998 due to lost business (decreased revenues) and increased costs related to the service problems is \$434 million after tax.<sup>8</sup> Overall, UP has gone from a profitable company, to an unprofitable company. For the first six months of 1998, UP reported a net loss of \$481 million, or a loss of \$219 million after deleting a one-time writeoff due to discontinued operations, compared to net income during the same period of 1997 of \$344 million. Thus, the total change was a decrease in profits of \$825 million. Consolidated net income fell by \$912 million. This \$700 million to \$1 billion decrease in profits would be among the most spectacularly unsuccessful exercises of market power in the history of U.S. industry, if an exercise of market power were the cause. I conclude that the service problems were unrelated to any exercise of increased market power caused by the merger. Given the healthy state of the U.S. economy, UP could not have

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<sup>5</sup> See Union Pacific's Report on Service Recovery, Ex Parte No. 573, filed Dec. 1, 1997, pp. 63ff.

<sup>6</sup> Union Pacific Corp, Quarterly Report, SEC form 10-Q, filed August 11, 1998.

<sup>7</sup> Even if congestion expenses and one-time costs are eliminated from the cost calculations, UP's costs still increased by 13.6% compared to the previous year.

<sup>8</sup> Revenue decreased in part because UP waived shipper contract obligations to use UP and allowed the traffic to be moved over other competing railroads. This action is inconsistent with an exercise of market power by UP. See Union Pacific's Report on Service Recovery, Ex Parte No. 573, filed Dec. 1, 1997, p. 79.

miscalculated so badly as to have an attempted exercise of market power lead to such an unprofitable outcome.

21. The last outcome that I consider from an attempted exercise of market power is UP's market value. The stock price of a company is the discounted value of expected future profits. If UP had succeeded in exercising market power, its stock price should have increased, reflecting investors' realization that UP would be able to charge higher future prices (or lower future service quality) without the fear that competitors could take away sufficient business to make these actions unprofitable. Again the stock market data for UP are contrary to the market power hypothesis. Since the service problems began, UP's stock price has decreased by over 40%.<sup>9</sup> The stock price has decreased by 17% since the SP merger was completed in September 1996, despite significant increases in the S&P 500 and other stock market indices during the period of over 50% and an increase in other major (Dow) railroad stock prices of 6% over the same period. Thus, UP's stock has performed very poorly on either a standalone basis or in comparison to general stock market movement or the movement of the BNSF stock price or other railroad stock prices over comparable periods. Thus, investors do not believe that the service problems demonstrate that UP will be able to exercise market power in the future.

22. All three economic data indicators—costs, profits, and stock market value—are inconsistent with the hypothesis that UP has exercised market power following its merger with SP in September 1996. No economic data are consistent with the hypothesis of increased market power caused by the merger. Thus, I conclude that the service problems are not caused by the attempted exercise of market power by UP.

23. Competing railroads have an economic incentive to attempt to use the service problems that have occurred subsequent to the merger to gain a competitive advantage relative to UP. However, the submissions by these competing railroads, e.g. the statement of Prof. Kalt, do not identify any situations where the UP service problems

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<sup>9</sup> Over the same time period the stock price of the BNSF increased by approximately 11%. An index of other major (Dow) railroads decreased by 7% over the same period.



have been created by an exercise of market power by UP.<sup>10</sup> To the contrary, UP has economic incentives to provide quality service at competitive rates. This outcome should not only maximize UP's profits, but it would have the further effect of reducing governmental oversight. UP's service problems have resulted in heightened scrutiny of UP by the Board and by Congress. Since the STB has oversight authority for 5 years with respect to imposing additional merger-related conditions on the UP, UP would be inviting more regulation if it did attempt to degrade service quality or to raise prices to supra-competitive levels. This increased regulation could impose significant costs and make it more difficult to operate the merged railroad. The extra constraints imposed by regulation would make UP less competitive and likely lead to decreased future economic performance by UP. A reduction in UP's service quality would not be a rational exercise of market power if the result were not only to lose money (as UP did) but also to increase the risk of governmental regulation. Thus neither the economic incentives nor the economic outcomes that have occurred since the 1996 merger between the UP and the SP are consistent with the exercise of increased market power by UP.

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<sup>10</sup> While Prof. Kalt claims that "merger-related reductions in competition" have occurred (p. 2), he does not claim that UP has exercised increased market power due to the merger. In particular, Prof. Kalt points to no examples of increased prices by the UP, and he does not attribute the service problems to an exercise of market power by the UP. Indeed, while Prof. Kalt states that UP's service problems have affected BNSF (p.8, p.10), he makes no analysis to demonstrate that in the absence of the merger, the service problems would have affected competing railroads by a lesser amount. Prof. Kalt states that the service problems have the effect of "threatening the ability of BNSF and other to provide adequate, reliable and timely service as a competitive alternative to UP service" (p. 23), but he does not show that BNSF suffered relative to UP from the service problems, nor does he point to any actual reduction in competition that has led to higher prices or higher profits for UP. Thus, Prof. Kalt gives no examples of an increased exercise of market power by UP due to the merger with SP.

VERIFICATION

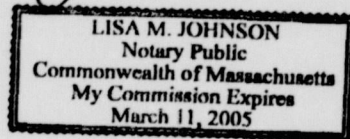
STATE OF MASSACHUSETTS    )  
                                          ) ss.  
COUNTY OF MIDDLESEX        )

I, Jerry A. Hausman, being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.

*J. A. Hausman*    *Sept 1, 1998*  
Jerry A. Hausman

Subscribed and sworn to before me this  
*1st* day of September, 1998

*Lisa M. Johnson*  
Notary Public







VERIFIED STATEMENT

OF

JAMES E. MARTIN

My name is James E. Martin. I am currently a self-employed railroad transportation consultant. I began my railroad career in 1944 with the New York Central Railroad. In my more than 50 years of railroad experience, my positions have included President and Chief Operating Officer of Illinois Central Gulf Railroad, Executive Vice President-Operations of Chicago & North Western Transportation Company, Senior Vice President-Operations of Union Pacific Railroad, Vice President of Operations of Chicago, Rock Island & Pacific Railroad, Southern Regional General Manager of Penn Central Transportation Company, Vice President of Operations of Lehigh Valley Railroad, and Vice President-Operations & Maintenance for the Association of American Railroads.

My career has also included extensive involvement with terminal railroad companies. From December 1989 through April 1994, I served as President of the Belt Railway Company of Chicago. I have also served as a director of that company, as well as of the Terminal Railroad Association of St. Louis, the Kansas City Terminal Railway, and the Peoria & Pekin Union Railroad. In addition, I was the project director responsible for the development of the operating plan and organizational structure for the recently-established Terminal Ferroviaria del Valle de Mexico in Mexico City, Mexico.



I am submitting this statement to address KCS/Tex Mex's and NIT Leagues's assertions that experience with switching railroads, such as the Belt Railway Company of Chicago ("BRC"), the Terminal Railroad Association of St. Louis ("TRRA"), the Houston Belt & Terminal Railway ("HBT"), and the Terminal Ferroviaria del Valle de Mexico ("FTVM"), demonstrates that terminal railroads are traditionally developed to promote competition in the cities they serve. See KCS-2, pp. 35-36, & Ritter V.S., pp. 296-98; NITL-4, p. 13 ("The League looks favorably on neutral switching arrangements to promote and insure competitive, efficient, and non-discriminatory rail service in a region."). As I explain below, KCS/Tex Mex's and NIT League's assertions are incorrect, and the examples they rely upon -- with which I am intimately familiar -- actually prove them wrong.

I. TERMINAL RAILROADS ARE DESIGNED TO FACILITATE OPERATIONS, NOT TO INJECT COMPETITION

Contrary to KCS/Tex Mex's and NIT League's suggestion, the purpose of terminal railroads was not to create or add to competition among line-haul carriers. Instead, terminal railroads developed as the most efficient way to avoid the very complex operating problems that would otherwise arise from large numbers of railroads' interchanging traffic and serving numerous industries within crowded terminal areas. Shippers located along terminal railways are often open to competitive service, but this is generally

because the competition pre-dated the formation of the terminal railway, or because a shipper located a new facility along a terminal railway in order to have access to multiple line-haul railroads. This has certainly held true for the terminal railroads that I have been involved with, which are, for the most part, the very railroads that KCS/Tex Mex rely upon as examples.

For example, BRC performs intermediate switching and industry switching, and dispatches overhead trains, for nearly all of the railroads entering the Chicago terminal, which after the Conrail merger will include six major railroads and twelve regional, shortline and switch carriers. BRC developed into its present form when the railroads serving the Chicago area recognized that congestion would otherwise preclude individual carriers' direct operations in the terminal area. BRC's purpose is to provide coordination in sorting out thousands of loaded and empty freight cars, and to increase efficiency in the Chicago terminal, not to promote competition among line-haul carriers. Most major carriers serving Chicago have a substantial number of significant, exclusively-served shippers, and the creation of BRC (and other Chicago terminal carriers) did not change that. BRC does serve approximately 80 Chicago-area industries, but its primary function is to facilitate the interchange and classification of traffic moving between carriers serving Chicago.



Like BRC, TRRA's animating purpose was not to generate competition. Instead, TRRA's primary role was and is to coordinate the handling of freight between the railroads serving the St. Louis-East St. Louis gateway -- including the transfer of cars from the east side of the Mississippi to the west side and vice versa. TRRA was initially comprised of seven railroads serving St. Louis and East St. Louis, and quickly expanded its membership to include sixteen owners. TRRA developed because of the physical and practical impossibilities of each railroad operating in the St. Louis area developing its own facilities, including bridges over the Mississippi River, and carrying out separate interchanges with every other carrier serving the gateway.

FTVM provides another example of a terminal railroad that was put in place for operational, not competitive, reasons. FTVM was created as part of the privatization of the Ferrocarriles Nacionales de Mexico ("FNM"). FTVM was developed to facilitate efficient interchange among the line-haul carriers that serve Mexico City, provide classification services, and provide inbound and outbound service to industries in the terminal area. The decision to create an independent switching company was based on the need to provide safe, efficient and expeditious handling of rail traffic entering and departing the Mexico City terminal from a number of different carriers. FTVM will provide the carriers serving

Mexico City with access to local industries, but this was not the motivation for establishing the terminal railroad -- it simply reflects the outcome of a situation in which, because all rail facilities in Mexico City were owned by the government, none of the carriers that were created through privatization had any pre-existing property interest in serving those industries, and there was no apparent way to assign particular industries to particular line-haul railroads. In addition, as discussed in more detail below, the decision to use a terminal railroad reflected the fact that there was only one set of rail facilities in Mexico City and no way to divide them among the serving railroads that would provide each railroad adequate facilities for serving Mexico City customers.

II. WHERE THE NUMBER OF RAILROADS IN A TERMINAL AREA IS SMALL, AS IN HOUSTON, USE OF TERMINAL RAILROADS IS INEFFICIENT

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KCS/Tex Mex are also incorrect when they suggest that experience with terminal railroads supports the expansion of the PTRS in the Houston terminal area. Experience teaches that terminal railroads have a role to play when they help resolve the complex operational problems that would result from numerous railroads' operating within a constrained terminal area, with exponentially-growing numbers of potential two-railroad interchange combinations. Where only two or three carriers operate in a terminal area, however, it may



well be more efficient for those carriers to interact directly with each other and with shippers, without a terminal railroad as an intermediary.

The examples KCS/Tex Mex rely upon actually prove my point. KCS/Tex Mex point to BRC and TRRA as examples of successful terminal railroad operations. As discussed above, however, BRC is an important part of the Chicago terminal because it facilitates the operations of eighteen railroads operating to and from the Chicago gateway. Similarly, TRRA once had as many as sixteen owners, and it still has five, and facilitates the interchange of traffic for seven different railroads.

KCS/Tex Mex also point to HBT. But HBT's experience actually provides the strongest possible counter-example to KCS/Tex Mex's claims. HBT is owned by only two carriers, UP and BNSF, and the two carriers have recently agreed that they will serve HBT shippers directly rather than continue to rely on HBT's services. (This restructuring did not involve any change in competition because all HBT industries remained open to both UP and BNSF, as well as to Tex Mex for traffic bound to and from its Corpus Christi/Robstown-Laredo line.) As UP and BNSF recognized, HBT may have played an important role in the Houston terminal at one point, but not after the Rock Island bankruptcy and the UP/MKT, BN/Santa Fe and UP/SP mergers had reduced the number of carriers operating in the

Houston terminal from six to two (plus the limited trackage rights role of Tex Mex). UP's and BNSF's experience with HBT is a clear example of how the costs and overhead associated with operating a terminal railroad, and the costs associated with interchange between a terminal railroad and the line-haul carrier, simply cannot be justified once the operating need no longer exists.

As a further example, KCS/Tex Mex point to FTVM. As I explained above, the decision to create a terminal railroad in Mexico City was driven by operational, not competitive, considerations. A review of the operating environment made it clear that the operation of one railroad within the terminal -- which was the status quo before privatization -- would produce much less conflict and congestion than attempting to coordinate the operations of three newly-privatized line-haul carriers utilizing the facilities of a single railroad formerly owned by the government to serve the Mexico City terminal.

In particular, it was not the case in Mexico City, as it was with respect to HBT, that there were sufficient existing support facilities, including track and yards, to divide the terminal area among serving carriers in a way that would allow each carrier to perform necessary terminal functions. There is only one major hump yard in Mexico City



-- Valley de Mexico -- and one major intermodal terminal -- Pantaco. Moreover, Mexico City is a large city and it would have been difficult and economically unfeasible for each railroad to construct the type of additional facilities with easy access to shippers that the line-haul carriers would have needed in the absence of a terminal railroad.

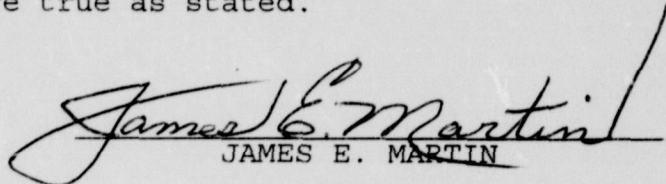
Finally, KCS/Tex Mex mention the "shared assets areas" -- which are actually terminals that NS and CSX will serve but that will be operated by a third entity with the Conrail name -- that were developed in the Conrail transaction. In fact, the situation in Mexico City is analogous to the situation that faced NS and CSX. In the Conrail situation, as in Mexico City, there was a single railroad that operated in certain terminal areas, and that railroad had, over time, consolidated its facilities to the point where only a single railroad could feasibly operate within those terminals. For example, Conrail had only one major classification yard, Oak Island Yard, in the North New Jersey shared assets area. NS and CSX evidently agreed that it would not make sense operationally, or indeed even be possible, to divide certain terminal areas and facilities between two railroads. KCS/Tex Mex's own witness, Mr. Ritter, seems to recognize that it was considerations of economics and operational feasibility that led to the use of a single third

party to operate the "shared asset areas." See Ritter V.S.,  
p. 297 ("duplicate infrastructure would not be economical or  
feasible").

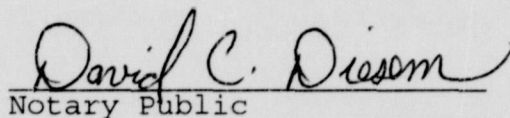
VERIFICATION

STATE OF ILLINOIS     )  
                              ) ss.  
COUNTY OF DUPAGE     )

I, James E. Martin, being duly sworn, state that I  
have read the foregoing statement, that I know its contents  
and that those contents are true as stated.

  
JAMES E. MARTIN

Subscribed and sworn to before me this  
16<sup>th</sup> day of September, 1998

  
Notary Public







**VERIFIED STATEMENT  
OF  
GARY W. NORMAN**

1. My name is Gary W. Norman. I am Superintendent of Transportation Services for the San Antonio Service Unit of Union Pacific Railroad. My office is located at 1711 Quintana Road, San Antonio, Texas 78211. I have been Superintendent of the San Antonio Service Unit since January 1996.

2. I have been employed by UP and its predecessor MP for 22 years. I began my career as a Transportation Supervisor for MP in 1976, and advanced through several operating positions, ultimately becoming a Senior Trainmaster at the time of the merger with UP. Since the UP-MP merger I have served as Terminal Superintendent and as Regional Director for UP's West and Southern Regions. Beginning in 1993, I spent two years as UP's General Director of Mexican Operations. In January 1996, I assumed my current position of Superintendent of the San Antonio Service Unit.

3. As San Antonio Superintendent, I have had overall operational responsibility for UP's train operations in the territory bounded by Alpine, Texas, on the west, San Antonio and Bloomington, Texas, on the north, and the Mexican border on the south. (UP's very recent reorganization of its operating department altered these boundaries slightly.) This territory encompasses the portion the former-MP Austin Subdivision between San Antonio and Laredo, Texas, where UP connects with the TFM; the former-SP Del Rio Subdivision between San Antonio and Eagle Pass, Texas, where UP connects with Ferrocarril Mexicano (known as "Ferromex"); and the portion of UP's Brownsville Subdivision between Bloomington, Texas, and Brownsville, Texas, where UP connects with

the TFM. I am also responsible for all UP train operations at the Laredo, Eagle Pass and Brownsville gateways.

4. The purpose of this statement is to address two requests for additional conditions submitted by BNSF. First, I address BNSF's request for trackage rights over UP's line between San Antonio and Laredo, together with terminal trackage rights over a short segment of trackage owned by Tex Mex (through its 100% parent Mexrail) at the north end of the International Bridge at Laredo. I explain the adverse effects granting those conditions would have on operations at Laredo, on UP's lines between Laredo and San Antonio (and indeed north and east of San Antonio) and also at Eagle Pass. I also explain that BNSF is incorrect in suggesting that those conditions are somehow justified by service and/or capacity issues at Eagle Pass.

5. Second, I address BNSF's request for additional operating rights between Harlingen and Brownsville, Texas. I explain that BNSF's assertions about service problems on this line are incorrect and there is no basis for any intervention by the Board. Nevertheless, UP shares BNSF's interest in rational and efficient operations in Brownsville, where there has been an ongoing transition in the configuration of rail lines as a result of a not-yet-completed government-railroad initiative to relocate various trackage. Accordingly, UP has made a proposal to BNSF that would give BNSF almost all of the additional rights it seeks from the Board.

#### **I. BNSF'S REQUEST FOR SAN ANTONIO-LAREDO TRACAGE RIGHTS**

6. BNSF's proposed trackage rights operations over UP's line between San Antonio and Laredo would cause extraordinary operating problems. I describe these problems, and the adverse effects of BNSF's proposal, in greater detail below. To summarize, BNSF's proposal would add a significant number of additional train movements



to UP's Austin Subdivision and the Laredo gateway (diverted from BNSF-Tex Mex interline routings and BNSF single-line routings via the Eagle Pass gateway), which are already in need of significant capacity expansion. The capacity shortfalls and operating difficulties on UP's route to the Laredo gateway fall into several categories:

- capacity shortfalls north of San Antonio, especially on the crowded Austin Subdivision between San Antonio and Taylor;
- operating bottlenecks in the San Antonio terminal and SoSan Yard;
- capacity shortfalls on the partially unsignalled single-track mainline between San Antonio and Laredo; and
- lack of adequate staging facilities in the vicinity of Laredo.

In the already-strained San Antonio terminal and on the UP's single-track San Antonio-Laredo mainline (as well as, to a somewhat lesser extent, on the UP lines north and east of San Antonio that BNSF trains would use), there simply is no room to accommodate BNSF's additional trains.

7. By introducing a fourth carrier at Laredo (in addition to TFM, Tex Mex and UP), BNSF's proposed direct access to Laredo would also complicate the already-difficult process of maintaining fluid and efficient Laredo border-crossing operations. BNSF's proposed operations pose a significant risk of toppling the delicate operating equilibrium that has been achieved at the Laredo gateway, which already suffers from extremely constrained infrastructure and operating characteristics that make it inherently difficult to maintain operational fluidity in the face of ever-growing cross-border traffic. The result of granting BNSF's proposed condition requests would be a net reduction in the volume of cars that could be crossed at Laredo and a potential return to the gridlock that forced UP to embargo traffic bound for Laredo in spring of this year.

8. For some time UP has recognized the need to improve its infrastructure between San Antonio and Laredo to accommodate recent traffic growth (as well as anticipated future growth), and for the three railroads serving Laredo – UP, Tex Mex and TFM – to improve infrastructure at the gateway and to make other operational changes that increase the throughput of the Laredo gateway. Capacity and operating issues relating to this corridor have received careful and thorough study by UP and third-party consultants, including an exhaustive study of conditions at the Laredo gateway in which Tex Mex and TFM participated. UP (as well as TFM and Tex Mex, with respect to matters concerning them) are already in the process of implementing many of the operational recommendations of these studies. In addition, UP has plans to make investments to improve capacity on this line, including installation of CTC between San Antonio and Laredo, a new siding south of San Antonio and new staging trackage in Laredo. UP understands that TFM is also adding additional yard capacity south of the border in Nuevo Laredo and that Tex Mex is building a yard on its line a few miles east of Laredo.

9. Contrary to BNSF's suggestion, however, these ongoing improvements will not create any excess capacity that would permit operation of additional BNSF trains without creating congestion and increasing train delay. (The new Tex Mex yard would not even be accessible to BNSF trains using the UP route.) Instead, every one of these efforts is vitally necessary merely to catch up with traffic growth so that current traffic levels can be handled without incurring unacceptable levels of train delay and threatening the breakdown of fluid operations. These steps will not leave the railroads serving Laredo with much, if any, margin of capacity to accommodate additional traffic growth at Laredo,

much less to handle the additional – unnecessary – train operations that would result from BNSF's proposal.

10. BNSF's proposal to use UP's San Antonio-Laredo line to reach the Laredo gateway would also have adverse effects at the Eagle Pass gateway. There, UP and BNSF each connect with Ferrocarril Mexicano ("Ferromex"), which is in a position to compete with TFM for much of the traffic moving between the United States and Central Mexico. UP and BNSF have each been working with Ferromex to develop the Eagle Pass gateway by improving the physical infrastructure and border crossing processes, and also providing Ferromex with the international traffic it needs to justify improvement of its own facilities at Eagle Pass and on its lines between Central Mexico and the U.S. border. BNSF's proposed access to Laredo via UP's Austin Subdivision would reduce BNSF's interline traffic with Ferromex via Eagle Pass, and in the process pull the rug out from under the joint BNSF-Ferromex efforts. BNSF's diminished role at Eagle Pass would threaten ongoing efforts to make Eagle Pass more efficient and, more importantly, impair Ferromex's ability to provide strong competition against TFM for traffic moving between the United States and Mexico.

11. The UP route over which BNSF proposes to operate its traffic to and from the Laredo gateway is, as BNSF suggests, the shortest and most efficient rail route between most points in the United States and Laredo, notwithstanding the congestion and capacity limitations on UP's lines that have resulted from rapid traffic growth in recent years. That efficiency is no doubt a major reason BNSF wants operating rights on UP's line. Using UP's route would also offer BNSF another distinct advantage, by allowing it to avoid having to share its revenue with Tex Mex. Because of these advantages, BNSF would have



strong incentives to favor UP's route without regard to the congestion and operating difficulties that BNSF's operations would cause. (In addition, it is important to bear in mind that the advantages of the UP route were not created by the UP/SP merger. BNSF does not need rights on UP's line to replace any reduction in competition caused by the merger. Rather, UP (and its predecessor MP) has always been the only railroad with access to this line, because SP reached Laredo only via an interline connection with Tex Mex at Corpus Christi/Robstown, just as BNSF does today.)

12. Understanding the operating problems that would be caused by BNSF's proposed operations requires an understanding of the unique attributes of the Laredo gateway that make rail operations there inherently difficult. Although the Laredo gateway is in many respect the most efficient gateway for most rail traffic moving between the central and eastern United States and Mexico, several unique operating characteristics make it more difficult to maintain fluid and efficient train operations via Laredo than via a typical, domestic interchange point.

13. Operations at Laredo would be cumbersome enough were it not an international border crossing. There are basic limitations in the physical infrastructure at Laredo. The very old single-track timber bridge is itself a serious bottleneck. North of the border, all traffic to and from the bridge must traverse numerous downtown Laredo grade crossings, which are located so as to require that trains often be split apart while waiting to cross into Mexico and reassembled before heading to the bridge. There are similar shortcomings on the Mexican side of the border. Steady traffic growth over the past decade has left the staging, receiving, and classification tracks on all three of the railroads serving Laredo inadequate to accommodate existing traffic volumes smoothly. As a result, each of

these railroads is currently embarked on programs to expand those facilities in order to keep up with traffic growth. Finally, because two railroads north of the border are interchanging with one railroad south of the border, there are the inherent complexities associated with coordinating deliveries and receipts of cars among the three railroads and performing classification (pre-blocking) of cars for purposes of carrying out efficient interchange.

14. The fact that Laredo is an international border crossing, however, makes the operating conditions significantly more difficult. Loaded cars must be held back until the necessary paperwork permitting the loads to cross the border (referred to as "manifesting") has been completed. The crossing of trains must be tightly coordinated with (and very often significantly delayed by) the operations of customs and other governmental agencies (including agricultural and narcotics inspectors) on both sides of the border. Accommodating the schedules of these agencies has required the establishment and adherence to tight northbound-only and southbound-only operating windows, which in turn require that trains must be staged very close to the border so that they are ready to cross during available crossing windows. Tight adherence to these windows is also vital to each railroad's planning process – especially with respect to the availability of crews and locomotive power.

15. These same characteristics also add complexity to operations north of Laredo. UP trains bound for Mexico typically must be staged well north of Laredo and carefully metered south to ensure that they are ready to cross at Laredo when a window opens, but are not moved south too soon so as to cause gridlock and block the movement of northbound trains from Mexico. The inevitable result, given the strained capacity of UP's track between San Antonio and Laredo, is that staged southbound trains must compete with

northbound trains for the few available sidings and yard tracks in San Antonio and on the Austin Subdivision.

16. BNSF's proposed operations between San Antonio and the Laredo gateway would alter operations on these lines and at the Laredo gateway in two significant ways. First, BNSF's direct access to Laredo would add a fourth railroad to that border gateway, and a third on the United States side of the border. As I explain below, this alone would cause a significant reduction in the efficiency of border crossings at Laredo. The addition of BNSF to UP's San Antonio-Laredo line would also make it more difficult to coordinate operations there because of the additional communications interfaces and other complexities when there are two railroads sharing a line.

17. Second, BNSF's proposed operations would add a significant number of additional train movements at every segment of the route between San Antonio and Laredo. It appears that BNSF's proposal would initially add approximately five to seven additional daily train movements on UP's line between San Antonio and the Laredo bridge, four to six additional daily train movements on UP's lines north of San Antonio and in the San Antonio terminal; and four additional crossings of the Laredo bridge itself.<sup>1</sup> Future traffic growth would of course increase these numbers.

18. The additional trains on UP's San Antonio-Laredo line would come from several sources: (1) Some would be shifted by BNSF from the Eagle Pass gateway to the Laredo gateway. BNSF says that it would shift the grain traffic it interchanges with

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<sup>1</sup> These figures do not include the new BNSF trains that would handle traffic that BNSF expects to divert from UP.



Ferromex at Eagle Pass to a Laredo routing in conjunction with TFM, transferring an average of one-half train per day in each direction from Eagle Pass to Laredo. BNSF Application, Hord V.S., p. 24. Since this grain moves in unit trains, BNSF would generally not be able to combine this traffic into other trains in order to reduce the number of additional train movements. (2) BNSF also plans to shift 90% of the United States-Mexico traffic it now interchanges with Tex Mex at Corpus Christi/Robstown to a direct BNSF route via trackage rights over UP between San Antonio and Laredo. This traffic amounts to one to two trains per day in each direction. BNSF Appl., Rickershauser V.S., p. 36. (3) BNSF also intends to establish new intermodal and automotive trains if given access to UP's route. These services would require dedicated trains. Since UP does not plan to bow out of these markets, BNSF's new intermodal and auto trains would result in the net addition of train movements. The number of additional BNSF trains in all of these categories would increase as cross-border traffic continues to grow.

19. All of these additional train movements would represent new movements on UP's line between San Antonio and the Laredo bridge, where there are no BNSF operations today. The additional trains on UP's lines in San Antonio and north of San Antonio would consist of all of the BNSF trains described in the preceding paragraph, with the exception of the BNSF trains diverted from Eagle Pass, which already traverse UP's San Antonio-Flatonia-Caldwell line. The additional trains at the Laredo bridge crossing would also consist of all of the trains described in the preceding paragraph, except that the traffic diverted from Tex Mex would not cause a one-for-one increase in the number of trains crossing the bridge. Nevertheless, the diversion of BNSF traffic from Tex Mex to UP's route would increase the number of train movements associated with the same volume

of traffic. That is because, today, Tex Mex can combine its own traffic (consisting primarily of KCS- and BNSF-interchange traffic) for movement across the Laredo bridge, and TFM can do the same with its deliveries to Tex Mex. With BNSF conducting separate operations at Laredo via UP's route, this would no longer be possible, resulting in more movements, of shorter trains, at the Laredo border crossing.

20. These operational effects would lead to significant additional congestion and train delays at every segment of the route over which BNSF's trains would operate, even taking account of the additional capacity UP is in the process of installing to address congested operating conditions.

**At San Antonio**

21. The addition of BNSF Laredo trains to UP's lines in the San Antonio terminal would cause significant additional congestion and delay. The San Antonio terminal is already very crowded with trains, and UP's own trains operating to and from Mexico already encounter (and cause) delay there. Most of UP's traffic to Mexico reaches San Antonio via UP's Austin Subdivision. That is also the route over which BNSF has permanent trackage rights, which were granted to permit BNSF service to and from San Antonio and Eagle Pass.<sup>2</sup> In the San Antonio terminal, trains moving to and from Mexico via the Austin Subdivision must cross UP's former-SP Sunset Route mainline, which handles about 50 UP train movements per day (plus four BNSF trackage rights trains to/from Eagle Pass), at grade (at Tower 105), and then operate through the middle of UP's

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<sup>2</sup> I understand that in this proceeding BNSF has asked for permanent trackage rights between Temple and San Antonio via Caldwell and Flatonia. As I explain below, BNSF's  
(footnote continued . . .)

principal San Antonio yard at SoSan. There are no tracks that permit trains to bypass the yard.

22. The Austin Subdivision north of San Antonio is among the most over-capacity segments on the entire UP system. It is used by an average of 16-20 trains per day, including numerous rock and other bulk trains, many of which must perform switching on the mainline. In addition, this trackage hosts Amtrak's *Texas Eagle* six times per week.

23. For a variety of reasons, trains on this route already encounter considerable delay traversing the San Antonio terminal. SoSan Yard, which is the principal facility on UP's system for classifying and staging Laredo traffic, is at capacity. In addition, because there is no mainline bypass track at SoSan, yard work often interferes with the movement of trains even if they do not require work at SoSan. When southbound trains must wait north of San Antonio for space to become available at SoSan, this in turn consumes scarce siding capacity on the overcrowded Austin Subdivision north of San Antonio and further blocks the movement of northbound trains departing San Antonio. Complicating this situation is the fact that the yard tracks at SoSan are not long enough to accommodate the longest Mexico-bound trains. BNSF's additional trains would make a difficult situation much worse

24. UP is aggressively addressing some of the existing bottlenecks at San Antonio. Among other things, UP is adding several additional tracks at SoSan that can be used by UP's switch crews to trim trains without blocking mainline operations. These

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(... continued)

operation of additional Laredo trains between Flatonia and San Antonio would also cause operating problems.



steps, however, will not create sufficient new capacity to accommodate BNSF's additional trains. UP is performing this work, at great expense, to permit UP to implement its merger operating plan, which calls for SoSan to become UP's principal facility for staging and classifying Laredo gateway traffic, thereby freeing up capacity elsewhere (such as Livonia and Fort Worth) moving this work closer to the Mexico border where it belongs. BNSF's use of new yard tracks at SoSan as running tracks through the yard would vitiate the benefits UP hopes to achieve with its investment in new capacity.<sup>3</sup>

25. Second, UP's southbound trains often encounter additional delays even when space is available at SoSan. The nearest siding at which trains can be held north of SoSan is North Loop Siding, near the San Antonio airport, about nine miles north of Tower 105 and 14 miles north of SoSan. With frequent operations on the Sunset Route mainline and heavy northbound traffic on the single-track between SoSan and North Loop Siding, it is often difficult for UP's dispatches to find windows big enough to permit southbound trains to reach SoSan without blocking the single-track mainline. This segment is also used by Amtrak's *Texas Eagle* six times per week. BNSF's trains could not be accommodated without significantly adding to the already undesirable level of train delay caused by the lack of adequate capacity on this line and at SoSan Yard. BNSF's additional

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<sup>3</sup> In my evaluation of the effect of BNSF's proposed operations, I have assumed that BNSF would not use UP's SoSan facility (or any other UP facility) to stage trains (or blocks of cars) for subsequent movement to Laredo, but would instead perform this function at its yard in Temple, Texas, or elsewhere on its own lines in Texas. Any attempt by BNSF to use SoSan would be an operational disaster. The SoSan Yard is already more-than-fully utilized by UP for its Laredo gateway traffic, and could not accommodate BNSF's trains. Nevertheless, as discussed above, BNSF's through trains would have no alternative but to operate through the yard if they used the Austin Subdivision north of San Antonio, as there is no mainline bypass track.

trains would also pose a serious threat to the ability of Amtrak's trains on this line to operate without incurring additional delay.

26. If BNSF were instead to operate its Temple-San Antonio-Laredo trains via Caldwell and Flatonia, the additional BNSF trains would cause similar operating problems at San Antonio. The Sunset Route hosts 55 trains per day, including Amtrak's *Sunset Limited* six times per week. In addition, in the San Antonio terminal, the Sunset Route mainline is also used by Amtrak's *Texas Eagle* six times per week to access Amtrak's San Antonio station, which the train reaches via a back-up move from Tower 105. East of San Antonio, Kirby Yard is a heavily-congested bottleneck. Most UP trains must stop at Kirby for crew changes and mandatory 1,000-mile inspections – often on the mainline because of an inadequate number of yard tracks – making this area a major bottleneck. BNSF's new trains would have to change crews at the same location, adding to congestion. Moreover, between Kirby and San Antonio is a three-mile stretch of single-track that poses another significant challenge to maintaining fluid operations. Yet another is the at-grade crossing with the Austin Subdivision at Tower 105.

#### **Between San Antonio and Laredo**

27. BNSF's proposed operations would also cause significant additional, and unnecessary, train delay on UP's single-track mainline between San Antonio and Laredo. Today, UP's mainline between San Antonio and Laredo is a partially unsignalled, 156-mile single-track line, with only five widely-spaced passing sidings. Trains are dispatched using track warrants. These basic infrastructure limitations place tight constraints on the volume of traffic that can be moved over the line without excessive delay. UP has thoroughly studied capacity on this line and determined that UP's own current level of train operations already significantly outstrips the line's capacity to handle train

movements without undue delay. UP therefore needs to make significant investment in new capacity just to catch up with traffic volumes.

28. UP is taking several steps to expand capacity on this line. As described in UP's March 1 report on Houston/Gulf Coast infrastructure, UP is installing CTC on the line and adding a passing siding at Moore, Texas (to be known as Yarbrough Siding), roughly in the middle of a 39-mile stretch of single track. These improvements will help a great deal, but BNSF is misinformed when it suggests that these improvements will add sufficient new capacity to accommodate BNSF's additional trains. Unfortunately, our analyses have shown that these steps alone will not even be sufficient to eliminate all of the delay associated with UP's existing level of train operations, and they will not create any margin of excess capacity to accommodate UP's own expected future traffic growth.<sup>4</sup> The addition of BNSF's trains to the line would take back much of the added capacity UP's investments will achieve and prevent the objective of UP's capacity expansion efforts – improved train performance on this line – from being realized. Even with CTC and an additional siding at Moore, there still will be too few sidings and too much distance between them to accommodate BNSF's traffic without adding to congestion and delay.<sup>5</sup>

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<sup>4</sup> Even if UP's capacity investments did make room for BNSF's trains, it would be inappropriate for BNSF to be given the right to usurp that capacity for its own use, making it unavailable to accommodate UP's traffic growth or improve train performance.

<sup>5</sup> The primary effect of adding CTC will be to allow dispatchers to set up train meets and passes more efficiently and reduce the delays caused when trains stop and wait to receive block authority from dispatchers under a track warrant system. By itself, however, CTC does not address the most serious capacity problem on this line, which is the lack of sufficient track space for all of the trains moving in opposite directions to meet, especially given the frequent need to use sidings to stage trains destined for Mexico.



**UP's Laredo-Area Facilities**

29. Operating problems and capacity constraints are perhaps even more severe in the vicinity of Laredo itself. Significant traffic growth in recent years has already resulted in UP's facilities operating above optimum capacity. As noted above, the efficient operation of an international border gateway places onerous demands on railroad infrastructure. UP's Laredo operations require a significant amount of track space in the vicinity of the border crossing to, among other things, (a) stage southbound trains while they await an available border crossing window; (b) classify northbound traffic, to supplement the rudimentary (and sometimes non-existent) blocking provided by TFM, and (c) hold locomotive power for use in handling northbound trains.<sup>6</sup> All of these activities need to be carried out without getting in the way of UP's northbound trains or impeding the progress of southbound trains to the Bridge when a crossing window becomes available. This intense need for infrastructure is heightened further by two characteristics of the Laredo border operation. First, it is imperative that trains be held as close as possible to the Bridge, so that when a crossing slot becomes available it is not necessary for trains to consume scarce crossing time reaching the Bridge. Second, the Bridge is a one-way operation, with alternating six-hour directional crossing windows. This requires, for example, that all southbound trains must be held north of the border during every six-hour northbound window, requiring extra track capacity for this purpose.

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<sup>6</sup> UP also devotes a significant portion of its Port Laredo facility to use as an intermodal terminal.

30. To meet these needs for facilities at Laredo, UP uses its Port Laredo facility, a stub-end yard with 12 classification tracks and four receiving and departure tracks that is 12 miles north of the border. UP placed this facility in service in 1994. UP also uses several staging tracks immediately north of the International Bridge. Those facilities are already at or above capacity. For example, trains heading to Laredo often must be held in mainline sidings between San Antonio and Laredo because there is insufficient room at Laredo, which in turn makes those sidings unavailable for use by northbound trains and further reduces capacity on this line.

31. UP is already doing all that it can to expand its existing facilities at Laredo, just to try to keep pace with traffic levels. For example, our capital plans call for several additional staging tracks adjacent to the mainline a few miles north of Port Laredo. BNSF's additional trains could not be accommodated on existing facilities and track capacity at Laredo, or even the additional capacity that UP is in the process of adding. There is simply no place to put those new trains without displacing UP's own trains. As a result, if BNSF's trains were added to this line, there would be no way to avoid them getting in the way of the fluid movement of trains to and from the Laredo bridge, causing gridlock and curtailing UP's ability to make efficient use of available crossing windows.

32. Nor is there any readily-available location at which BNSF could construct additional capacity along UP's line close enough to Laredo to permit efficient operations at the gateway. The available locations for potential new trackage are constrained by Interstate 35, which closely parallels UP's trackage for about 100 miles north of Laredo, the location of UP's own existing (and planned) facilities; and the location of existing industrial spurs. Even if new trackage could be located, moreover, the movement of

BNSF trains into and out of that trackage would impose burdensome new operations on UP's already-congested single-track mainline near Laredo.

**At the Laredo Bridge Crossing**

33. Other problems would be caused at the border crossing itself by the addition of BNSF trains operating via UP's route. The single-track International Bridge is perhaps the most severe bottleneck confronted by rail traffic moving between the United States and Mexico via the Laredo gateway. Operations at the bridge crossing are inherently difficult for numerous reasons. Trains must be inspected by customs, agricultural officials (especially for grain trains), and often narcotics authorities that conduct surprise "SWAT" inspections. Even after much of the work of government agencies has been moved off of the bridge itself and to nearby staging tracks, delays to trains crossing the bridge are still frequent and unpredictable. It is not at all uncommon for a single train to spend several hours on the bridge, not counting the time spent approaching the bridge after being called. The significant amount of time often required for trains to cross the bridge severely limits the total crossing capacity of this facility.

34. Close coordination among the three railroads serving the bridge is absolutely essential to permit operations to be carried out at all, much less to make full use of the bridge's limited capacity. Before a train can be moved toward the bridge, the railroads must confirm with each other that space is available on the other side of the border to receive it. Communication with and among the railroads north of the border is also necessary to determine whose trains will cross next.

35. The bridge's capacity is also tightly constrained by the relatively-cumbersome operating conditions on the approaches to the bridge. Unless there is extraordinary careful advance planning (which is often not possible even under the best of



conditions), when a train receives word that its turn to cross has come, it often requires considerable time to reach the bridge, creating unavoidable down-time on the bridge. For example, there is not sufficient room at the north end of the bridge for Tex Mex's southbound trains to wait at the bridge for their turn to cross without blocking grade crossings in downtown Laredo. As a result, those trains wait at Tex Mex's yard on the other side of town, and after they are called for the bridge they must traverse several miles of slow-speed running through downtown Laredo to reach the bridge. Similarly, although UP's trains can wait closer to the bridge, most of UP's waiting trains must be broken apart at several grade crossings, requiring that crews spend considerable time re-assembling them when it is time to cross (unless perfect planning, coupled with the lack of unforeseen delays to the train ahead, allows those trains to be made ready to cross in advance of a slot becoming open).

36. These capacity problems are exacerbated by congestion at TFM's facilities in Nuevo Laredo, where TFM must perform the mirror-image of the work performed north of the border – making room to receive southbound trains while at the same time holding northbound trains for movement across the bridge. Even though TFM does not make all the blocks for UP that UP requests – requiring UP's facilities north of the border to re-classify merchandise traffic before sending it north out of Laredo – TFM still has had difficulty with congestion at its Nuevo Laredo facilities. This has affected TFM's ability to deliver all the traffic UP and Tex Mex can accept – because it has not been able to assemble trains for delivery. It has also affected TFM's ability to accept all the traffic UP and Tex Mex have had available to deliver – because its tracks are clogged with northbound traffic. This in turn prevents the bridge's limited capacity from being used to its fullest potential.

37. At Laredo, whenever operations are not at their optimum level – whether because of delays caused by government officials, inevitable missteps in the planning and coordination of the movement of trains to the bridge, the lack of available space on either side of the bridge to accept traffic, congestion-caused delays in delivering traffic to Laredo, or any other reason – the situation can very easily, and very quickly, deteriorate. If only one or two trains fail to get across during the course of a directional operating window on the bridge, trackage at the gateway can become clogged and traffic can quickly pile up on one side the border or the other (or both). Missed crossings are very hard to make up because all of the bridge's available capacity is already consumed during every available crossing window. And the trains that are backed up waiting to cross leave less room for trains moving in the other direction. The unavoidable consequence of any impediment to maximum utilization of the bridge's capacity -- or increase in the volume of traffic needing to cross -- would be further reductions in the already-strained capacity of the bridge and a serious risk of gridlock.

38. Because of these conditions, the proposed BNSF operations would cause extraordinary operating problems, and create the very real potential of a complete service meltdown at Laredo. There would be additional trains needing to cross the Laredo bridge, but no capacity on the bridge to accommodate those additional crossings, and no space on either side of the bridge to hold those trains while they waited to cross. Moreover, many of BNSF's new trains -- those diverted from Eagle Pass -- would be grain trains, which typically use the most crossing capacity because of the need for time-consuming agricultural inspections.

39. Moreover, BNSF's mere presence at Laredo – without regard to whether its operations resulted in additional bridge crossings – would achieve a reduction in bridge crossing capacity. BNSF's presence at Laredo would create a need for coordination among four railroads instead of three, making communications and coordination of the railroads' operations disproportionately more difficult and multiplying the opportunities for inadvertent delays, missteps and missed crossing opportunities. These complications would cause a direct reduction in the total throughput of the bridge and result in significant delays or even gridlock, especially with additional trains that would be competing for the reduced capacity.

40. The efficiency of the bridge crossing process would be further reduced by the fact that TFM would need to make additional blocks to accommodate BNSF's operations. In addition to its current blocks for Tex Mex and UP, TFM would have to prepare separate blocks of BNSF traffic – or at least handle BNSF's blocks in separate train movements. Not only would these additional blocks require scarce track capacity at Nuevo Laredo, they would also mean more TFM northbound bridge crossings, since TFM could no longer deliver BNSF traffic together with its Tex Mex traffic for combined handling by Tex Mex.

41. BNSF's proposal that separate operating windows be created to accommodate its own operations is misguided and reveals a fundamental lack of understanding of Laredo operations. Fragmentation of the existing windows would be inconsistent with the operations of governmental agencies on both sides of the bridge, and would also cause a disastrous net reduction in the capacity of the bridge. Reducing the duration of the alternating six-hour windows currently in use to create separate windows for



BNSF's operations would not only leave less time for Tex Mex and UP trains to cross, but reduce the total number of trains all of the railroads would be able to cross during their windows. A greater number of shorter windows would mean more missed windows, which – as I explained above – can never be made up given the lack of excess capacity on the bridge and its ancillary facilities.

**Recent Experience Confirms that the Addition of BNSF Trains Would Create Serious Operating Problems**

42. Recent experience at Laredo confirms the potentially serious adverse consequences of adding additional, unnecessary train movements to the Laredo gateway. In March of this year, a series of events precipitated a crisis at the Laredo gateway. Congestion in Texas, operating difficulties on TFM, which had only recently commenced operations, inopportune derailments north and south of the border, and greater-than-normal delays associated with agricultural and customs inspections on the Laredo bridge together led to a backlog of traffic needing to cross the border and at the same time reduced the capacity of the gateway to handle even normal volumes of traffic. The result was virtual gridlock, not only at the bridge but on UP's and TFM's single-track lines leading to Laredo. Despite extraordinary efforts, it proved impossible to increase the crossing capacity of the bridge sufficiently for UP to work off its back-log of traffic – which for a time reached all the way to Kansas on UP's lines – and UP ultimately had no choice but to declare an embargo of most traffic moving to Mexico via Laredo.

43. The embargo, coupled with ongoing efforts to achieve incremental improvements in the capacity of the Laredo gateway through improved coordination among railroads, more efficient processes for government inspections, and continued investment in additional facilities, ultimately succeeded in rescuing the gateway from gridlock. The three

railroads at Laredo have managed to achieve a delicate equilibrium that allows the gateway to function reasonably well for existing levels of traffic. The additional facilities these railroads are constructing will help to improve the efficiency of the gateway for current operations and, with luck, allow the gateway to accommodate traffic increases that are anticipated with growing NAFTA trade.

44. However, this experience – reinforced by careful study of operating and infrastructure issues at Laredo carried out by UP, Tex Mex and TFM – provides the clearest possible confirmation that the Laredo gateway and the ancillary trackage that serves it cannot accommodate additional (and unnecessary) new train operations without degrading the efficiency of the gateway and reducing its capacity, and thus posing a very real threat of precipitating the same kind of crisis that occurred earlier this year.

#### **Eagle Pass Problems**

45. BNSF's plan to shift its grain traffic from the Eagle Pass gateway would also threaten efforts by UP, BNSF and Ferromex to improve the efficiency of the Eagle Pass gateway and undermine Ferromex's emerging role as a strong and effective competitor of TFM within Mexico.

46. UP, BNSF and Ferromex have been working together at Eagle Pass to develop improved physical infrastructure to serve that gateway – including additional staging tracks north of the border – and to improve the efficiency and coordination of their railroad operations and the associated border-crossing processes.<sup>7</sup> Ferromex has been an

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<sup>7</sup> For a time earlier this year, Eagle Pass experienced congestion caused by inadequate infrastructure on both sides of the border to handle surging traffic volumes and the addition of separate BNSF trackage rights operations. This congestion led UP, BNSF and Ferromex  
(footnote continued . . .)

eager participant in these efforts. It has placed a strong emphasis on international cross-border traffic, and is in the process of investing in its own lines within Mexico that serve the Eagle Pass gateway so that it can become a more effective competitor against TFM for movements of international traffic within Mexico.

47. A shift of BNSF's grain traffic from Eagle Pass to Laredo would not cut into Ferromex's cross-border traffic base and threaten to dampen Ferromex's incentives to continue its efforts to improve its capabilities via Eagle Pass, perhaps in favor of traffic opportunities elsewhere within Mexico. The Board should not allow BNSF to siphon traffic from the Eagle Pass gateway to the already overcrowded Laredo gateway.

## **II. BNSF'S REQUEST FOR ADDITIONAL RIGHTS BETWEEN HARLINGEN AND BROWNSVILLE**

48. BNSF asks for additional operating rights between Harlingen and Brownsville for the stated purpose of serving the Brownsville and the Brownsville gateway more effectively via trackage rights instead of haulage. In particular, BNSF asks for (a) temporary trackage rights over the former SP line between Harlingen and Brownsville, in addition to its existing rights over the UP line between these points, pending the completion of a rail bypass project, and (b) the right to use BRGI as BNSF's agent on a permanent basis between Harlingen, Brownsville and the connection with TFM at Matamoros, Mexico.

BNSF Application, p. 14; *Id.*, Rickershauser V.S., pp. 15-17. BNSF asserts two justifications for its requests: "erratic and often substantially delayed" haulage service that

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(... continued)

to adopt mutually-agreed limits on the volume of traffic they would move via Eagle Pass to avoid the kind of gridlock that developed at Laredo. Congestion problems have since been overcome, and the volume limitations are no longer in place.



UP has been providing and "current unique rail routes in the Brownsville area resulting from an incomplete rail bypass project." Application, p. 13.

49. BNSF's complaints about erratic and delayed haulage service to Brownsville provide no justification for BNSF's requests. UP provides BNSF haulage services in UP's own trains. BNSF haulage traffic arrives and departs Brownsville in UP's own through trains, and it is delivered to industries, the BRGI and TFM using the same local operations that UP uses to handle traffic in its own account. Moreover, although UP's trains on this line suffered delays during the worst of UP's service difficulties, operations are now back to normal and are neither "erratic" nor "substantially delayed."

50. In addition, BNSF has always had the right to commence its own trackage rights operations if it were sincerely dissatisfied with UP's haulage service. Neither the incomplete status of the ongoing line relocation project nor anything else has prevented BNSF from establishing trackage rights operations over the former UP line between Harlingen and Brownsville, which is the same line that UP uses for its own trains to and from Brownsville to serve both the border gateway and shippers at the Port and elsewhere in Brownsville.

51. Nevertheless, now that BNSF apparently wishes to establish its own trackage rights operations between Harlingen and Brownsville, UP shares BNSF's interest in having those operations carried out in an efficient manner, so as not to cause unnecessary interference with UP's own Brownsville operations. UP gave careful consideration to how BNSF's operations would could be carried out most efficiently for all concerned, and we concluded that BNSF's proposal to operate most of its trains excluding only unit grain train movements, via the former SP line on a temporary basis made good sense. Until the

completion of the final stage of the ongoing track relocation project, which involves a "bypass" connection between the former UP and former SP lines west of Brownsville that permits a direct connection between the UP line and the Port of Brownsville (shown on the attached map), the most efficient way for BNSF's traffic to reach a connection with the BRGI at the Port of Brownsville is via this route. Accordingly, UP has made a proposal to grant BNSF trackage rights over the SP line on a temporary basis until the completion of the new bypass connection.<sup>8</sup> These are precisely the additional trackage rights BNSF has requested.<sup>9</sup>

52. Moreover, UP is also willing to have BNSF use its existing trackage rights over the former-UP line for unit grain trains, just as BNSF has proposed. UP only asks that BNSF commit to taking reasonable steps to ensure that BNSF's new train operations do not cause undue interference with UP's operations on this line. Preventing such interference requires that BNSF's trains be pre-cleared to cross into Mexico before they head toward Brownsville and that a new siding be constructed – at UP and BNSF's joint expense – to meet and pass trains and to chamber trains that encounter unexpected problems crossing the B&M Bridge into Mexico. See Holm Letter, ¶ IV.

53. UP has also agreed to allow BNSF to make limited use of BRGI as its agent for the interim period until completion of the new bypass connection. UP is willing

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<sup>8</sup> That proposal is set forth in a letter from John W. Holm to BNSF and BRGI dated September 5, 1998, a copy of which is attached hereto. See Holm Letter, ¶ I.

<sup>9</sup> UP has proposed that BNSF compensate UP for its use of these new rights on the basis of its pro-rata share of actual maintenance and operating expenses plus a customary interest rental component, which is particularly appropriate given that BNSF would be the dominant user of this segment.

to allow BRGI to act as BNSF's agent only in the Brownsville terminal, for purposes of serving the Port of Brownsville, accessing other local industry in Brownsville, and effecting interchange with UP in downtown Brownsville via the Port Lead (which BRGI has leased and operates). UP would transfer BNSF traffic between BRGI and TFM, which is how BRGI-TFM traffic is handled today. This limited agency arrangement would allow BNSF to originate and terminate its Brownsville trains at the Port of Brownsville, and avoid the need to operate over the Port Lead and perform its own switching operations.

54. On the other hand, there is no justification for BNSF continuing this agency arrangement on a permanent basis or expanding it to permit a direct connection between BRGI and TFM or to allow BRGI to operate as BNSF's agent on UP's mainline between Harlingen and Brownsville.

55. A direct interchange between BRGI and TFM – whether on a temporary or permanent basis – is not justified and would cause potential operating problems. Maintaining efficient border crossing operations is already complicated enough, and crossing capacity is already constrained by the inherent difficulties of cross-border operations. The addition of direct BNSF interchange with TFM at Brownsville (for BNSF's unit grain trains, for example) will complicate operations at the B&M Bridge further (although it should not add new train movements). Adding BRGI to the bridge, however, would multiply the number of train movements on the bridge, causing unnecessary additional congestion on the bridge. Adding a fourth carrier – BRGI – with whom operations would need to be coordinated would also make border operations more complicated and difficult, inevitably reducing the total capacity of the Brownsville gateway. BNSF's cross-border traffic should be interchanged directly between BNSF and TFM (or



handled in UP's existing cross-border movements during the interim period, as UP proposes), to avoid these problems.

56. Extending BRGI's agency role to include operation over the Harlingen-Brownsville segment also is not justified. There is no reason that BNSF cannot conduct its own operations between Harlingen and Brownsville, as its trackage rights agreement with UP anticipates. Moreover, there are inherent inefficiencies associated with introducing a third carrier (BRGI) on trackage in Harlingen that would already be shared by two railroads.

57. Nor is there any justification for making BRGI's agency role – even if limited as UP proposes – permanent. After the completion of the bypass connection, and the elimination of BRGI's cumbersome operations on the Port Lead between the Port of Brownsville and downtown Brownsville, BNSF will be able to interchange efficiently with BRGI via the new connection and also interchange directly with TFM via the former UP line over which it would be operating. SP would not have been able to use BRGI as its agent absent the merger. Nor could UP do so consistent with its labor agreements. UP conducts its own operation on this line – rather than using BRGI as an agent – and there is no reason BNSF should not do so as well.

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET  
OMAHA, NEBRASKA 68179

September 5, 1998

**Via Facsimile (956) 831-2142**

Mr. Larry Cantu  
President & Chief Operating Officer  
Brownsville and Rio Grande International Railroad Company  
P. O. Box 3818  
Brownsville, Texas 78523

**Via Facsimile (817) 352-7432**

Mr. Rollin Bredenberg  
Vice President Transportation - South  
The Burlington Northern and  
Santa Fe Railway Company  
2600 Lou Menk Drive  
Fort Worth, Texas 76131

Gentlemen:

Supplemental Order No. 1 to STB Service Order 1518, served December 4, 1997, expired on August 2, 1998 and a 45 day wind down period has commenced.

Union Pacific's past proposal, in response to various request by both BRGI and BNSF regarding operations in: (a) Brownsville, Texas, (b) between Brownsville and Harlingen and (c) operations to and from TFM, have been predicated on expiration of Service Order 1518.

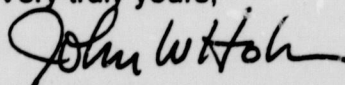
This letter will summarize UP's position in light of the expiration of Service Order 1518. UP is agreeable to the following:

- I. UP will grant BNSF temporary overhead trackage rights over former SP Harlingen-Brownsville line for Port of Brownsville, Brownsville local or carload traffic to TFM. Compensation would be based on pro-ratio of actual M&O expenses and customary interest rental component. These rights would cease upon completion of the portion of the bypass between the UP and SP lines, after which UP would abandon the SP line between Arroyo and Los Fresnos.

- II. BNSF will utilize its own crews for all of its trains moving south of Harlingen, with Harlingen serving as a crew base for BNSF trains.
- III. UP will lease the former SP yard at Harlingen to BNSF for staging Mexico trains and to support its south Texas operations. Alternatively, UP is agreeable to selling the SP Harlingen Yard to BNSF at its fair market value with the understanding that such sale would satisfy the condition in Section 4 (b) of the Settlement Agreement dated September 25, 1995 between BNSF and UP/SP that provides that BNSF has the right to purchase, at fair market value, a yard in Brownsville to support trackage rights operations.
- IV. BNSF will use its current trackage rights over UP Harlingen-Brownsville line for unit grain trains with understanding that trains must be pre-cleared and that a slot is available for uninterrupted movement across the B&M bridge. Also, further require the construction of an 8,000 foot operating siding for meeting and passing trains, jointly paid for by UP/BNSF, at approximately Milepost 4.0 and also to serve on an emergency basis only to chamber trains if they encounter problems crossing bridge.
- V. BRGI may act as BNSF agent in Brownsville only, on a temporary basis to handle BNSF traffic to: (a) local Brownsville customers, (b) Port of Brownsville and (c) for interchange to/from UP (including TFM interchange). This temporary arrangement shall cease upon abandonment of those portions of the Port Lead affected by the relocation project.
- VI. After relocation project is complete, (a) BRGI/UP traffic will be interchanged with UP at UP's new Olmito yard with UP handling BRGI's traffic to/from TFM with a charge to be established using the methodology that applies to the current arrangement, (b) BRGI/BNSF traffic will be interchanged at the Port of Brownsville (c) BNSF will handle its traffic to TFM directly and (d) BNSF will abandon its rights over that segment of the Port Lead affected by the relocation project and UP will grant BNSF substitute trackage rights over the new line between Olmito and Port of Brownsville under the same terms as the existing Algoa to Brownsville Trackage Rights Agreement after which BNSF will handle its traffic directly to Port of Brownsville.

We stand ready to discuss these terms to reach a permanent agreement as outlined above.

Very truly yours,

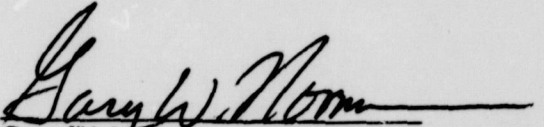


Assistant Vice President -  
Support Services



VERIFICATION

I, Gary W. Norman, declare under penalty of perjury that the foregoing statement is true and correct. Further I certify that I am qualified and authorized to provide this statement.

  
Gary W. Norman

Dated: Sept 16, 1998



**VERIFIED STATEMENT**

**OF**

**MICHAEL D. ONGERTH**

My name is Michael D. Ongerth. I am General Director-Joint Facilities for Union Pacific Railroad Company, 1416 Dodge Street, Omaha, Nebraska 68179. Prior to the UP/SP merger, I was Vice President-Strategic Development for Southern Pacific Transportation Company in San Francisco. During my nearly thirty years at SP, I held a number of field operating positions, served as Vice President and General Manager of the Northwestern Pacific Railway Company, and, later, was responsible for network and systems operations planning, supervision of system Amtrak operations, and supervision of system intermodal operations. In addition to my system-level jobs, I was specifically assigned to SP's Texas lines in 1971 and 1972, again from 1975 to 1978, and once again in the fall of 1979.

In this verified statement, I will discuss SP's physical plant in the Houston and Gulf Coast area from the 1970s until the UP merger in 1996. I am familiar with the testimony provided by Alan DeMoss, who was SP's Vice President - Operations and Senior Vice President - Operations from 1978 through 1981. I agree with his description of what we called "World War III," a period of at least two years from the fall of 1978 through the fall of 1980 when SP suffered severe congestion in the Houston and Gulf Coast area. I agree with him that "World War III" resulted from minimally adequate capacity overwhelmed by traffic growth, combined with a locomotive shortage and a backlog of traffic for Mexico. Because of its financial limitations, SP added little



of the capacity in the area that might have averted "World War III," and it actually reduced capacity in the decade and a half between "World War III" and the UP merger.

SP's Texas and Louisiana Lines in the 1970s

In the 1970s, the SP in Texas and Louisiana was different from the rest of the SP. In 1997, its unique history was still visible.

Until the 1970s, the Southern Pacific system operated virtually as three separate railroads. SP's Pacific Lines comprised the majority of the SP from El Paso all the way to Portland, Oregon. The Cotton Belt was a separate subsidiary, running from East St. Louis and Memphis into northeast Texas. The remaining SP lines in Texas and SP's Louisiana lines comprised the "T&L Lines," the Texas and Louisiana lines, which had previously been the Texas & New Orleans Railroad. Before the 1970s, these three parts of the SP system had separate managements. Unlike today's railroads, the Cotton Belt, the T&L Lines and the Pacific Lines rarely rotated managers among the three divisions. Especially on the T&L Lines, the managers were home-grown and stayed on that property throughout their careers. Not until 1977 did SP's San Francisco headquarters assert direct management responsibility over the T&L.

T&L Lines managers were proud and independent, and they seemed to me to take pride in running their railroad on a shoestring. The T&L Lines did not receive the same level of investment as the Pacific Lines. I do not know whether the T&L Lines managers requested the same level of funding as Pacific Lines managers and were denied, or requested lower levels of funding in the first place. Whatever the original reasons, the T&L Lines did not receive the level of investment that SP's San Francisco

headquarters channeled to the nearby SP lines in California and Oregon with which most San Francisco-based officers were more familiar. The T&L used a lower standard of maintenance.

When I first worked on the T&L Lines in 1971, it was obvious to me that their infrastructure was inferior to the Pacific Lines infrastructure further west. T&L Lines trackage was in poor condition. Main lines on the T&L generally were inferior to secondary lines in California, and some of the California branch lines were equal to T&L mains. Tie condition in Texas was generally poor. Almost all of the rail was jointed rail, and most of it was only 112 pound rail, unlike the heavy, continuous welded rail on many of the Pacific Lines. The T&L Lines suffered numerous derailments, some of them catastrophic, because of track conditions. When I worked in North Texas in 1975, the T&L was still installing 115 and 119-lb. rail on small 8 ½-foot ties, a smaller standard than was employed on the Pacific Lines and most other major railroads.

Yards and industrial track were also in poor condition. Yards on the Pacific Lines had adequate track structures. Many were hump yards or at least had electrified switches on the switching leads. On the T&L lines, yard track structure was marginal and virtually all of the switches were manually operated. I recall one instance between 1975 and 1980 in which the FRA inspected our yard at Ennis, Texas, and took all 19 of the yard tracks out of service because they did not meet FRA's lowest track standard. Miller Yard in Dallas was in bad shape. Hearne Yard was worse.

The industrial tracks in the Houston area were no exception. The Bayport Loop, which then as now carried large volumes of hazardous chemical traffic, had been

constructed only two years earlier when I got there in 1971, but the maximum speed limit was down to 5 m.p.h. on portions of the loop because of poor track structure. When SP built the Bayport Loop, it did not provide for subgrade stabilization on the flat, swampy terrain. As a result, the subgrade quickly failed under the heavy chemical loads, and we had numerous derailments. I recall that, shortly before a senior management inspection, we dumped many carloads of fresh ballast on the Bayport Loop so that the inspection train could pass at a normal speed and the San Francisco officers would be unaware of the flawed condition of the subgrade. This is an example of T&L lines officers trying to make do with inadequate resources but not asking for help. Within a few weeks, a train derailed on the Loop, and the maintenance official responsible for the track was fired because he had failed to reinstate the 5 m.p.h. speed limit soon enough.

The design of industrial trackage was inferior on the T&L lines as well. On the Pacific Lines, SP constructed industrial trackage like most other railroads. It built switching leads, called "drill" tracks, that provided room for switch engines to get off the mainline while switching local industries. The T&L Lines generally did not have drill tracks. Instead, the industrial tracks are connected directly to main line tracks, which requires a local or switch engine to block the main track while switching an industry. This has the effect of reducing effective track capacity. This trackage pattern is still apparent on trackage throughout the SP Gulf Coast area.

On the T&L we had the bare minimum trackage to do the job. I was responsible for the Strang/Bayport area operation long before SP built Strang Yard, one



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of its few new facilities in the Gulf Area in its final 25 years. In only one year, traffic on the SP Galveston Subdivision, which includes Strang, doubled. We had to switch this traffic on two setout tracks plus the three sides of a wye. Switching was carefully choreographed because we did not have sufficient facilities.

On the Pacific Lines, most main lines were equipped with Centralized Traffic Control systems that allow dispatchers to control switches and signals. Except where another railroad or a public agency had funded CTC, the T&L lines had no CTC early in the 1970s. Most mainlines were equipped only with Automatic Block Signals. SP's main chemical route north of Houston, the "Rabbit," was dark territory, which is less desirable for chemical traffic and more difficult to dispatch.

T&L Lines management took pride in running priority trains, such as the Blue Streak Merchandise, at high speeds on jointed rail without CTC. Their ability to do this may have masked the poor overall condition of the railroad.

In my opinion, SP's San Francisco management was also reluctant to invest in the T&L Lines for a number of years because it hoped to acquire the southern half of the Rock Island Railroad, which would have reduced traffic on the T&L in favor of a shorter route through Tucumcari, New Mexico. Into the 1970s, management viewed the Tucumcari-Rock Island route as the preferred route to the Midwest. Regardless of the reasons, the T&L Lines in the early 1970s had received relatively little investment for a number of years. They were in deteriorated condition, and very little investment had been made to prepare for traffic growth. This pattern of capital

expenditures to correct maintenance deficiencies, rather than to expand capacity, continued all the way through the mid-1990's to the merger with UP.

From 1972 into 1974, T&L traffic surged, resulting in severe congestion. SP suffered locomotive shortages, crew shortages and traffic delays throughout the Gulf Coast area and in Houston. This traffic growth, combined with an outcome in the Rock Island case that was unacceptable to anyone and resulted in its demise, prompted SP to rehabilitate parts of the T&L. So much of the railroad was in poor condition that the priority was refurbishing existing facilities, not adding new ones. In general, T&L management invested in rehabilitating and upgrading the mainlines that were still needed for California - Midwest transcontinental service. The Sunset Route received continuous welded rail and CTC from El Paso to Flatonia, the junction point east of San Antonio where traffic to St. Louis and Memphis turned north.

During this period, the T&L added two more tracks at Strang. Otherwise, there was little or no new investment in the Houston and Gulf Coast area. Economic activity and consequently rail traffic slowed in 1974, solving the congestion problem and bringing SP's spending wave on other parts of the T&L lines to an end. Over the next five years, the T&L received subsistence maintenance support, as Mr. DeMoss explains, and virtually no capacity expansion.

The T&L Lines reached the late 1970s with essentially their 1970-vintage physical plant unimproved with few new capacity enhancements. Then, in 1978, the stressed T&L Lines collapsed into World War III. For more than two years, SP service was in crisis in the Houston and throughout the Gulf Coast region.



A strong economy placed burdens on the SP system throughout the West, and by late summer of 1978, SP was in a transportation crisis. Traffic growth was particularly strong in the Houston area, where chemical and plastics traffic surged. For example, plastics shipments on SP increased by 21% from 1978 to 1979, and most of those shipments required double-handling because plastics products usually require storage in transit. In addition, U.S. grain sales to the Soviet Union pushed heavy volumes of grain through Houston and Galveston port facilities. In 1979, traffic to Mexico surged. All the U.S. railroads serving Mexico instituted embargo and permit systems. SP filled the east end of its Bellaire Branch with 400 cars for Mexico, and Mexico traffic filled sidings as far north as Pine Bluff, Arkansas.

As traffic grew, SP was not ready. SP suffered from a severe locomotive shortage, resulting from the flawed locomotive maintenance program that Mr. DeMoss discusses. Between 20 and 25% of SP's locomotives were out of service on any given day. SP's locomotive fleet also averaged 5 to 6 years older than most other railroads, and SP usually ran the locomotives to failure, rather than performing preventive maintenance. In addition, as UP experienced last fall, when congestion builds up, it traps locomotives and reduces locomotive utilization, so that the functioning locomotives were less productive. As trains fail to leave yards as planned and move slowly over the road, crews run out of time under the Hours of Service Law and the resulting crew shortages make it even harder to move trains. SP made regular use of management crews and borrowed train crew members from other parts of the SP system. In addition, SP hired experienced train and engine crews from all available sources.

From October to December 1978, SP senior management stationed me in Houston on special assignment. Although I had a nominal assignment, my real task was to evaluate the situation and assist local management in developing solutions. I found a railroad near gridlock. Train speed had declined dramatically. SF manifest trains required 4 to 6 days for the run between Houston and New Orleans. The transit time for SP's highest priority train from New Orleans to Houston increased from 16 ½ hours in October 1977 to over 35 hours in July, 1979 and to over 49 hours in December 1979. Although SP was not installing a new computer system, cars became lost. SP stashed strings of cars on every available unused industry spur and branch line, causing extensive delays. Englewood Yard was severely congested with a 50% increase in switching in 1979, and it often was unable to receive trains. Plastics SIT cars were stored in 19 different locations in the Houston area alone during 1979.

In December, SP attempted to clean out Englewood by pulling trainloads of cars out of the yard and stashing them on the west end of the Bellaire Branch. Six weeks later, those cars - including customers' loaded cars - were still on the Branch.

By 1979, SP's San Francisco management was paying close attention to Houston. In February it created a new position of General Manager and Assistant Vice President-Operations based in Houston. Later that year, SP added additional managers in the Houston area. Lacking CTC, it added train-order operators on the line between Houston and Avondale. It divided dispatching territories on the same line so that dispatchers would face less pressure.

SP management also recognized that it had to rehabilitate the eastern half of the T&L, not to expand traffic, but merely to stay in business. It began a crash campaign to resuscitate the T&L. It rebuilt the Bayport Loop and the HL&P Lead, providing the subgrade that had not been installed earlier. In 1979, it spent \$26 million on maintenance, including 105 miles of rail and over 150,000 ties, between Houston and Avondale. It rebuilt half of the classification (bowl) tracks at Englewood Yard, although this rebuilding actually had the effect of reducing yard capacity by shortening the length of the bowl tracks. It virtually rebuilt Beaumont yard, which had become unstable due to inadequate subgrade support. Two tracks were rebuilt at Lafayette Yard in Louisiana. In a major rehabilitation project, SP rebuilt the Bellaire Branch west of Houston, including a new bridge over the Colorado River, recreating by 1981 an additional main track for 55 miles west of Houston and initiating a form of directional running. All of this work was necessary to bring facilities up to operating condition and represented the bulk of SP's expenditures in the area.

SP also embarked on a capacity expansion program that was decades late in coming. With limited resources, though, it could not expand facilities the way a UP or Santa Fe could. It added CTC between Houston and Echo, a distance of about 95 miles east of Houston, but not between Flatonia and Houston or between Echo and Avondale. It rehabilitated Dayton and added two tracks at Dayton. It built a new connection to the Galveston line near Englewood. In the Beaumont area, SP lengthened one siding and added another, as well as building a bypass track around a yard. West of



Houston, it rehabilitated Eagle Lake Yard, added a few tracks at Glidden Yard, which it also rehabilitated, and began construction of Kirby Yard east of San Antonio.

The most significant capital expansion in the Houston area was Strang Yard, completed in 1980 at a cost of \$4.1 million. SP added approximately ten tracks at Strang to support continuing growth in chemical traffic in the Bayport area. It also added several tracks in Englewood's East Yard so that the yard could accept more trains, and it added trackage on the Clinton Branch to support grain exports.

SP had many other capacity-expansion plans that were never carried out. For years, SP considered building a much-needed Storage In Transit (SIT) yard in the LaPorte area, near Strang, but the project was left on the cutting room floor in each annual budget process. The LaPorte storage project became our annual maintenance slush fund. We would put it in the budget and then, when maintenance needs became emergency needs, we diverted the funds to track repairs. The 1982 recession ended SP's capital expansion plans, and SP canceled most expansion plans, and most projects not completed, were canceled or curtailed.

In my opinion, several factors combined to allow SP to bring World War III to an end after October, 1980. Traffic growth slowed and then reversed as we entered the 1980s, reducing the pressure on our physical plant. Under the direction of Bill Lacy and Rollin Bredenberg, SP adopted a series of operating changes that took switching activity out of Englewood. It began switching trains on a planned basis at every other available yard, including running some traffic past Houston and returning it on other trains. It adopted a practice of hauling outbound trains out of Englewood and

other terminals and parking them so that the terminals could accept inbound trains and keep working. It worked with other railroads to eliminate interchanges of grain traffic and instead move grain directly to the ports. It eliminated a number of uneconomic local switching movements that caused congestion in Englewood. In 1980, in a very important change, it instituted unit train rates for rock service (over the opposition of other railroads and at least one large rock shipper), which allowed it to reduce switching of rock cars in Englewood. And it took advantage of its improved infrastructure, especially between Houston and Avondale. By the end of October, 1980, the SP in the Houston area suddenly became fluid again, just as UP became fluid again in the Houston area this April. When the Bellaire Branch reopened in 1981, SP had enough capacity to handle all the traffic tendered to it.

After 1981, with the exception of additions to intermodal facilities, SP never again expanded capacity in a significant way in Houston and along the Texas Gulf Coast. It added some facilities, but throughout the remainder of its existence, SP essentially did not build for growth in this region. As a result, most of the growth in rail traffic in the Houston area went to other carriers, principally UP, BN and Santa Fe. In many ways, SP steadily reduced capacity. As facilities deteriorated due to lack of maintenance, SP lacked the money to repair them. It had no choice but to abandon them.

Throughout the eastern half of Texas, SP gradually reduced operating capacity in the 1980s and 1990s as facilities deteriorated and the money was not available to rebuild them. Although rebuilt in 1981, the Bellaire Branch was allowed to

decline until it became a 10 mph railroad instead of a second mainline, making directional running impossible and forcing all traffic back to the Glidden subdivision. In 1986, it retired the "Beaville Line" from San Antonio toward Corpus Christi after a rock train derailed and destroyed a long bridge on the line, eliminating the second of SP's three routes towards Brownsville. SP later abandoned its Rocklin Branch between Beaumont and Lufkin, which had served as a bypass around Houston for chemical traffic to and from the Beaumont and Lake Charles areas, because the branch was not economical to operate.

SP eliminated substantial amounts of yard capacity, including some of the yards that had supported Houston in bringing "World War III" to a close. Ennis Yard gradually deteriorated and was finally closed in 1986 or 1987. Most of the tracks at Glidden Yard were removed. In Houston, Depot Yard in the center of the city was retired. Navigation Yard was taken out of service. The SP Engineering Department persuaded management to rebuild Cheney Yard in Houston, but after tearing out the tracks, it used the money for other purposes, eliminating that yard in the early 1990s.

In the opinion of many SP officers, SP's worst major capacity error occurred at the beginning of 1990, when SP ceased operations on the Wharton Branch over most of the distance south of Rosenberg, Texas, to Victoria. SP made this decision even though the Wharton Branch was a main route to the Tex Mex and Mexico traffic was surging. As a result, SP had to run all of that traffic via Flatonia to Corpus Christi.

In the early 1990s, SP reorganized the trackage at Hardy Street Yard in Houston. This work was needed, because the tracks were too close together and unsafe



for employees, but the new yard had less capacity than the old one, and the capacity was not replaced. By keeping locomotive repairs at Hardy Street, SP preserved an inefficient operation in which locomotives had to shuttle across the center of Houston between Englewood and Hardy Street.

When SP added new facilities in the 1980s and 1990s, most were intermodal facilities. In 1987, it built the Miller Yard intermodal facility in Dallas, which was built to service the SFSP system that never came to fruition. SP built intermodal facilities at San Antonio, but that construction had the effect of reducing yard capacity for manifest traffic. It added intermodal facilities at Englewood. It built a bypass track at Hearne and added CTC and a siding on the line between Giddings and Hearne, and it added a siding on the north end of the Rabbit. Although SP lacked funds to build a major SIT yard, it encouraged a third party to build a SIT facility near Dayton.

When it acquired the SP, UP obtained a railroad with very little excess capacity in the Texas Gulf Coast area and little ability to handle surges in traffic. Although its main lines were in better condition, than in 1978, SP needed substantial amounts of tie and rail rehabilitation, and secondary and yard tracks were in marginal condition. With the merger, and in particular the use of directional running which changes the use of SP's capacity in the Houston area, SP's Texas Gulf Coast facilities are now part of a railroad that is operating effectively. I saw proof of that this month.

Had the recent sequence of tropical rains and washouts struck SP two years ago, the effects would have lingered for weeks. The merged UP and SP recovered in a few days.

VERIFICATION

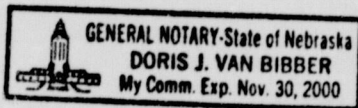
STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

I, Michael D. Ongerth, being duly sworn, state that  
I have read the foregoing statement, that I know its contents  
and that those contents are true as stated.

Michael D. Ongerth  
MICHAEL D. ONGERTH

Subscribed and sworn to before me this  
17th day of September, 1998

Doris J. Van Bibber  
Notary Public







VERIFIED STATEMENT

OF

JOHN H. REBENSdorf

My name is John H. Rebensdorf. I am Vice President-Network and Service Planning for Union Pacific Railroad Company. I previously submitted a verified statement in connection with this proceeding which was included in Volume 1 (UP/SP-22) of the Application filed with the Board on November 30, 1995, and a rebuttal verified statement that was included in Volume 2 (UP/SP-231) of the Applicants' Rebuttal that was filed on April 29, 1996. My background and qualifications are set forth in my initial statement.

This statement has three purposes. First, I will address BNSF's requests for additional rights, and explain how BNSF is using these proceedings to advance its commercial interests without offering UP the type of quid-pro-quo exchanges that it should in order to obtain the rights it is seeking. Second, I will address KCS/Tex Mex's proposal to construct and "swap" a second main line along the former SP Houston-Beaumont line for UP's existing line, and explain how the value of this transaction is grossly skewed in KCS/Tex Mex's favor. Finally, I will address KCS/Tex Mex's proposed Wharton Branch purchase, and explain the status of the parties' efforts to reach agreement.

I. BNSF'S REQUESTS FOR ADDITIONAL RIGHTS

As part of the UP/SP merger process, I was charged with negotiating an agreement that would preserve competition

where it would otherwise have been lost. The negotiations were successful and resulted in the UP/SP-BNSF settlement agreement.

Although I will not describe the specifics of those negotiations -- we did not reveal the back-and-forth of the settlement negotiations in the merger case, and I will not do so here, in order to avoid a chilling effect on future settlements -- it was very clear that both parties considered BNSF to have received all of the rights it needed to preserve pre-merger competition. BNSF specifically confirmed that fact in its subsequent pleadings in the merger case. See, e.g., BN/SF-1, Ice V.S., p. 13 (settlement agreement will "preserve effective and vigorous competition for shippers served only by UP and SP today"); BN/SF-1, Owen V.S., p. 2 ("the services and operations planned by BN/Santa Fe are competitive with those proposed by UP and SP in their Operating Plan"); BN/SF-1, Lawrence V.S., p. 2 (settlement agreement "is a complete and sufficient remedy for the loss of competition in the markets that would otherwise lose access to a second rail carrier as a result of the UP/SP merger").<sup>1/</sup> And BNSF explicitly agreed

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<sup>1/</sup> See also BN/SF-54, p. 16 ("Messrs. Ice, Owen and Clifton conclude that there are no operational or infrastructure problems that will inhibit BN/Santa Fe from providing the customer service and train operations as presented in BN/Santa Fe's operating description. Furthermore, with the new commitments of UP/SP as reflected in the CMA Agreement, there is no question that BN/Santa Fe will be in a position to offer services and operations that will be competitive with those offered by a combined UP/SP.").



not to seek additional conditions for itself or support condition requests of others. See Settlement Agreement § 14.

In my initial verified statement, I explained that the settlement agreement included two types of rights. First, and most important, by replacing existing SP service with new BNSF service it conferred upon BNSF all of the rights that were necessary to preserve competition that the merger might otherwise have eliminated. Second, BNSF and UP traded various other rights that were not justified by any potential adverse competitive effects of the merger, but were negotiated on a quid-pro-quo basis because they would improve the competitiveness or efficiency of both carriers. BNSF presents its most recent request for additional rights as necessary to preserve competition, but in fact, it is asking the Board to grant it the latter kind of rights: cost-reducing or competition-adding rights that are properly the subject of quid-pro-quo negotiations between the railroads.

In my initial verified statement, I described some of the competition-adding trades that were included in the settlement agreement. The most significant of these gave BNSF a new single-line route in the I-5 Corridor and gave UP the ability, through a proportional rate agreement, to market its services to Pacific Northwest shippers local to BNSF and served via BNSF gateways. Other competition-adding trades included enhanced BNSF access to the Mexican gateway of Eagle

Pass, Texas, and to the proposed Joint Intermodal Terminal at Oakland, and UP trackage rights on BNSF's lines between Barstow and Mojave, California, and between Bend and Chemult, Oregon. These rights, and others that UP and BNSF exchanged, were not necessary to preserve competition that would otherwise have been lost in a UP/SP merger, but the settlement agreement negotiations provided an opportunity to arrive at these further, mutually-beneficial exchanges of rights.

As Richard B. Peterson explains in his verified statement, the rights BNSF is now seeking are not necessary to preserve pre-merger competition. Instead, they are the type of efficiency-enhancing and competition-adding "wish list" items that BNSF could have pursued in the settlement agreement negotiations, and can still pursue if it is willing to place items of equal value to UP on the trading block. The rights that BNSF is requesting may indeed enhance BNSF operations or add new competition in some instances (although as Dennis Duffy and Gary Norman point out in their verified statements, some of them would not actually improve BNSF operations, and would harm UP operations), but UP can just as easily suggest rights that BNSF could grant to UP in order to increase UP's efficiency and ability to compete with BNSF.

For example, BNSF argues that Taylor-Milano rights would improve its route for rock shipments. As part of the settlement agreement, BNSF received rights over the route that

UP used for this traffic prior to the merger. These rights fully preserved pre-merger competition. Now, BNSF is attempting to renegotiate the settlement agreement to obtain more than is necessary to preserve pre-merger competition. Had BNSF sought at the time the settlement agreement was being negotiated to add competition or reduce costs using a Taylor-Milano route, UP would have asked for other competition-adding rights in return, such as rights over BNSF's line from Tower 55 via Milano to Virginia Point, Texas, or over BNSF's line from Lincoln to Falls City, Nebraska.

As another example, BNSF is seeking permanent bidirectional rights over UP from Caldwell to Flatonia to San Antonio. But as part of the settlement agreement, BNSF obtained rights over one of UP's pre-merger routes to San Antonio, which fully preserved pre-merger competition. Once again, BNSF is now trying to better its settlement agreement rights and add new competition by securing a lower-cost alternative route on a permanent basis.<sup>2/</sup> Had BNSF sought such competition-adding or cost-reducing rights in the settlement agreement negotiations, UP would have asked for similar rights in exchange. For example, UP could have requested rights over BNSF between Villard Jct. and Argo,

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<sup>2/</sup> With UP's concurrence, BNSF has been using the Caldwell-Flatonia-San Antonio route on a temporary basis to alleviate congestion.



Washington, for use as an alternative to UP's existing route in that area.

As a final example, BNSF is seeking permanent, bidirectional rights on UP's Caldwell-Flatonia-Placedo line. Once again, in the settlement agreement, BNSF obtained rights over UP's line between Algoa and Placedo, which fully preserved pre-merger competition. It is now seeking to add new competition by gaining permanent, bidirectional use of an alternative route.<sup>3/</sup> And once again, had BNSF sought those rights in the settlement agreement negotiations, UP would have asked for similar competition-adding alternative routes, for example, over BNSF's line between Denison and Irving, Texas, or between Fox Jct. and Union, Colorado.

My point is not to suggest that the particular proposals described above would necessarily be viewed by UP as fair exchanges for the rights BNSF has requested, or that trading rights that could be used for similar purposes is the only way parties can reach agreement. My point is that there are many situations in which UP and BNSF could benefit from rights over each others' lines, and that the railroads should negotiate for these rights on a quid-pro-quo basis. Had BNSF ultimately demanded more than the competition-preserving conditions, plus particular quid-pro-quo's, which became the

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<sup>3/</sup> Again, UP has been permitting BNSF to use this routing on a temporary basis to alleviate congestion.

settlement agreement, UP too would have demanded more. UP is ready and willing to negotiate with BNSF regarding reasonable pro-efficiency trackage rights swaps, provided that BNSF is willing to provide quid pro quos of sufficient value. BNSF knows this, because the railroads have an agenda of possible arrangements on the table now. BNSF should not, however, be permitted to engage in a one-sided renegotiation of the settlement agreement -- something, indeed, that it expressly agreed not to do.

## II. HOUSTON-BEAUMONT CONSTRUCTION AND "SWAP"

KCS/Tex Mex have proposed to construct a new rail line on UP's right-of-way adjacent to the former SP's Lafayette Subdivision between Dawes and Beaumont, Texas, and, upon the line's completion, deed it to UP in exchange for UP's Beaumont Subdivision between Settegast Jct. and Beaumont. KCS/Tex Mex ask the Board to compel UP to participate in this transaction as a condition to the UP/SP merger. Richard Peterson explains in his verified statement that there is no competitive rationale for this request, and Eddy Handley explains that there is no operating rationale. It is also important for the Board to recognize a third reason not to impose this transaction on UP -- the value of KCS/Tex Mex's proposed "swap" is grossly skewed in KCS/Tex Mex's favor.

Only a brief review of KCS/Tex Mex's proposal is necessary to highlight the disparity in value between the line

KCS/Tex Mex propose to build and the UP line they propose to receive in exchange. The UP line between Settegast Jct. and Beaumont that KCS/Tex Mex propose to receive is a 75.1-mile-long rail line with 2.4 miles of bridges and 13.9 miles of sidings and second main line. The former SP line between Dawes and Beaumont is 70.6 miles long.<sup>4/</sup> KCS/Tex Mex say they will doubletrack this line, but they also say in a footnote that they will not doubletrack 12 miles of bridges making up part of the line. See KCS-2, p. 80 n.69. Although KCS/Tex Mex bury this point about bridges in a footnote, it makes a tremendous amount of difference in the economic value UP would receive, and more importantly in the diminished operating utility of what we would receive versus what we would be giving up. That footnote means that KCS/Tex Mex would receive a 75.1-mile through line that is in excellent condition, and in exchange UP would receive 58.6 miles of sidings of various lengths.

KCS/Tex Mex also stress that, under their plan, UP will retain its interest in the real estate under the track to be conveyed to KCS/Tex Mex, but the land does not appear to have any value other than as a railroad right-of-way, so this is a sleight-of-hand designed to create the misimpression that

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<sup>4/</sup> KCS/Tex Mex say the line is approximately 75 miles long, but they describe the line as between SP Milepost 353 and SP Milepost 282.4, a distance of 70.6 miles. They are most likely confusing the SP line with the UP line they plan to obtain.



the values of the items to be "swapped" are comparable. Also, it is not as if KCS/Tex Mex would use their own land to construct the line they propose to convey to UP -- the line would be constructed on an existing UP-owned right-of-way.

### III. WHARTON BRANCH SALE

KCS/Tex Mex also ask the Board to require UP to sell Tex Mex the former SP Wharton Branch between Rosenberg and Victoria, Texas. There is no reason for the Board to impose this sale as a merger condition. UP has agreed to sell the Wharton Branch between Milepost 2.5 and Milepost 87.0, and the parties have reached an agreement in principle on an arbitration process to determine the sale price.

UP and KCS/Tex Mex are still attempting to reach an agreement on the precise boundaries of the line to be sold and several additional matters. In their filing with the Board, KCS/Tex Mex said they wanted to purchase the line between Milepost 0.0 at Rosenberg and Milepost 87.8 at Victoria. More recently, KCS/Tex Mex have indicated that they wish to purchase the line to Milepost 86.8 and receive trackage rights from Milepost 86.8 to a connection with Tex Mex's trackage rights over UP's Flatonia Subdivision.

UP is willing to sell the line between Milepost 2.5 near Rosenberg and Milepost 87.0 near Victoria. UP would also

grant Tex Mex overhead rights to operate on the remaining portions of the line between Mileposts 0.0 and 90.8.<sup>5/</sup>

UP is unwilling to sell its line between Mileposts 0.0 and 2.5 and between Mileposts 87.0 and 90.8 because it would create unnecessary additional dispatching interfaces. Regardless of the precise end-points, KCS/Tex Mex operations over the Wharton Branch will require a hand-off of dispatching control over KCS/Tex Mex trains as those trains enter and exit the Branch. But if the two short track segments in question are sold to KCS/Tex Mex, then additional, unnecessary hand-offs of UP trains to KCS/Tex Mex dispatching would be required, because UP uses those segments for its own operations. UP's granting overhead trackage rights over these small segments, rather than selling them, will allow KCS/Tex Mex to provide the service they want to provide without unnecessarily complicating UP's operations.

UP and KCS/Tex Mex are presently attempting to resolve several other issues that KCS/Tex Mex have raised in the context of the line sale that stand in the way of an agreement. First, KCS/Tex Mex are seeking the right to construct a track around UP's Victoria Yard utilizing UP's right of way. UP cannot agree to this because the land KCS/Tex Mex are seeking is used for a necessary access road.

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<sup>5/</sup> Trackage rights to Milepost 90.8 would allow KCS/Tex Mex to connect with Tex Mex's trackage rights over the Flatonina Subdivision.

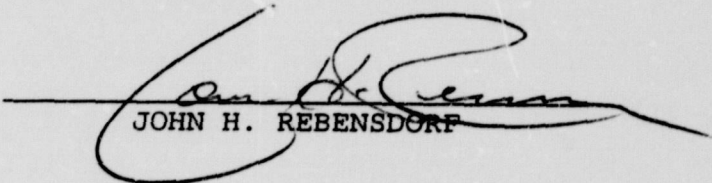
Second, KCS/Tex Mex are seeking the right to interchange blocks of cars with BNSF at the north end of the Wharton Branch, near Rosenberg. UP will allow KCS/Tex Mex to interchange full trains with BNSF using the existing UP-BNSF interchange tracks at Rosenberg, but cannot allow KCS/Tex Mex to interchange blocks at this location because the interchange would interfere with UP's operations at Rosenberg and on UP's heavily used Glidden Subdivision between Houston and San Antonio, as Mr. Handley explains. We believe that there are other ways that KCS/Tex Mex's desires can be accommodated, and we will continue to negotiate in good faith with KCS/Tex Mex. There is no reason for the Board to interfere with these negotiations.



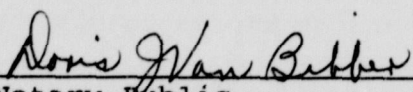
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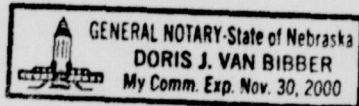
STATE OF NEBRASKA     )  
                              ) ss.  
COUNTY OF DOUGLAS    )

I, John H. Rebensdorf, being duly sworn, state that  
I have read the foregoing statement, that I know its contents  
and that those contents are true as stated.

  
JOHN H. REBENS DORF

Subscribed and sworn to before me this  
17th day of September, 1998

  
Notary Public





**VERIFIED STATEMENT**

**OF**

**TROY T. SLINKARD**

My name is Troy T. Slinkard. I am the Joint Director at the Consolidated Dispatching Center (CDC), operated by Burlington Northern Santa Fe and Union Pacific Railroads at 24125 Aldine-Westfield Road, Spring, Texas 77373. I am jointly employed by, and my salary is paid by, BNSF and UP to run this dispatching center. I report to Rollin Bredenberg, Vice President-Operations, South, of BNSF and to Steve Barkley, Vice President-Southern Region, of UP. I am providing this statement at the request of UP's lawyers to respond to the verified statements of Patrick L. Watts, Vice President-Transportation of Tex Mex, and Ronney O. Nichols of Tex Mex about dispatching at the CDC. Dispatchers under my supervision are responsible for dispatching Tex Mex trains on the BNSF-UP Joint Line between Houston and Beaumont, Texas, and on routes used by Tex Mex in the Houston terminal complex.

Mr. Watts and Mr. Nichols state that CDC dispatchers discriminate against Tex Mex trains operating on these lines, that they have observed many acts of discrimination and that they are unable to do anything about the situation. These statements are completely inaccurate, and they offend me and the many CDC professionals who have been working for months to provide fair and equal dispatching to all railroads serving Houston. I invite anyone at the STB who doubts that our people provide equal treatment to Tex Mex to come to Spring and interview any employee of this center.



Mr. Watts and my brother, Bill Slinkard, who as KCS's Superintendent-Gulf Coast, also submitted testimony on behalf of Tex Mex, recommend that a dispatching center for the Houston area should dispatch train:

in a non-discriminatory and fair manner, using its informed discretion in order to dispatch trains so as to most efficiently serve shippers, based upon both the priority of the trains being dispatched and upon the totality of the train operations in the Greater Houston Terminal Area. (Slinkard and Watts, Attachment D)

That is exactly the way the dispatchers in the CDC handle Tex Mex trains and all other trains. The events that Mr. Watts and Mr. Nichols believe are discrimination result from dispatchers applying this principle in situations where Mr. Watts and Mr. Nichols are not aware of the "totality of the train operations in the Greater Houston Terminal Area."

Our people do not discriminate against any railroad. I personally have told all of the dispatchers to treat all trains of the same priority of all railroads equally and to dispatch trains to maximize the overall operation of the area rail network. Train dispatchers want to accomplish one goal above all others: They want to get trains off of their part of the railroad as quickly as possible regardless of whose train it is. Our dispatchers try to do just that.

Our two Houston terminal dispatching positions, STO1 and STO2, which dispatch the entire Houston complex, are very busy. They handle about 150 trains per day on 48 miles of track with numerous rail crossings at grade and large amounts of local switching on those tracks. STO1 and STO2 dispatchers must perform, according to

a recent study, over 2,300 actions, such as conducting telephone calls, communicating with trains by radio, clearing signals and controlling switches, in a 24-hour period. They do not have time to engage in intentional delays to any railroad's trains, which would only make their own jobs harder and place additional workloads on already busy positions. (I agree with Mr. Watts that these positions are overworked and should be redistributed to three positions, and I understand that BNSF and UP plan to do that.)

In fact, Tex Mex trains sometimes get better treatment than they deserve. All of our dispatchers know that they are under a spotlight when they handle Tex Mex trains, so they take extra care when the Tex Mex is involved. Both BNSF and UP managers could claim at times that we "discriminate" against BNSF and UP trains and in favor of Tex Mex trains at the CDC. In fact, one of my dispatchers recently thought he was required to give preferential handling to Tex Mex trains. He was dispatching the Lafayette Subdivision of the BNSF-UP joint line and had a slow Tex Mex manifest train MSHHOJ in front of and delaying UP's high-priority IATLB, an Atlanta-Long Beach APL doublestack train. I had to assure him that it was OK for him to follow good dispatching practice by running the fast, high-priority train around a slower Tex Mex train.

Tex Mex does two things that help us give proper handling to its trains, which we appreciate. When we need to get in touch with a Tex Mex manager, Mr. Nichols and other Tex Mex people are very responsive and return our calls quickly. Also, Tex Mex train crews carry cellular telephones. When our dispatchers are unable to contact a Tex Mex train by radio, we can reach them by calling a Tex Mex official

and asking him to contact the train crew by phone. The shortage of railroad radio frequencies in Houston is a major problem, so it would be helpful if other railroads followed that practice.

Trains get delayed on any railroad, but especially in Houston. The Houston terminal complex has limited capacity and many of the tracks and yards are operating at or near capacity. Many tracks, such as the HB&T East Belt line that Tex Mex often uses, have a large amount of local switching, which is difficult to coordinate with through freight movements. As a result, most trains take some delay in Houston, and the delays may be considered lengthy. When something unexpected happens, such as a derailment, a power outage, a signal failure or one railroad refusing to accept a train from another, congestion builds up quickly, and it sometimes may take hours to clear it. This is difficult to avoid without adding more capacity.

Tex Mex trains get delayed in Houston just like BNSF, PTR A and UP trains. The Tex Mex trains that switch one, two or three yards on the East Belt line are especially likely to be delayed and to cause a lot of delay, because the line is very busy and our dispatchers often do not know when the Tex Mex train will be ready to go so that they can plan for it. Tex Mex may think that delays in Houston are discrimination, but everyone's trains get delayed.

Almost every train that operates through the Houston terminal complex delays other trains. Since 80 to 100 of the daily trains in our terminal complex are UP trains, 15 to 20 are BNSF trains, and about 30 are PTR A trains, almost every Tex Mex train delays a UP, BNSF or PTR A train, but that is not discrimination either.



Mr. Watts and Mr. Nichols believe that Tex Mex is suffering from "discrimination" when our dispatchers are merely doing their jobs by doing what is best for all trains and for the Houston terminal complex. I reviewed the seven examples of "discrimination" listed by Mr. Watts and Mr. Nichols. When something unusual happens in the complex, I keep notes about it, and I have notes on two of those situations. In one of them, a busy dispatcher did not anticipate a problem, and I intervened to fix it without any request from Tex Mex. In the other, the dispatching was correct, but a Tex Mex train shut down one of Houston's main tracks for hours due to Tex Mex operating problems.

- Mr. Watts discusses a 50-minute delay on May 1, 1998 to Tex Mex train 1MMXSHJ-30 at a place called North Shore Jct. on the East Belt line to allow a UP train "inexplicably" to pass it. (Watts, p. 8) The two trains were headed toward different routes with different track conditions affecting them. The Tex Mex train was headed straight north on the East Belt toward the Beaumont Subdivision. It had to pass through Settegast Yard, which had to clear a track for the train. The UP train was headed for Spring, Texas, and would have used a different route that avoided Settegast.

I made notes about Tex Mex operations that day because a southbound Tex Mex train blocked Strutt siding, the only siding in the same area, for 4 hours and 40 minutes from 8:05 a.m. to 12:45

p.m. waiting on a new crew. When we cleared that Tex Mex train into Basin Yard, its crew reported that it had three setouts for Basin Yard scattered throughout its train, which means that it was misblocked. Mr. Nichols got involved in trying to straighten out that problem, but this train was still switching at 8:30 p.m. It blocked one of the two East Belt main tracks for hours. It was a very difficult day on the East Belt, but there was no discrimination by us.

- Mr. Watts also describes an incident early on May 12, when a Tex Mex train was delayed for 80 minutes at T&NO Junction on the south side of Houston. (Watts, pp. 8-9) UP local 1LHB89-11 ran out of time under the Hours of Service Law on the Harrisburg Line and tied up on the mainline. Normally, UP's Sugarland Local (1LXD37-08) would have had enough track space to get through T&NO Junction and out of the way of through trains, but on this day that local was unusually long and could not get in the clear on its normal route. When I saw this situation, I personally got involved and helped the dispatcher clear the track and move the Tex Mex train. In retrospect, this situation could have been handled better by the busy dispatcher who should have anticipated the problem, but it was not "discrimination," and we took the initiative to fix the problem on our own.

I do not see any indication of "discrimination" or even dispatching error in the other five Tex Mex examples. For example, Mr. Nichols describes a situation on June 5, 1998, when a westbound Tex Mex train was "inexplicably delayed" for 2½ hours at Fauna, Texas, on the joint BNSF-UP line while three UP trains passed it. (Nichols, p. 5) I do not recall that particular event, but this situation happens all the time, and the dispatching is correct. Many Tex Mex trains need to turn south onto the busy HBT East Belt line, which is often crowded, and trains are slotted by class to ensure equal handling. Also, many Tex Mex trains need to switch at Basin and/or North Yard, and it may be necessary to stage a train until the yard can take it. As a result, the dispatcher often must hold trains for the HB&T East Belt. Other Tex Mex trains are headed west through Tower 26, which is often backed up. Meanwhile, the three UP westbound trains probably had a clear route on the SP mainline into Englewood Yard, and there was no reason to delay them. I would reprimand a dispatcher who did not let those trains proceed, because that would be poor dispatching and not in the best interest of the entire terminal complex. This is a good example of Mr. Watts and Mr. Nichols failing to see the "totality of train operations in the Houston Terminal Area" and claiming "discrimination" even though the dispatching was correct.

Mr. Watts and Mr. Nichols say that they cannot affect the handling of Tex Mex trains at the CDC, but this is not true. They generally are not present at the CDC. Tex Mex officials are, of course, always welcome at the Spring dispatching center. We would like them to become active partners in the dispatching center and to bring Tex Mex and KCS dispatchers into the center, where they could work side-by-side with



BNSF and UP dispatchers to improve coordination.

Under normal circumstances, Tex Mex officials spend limited time in the center. Normally, we see Mr. Nichols about two or three times a week for a few hours at most. On those days, he comes in, makes several calls on Tex Mex business, finds out where Tex Mex trains are and sometimes gives me information about Tex Mex's plans for the day. For example, he sometimes tells me that Tex Mex is going to try to run one train from Houston to Beaumont and another back using the same crew, and he asks me to give them a good run. We try to do that. On most days, we do not see any Tex Mex official, and we have no telephone contact with them until the daily 11:00 a.m. conference call among BNSF, PTRR, Tex Mex and UP, when PTRR tells the other railroads which trains it will take and when.

During June and July, while the STB was deciding whether to extend the Emergency Service Order, Tex Mex had one or two officials in our center for long periods of time every day to monitor their operations. As soon as the STB made its decision, though, the Tex Mex officials went back to their normal pattern of infrequent visits. Mr. Nichols and other Tex Mex officials are welcome to talk to me or my managers at any time, and we will listen to and act on any complaints. During the entire six months that I have been at CDC, though, Tex Mex officials have questioned our dispatching to me only 8 or 10 times. Sometimes they seemed satisfied with my explanations, although [once] Mr. Watts disagreed about the dispatching and said he would write up the delay for the STB. I have not received any complaints for more than six weeks.

The way Tex Mex officials raise concerns about our handling of their trains is not productive and does not let us help them. Instead of contacting us promptly, when we can evaluate what is happening and explain it or take immediate action, Mr. Nichols and other Tex Mex officials usually wait many hours until after the event is over. Rather than trying to help us help Tex Mex trains while we can do something about it, Tex Mex seems to prefer to watch what happens and question it later. By then, it is usually too late to do anything, and it is also much more difficult for a busy dispatcher to reconstruct why he or she made a decision.

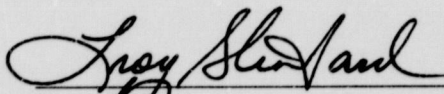
For example, Mr. Nichols describes a radio communication problem which he observed on June 3, 1998. (Nichols, p. 4) He should have taken that problem up with a manager or with me immediately, instead of just watching and complaining to the Surface Transportation Board. We could do an even better job for Tex Mex if its officials would raise problems with us on a timely basis. They could do that easily if they used the office space we are holding for them and stationed a manager here around the clock.

Mr. Nichols says that he was not invited to a joint staff meeting on June 18, 1998. He had told me two days earlier that he was not a Tex Mex employee, but only a consultant, so I did not invite him. Perhaps this was a misunderstanding. I am confident that if Tex Mex and the CDC work together, everyone will benefit.

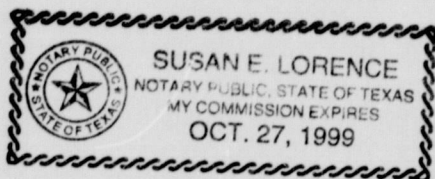
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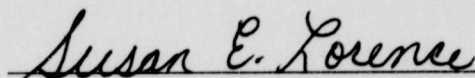
STATE OF TEXAS                    )  
                                          ) ss:  
COUNTY OF HARRIS            )

Troy T. Slinkard, being first duly sworn, deposes and states that he has read the foregoing Verified Statement, know the facts contained therein, and that the same are true as stated to the best of his knowledge, information and belief.

  
Troy T. Slinkard

Subscribed and sworn to before me this 16<sup>th</sup> day of September, 1998.



  
Notary Public





VERIFIED STATEMENT

OF

JERRY S. WILMOTH

My name is Jerry S. Wilmoth. I began my railroad with Missouri Pacific Railroad 23 years ago as a train order operator/CTC operator and have been with the railroad ever since, coming to the UP after the UP/MP merger in 1982 . Since 1979, I have been involved with either real estate, contracts or joint facilities matters. I gained my joint facilities experience in 1986-87 as Region Manager -- Joint Facilities & Contracts for the UP's Central in Kansas City, Missouri and again beginning in 1991-1993 as Regional Manager -- Joint Facilities -- Central Region in Omaha and then beginning in 1994 in my current position as Director -- Joint Facilities. My responsibilities center on UP's joint facility arrangements, including the trackage rights and other agreements arising out of the UP/SP merger, as well as, managing UP's Southern Region joint facility activities and serving on the BNSF Joint Service Committee. We have no joint service committee with Tex Mex although we have an agreement to set one up and I would serve on this committee. In this statement, I will discuss some of the actions UP takes to make sure that these arrangements work and the results of our actions.

BNSF and KCS/Tex Mex register a number of complaints about UP's handling of their railroads' trains and cars on our lines. UP could match them complaint for complaint if we wanted to, but this is not the time or the place. After many years of working with joint facilities, I believe that these railroads are raising these complaints

primarily because they hope the complaints will cause the Board to give them commercially-valuable UP rights. Under normal circumstances, competitors using joint facilities usually resolve their conflicts and concerns cooperatively. Our competitors, especially KCS/Tex Mex, seem to think there is more to be gained right now by complaining than by cooperating.

Many of the complaints are about "discrimination" in train dispatching. UP has been working very hard together with BNSF for a number of months to develop reciprocal automated systems that measure train performance on jointly-used lines to ensure equal handling. This has been a major cooperative effort, unprecedented in the industry as far as we know. UP and BNSF have spent a great deal of money installing AEI equipment scanners at agreed locations on jointly-used tracks throughout the West. UP's system is now working on more than 4,000 miles of the UP track.

As far as I know, this is a unique capability not available on any other joint facility in the United States. We developed this capability partly to provide the monitoring required for the dispatching protocols we signed with BNSF and to ensure unbiased data is used to monitor and compare train performance. We can use this equipment to compare performance of our trains with performance of tenants' trains of equal class. UP is now providing comparative train performance data to BNSF, but BNSF has not yet supplied any similar data to UP on tracks it own and over which UP operates.

Since late July, UP has been able to prepare automated comparisons of train performance on almost all segments where BNSF operates on UP (which include



the segments Tex Mex uses). UP used this new capability to test the BNSF and Tex Mex "discrimination" claims. We compiled automated transit time comparisons for a 31-day period ending September 10, 1998. The comparisons show no sign of any discrimination by UP dispatchers against either BNSF or Tex Mex trains. I want to stress that these measurements are automated, not manual. There is no element of judgment involved.

The following tables compare UP, BNSF and Tex Mex transit times on all significant track segments where those railroads use UP tracks. The data are divided by train type, so that train priorities do not affect the results. The train types are premium intermodal, intermodal, premium manifest, manifest unit (which includes grain, coal and rock trains), and local trains. BNSF and UP have agreed that locals should be excluded from these comparisons.

In developing my analysis, I excluded segments with no comparable train operations, but those are included in my workpapers. For example, on one route, only BNSF operates manifest trains. Within the Houston terminal complex, there are many problems in identifying trains as they pass through the terminal. We have no way of performing a comparison inside the terminal. And I have not presented a comparison where fewer than four trains of a railroad operate on a segment.

With those exceptions, all available comparisons for the southeastern part of the UP system are presented in these tables. I have noted situations where I believe that UP trains perform on-line work or other activities, which would cause their transit times to be higher than trackage rights trains, which have fewer on-line work events

outside Houston. On a few segments, UP trains approach major yards and are more likely to be staged for these yards, which might increase the transit times for UP trains.

The BNSF table does not include trackage rights segments between Colorado and Northern California. The data are included in my workpapers, but I do not consider the comparisons to be meaningful. As UP has reported to the Board, it had substantial congestion problems in the Far West after July 1 associated with TCS implementation on SP and other factors. As a result, BNSF transit times are much faster than UP transit times. Congestion has now eased, so it should soon be possible to obtain usable comparisons on those track segments.

The comparisons are presented in the tables below. Note that on the segment from Beaumont to Houston, Tex Mex's average transit time for their manifest trains not only bested UP's time for manifest trains but also matched the average transit time for UP intermodal trains.

UP/Tex Mex Comparisons:

Segment	Train Type	Tex Mex Transit Time (in hours)	UP Transit Time (in hours)
Beaumont to Dawes (just east of Houston)	Manifest	3.0	3.5
	Intermodal (UP only)	N/A	3.1
Settegast to Beaumont	Premium	N/A	4.1
	Manifest	3.2	5.0
	Intermodal	N/A	3.0

Segment	Train Type	Tex Mex Transit Time (in hours)	UP Transit Time (in hours)
Houston (Tower 26) to Rosenberg	Manifest	3.7	3.2
Rosenberg to Flatonia	Manifest	5.2	6.5
Corpus Christi/ Robstown-Algoa <sup>1</sup>	Manifest	10.0	19.4 <sup>2</sup>

UP/BNSF-Comparisons:

Segment	Train Type	BNSF Transit Time (in hours)	UP Transit Time (in hours)
Memphis (Bridge Junction) to Pine Bluff	Premium Manifest	4.9	6.0
Pine Bluff to Houston (Tower 26)	Manifest	19.2	19.4
Houston (Tower 26) to North Little Rock	Manifest Premium Manifest	20.1 N/A	22.6 23.4
North Little Rock to Memphis (Bridge Junction)	Premium Manifest Manifest	5.2 6.4	5.3 5.9
Iowa Junction to Beaumont	Intermodal Manifest	3.8 4.9	4.3 5.9
Beaumont to Dawes	Intermodal Manifest	2.6 3.0	3.1 3.5
Houston to Beaumont <sup>3</sup>	Manifest	3.0	5.0

<sup>1</sup> The Tex Mex time is from Robstown to Algoa, a distance of 202 miles. The UP transit time is from Corpus Christi to Algoa, a distance of 206 miles.

<sup>2</sup> UP trains stop en route for crew changes and switching.



Segment	Train Type	BNSF Transit Time (in hours)	UP Transit Time (in hours)
Beaumont to Iowa Junction	Premium manifest	6.9	14.3
Tower 26 to Rosenberg	Grain <sup>4</sup>	3.7	3.7
Corpus Christi to Algoa	Manifest	9.6	19.4 <sup>5</sup>
Caldwell to Flatonia	Manifest Coal	3.6 4.6	3.1 3.1
Flatonia to San Antonio	Manifest Coal	5.1 6.1	5.9 7.8
San Antonio to Eagle Pass	Manifest	6.2	6.3
Eagle Pass to San Antonio	Manifest	7.7	8.5
San Antonio to Flatonia	Manifest Coal	4.2 5.3	5.8 5.9
Flatonia to Caldwell	Coal	3.0	7.1
Ft. Worth to Sweetwater	Intermodal Manifest	6.2 13.4	6.1 16.4
Sweetwater to Ft. Worth	Intermodal Manifest	6.3 8.9	8.3 13.0 <sup>6</sup>

BNSF also complains about UP haulage service on the SP Baytown Branch. UP has no obligation to provide haulage service to BNSF at all on this branch.

<sup>3</sup> For BNSF, Tower 26 to Beaumont. For UP, Settegast Yard to Beaumont. The BNSF segment is longer.

<sup>4</sup> BNSF's trackage rights over this route are restricted to unit grain trains.

<sup>5</sup> UP trains change crews and work en route.

<sup>6</sup> Some UP trains may perform work en route.

UP voluntarily provided haulage service as an accommodation to BNSF to let it start providing competition quickly. But BNSF cancelled the haulage agreement, effective April 19, 1998. Even so, it still expects UP to provide haulage service. Within the last two weeks, BNSF's Accounting Department threatened not to pay UP for providing haulage service where there is no agreement. We are presently discussing this unreasonable threat with BNSF and expect a satisfactory resolution.

UP is obligated to provide haulage service to BNSF only as specified in the settlement agreement. Under the BNSF settlement agreement, BNSF has three other choices of how to provide service to industries on our lines, and it is supposed to select one and abide by it for a period of five years. It can operate its own trains directly over our lines and serve shippers itself; it can use UP reciprocal switching; or it can seek our approval to use a third-party switching railroad.

BNSF constantly complains about haulage, but it repeatedly chooses to use haulage instead of the options it negotiated. For example, BNSF recently asked us to continue to provide haulage service to most customers between El Paso and Sierra Blanca, Texas while it serves a single customer directly.<sup>7</sup> As it has done elsewhere, BNSF chose to use UP haulage to serve smaller shippers but it elected to serve a high-volume shipper by trackage rights.

The Board should take into account the fact that railroads, including UP and BNSF, provide reciprocal switching to each other all over the United States.

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<sup>7</sup> This conflicts with the haulage agreement wherein BNSF agreed not to use haulage and trackage rights simultaneously on the same corridor.

Reciprocal switching is a common way for railroads to deliver shipments to and receive shipments from industries that they do not serve directly. Generally, from an operational standpoint, reciprocal switching and haulage service are exactly the same, only the economic arrangements differ. When railroads are not pursuing opportunities to obtain major commercial concessions, they work out the problems involved in reciprocal switching and haulage.

We have devoted tremendous amounts of time and resources to solving problems associated with BNSF operations and haulage on our railroad. Thus far, we have achieved more beneficial results than has BNSF. These operations are not problem-free. Coordination takes work. UP is doing the work.

UP performed comparisons of transit times for UP shipments and BNSF shipments in haulage service on the Baytown Branch. Those comparisons show that BNSF haulage cars are handled as timely as UP cars. In July, BNSF cars on the Baytown Branch had an average transit time from release by the shipper at Baytown industries to interchange to BNSF at Baytown of 2.2. days. UP's average transit time to Baytown Yard was half a day longer. In August, the pattern was reversed. These transit times are lengthy due to lack of capacity on the branch, but we treat all cars the same way.

UP and BNSF are equally affected not only by congestion but by two other problems in connection with Baytown Branch service. Neither would be repaired by BNSF's proposal for "neutral switching supervision." One problem is caused by our shippers. On weekends, some of them release cars without giving us shipping



instructions, so UP does not know whether the car should go to BNSF or UP. Since we don't know what to do with them and we do not have room at our yard in Dayton, we take them into Houston to be sent out onto the UP system as quickly as possible. These cars suffer delays while we wait for the instructions, and have to interchange them to BNSF belatedly if they turn out to be BNSF cars.

The other problem, which affects UP and BNSF equally, is that we have inadequate reporting of work events on the Baytown Branch. As a result, neither UP nor BNSF has adequate information about the movement of freight cars on the branch until they reach our yards at Baytown. UP is taking steps to improve its recording of work events.

BNSF has asked the Board for trackage rights over any UP line that UP decides to use for directional running. BNSF has not made the same offer to UP, nor do I expect that we would receive such an offer.

UP has given BNSF trackage rights for directional operations on our own wherever it was logical and in the interests of both companies to do so. We gave them the right to run eastbound between Houston and Beaumont on the Beaumont Subdivision, the right to run southbound via Flatonia and Placedo while we run directionally between Houston and Placedo, and the right to operate northbound out of Houston to Memphis. It is often in UP's interest to allow BNSF to participate in directional operations because there will be fewer oncoming BNSF trains, which means less delay.

Because each situation is so different, though, trackage rights should be negotiated. BNSF's example of the Dallas-Ft. Worth area shows why. BNSF sold its

former mainline between Ft. Worth and Dallas to the Dallas-area transit organization for a substantial sum of money. BNSF retained trackage rights over that line, but they are restricted by commuter service. BNSF profited from the sale of its line and it now wants to burden UP service without paying UP anything.

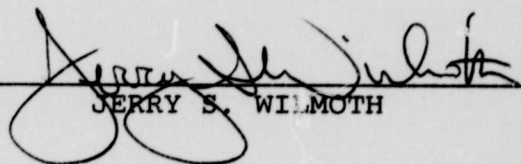
BNSF also has two options to using our mainline. It can use the Ft. Worth-Waxahachie segment. If BNSF wants to add capacity to that segment, UP may help fund it because we would use it as well. BNSF can also use the former Santa Fe line via Temple, Texas.

If BNSF wants to use UP's line, it should negotiate that arrangement with UP and pay UP fair compensation. But UP will not run directionally on this line if the Board grants BNSF directional operating rights. We are concerned that BNSF's long-term goal is to obtain access to the many UP-served industries on our Dallas-Ft. Worth line, including the Arlington automotive facility. Considering BNSF's support for open access requests by many shippers in this proceeding, we could not take that risk. We would have to forgo the efficiencies of directional operation.

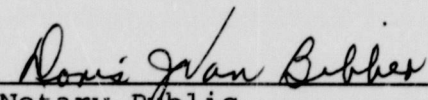
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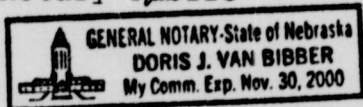
STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

I, Jerry S. Wilmoth, being duly sworn, state that I  
have read the foregoing statement, that I know its contents  
and that those contents are true as stated.

  
JERRY S. WILMOTH

Subscribed and sworn to before me this  
17th day of September, 1998

  
Notary Public







VERIFIED STATEMENT

OF

JERRY R. DAVIS

I am Jerry R. Davis, Executive Vice President and Chief Operating Officer of CSX Transportation, Inc. (CSXT) in Jacksonville, Florida. Since July of 1989, I have been responsible for all aspects of rail operations at CSXT, one of the nation's largest rail carriers.

For almost thirty years before I moved to CSXT, I was at Union Pacific Railroad Company. I began my Union Pacific career immediately after graduating from high school on June 24, 1957, as a student telegrapher on the Kansas Division. I worked as a telegrapher at various UP locations until 1963, when I was promoted to Train Dispatcher at Union Pacific's Kansas City dispatching office. I worked most of the dispatching positions in that office and in the UP dispatching offices at Marysville, KS; Salina, KS; and Denver, CO. I handled three Union Pacific segments where Rock Island operated over UP, including the line between Topeka and Kansas City.

From 1968 through 1985 I held management positions of increasing responsibility in Union Pacific's Operating Department, including Trainmaster on UP's Utah and Idaho Divisions, Superintendent of the Utah Division, Assistant General Superintendent-Transportation, General Superintendent of UP's Eastern District, Assistant Vice President-Operations,

Vice President-Operations, and ultimately Executive Vice President-Operations. I joined CSXT in July 1989.

I was invited by Union Pacific to review the statements submitted by Southern Pacific Transportation Company (SP), in which SP claims that UP has engaged in a pattern and practice of discrimination against SP trains for the last ten years. I thought these SP statements were so misleading and inaccurate that I offered to provide comments to the Interstate Commerce Commission based on my experience as the officer in charge of operations on two of the nation's largest railroads and my personal experience as a dispatcher and in other hands-on operating positions on Union Pacific over a period of many years.

#### UP Handling of Foreign Trains

When I was a dispatcher in Union Pacific's Kansas City dispatching offices, we handled Rock Island trains with UP trains on a first-come, first-served basis. In those days, both railroads ran a number of passenger trains between Kansas City and Topeka, and we did everything we could to be sure that Rock Island and Union Pacific passenger trains were not delayed. We also gave priority handling to the Rock Island priority freight trains, most of which originated on SP in Southern California.

I understood when I was a dispatcher that it was Union Pacific policy to give equal handling to all trains



regardless of which railroad owned them. That remained Union Pacific's policy throughout all the years I was responsible for operations at UP. We never developed, or even thought about, a management policy of giving inferior service to SP, DRGW or any other railroad. To my knowledge, we never issued instructions to our dispatchers to favor our trains over tenant trains, and I would have countermanded any such instruction if I had become aware of it.

Dispatchers are sometimes instructed to give special attention to specific trains. I recall issuing instructions like that for certain UP trains, and I also recall issuing that type of instruction for priority foreign-line trains. For example, I remember issuing instructions to expedite DRGW's hot intermodal trains between Ogden and Salt Lake City.

When one of my colleagues at another railroad had a concern about delays to particular trains, I would look into it and report back. They did the same for me. Never in all my years at Union Pacific did anyone claim that UP was intentionally or systematically discriminating against SP trains. In the Operating Department at Union Pacific Railroad, we were not in the business of discriminating. We believed we had only one job: to run trains as well as we could.

#### Trackage Rights Perceptions and Responsibilities

I have been involved with trackage rights arrangements throughout most of my railroad career, both at UP and

at CSXT. As a dispatcher on Union Pacific, I was personally responsible for handling Rock Island trains on several UP lines. As an operating officer on UP and CSXT, I have been heavily involved in negotiating and managing trackage rights operations, both from the standpoint of the tenant and from the standpoint of the owner of the track.

In my experience, railroads that operate over trackage rights are always concerned about the treatment their trains receive from the owning railroad and its dispatchers. In every trackage rights arrangement that I have had contact with, the pattern has been very consistent: The tenant always has the perception that its trains are being delayed or not given preferential treatment at particular places and times. The tenant always wonders whether these delays are the result of what SP calls "discrimination." When an operating officer looks into the details of specific decisions, though, it usually turns out that there is a good explanation.

For example, CSXT and UP share a mainline between Yard Center, on the south side of Chicago, and Woodland Junction, Illinois, a distance of about 64.4 miles. Union Pacific dispatchers control train movements on this line. On several occasions, CSXT trains have been delayed on this line. I wondered whether UP dispatchers were holding our trains to give priority to UP trains.

I investigated to see what was going on. My conclusion was that CSXT trains were getting a fair shake. Both UP and CSXT trains were getting delayed on this track because it had become so busy. Although the line has double main track, most of the line does not have Centralized Traffic Control, and there are few crossovers, so there is little chance to run one train around the other. Also, UP has more expedited trains on this line than CSXT, and good dispatching practice makes it appropriate for those trains to be given priority treatment.

Based on my experience as a dispatcher and also as the top operating officer on two major rail systems, I believe dispatchers are subject to more criticism and Monday-morning-quarterbacking than employees in any other railroad craft. Everyone thinks he or she would have done a better job of running the railroad.

As a dispatcher, though, I know that unless you are asked to recreate your decisions within the first few hours after you made them, you cannot do it. On each shift, you make hundreds of decisions and are flooded with communications and changing conditions. It is impossible to go back months or years after a complicated night of decisions and figure out why the dispatcher made particular choices. There is no way to recreate all of the factors the dispatcher had to think about, such as what each train crew was saying about how its



engines were working, whether the dispatcher was having trouble reaching a train on the radio, whether there was a signal failure, and dozens of other events.

Without knowing all the aspects of the situation facing the dispatcher at the time of each delay, there is no way to evaluate the dispatching decision. I know this from personal experience, because I was sometimes asked to respond to complaints from Rock Island about decisions I made as a dispatcher that I believed, when I made them, were correct. It was hard to do.

The tenant railroad almost never sees this whole picture. All the tenant knows is that a particular train was delayed at a particular place. Delays on your own railroad are exasperating, but you have no one to blame for them but yourself. When another railroad has control of your trains, it is only human nature to wonder if something else is going on.

As an Operating Department officer for many years on two railroads, I also know that it is a supervisor's job to look into train delays on a day-to-day basis. If you wait until the end of the week or the end of the month, you cannot figure out what happened. All you can do is complain, and your complaints will usually be wrong.

When you are a tenant on trackage rights, you must exercise the same day-to-day involvement in supervising

your operations and looking into and resolving concerns immediately that you would if you were running on your own railroad. Trackage rights are not a one-way street where all the responsibility shifts to the track owner. It is not the owner's job to manage the tenant's service. To do an effective job as a tenant, you must talk every day to your counterparts on the owner's line and tell them which trains are hot, which trains need help, and which delays you want explained. If you do not do this, the owner's dispatchers will not know how to help you, and they will just do the best they can while they are getting a lot of direction about how to handle their own trains.

The Rock Island did a good job of managing its trains on the Kansas City-Topeka line, although their officers were a pain in the neck. Rock Island sent us wires every day telling us exactly what their operating plan for the day looked like and which trains required special handling.

DRGW also was effective in managing its trackage rights operations for the several years it operated over UP's line between Pueblo and Kansas City as an independent railroad. It ran a first-class operation on our line, just as DRGW had provided first-class service over its own lines. Its locomotives were in good condition, and its people made an effort to understand our railroad and the problems facing our dispatchers and train crews.

My counterpart on DRGW was Larry Parsons, the Vice President-Operations for DRGW. Under his leadership, DRGW was very active in managing its operations over our trackage rights. DRGW's local officers took care of most questions with local UP officers. If they could not solve the problem, Larry called me. Larry and I talked to each other regularly and toured the entire line together, and he personally visited our dispatching offices and talked to our dispatchers.

SP seemed to be much less involved on a day-to-day basis in managing its trackage rights on UP. I did not hear from SP officials very often. When there were unusual delays, we heard from them, but we certainly did not receive the kind of hands-on communications we had received from other railroads. I assumed SP was basically satisfied with our service.

What SP has done in its statements is to gather the usual war stories and anecdotes that every railroader can tell about its suspicions concerning events that cannot be recreated. When I read the SP statements, I found the same kinds of complaints that I have heard, read and made myself hundreds of times about hundreds of day-to-day dispatching decisions on my own railroad or on trackage rights. If a railroad's managers have done their jobs, though, there is no excuse for the railroad to bring up claims of "discrimination" from last year, let alone ten years ago. Those events should have been



dealt with when they happened, and many of them probably were. Looking back from 1994, no one will be able to figure out what really happened in each instance, because the only way to find out is to look into it right away.

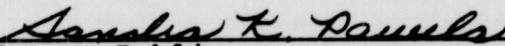
There is one thing I do know for certain: The notion that there was some "pattern and practice of discrimination" against SP, at least while I was at UP, is wrong.

STATE OF FLORIDA       )  
                              )   ss:  
COUNTY OF DUVAL       )

JERRY R. DAVIS, being first duly sworn, deposes  
and states that he has read the foregoing Verified Statement  
knows the facts asserted therein, and that the same are true  
as stated to the best of his knowledge and belief.

  
\_\_\_\_\_  
Jerry R. Davis

SUBSCRIBED and sworn to before me this 22nd day  
March, ~~1993~~ 1994.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 2-15-95

STB FD 32760 (Sub 26) 9-18-98 B 191210V2 1/5



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UP/SP-357

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 26)



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 --  
HOUSTON/GULF COAST OVERSIGHT

UP'S OPPOSITION TO CONDITION APPLICATIONS

VOLUME 2 - VERIFIED STATEMENTS AND APPENDIX MATERIALS

CARL W. VON BERNUTH  
RICHARD J. RESSLER  
Union Pacific Corporation  
Suite 5900  
1717 Main Street  
Dallas, Texas 75201  
(214) 743-5640

JAMES V. DOLAN  
PAUL A. CONLEY, JR.  
LAWRENCE E. WZOREK  
Law Department  
Union Pacific Railroad Company  
1416 Dodge Street  
Omaha, Nebraska 68179  
(402) 271-5000

ARVID E. ROACH II  
J. MICHAEL HEMMER  
MICHAEL L. ROSENTHAL  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044-7566  
(202) 662-5388

Attorneys for Union Pacific  
Corporation, Union Pacific  
Railroad Company and Southern  
Pacific Rail Corporation

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Part of  
Public Record

September 18, 1998

:/ Including related sub-dockets.

VOLUME 2

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**HOUSTON/GULF COAST OVERSIGHT**

**STATEMENT**

**OF**

**RICHARD J. BARBER**

**Filing date: September 18, 1998**

## Houston/Gulf Cost Oversight

VERIFIED STATEMENT -- RICHARD J. BARBER

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**VERIFIED STATEMENT**

**OF**

**RICHARD J. BARBER**

**WITNESS CREDENTIALS**

My name is Richard J. Barber, and I am an independent economic consultant. I testified on behalf of Applicants in the Union Pacific/Southern Pacific merger proceeding.

As an economist, I have dealt with a variety of issues -- mergers among them -- during the past 30 years. My principal area of professional activity has involved transportation (truck, pipeline, barge, and aviation) and, particularly, rail transportation.

My past work falls into three phases. As a university professor during the 1960s -- at Rutgers, Southern Methodist University, and Yale -- I taught courses dealing with business regulation (antitrust and finance, as well), with considerable emphasis on transportation. I also wrote in that period for professional journals, with my research including assessments of transport mergers and of productivity and technological change in rail and other forms of transportation. In 1961-62 (while on university leave) I served on the staff of the Joint Congressional Economic Committee and later, from 1965-67, I was on the staff of the Senate Antitrust Subcommittee.



In 1967, I became Deputy Assistant Secretary for Policy at the U.S. Department of Transportation (DOT). Over the next three and a half years, I was involved with a number of rail transportation problems, including early-stage assessments of possible reform of transport regulation. After leaving DOT in late 1970, I served as staff director for a study of transportation policy conducted by the National Academy of Sciences for a White House Advisory Panel and also consulted for the Senate Commerce Committee in its retrospective study of the causes, effects, and longer-term implications of the collapse of the Penn Central. In conjunction with this inquiry I prepared a report, The American Railroads: Posture, Problems, and Prospects, which the Committee published in 1972.

Commencing in 1971 and continuing to date, I have presented testimony in a number of proceedings before the ICC and this Board. Some have involved non-rail matters, some cross-modal issues (rail-barge and rail-motor carrier integration), but the greater number have pertained to railroads, including rate and Ex Parte dockets (e.g., market dominance) and railroad control proceedings. In conjunction with the latter, I have examined and submitted statements as to the effects of proposed rail consolidations on competition. I gave testimony in support of the CSX, Norfolk Southern, and UP/MP/WP mergers, in opposition to the SFSP and WC/FRVR-GDW proposals, and in support of the UP/CNW control transaction.

My educational credentials include undergraduate and graduate degrees from Wayne State University, the University of Michigan, and Yale University. I am a member of the American Economic Association, the National Association of Business Economists and the Association for Transportation Law, Logistics and Policy.

Counsel for UP asked me to address the issues raised by the Board in its Decision No. 1 in this proceeding, and to evaluate the condition proposals that have been presented in the proceeding. This statement presents the results of my assessment.

## SUMMARY AND OVERVIEW

In its initial oversight proceeding, the Board found that the Union Pacific/Southern Pacific merger, elaborately-conditioned to an unprecedented degree and in many carefully-etched ways, had not caused any adverse consequences (Finance Docket No. 32760 (Sub-No. 21), Decision No. 10 at 2-3, served Oct. 24, 1997). That ruling, on the basis of the evidence then available, was a correct one. Since then considerable new information has become available that, based on a broad range of specific facts -- including detailed traffic data for the period July 1997 through June 1998 and a growing body of evidence of greatly intensified rate competition -- allows an even fuller economic evaluation of the competitive effects of the merger conditions. In preparing this statement, I have drawn extensively on this new material. Upon close analysis, I come to a number of interpretations, which can here be briefly summarized so as to provide an introduction to the more detailed analysis that will follow.

---

No competitive harm stemming from an effect of the UP/SP merger has been newly "discovered." All the harms that might have resulted from the merger were addressed through the conditions imposed by the Board in its Decision No. 44 (August 12, 1996). Where there had been competition between UP and SP (and no other railroad) at a given location or in an



identified corridor, the conditions maintained, and indeed considerably strengthened, competition, by giving BNSF replicatory access to all the affected "2-to-1" locations and "2-to-1" corridors. By replacing a weakened and network-limited SP with the strong, far-reaching BNSF system, encompassing its sprawling route system, the Board insured that UP would be confronted with a competitor that has proven it can contest vigorously and successfully, to shipper and overall public benefit. Tex Mex also received trackage rights to connect with KCS at Beaumont and handle certain Houston traffic, which, while not, in my view, necessary to preserve pre-merger competition, have further increased competition for Mexican traffic flows via Laredo.

---

Use of a "Houston rail market" to assess whether the merger has harmed competition, as KCS/Tex Mex try to do, is misguided. To assess competition for rail service at Houston (or elsewhere) requires a more discrete analysis. Distinctions must be made between "1-to-1" situations (where, pre-merger, UP or SP but not both provided service) and instances ("2-to-1" or "3-to-2" situations) where pre-merger SP independently competed with UP. At the "1-to-1" locations the Board concluded that the transaction would not harm competition and no relief was warranted. At the "2-to-1" locations the merger's potential adverse competitive harm was avoided by conditions giving BNSF access that replicated SP's.

For "3-to-2" traffic, the Board properly found that the merger, as conditioned, would strengthen competition, by producing a much more competitive UP/SP system, and a significantly more competitive BNSF system. With source competition also remaining strong, the result has been to deal with all the merger's competitive risks. By treating Houston traffic as a homogenized blob of tons and loads, KCS/Tex Mex obscures the fact that those who would gain from its proposals are principally "1-to-1" shippers. Through the creation of new service at Houston, having no nexus to any competitive harm of the merger, these shippers would be placed in a "1-to-3" category. This is unprecedented and unwarranted.

---

Because of the conditions that the Board put in place, UP achieved no increase in what is sometimes called "market power." If this phrase is quantified as and measured by the share of traffic in the Houston BEA, for example, UP has sustained a large loss of power or share since the merger. Pre-merger, UP and SP combined accounted for 80% of Houston-originated traffic. By contrast, in the first six months of 1998, UP's share of Houston originated traffic has fallen to 69%. BNSF traffic volumes increased by 51% in the first six months of 1998 compared with the last half of 1997, while UP's declined by 8%. UP's share of Houston-terminating traffic has also fallen. These same trends -- with UP losing share and clearly gaining no "market power" -- are observed throughout



the Gulf Coast area: in Texas as a whole, in other major industrialized/urban Gulf areas, and at Laredo (where Tex Mex's share of border crossing traffic has expanded by approximately a third).

BNSF's new competitive vigor and the ability it has shown to take traffic away from UP are directly traceable to the conditions imposed by the Board in 1996. BNSF was given direct routes (in the "2-to-1" corridors) which it had not previously operated, and access to a large body of additional traffic to move via those routes (e.g., BNSF has estimated that it gained the right to compete for as many as 40,000 carloads of new chemicals/plastics traffic in the Gulf Coast area). BNSF now has complete route parity with UP, if not better routes, throughout the West and for efficient interregional movements (to and from the Southeast as an illustration). Tex Mex also gained, with a stronger connection for Laredo traffic (BNSF rather than SP), and, for traffic that moves over Tex Mex's own line, a right to interchange traffic with KCS (which controls 49% of Tex Mex's stock) at Beaumont and to serve HBT- and PTR- served shippers at Houston.

Facing stronger competition over all its routes as the direct outgrowth of the merger conditions, UP is now broadly exposed to the harsh winds of BNSF and Tex Mex competition. Tough, persistent rate competition has been the inescapable result. Rate cutting is now widely evident and is



the chief means by which BNSF has successfully taken traffic from UP and by which UP has sought to protect its business (or to seek to regain traffic it has lost through rate discounting). Throughout the Gulf Coast area, UP's rates are falling, an outcome that further contradicts any claim that it gained market power through the merger as conditioned.

---

Recently observed competitive trends in the Gulf Coast area are a permanent fixture of rail service in this region and not some temporary phenomenon. While Service Order No. 1518 may have had some favorable operational effects in dealing with the now concluded service crisis, it does not explain the gain in BNSF and Tex Mex traffic shares at Houston (traffic moving under the contract opener provisions of the Service Order in the first six months of 1998 represented only 1% of total Houston outbound loads). Nor does the congestion that existed from the late summer of 1997 into 1998 explain UP's loss of market share and the gains made by BNSF (and Tex Mex). The reason is that in the tightly interwoven Houston/Gulf Coast area rail network all the railroads, UP certainly but also BNSF and Tex Mex, were subjected to congestion constraints. UP's loss of traffic share, and

BNSF's gain, is explained by the merger conditions, not service congestion.

---

BNSF has been positioned through the conditions to compete for traffic against UP, as it had begun to do prior to the emergence of the service problems and as it has continued to do since the Board's July 30 finding that the emergency had ended. Both BNSF and Tex Mex expect to increase their traffic still more, which will mean ongoing head-to-head rate competition of the sort already firmly established. The lesson is that the merger conditions imposed by the Board have indelibly altered the structure and dynamics of competition at Houston and in the Gulf Coast area.

The specifically identifiable competitive harms that might have arisen from the merger have been very effectively dealt with, but the precise form of the conditions went further and created the basic prerequisites for what has become a stronger, highly competitive environment. Public benefits of the merger have been preserved, potential harms of the transaction have been dealt with, and competition strengthened. The conditions have worked; that is the crucial bottom line. Part I will develop the reasons underlying this conclusion in detail.



In juxtaposition with the publicly-beneficial pro-competitive consequences of the merger conditions imposed in Decision No. 44, some other parties to this proceeding seek to add permanent new conditions that lack a nexus to such competitive risks as the UP/SP merger might have posed. As will be considered in Part II, the conditions proposed by the "Consensus Group" -- which I will refer to for simplicity as KCS/Tex Mex -- are a verbally-recycled version of what the Board has previously considered and rejected. No new factual support for their imposition has been presented, and the underlying logic remains ill-premised and contradicted by facts showing, contrary to KCS/Tex Mex's assertions, that UP has lost, not gained, traffic share at Houston.

What KCS/Tex Mex seek -- in particular, access to UP "1-to-1" shippers in the Houston area (accomplished by so-called neutral switching) and increased business for Tex Mex (more accurately, for KCS) -- simply amounts to the creation of a drastically restructured rail system at Houston. This is not aimed at solving the now-ended service emergency, which KCS/Tex Mex thought could not and would not end on the specious theory that the Board had increased UP's "market power." Nor are KCS/Tex Mex's proposals designed to remedy any adverse competitive effects attributable to the merger itself. Rather, through far-reaching divestiture KCS/Tex Mex seek to reconstitute rail service at Houston. This would



confer sizable private benefits on KCS/Tex Mex (by their own estimate, their plan would divert \$155 million of annual traffic from UP) but do so by diluting the merger's public benefits. There is no justification for the conditions they request.

As also will be examined in Part II, BNSF seeks conditions that would materially benefit it, but that do not address any competitive harm stemming from the UP/SP merger transaction. In asking for trackage rights over UP's heavily used San Antonio-Laredo line, BNSF is not seeking to replicate independent pre-merger SP competition. For traffic moving via Laredo in competition with UP, SP worked in cooperation with Tex Mex via the Rolstown interchange. That competition has been maintained, with BNSF substituted for SP. This is working well: BNSF is interchanging more traffic for Laredo with Tex Mex than had SP, and Tex Mex's share of Laredo border traffic, including the traffic moving via Beaumont with KCS, is increasing and UP's falling. Nonetheless, unhappy with its present revenue divisions with Tex Mex, BNSF is now looking to create a new direct service over UP for Laredo. This would yield it (by its own estimate) \$103 million in 1999 traffic diversion from UP. The effect would be to reduce the public benefits of the merger by imposing a new condition that does not remedy a competitive harm arising out of the merger. The other conditions proposed by BNSF also seek to enhance BNSF's

competitiveness at UP's expense, rather than to preserve pre-merger competition.

The UP/SP merger conditions imposed by the Board in Decision No. 44 have worked well, remedying all the harms that might otherwise have occurred and doing so in a way that has created far more competitive rail service at Houston and in the Gulf Coast Area. There remains, however, one concern, as examined in Part III. In approving the UP/SP merger, the Board sought to establish two strong, balanced rail systems -- UP and BNSF -- in the West, each with a comprehensive nest of integrated routes capable of efficiently serving shippers throughout the region. This strong two-carrier system in the West was seen as promoting competition. To achieve that objective, it was recognized that UP would have to invest heavily so as to catch-up on SP's past under-maintenance, as well as modernize an integrated network comparable to that of BNSF. (Over the next five years, UP plans to spend over \$1.4 billion in Texas and Louisiana for capacity expansion, track upgrade, and new facilities.)

Ideally UP's program would have gotten fully underway soon after the merger was consummated, sustained by what were expected to be favorable UP earnings. The service problems, however, have resulted in lower U. revenue, higher costs, and overall losses.

Getting UP back fully on its planned investment pace is now of the essence. Yet if KCS/Tex Mex and BNSF condition

proposals were imposed, the effect would be at least to impede the work that has to be done. By their own estimates, their proposals would have the combined effect of diverting at least a quarter of a billion dollars in traffic per year from UP. These estimates may well be understated and certainly over time they will grow, but it is clear they will reduce UP resources at a time when its investment needs are great and time-urgent. The inescapable effect would be to retard UP's emergence as the second strong carrier in the West. This would run counter to the Board's aim of achieving a two-strong-railroad West and inhibit competition.



I. THE UP/SP MERGER AS CONDITIONED HAS INTENSIFIED COMPETITION IN THE HOUSTON/GULF COAST AREA, REDUCING UP'S SHARE OF TRAFFIC, BRINGING ABOUT NO INCREASE IN ITS MARKET POWER, AND NOT CAUSING THE NOW-ENDED SERVICE PROBLEM

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Mergers of railroads like that of UP and SP promise sizable potential public benefits through cost reductions, expanded and better single-system routes and service, and an overall more efficient use of resources that ultimately contributes to consumer welfare.

The UP/SP merger was seen as producing annual cost savings of \$534.3 million (Decision No. 44 at 109) and an integrated system of improved routes throughout the West. It also offered a special benefit in that it placed a "teetering" SP<sup>1/</sup> -- with high costs, deficient service, and inadequate resources for needed capital improvements -- within a stronger system which could make use of its routing potential (*id.* at 114-15). Once UP and SP were fully integrated, and requisite capital upgrading was accomplished, UP/SP would be able to match-up against BNSF and thereby provide the West with two balanced rail systems capable of widespread competition in the region.

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<sup>1/</sup> "The merger has established a competitive situation between UP and BNSF (at our plant). This was not the case when SP was the competition. SP always seemed to be teetering on the edge financially and operationally. SP really needed UP's resources to rescue a very bad situation." Statement of Minnesota Mining & Manufacturing Company (3M), in Applicants' Second Annual Report on Merger and Condition Implementation, July 1, 1998. See also, *e.g.*, statements of Exxon, LMS International, and Pope & Talbot, expressing a similar concern for SP and recognition of increased competition.

Like nearly all rail mergers, however, consolidation of SP into UP posed some potential competitive risks arising out of the transaction. The challenge presented to the Board was to sort out the specific situations in which the merger would significantly diminish competition from those where the merger itself would not stifle competition (and would perhaps actually improve the quality of service available to a shipper). A key objective was to focus pointedly only on the harms occasioned by the merger, remedying them effectively by condition, but not to use the control proceeding as an occasion for broad-scale restructuring of rail service or for dealing with whatever long-standing industry structural problems some might like to mitigate. (Decision No. 44 at 144-46.) The underlying reason is that conditions necessarily dilute a merger's public benefits and should be invoked sparingly, where clearly necessary to deal with competitive harms having a direct nexus to the transaction.

A. Experience Shows That the Board Dealt  
Comprehensively With All Adverse Competitive Effects  
of the Merger: No New Specific Problems Have Been  
Presented and Competition Has Increased

In assessing the UP/SP merger, the Board identified two categories of potential competitive harm. One consisted of shippers that had been served by both UP and SP and no other railroad; the consolidation would eliminate SP as a competitor. The second, analogous to the first, was comprised of major corridors in which UP and SP had competed and where



there was no other direct rail service. The conditions addressed both such situations and in ways that have proven effective, as the data presented later conclusively demonstrate. These potential harms have not only been negated but strong new competition has been instigated. No new specific harms arising out of the merger have been discovered.

(1) All "2-to-1" Potential Merger Harms Have Been Dealt With Through the Conditions Imposed

In the UP/SP merger context, the Board carefully screened out and dealt with situations where pre-merger both UP and SP had provided the only independent rail service at given locations or in certain corridors. In these "2-to-1" circumstances the absorption of SP into UP would extinguish an existing competitive choice (the same potential effect was discerned for future competitive options -- build-ins, transload facilities, or new industry). Conditions reflecting but adding to terms of the pre-merger UP/BNSF settlement agreement (and the later CMA settlement), were imposed accordingly, substituting another carrier (primarily BNSF) for SP (the great significance of choosing BNSF to replicate for SP is discussed below). All "2-to-1" shippers and corridors have been covered by the conditions (no party in this category asserts that is was omitted).

On the other hand, in instances where UP or SP had provided the only service ("1-to-1" cases), the Board determined that the merger would not harm competition.



Instead, it would give shippers in this category better service since UP would have better routes and be able to offer expanded single-system service throughout the West (important because rival shippers served by BNSF already enjoyed greater regional single-line service). Since at the "1-to-1" locations, competition would not be lessened by the merger, but only potentially improved, no protective conditions were called for.

As for locations which had been served by UP, SP, and a third railroad ("3-to-2" situations), the Board sensibly concluded -- backed up by the testimony of many shippers in the control proceeding -- that the loss of SP would not harm competition because of SP's seriously-weakened condition and because of industry characteristics that lead rival railroads to compete intensely. Two strong railroads, UP and BNSF, each with new routes, promised stronger competition.<sup>2/</sup>

(2) The Conditions Have Given BNSF Full Route Parity With UP and Also Bolstered Tex Mex

While BNSF had a nest of quality routes in much of the West, it suffered from certain important missing route links where UP would have had a post-merger advantage absent the Board's corrective action. Taking Houston as a geographic reference point, BNSF had no direct route to New Orleans (and

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<sup>2/</sup> This has been realized, as shippers acknowledge. Says one: "Before the merger, our Texas plants were served by SP, UP and BN. Post-merger, we have seen the number of carriers drop by one but the interests of competition has increased." Lubrizol statement (in UP Second Annual Report, July 1, 1998).

hence no connection via that gateway into the Southeast) for Houston traffic (or, for that matter, its West Coast long-haul traffic); it had no direct route to St. Louis or Memphis (its moves were circuitous, more than 100 miles longer than UP or SP to St. Louis and 400-plus miles longer to Memphis, another key junction for Southeast traffic); and it had no routes to Brownsville or Corpus Christi and connections with Tex Mex for Laredo.

These large system gaps were closed through the imposed conditions. Since these corridors were in the "2-to-1" category, a replacement was needed -- and BNSF gained rights in all these corridors (it acquired much of the line to New Orleans through purchase, and more recently entered into an agreement with UP to exchange a half interest in that line for a half interest in the SP line between Houston and Beaumont). (This, of course, was not all that was accomplished: UP gained SP's route in the Southern Corridor, BNSF obtained access to the Central Corridor, and both roads acquired new, single-line north-south routes in the I-5 corridor.)

With the conditions in place, BNSF had achieved full route parity with UP or better in all the major traffic corridors. From Houston, it can now offer single-line service equal in quality to that of UP to the east (for and via New Orleans), to the north via Memphis, and into South Texas (including a connection with Tex Mex linking its system to



Laredo, as well as access to Brownsville and improved access to the Eagle Pass crossing). BNSF thus has been placed on equal or better routing terms with UP, positioning it to contest for traffic on a level competitive field.

Tex Mex's position was also buttressed. Prior to the UP/SP merger, Tex Mex had been dependent on SP for traffic, but SP's weaknesses had reduced its interchange volume with Tex Mex. With the merger, SP traffic could be expected to divert to UP's direct line to Laredo, which would have placed Tex Mex at risk and reduced competition at that border crossing. The conditions addressed this in two ways.

First, BNSF became the substitute partner for Tex Mex -- giving it potentially much greater access to interchange traffic for Laredo due to BNSF's strength and traffic-generating scale of its system. Tex Mex would thus benefit and BNSF-Tex Mex competition against UP at Laredo would increase. Second, Tex Mex was given trackage rights allowing it to interchange traffic with KCS (its 49% stockholder) at Beaumont (restricted to traffic to and from Tex Mex's own lines). This further enhanced Tex Mex's position as a competitor of UP. While this may not have been necessary to preserve pre-merger competition, it further increased competition for Mexico traffic moving over Laredo.



(3) The Conditions Opened Up Substantial Volumes of UP Traffic to Competition From BNSF and Tex Mex

Through the conditions, BNSF gained route parity with UP, but to make effective use of those routes BNSF needed to have an opportunity to compete for traffic to be moved over them. To meet this need, the conditions opened up an immense amount of UP traffic to BNSF competition at the "2-to-1" locations, with half of the traffic under contract at such points made immediately available, at the shipper's option, to BNSF. By BNSF's count, it gained access under the conditions to 188 shippers in Texas plus another 48 in Louisiana. (BNSF Quarterly Progress Report, July 1, 1998.)

Tex Mex also gained expanded competitive opportunities. With a stronger interchange partner, BNSF, and with rights to interchange Laredo border traffic at Beaumont with KCS, Tex Mex now sees itself as well-positioned to participate in handling growing NAFTA-related business (it currently estimates that the US/Mexico rail market will

(TM-6-HC-00071). The conditions thus gave Tex Mex an opportunity to compete in this large and growing market.

In sum, the effect of the conditions imposed by the Board set the stage for greatly intensified competition by BNSF, and an expanded Tex Mex presence. The three conditioning steps discussed above represented, in effect,

building blocks that offered the clear promise of heightening competition in the Gulf Coast area and exposing UP to much more strongly positioned contestants. The question, considered next, is how those conditions have affected competition since they took effect.

B. KCS/Tex Mex's Approach to Assessing the Competitive Effects of the Merger as Conditioned Is Conceptually Deficient, But Even If It Were Used Correctly It Would Confirm That UP Has Gained No So-Called "Market Power" Through the Merger

KCS/Tex Mex witnesses present data that they say show that the merger, even as conditioned, increased UP's market power as reflected in its share of Houston traffic. These data are flawed and when restated correctly demonstrate just the opposite. Their approach, though, is itself inherently deficient for it fails to examine the underlying market specifics in an analytical way that gets down to what are the essential factors that manifest the workings of rail market economics. I deal with this latter point in item (1) below. Then I turn to the KCS/Tex Mex methodology -- using aggregated traffic share and related statistics -- and show that even if it is properly employed the lessons are the same: UP has gained no market power, its share of traffic has fallen, and it is now locked in vigorous competition with BNSF.



- (1) KCS/Tex Mex Present a Badly Flawed Conception of the Houston "Market," Treating It as a Homogenized Blob of Traffic Rather Than Looking at Constituent Components That Accurately Portray Its Competitive Features
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In their submission, KCS/Tex Mex proceed on the premise that there is something called the "Houston market" for rail traffic. This is economic nonsense. There is no more a homogenized "Houston rail market" than there is a single, undifferentiated rail "market" for Illinois or Chicago or New Jersey. Railroads (like transporters generally) serve a multiplicity of distinct "markets" distinguished by, among other things, the number of railroads that serve a given shipper location (one, two, three or whatever) and the nature of the product being carried. These specific characteristics are important in assessing competition and evaluating the impact of a merger. KCS/Tex Mex's witnesses, Grimm and Plaistow, disregard these factors and speak as if the UP/SP merger's competitive implications can be measured by looking at aggregate measures expressed simply in tons or loads carried from all points in the Houston area to given destination regions. This is plain wrong as a matter of economics.

A proper approach follows the analytical model employed by the Board in Decision No. 44. There the Board correctly disaggregated the specific traffic and movements relevant to the merger. It thus considered shipping locations that, pre-merger, had been served by only UP or SP but not by



both ("1-to-1" situations) and concluded that these would not be competitively harmed by the transaction (they could, though, benefit since the merged carrier would be able to offer much more and much better single-line service). It also separately cast an analytical spotlight on instances where, pre-merger, a shipper (or a corridor) had been served by both UP and SP ("2-to-1" locations) or by UP, SP, and a third carrier ("3-to-2" locations) (see, generally, Decision No. 44 at 119-24). And it also examined source competition, finding that in the case of this merger, it was and would remain an "effective competitive constraint" since the outbound traffic was heavily oriented to products (e.g., plastics) that are close substitutes, bear high transport costs, and are sold at small margins on the basis of comparative delivered prices. (Decision No. 44 at 125-26).

Based on this discrete analysis the Board concluded, consistent with good economic treatment, that competition would not be harmed at the "1-to-1" locations but that at the "2-to-1" locations (and in "2-to-1" corridors) BNSF should be given access to replicate for the loss of what had been SP's independent competitive presence. Competition thus would be preserved (and invigorated because BNSF was stronger than SP) while source competition would assert an additional disciplinary constraint.

Experience shows that the conditions imposed by the Board have worked well. Not a single "2-to-1" shipper, at

Houston or elsewhere, has been omitted; all shippers in this category continue to have the benefit of competition from BNSF and UP. A large number of Houston/Gulf Coast shippers have provided statements expressing their praise for the new stronger competition they now enjoy and opposing the new conditions that KCS/Tex Mex seek.<sup>3/</sup> Aggregated traffic data fail to reveal the full extent of existing UP-BNSF competition.<sup>4/</sup>

By lumping together all Houston area traffic into an undifferentiated blob of tons and loads KCS/Tex Mex not only present an economically meaningless picture but mask the real target of the conditions they propose -- namely "1-to-1" shippers at Houston. None of these are named by KCS/Tex Mex; and none come forth from KCS/Tex Mex's shadows to endorse with

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<sup>3/</sup> See the shipper statements in the UP Second Annual Progress Report (July 1, 1998) and those filed herewith dated September 1998. These include statements of Houston-area shippers such as Exxon, Celanese, Lubrizol, and Shintech, among others. Sintech's September 2 statement also shows that source competition continues to be strong, providing comfort even for a shipper like it that is served only by UP.

<sup>4/</sup> Included in the aggregate data is traffic at "2-to-1" locations that are subject to intense UP-BNSF competition. Assume, for example, that at such a point a shipper seeks bids from both roads and then awards a one-year contract to UP. All of the tons shipped would show up as UP traffic, suggesting that this traffic in some fashion is UP's to possess perpetually when in fact the traffic is subject to keen competition. (At Houston half of the total traffic hauled by UP in the first half of 1998 was open to rail competition). Conversely, the data also include moves at "1-to-1" points where the merger did not harm competition.



specificity the conditions from which they seek to gain.<sup>5/</sup> The plain reality is that they cannot have sustained competitive harm from the merger transaction. They lost no independent competitive rail service, and their positions did not and do not warrant the creation of the new three-railroad service that they would receive via proposed "neutral" switching from PTRR. Yet it is the intent and effect of the KCS/Tex Mex plan to transform what have been and what remain "1-to-1" shippers into "1-to-3" shippers (with access, via the neutral switcher, to Tex Mex and BNSF as well as UP). On purpose, or through deficient economic analysis, KCS/Tex Mex's treatment of Houston rail traffic in terms of a formless blob of statistics obscures this unjustified outcome.

(2) KCS/Tex Mex's Claim That UP Gained Market Power Through the Merger Is False and Based on Flawed and Incomplete Data

KCS/Tex Mex argue that changes in shares for traffic originating in the Houston BEA provide a measure of competition. Their approach, using lumped-up data, is not right, but even if it is used -- with accurate and complete data -- it shows that UP has lost, not gained "market power." The essence of the KCS/Tex Mex position is (a) that UP's share of originating traffic at Houston moving to certain

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<sup>5/</sup> The trade association statements contained in KCS/Tex Mex's July 8 filing (by CMA and SPI) are so general as to be of no meaning. Certain shippers have sent letters to the Board supporting the Plan but these are unverified and lack meaningful specificity.



destination areas has not been reduced from the combined UP/SP pre-merger share and (b) that this is proof of the failure of the conditions to increase competition (KCS-2 at 19-21, Grimm-Plaistow VS at 148-50). In fact, they variously allege that the Board actually "created" a competitive problem at Houston<sup>5/</sup> or worsened it, and achieved no beneficial competitive effect through its imposed conditions (KCS-2 at 19, Grimm/Plaistow VS at 148-50).

These interpretations, overblown as they are, are premised on the traffic share data compiled by KCS/Tex Mex's witnesses (KCS-2, Grimm/Plaistow VS at 149-50). These tabulations, however, are seriously flawed, incomplete, and out-of-date. They deal only with outbound traffic and do not include traffic terminations; they relate only to the Houston BEA and do not consider other Gulf Coast areas affected by the merger (other industrial areas or, for that matter, Texas as a whole, or Laredo and Eastern Mexico gateway traffic); they are limited only to some destination states and do not cover the totality of traffic moving to and from all states, including all those in the West. Even for such data as were presented by the KCS/Tex Mex witnesses, errors were made in compiling the data for the destination states they purport to have

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<sup>5/</sup> Even by KCS/Tex Mex's line of reasoning, based on their own deficient data, it is obvious that the merger did not "create" or "provide" UP with its alleged monopoly position, since shippers that were solely-served before the merger remained so afterward and shippers that had rail competition before the merger still have rail competition.

included. Many movements from Houston to locations in their state groups were omitted in their tabulations.<sup>2/</sup>

Apart from errors in their data, the statistics as presented by Grimm/Plaistow obscure extant competition rather than offer enlightenment. Consider their Table 3 (KCS-2, Grimm/Plaistow VS at 151). Here they offer data for a few four-digit SPLCs (and none for the more commonly-used six-digit SPLCs). They say, for example, that UP's share of traffic shows "strong UP dominance" at SPLC 6846 and at SPLC 6847. However, these two four-digit SPLC's include Exxon's large plastic plants at Mt. Belvieu (SPLC 684640) and Baytown (SPLC 684771). These are "2-to-1" points to which BNSF gained access and for which it can compete against UP (Grimm/Plaistow make no mention of this).

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<sup>2/</sup> For example, although Grimm and Plaistow claim that the "East-Northeast" region includes "eastern Canada," no data from Canadian BEAs appears in their study, although waybill data confirms that such traffic exists. Similarly, they say that their "East-Northeast" region includes "all of New England" and "New York," but their study in fact did not include, for example, the Bangor ME, Burlington VT-NY, or Albany-Schenectady-Troy NY BEAs. In all, they excluded 10 of the 17 BEAs in the region where waybill data indicated that Houston traffic had terminated. Similarly, in the "South-Southeast" region, Grimm and Plaistow claim that they included "all the states from Virginia southward to Florida," but their study did not include, for example, the Greensboro-Winston-Salem-High Point NC-VA, Wilmington NC-SC or Jacksonville FL-GA BEAs. In all, they excluded 25 of the 54 BEAs in the region. And similar problems infect their "Midwest" region. Grimm and Plaistow claim the region includes "all states east and west between Ohio and Kansas" and between "Michigan and Arkansas," but they did not include, for example, the Northern Michigan MI, Jonesboro AR-MO, Peoria-Pekin IL or Chicago-Gary-Kenosha IL-IN-WI BEAs.



Does Exxon think it is the victim of supposed UP dominance? Hardly. In a statement included in UP's Second Annual Report (July 1, 1998), Exxon says it is "satisfied with the effectiveness of conditions imposed by the [STB] to maintain competition at Exxon's sites in the Houston area." It reports that both BNSF and UP have competed for its business and that it has negotiated contracts with both carriers on "competitive commercial terms." These contracts, at least while they are in place, have given UP a larger share of Exxon's traffic but the key point is that competition exists, giving UP no "dominance" as alleged by Grimm/Plaistow. This is a good example of how raw traffic data fail fully to manifest how the imposed conditions have preserved (and increased) competition where the merger might otherwise have posed a risk of harm.

C. Because of the Imposed Merger Conditions UP Has Lost Traffic Share, Gained No Market Power, and Been Exposed to Much Stronger Competition at Houston and in the Gulf Area

To consider the KCS/Tex Mex approach I have assembled a comprehensive body of statistics as they relate to carrier traffic trend shares at Houston and in the Gulf Coast area. The data presented here (detailed tables will be found in the Appendix to this statement) examine originating and terminating traffic, doing so for all the states grouped by



region (the groupings by state are listed in the Appendix)<sup>2/</sup> and embracing not only the Houston BEA but also Texas as a whole and other Gulf Coast BEAs. US-Mexico traffic, via Laredo and other eastern border gateways, is separately treated in the material that follows. The data presented here are for the period January-June 1998 as derived from the UP and BNSF traffic tapes which the Board made available through its Decision No. 1 and from Tex Mex and KCS traffic tapes obtained through discovery. Some even more recent information is also reflected later in this statement. I believe this offers the Board as complete a statistical picture as can be assembled.

(1) Houston: UP's Traffic Share Has Fallen in the  
Face of Much Stronger BNSF Competition

Contrary to the claims of KCS/Tex Mex, Exhibit 1 shows that UP's January-June 1998 share of total traffic originated in the Houston BEA has fallen -- from a pre-merger 80% in 1994<sup>3/</sup> to 69%. By contrast, BNSF's share increased

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<sup>2/</sup> The regions used have been conformed to those defined by Grimm-Plaistow for the Northeast, Southeast, and Midwest. The Far West has been added along with moves to-from Texas, separately tabulated, and for other traffic reported on the tapes (the "other" traffic reported in the Appendix tables primarily involves moves to the western Canadian provinces). The tapes are those of UP, BNSF, Tex Mex, and KCS.

<sup>3/</sup> I believe 1994 is the best pre-merger reference year since it was the base year used in the UP/SP merger proceeding. Even if 1995 or 1996 was used, it would not affect my analysis (the combined UP/SP share of Houston originated traffic was 80% in 1994, 81.6% in 1995, and 80% in 1996) (see Appendix Tables 3 and 4 for comparison).

# Exhibit 1

## PRE- AND POST-MERGER TRENDS IN UP AND BNSF SHARES OF TRAFFIC ORIGINATED IN HOUSTON BEA (% of tons)

	UP			BNSF		
	1994	July-Dec. 1997	Jan.-June 1998	1994	July-Dec. 1997	Jan.-June 1998
Total Traffic						
To: Northeast						
Southeast						
Midwest						
Far West						
Texas						
Other						

## CHANGE IN UP, BNSF VOLUME, 1997, 1998

	UP			BNSF		
	July-Dec. 1997	Jan-June 1998	Change	July-Dec. 1997	Jan-June 1998	Change
Total traffic						
To: Northeast						
Southeast						
Midwest						
Far West						
Texas						
Other						

Sources: Appendix Tables 1, 2, 5.

Exhibit 2  
PRE- AND POST-MERGER TRENDS IN UP AND BNSF  
SHARES OF TRAFFIC TERMINATED IN HOUSTON BEA  
(% of tons)

	UP			BNSF		
	1994	July-Dec. 1997	Jan.-June 1998	1994	July-Dec. 1997	Jan.-June 1998
Total Traffic						
From: North east						
Southeast						
Midwest						
Far West						
Texas						
Other						

CHANGE IN UP, BNSF VOLUME, 1997, 1998

	UP			BNSF		
	July-Dec. 1997	Jan-June 1998	Change	July-Dec. 1997	Jan- June 1998	Change
Total traffic						
From: Northeast						
Southeast						
Midwest						
Far West						
Texas						
Other						

Sources: Appendix Tables 6, 7, 10.



from in the first six months of 1998.<sup>10/</sup>  
UP's shrinking share of total Houston outbound traffic is mirrored in movements to all the destination regions listed in Exhibit 1.

Although these share trend data -- with UP's position at Houston falling and BNSF's expanding -- demonstrate that UP has been subjected to much more intense competition, they fail fully to show the true extent of competition. The reason is that a great deal of the traffic which UP did move in the period January-June 1998 is itself open to rail competition. The table summarizes what is involved. It is based on the data in Exhibits 1 and 2 and on the analysis presented in the Peterson VS.

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<sup>10/</sup> The soundest measure of traffic, in my view, is tons since these are not subject to the inescapable distortions involved in the use of loads (which vary depending on changes in car capacity even where there may be no change in tons handled). Tons, really ton-miles, are the typical basis for calculating revenue.

	HOUSTON BEA TRAFFIC, BY COMPETITIVE CATEGORY JANUARY-JUNE 1998 (in % of tons)		
	Originated Traffic	Terminated Traffic	Total Traffic
A. Traffic moving to from Houston BEA points not served exclusively by UP			
(1) Traffic moving by any other railroad January-June 1998	31%	41%	37%
(2) Traffic moved by UP January- June 1998 but to/from Houston locations accessed by another railroad	29%	37%	33%
B. Traffic moving to/from Houston BEA points served exclusively by UP	40%	22%	30%
Sources: Exhibits 1-2, Peterson VS			

Let me briefly explain the derivation of this insert table. Line A(1) is straightforward; it shows the share of traffic originated/terminated in the Houston BEA by a railroad other than UP (usually, of course, it was BNSF) (the data are in Exhibits 1 and 2). Line A(2) is the residual (100 less 31% for originated traffic or 69%) multiplied by the Peterson determination of UP's January-June tonnage that moved to/from locations served by another railroad. For originated traffic this was 41.4%, so the derivation is  $69\% \times .414$  or 29, the number shown in line A(2) for originated traffic. The same methodology was used for terminated traffic and for total traffic (originated + terminated in tons). This then leads to Line B, which is the share of total Houston BEA originated,

terminated, and summed traffic that moves to/from "1-to-1" UP points. As can be seen, of total Houston BEA traffic the share moving from UP/exclusive locations is 30%. The other 70% is open to rail competition and either moved by another railroad in the first half of 1998 (Line A(1)) or is open to competition from another railroad (Line A(2)).

This makes clear that UP has nothing akin to dominance of rail service in the Houston area. More than two-thirds of Houston BEA rail traffic moves to or from points that can be reached by a railroad other than UP. This body of traffic remains open to the same aggressive BNSF competition as already has slashed UP's share.

The explanation for BNSF's expanded share of traffic at Houston, and for UP's decline, is found in several factors. Particularly noteworthy, as can be seen in the lower portion of Exhibit 1, BNSF's total originated traffic at Houston increased by just between the two successive six-month periods, July-December 1997 and January-June 1998. By comparison, UP's traffic fell, This demonstrates both the size of the traffic base now exposed to competition and BNSF's ability to exploit it. With substantial UP traffic open to still more diversion. A key index of competition, or contestability, is that a rival road have the capacity to take and handle a substantial share of a larger carrier's traffic. BNSF has firmly evidenced that it measures up well by this competitive criterion.



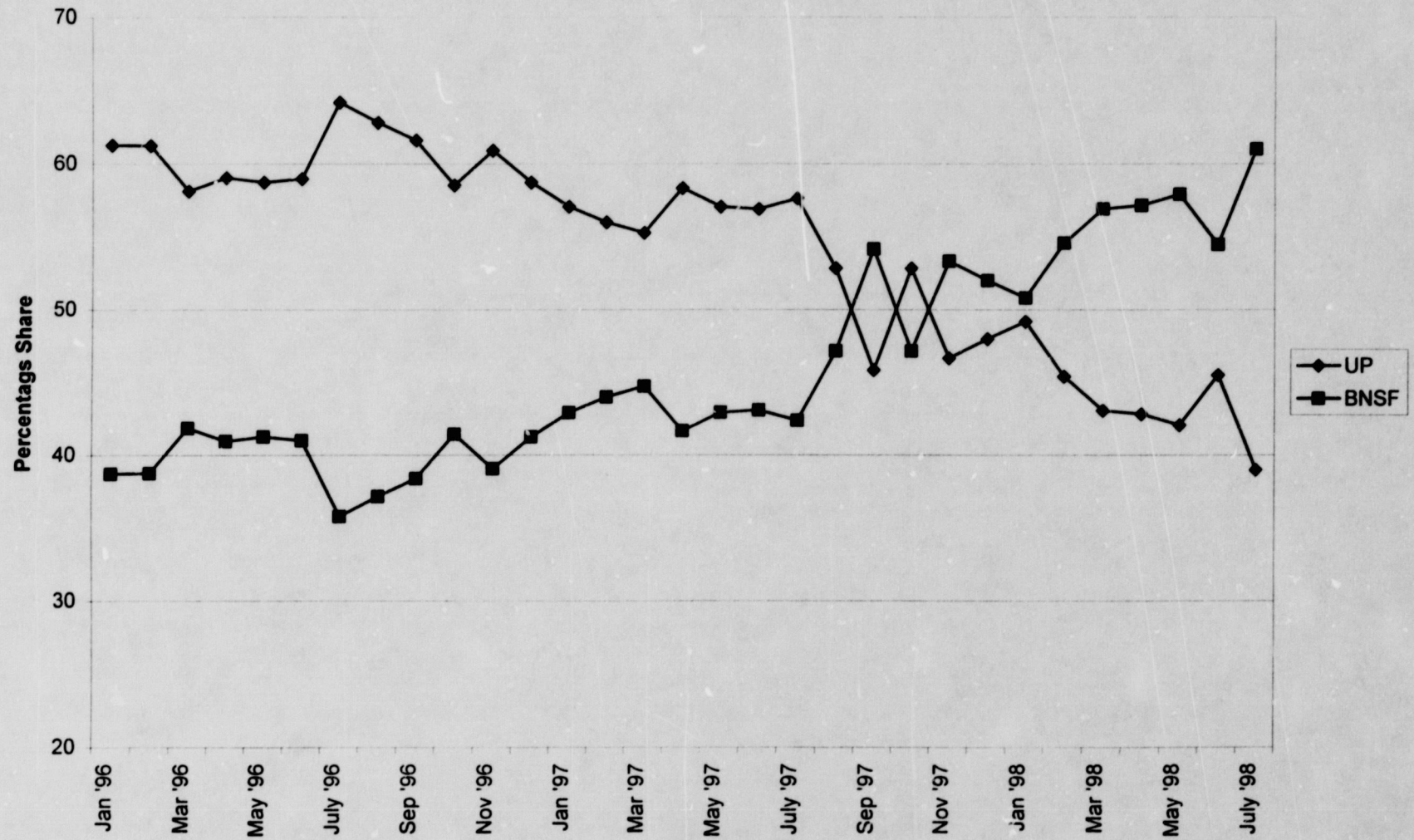
A closer look at the data in Exhibit 1 offers additional lessons. Consider traffic moving from Houston into the South/Southeast. Before the UP/SP merger BNSF lacked good routes connecting to the rapidly-growing Southeast via the New Orleans and Memphis gateways. The result was that in 1994 it accounted for only            of the traffic, with UP and SP having strongly advantaged route positions.<sup>11/</sup> The merger conditions changed this and BNSF gained routing parity with UP via New Orleans and Memphis.<sup>12/</sup> This immensely strengthened BNSF's competitive position, so that in the last half of 1997 its share had doubled            -- increasing still more, to            in 1998 (see Exhibit 1). UP's originated Houston tonnage destined for the Southeast declined by almost 300,000 tons in the first six months of 1998 as compared with the last six months of 1997 while BNSF's rose by

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<sup>11/</sup> Grimm/Plaistow claimed that the merger conditions failed to reduce UP's share of Houston-Southeast traffic (KCS-2 at 149-50). Exhibit 1 shows this is wrong.

<sup>12/</sup> A shipper, Celanese -- with a plant at Bay City, Texas, from which it originates approximately 4,000 cars of chemical products annually -- explains the situation: "The UP/SP merger was important to Celanese because it significantly increased competition for our rail traffic at Bay City. Before the merger, the Bay City plant was served by both UP and BNSF, but BNSF could not offer the route structure that effectively matched our needs. As a result, BNSF was not a significant competitor for most of the cars that originated out of Bay City. All of that changed with the UP/SP merger. The rights that BNSF got as part of the merger approval process have greatly strengthened its ability to compete for Bay City business. BNSF gained access to SP's Houston-New Orleans route, which was critical to our traffic flows. BNSF also secured trackage rights to move traffic from Bay City to the Memphis and St. Louis gateways, which again were critical to its ability to originate traffic from Bay City."

# PTRA Loaded Cars Received and Delivered



(Exhibit 1). It is the merger conditions that brought about this surge in competition. For other destination regions to which traffic moves from Houston, BNSF's existing route network -- enhanced by the new routes it gained through the conditions in "2-to-1" corridors -- have positioned it, across the board, to compete effectively against UP.

Another indicator of the effect of BNSF's expanded access to all outbound routes from Houston is found in its growing share of traffic moving via PTR. Before the UP merger conditions took hold, BNSF's share of PTR traffic (inbound and outbound) was constrained because it lacked routes for New Orleans and Memphis. When it gained those routes its share rose. Through 1996 BNSF's share of PTR traffic was under half, with UP having the rest. In September 1997 (i.e., before the emergency service order was promulgated), BNSF's share of PTR traffic rose above 50%, and it has remained above 50% in 1998. In July 1998 BNSF's share was 61%. UP's share has correspondingly fallen, as depicted in the accompanying chart.

BNSF's surging traffic growth is directly explained by its increasingly intensive use of the rights it gained through the imposed conditions. The trend data, displayed in Exhibit 3, reveal the marked extent to which BNSF has increased its moves over key trackage rights segments. In the Houston-Iowa Junction segment of BNSF's Houston-New Orleans corridor (which extends over its line to New Orleans) BNSF



Exhibit 3

BNSF TRAFFIC OVER TRACKAGE RIGHTS LINES,  
JANUARY 1997 - JULY 1998  
(in loads, both directions combined)

Month/year	Houston-Iowa Jct.	Houston-Memphis	Algoa/CC/Robstown	Temple/ San Antonio/ Eagle Pass
1-97	468	533	781	
2-97	1,491	1,395	1,346	
3-97	2,215	1,842	1,646	257
4-97	3,087	1,945	2,176	348
5-97	3,154	2,535	1,988	467
6-97	2,774	2,537	1,935	612
7-97	2,586	2,594	1,747	723
8-97	2,904	2,493	1,766	977
9-97	3,445	2,964	1,836	787
10-97	4,619	3,390	2,241	1,186
11-97	4,619	2,920	2,230	1,614
12-97	3,835	3,187	2,181	1,446
1-98	4,553	3,726	2,520	1,066
2-98	4,924	2,886	3,734	1,339
3-98	5,267	3,368	4,004	2,196
4-98	5,171	3,349	4,240	4,099
5-98	5,359	4,032	3,023	2,955
6-98	5,161	6,196	2,134	2,802
7-98	5,804	4,369	2,303	3,175

Source: UP Records

moves for the most recent month for which information is available (July 1998) more than doubled compared with the same month a year earlier. Similarly, between Houston and Memphis BNSF has handled growing traffic volumes, with its loads having doubled in the first seven months of 1998 (27,926) versus the first seven months of 1997 (13,381). BNSF is also running heavier trains in these corridors, thereby realizing economies of density like those of UP.

Data for traffic terminating in the Houston BEA show much the same pattern as for originating traffic (see Exhibit 2). UP's share of total terminated tonnage has declined from a pre-merger 64% in 1994 to 59% in 1998 after rising in the final six months of 1997. The traffic lost by UP has been gained by BNSF, with its total inbound Houston traffic having more than                      between the first half of 1998 and the last half of 1997, with gains from all origin regions.

(2) State of Texas: UP's Traffic Share Has Fallen,  
BNSF's Has Increased

The UP/SP merger obviously affected Houston but it also had impacts at other locations in Texas. At "2-to-1" points, where the transaction posed a risk to competition, the Board's conditions took hold, opening up new traffic to competition from BNSF and giving it better routes. The effects on Texas traffic thus call for review.

Exhibit 4

PRE- AND POST-MERGER TRENDS IN UP AND BNSF  
SHARES OF TRAFFIC ORIGINATED IN TEXAS  
(% of tons)

	UP			BNSF		
	1994	July-Dec. 1997	Jan.-June 1998	1994	July-Dec. 1997	Jan.-June 1998
Total Traffic						
To: Northeast						
Southeast						
Midwest						
Far West						
Texas						
Other						

CHANGE IN UP, BNSF VOLUME, 1997, 1998

	UP			BNSF		
	July-Dec. 1997	Jan-June 1998	Change	July-Dec. 1997	Jan- June 1998	Change
Total traffic						
To: Northeast						
Southeast						
Midwest						
Far West						
Texas						
Other						

Sources: Appendix Tables 11, 12, 13.



Exhibit 5

PRE- AND POST-MERGER TRENDS IN UP AND BNSF  
SHARES OF TRAFFIC TERMINATED IN TEXAS, 1994,  
JULY-DECEMBER 1997, JANUARY-JUNE 1998  
(% of tons)

	UP			BNSF		
	1994	July-Dec. 1997	Jan.-June 1998	1994	July-Dec. 1997	Jan.-June 1998
Total Traffic						
From: Northeast						
Southeast						
Midwest						
Far West						
Texas						
Other						

CHANGES IN UP, BNSF VOLUME, 1997, 1998

	UP			BNSF		
	July-Dec. 1997	Jan-June 1998	Change	July-Dec. 1997	Jan-June 1998	Change
Total traffic						
From: Northeast						
Southeast						
Midwest						
Far West						
Texas						
Other						

Sources: Appendix Tables 14, 15, 16.

The Texas data display the same trends as characterized Houston BEA traffic (see supra), with UP's share of total traffic originating in Texas falling to 59.9% in January-June 1998 from 65.5% in 1994 (and 68.5% in the last half of 1997). Overall, UP's Texas-originated tonnage declined 4.6% in the half-year 1998 compared with the final six months of 1998 (Exhibit 4), while BNSF's originated volume rose by UP lost share not only in total but in all the destination regions except to the Midwest (where its share grew 1.9%). For moves to the Southeast from Texas origins, UP's tonnage declined 9.4% in the half-year 1997-1998 periods while BNSF's increased Noticeable, again, is the importance of the routes gained by BNSF through the conditions giving it parity to compete pervasively with UP.

As for traffic terminating in Texas, UP has also lost share to BNSF. This is true not only in comparison with the pre-merger situation (in 1994 UP accounted for 56.6% of inbound traffic versus but also in the two six-month periods of 1997 and 1998 (see Exhibit 5). Between July-December 1997 and January-June 1998, BNSF Texas terminating tonnage while UP's held flat.

It is thus not just at Houston that the conditions have made BNSF a much stronger competitor. BNSF has taken large volumes of traffic from UP throughout Texas, reducing

UP's share and exposing it to far more intense competition. If traffic share is thought of as an index of "market power," UP has lost, not gained any "power" that an unconditioned merger might even arguably have caused.

(3) Increased Competition at Gulf Coast BEAs Other Than Houston

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Along the Gulf Coast, in Texas and in southwest Louisiana BEAs where both UP and SP operated, the conditions also have exposed UP to increased competition. While the changes in traffic shares in these BEAs are generally less dramatic than at Houston, the lesson is the same: UP gained no market power. Either it was, pre-merger, already the second ranked firm (as at Beaumont and Lake Charles, where KCS is bigger) or it has lost share to others (as at Brownsville and Corpus Christi) in large measure because of the conditions that were imposed. The pertinent data are summarized in Exhibit 6 (additional details are in the Appendix).

At Brownsville, UP and SP, pre-merger, accounted for all originated rail traffic. The conditions, however, gave BNSF access to Brownsville. In January-June 1998 BNSF accounted for        of this area's originated traffic and for        of terminations. The most important development at Brownsville is that BNSF has been introduced as a participant in border crossing traffic for Mexico in substitution for SP. As was expected (Decision No. 44 at 147), BNSF has filled this



Exhibit 6

TRENDS IN TRAFFIC SHARES BY CARRIER,  
OTHER GULF COAST BEA'S

	% of Total Originated Tons		% of Total Terminated Tons	
	1994	Jan.-June 1998	1994	Jan.-June 1998
BEA				
Brownsville TX				
UP				
BNSF				
Corpus Christi TX				
UP				
Tex Mex				
BNSF				
Beaumont TX				
KCS				
UP				
BNSF				
SRN				
Lake Charles LA				
KCS				
UP				
BNSF				

x SRN Data Not Available

Sources: Appendix Tables 17-21.

role, with its share of Brownsville southbound crossings now at 26% as compared with SP's 17% pre-merger.

At Corpus Christi, UP's principal competitor is Tex Mex (BNSF can now also reach Corpus Christi and it is moving grain to the docks for export). Pre-merger, Tex Mex originated \_\_\_\_\_ of the traffic moving from Corpus Christi but its share has more than doubled, to \_\_\_\_\_ in the first six months of 1998. Tex Mex's share of terminations has also increased (from a 1994 pre-merger share of \_\_\_\_\_ in 1998). UP's position has eroded in the teeth of stronger competition from BNSF and Tex Mex, which can now interchange traffic at Beaumont with KCS.

At the Lake Charles BEA, the origination shares are about as they were in 1994. KCS remains first and has gained \_\_\_\_\_ percentage points of share while UP has lost about a point. UP's share of terminating traffic has fallen by more than half, from 27% in 1994 to 13% in 1998, while the KCS share has increased from \_\_\_\_\_

At Beaumont (which includes Port Arthur), KCS remains the biggest carrier and UP continues to be subject to competition from both it and BNSF.<sup>13/</sup> Such data as are in hand suggest that shares have held much the same as they were pre-merger. KCS still has the largest share and BNSF increased its share by a small amount while UP's position has

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<sup>13/</sup> Data for the Sabine River & Northern Railroad are not available for 1998 (it originated \_\_\_\_\_ of Beaumont BEA traffic in 1994).

remained essentially unchanged for originations and terminations. KCS and Tex Mex, however, are now interchanging substantial traffic at Beaumont.

(4) Increased Competition for U.S. Eastern Mexico Traffic and for Laredo, With Tex Mex  
Constraining UP's Position

The UP/SP merger posed significant concerns for Tex Mex and for traffic moving over Tex Mex for Laredo as well as for competition generally at the Eastern Mexico-U.S. gateways (Brownsville and Eagle Pass in addition to Laredo). For the traffic it could move over its line to the border at Laredo, Tex Mex's only interchange was with SP at Robstown/Corpus Christi.

The Board addressed this problem in two ways. First, it gave BNSF rights south to Brownsville (and "2-to-1" facilities at Corpus Christi), trackage rights to Eagle Pass to replace BNSF haulage, and a connection with Tex Mex. This gave Tex Mex a partner that was much stronger than SP. Because of SP's deterioration (and its comparatively limited Western network -- not reaching into the Upper Midwest for grain, a major source of southbound traffic for Mexico) Tex Mex's interchange traffic was dwindling and this had led to an increase in UP's share of traffic moving over Laredo. BNSF also has a bigger network (to gather grain and other products) for southbound movement either over Brownsville, or for Laredo via Tex Mex. Thus pre-merger SP service was more than



replicated and competition with UP was assured for movements via all the Eastern Mexico gateways.

Second, and to further reinforce Tex Mex, the Board granted Tex Mex trackage rights extending to Beaumont for interchange with KCS, allowing it to serve and interchange traffic that has a prior or subsequent move over Tex Mex's Corpus Christi/Robstown-Laredo line. This opened up additional opportunities to participate in growing NAFTA-related Mexico-U.S. traffic in coordination with Tex Mex.

Tex Mex's competitiveness -- and its financial position -- has also been strengthened, as shown in its increased traffic volumes. In the period January-May 1998, total Tex Mex loads via Laredo from the same months in 1997.

In the period January 1996-July 1996, before the UP/SP merger, Tex Mex's share of southbound Laredo crossings had fallen to 21% (southbound traffic predominates in this border flow). After the merger, and when the conditions had taken effect, Tex Mex's share of southbound Laredo crossings began to climb. It was up to 37% in January-July 1998 (see Peterson VS).

Forcefully clear from the preceding discussion is that all across the Gulf Coast area -- at Houston, in Texas,

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<sup>14/</sup> Additional details are provided infra in Part II(A)(1) and Exhibit 8.

in BEAs other than at Houston, and at Laredo and other Eastern Mexico gateways -- UP has lost traffic share in the face of intensified competition from BNSF (and Tex Mex) greatly energized by the conditions imposed by the Board. Not only have the discerned competitive harms that the UP/SP merger transaction might have caused been very effectively and fully addressed, but much stronger competition has been unleashed.

D. Rail/Rate Competition Is Now Widespread as UP, BNSF Contest for Traffic by Slashing Their Prices

With the merger conditions having placed BNSF on route parity with UP -- with both now able from Houston to transport freight, say, east over New Orleans, north via Memphis, south for border crossings, including Laredo vis Tex Mex for BNSF, as well as west and into the Upper Midwest -- acute price competition between them was not just likely to be sparked but was an inescapable economic certainty.

For moves in the major corridors each has gained improved comparable-quality routes (several important new ones for BNSF with UP also securing a direct route from Texas east-west in the Southern Corridor) and added capacity. In terms of the basic function to be performed -- to haul goods from one place to another (from many common origins via many common pathways over key gateways) -- UP and BNSF offer a largely homogeneous batch of services. From a shipper's perspective there is nothing to distinguish between them -- except the prices (rates) they charge. The most effective and quickest

way of adding traffic, diverting it from a rival, is to lower prices since the cross-elasticity of price between them is high. And what they thus can gain they can accommodate. BNSF has demonstrated that it can, in the very short-run, handle a great deal more traffic that it is able to attract from UP (it will be recalled from the earlier material that in the first six months of 1998 BNSF carried more tons outbound from Houston than it had in the last half of 1997).

Under these circumstances rate-cutting is to be expected. When one slashes rates, and both UP and BNSF have done so repeatedly in the post-merger environment, the other really has no option but to respond so as to protect its existing traffic and to take traffic back or seek new business. This is competition writ large.

In the Confidential Appendix to its July 1, 1998 Second Annual Report on Merger and Condition Implementation UP catalogs a blizzard of examples of UP rate competition with BNSF.<sup>15/</sup> Seventeen pages of that Appendix list examples of where BNSF has taken business from UP through rate initiatives and another ten pages offer illustrations of UP's efforts to regain or hold traffic through its own pricing actions. Included in this maze of price competition is a very broad consist of traffic -- arrayed by corridor, for many commodities, inbound to the Gulf Coast area or outbound, for

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<sup>15/</sup> The material cited is in Sections B and C of the Confidential Appendix.



small as well as large-volume movements, and for shippers and receivers ranging from industrial giants to smaller users.

Here I will cite only a few of the examples contained in UP's Confidential Appendix, doing so to illustrate the prevailing competitive dynamics. Consider instances where BNSF won new traffic away from UP. To gain



Many other specific examples could be cited, but the overall effect of this sharp-edged rate competition has been to reduce UP rates across the board (see Confidential Appendix E to UP's Second Annual Report, July 1, 1998). Contrary to the imagined supposition that UP gained "market power," in fact it has had to bring rates down, as would be expected under competition. At "2-to-1" points UP average rates per ton-mile are running below their pre-merger values. For traffic moving in the Houston-Memphis and Houston-New Orleans corridors, now also served by BNSF, UP rates per ton-mile have fallen. Rates for Eastern Mexican gateway traffic are down for autos, down for intermodal, and down or unchanged for bulks and other carload moves. At "3-to-2" locations, UP rates are also down. For Gulf Coast plastics traffic (polyethylene and polypropylene moving from Texas and Louisiana plants) UP rates per ton-mile have declined below those that prevailed pre-merger. These trends manifest competition in its most dramatic form and offer solid evidence of the efficacy of the conditions.

While rate competition has been most clearly evident at locations where UP and BNSF are locked in head-to-head combat, shippers exclusively served by UP (or BNSF) will also benefit. The reason is source competition. Where, as is typically the case, goods moving by rail are homogeneous,



incur high transport costs relative to price, and sell in destination (end-use) markets primarily on the basis of delivered price at slim profit margins, competition among alternative sources of supply constrains rail rates. Plastics are a good example. Out of their own self-interest railroads have to price their movements so as to keep all shippers -- be they exclusively served ("1-to-1" locations) or otherwise -- on competitive delivered-price terms. As the Board has said:

"The railroads are well aware that, if plastics shippers do not receive transportation rates comparable to those received by their nearby competitors, they will be hindered in their ability to compete in marketing their products, and the serving carrier will lose traffic." (Decision No. 44 at 125)

Accordingly, when rates are reduced at "2-to-1" and "3-to-2" plant origins, the economic effect is to constrain pricing at exclusively-served "1-to-1" origins. If the latter rates were raised, the involved shippers would be hampered in their ability to compete for sales with their "2-to-1" rivals. This would reduce their traffic to the disadvantage of UP or any serving railroad. The effects of UP-BNSF rate competition thus can be expected to radiate outward, influencing pricing broadly and not just for "2-to-1" (or "3-to-2") shippers.<sup>16/</sup>

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<sup>16/</sup> Shippers understand this. Shintech, for example, ships a large-volume of plastics from its Freeport, TX plant. It is exclusively served by UP but notes that it "has committed to keep us competitive with other shippers in our industry, even though we are a captive shipper on their line." It has not experienced any significant reduction in competition due to the merger and opposes adding new conditions. Shintech statement, Sept. 1, 1998.

Large changes in traffic shares, with UP losing and BNSF gaining position, combined with abundant evidence of intense rate competition, show that the conditions imposed by the Board have worked. As one rail customer has put it: "BNSF's aggressive competitive presence has kept UP's feet to the fire and resulted in improved service and rail rates."<sup>17/</sup> Competition throughout the Gulf Coast Area has been accentuated, to the benefit of shippers.<sup>18/</sup>

E. Existing Competitive Trends Are Not a Temporary Phenomenon But Are Firmly Established for the Long-Term

Strengthened routes and expanded traffic access have made BNSF a fully effective competitor of UP. Tex Mex's competitive capabilities have also been invigorated. It is this competition, traceable directly to the merger conditions, which explains UP's loss in traffic and the overall decline in rail rates at Houston and across the Gulf Coast area. These

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<sup>17/</sup> Statement of LMS International in UP's July 1, 1998 Second Annual Report.

<sup>18/</sup> See the statements of Celanese (BNSF-UP competition has "significantly reduced rates"), Chrysler (which sees "increased competition between UP and BNSF, as each strives to offer better rates and improved service in order to take the other's traffic"), Dal-Tile (BNSF's "aggressive competition" has "forced UP to respond with its own favorable rates"), Deacero (as each railroad fights to take the other's traffic and offers us "favorable rates," there are competitive benefits that "would not have been possible without the merger"), Exxon ("we believe the conditions imposed by the STB to maintain competition have been effective," providing "competitive rates and service"), and Lubrizol ("BNSF and UP have been very aggressive in competing for the other's traffic" and Lubrizol "has been the beneficiary").



are the paramount lessons of the preceding discussion. But, someone might ask, are these observed trends mere temporary phenomena -- traceable to the now-ended service problem and the steps taken to deal with it? This is a fair question and it deserves an answer.

Consider first Service Order No. 1518, by which the Board ordered UP temporarily to release shippers switched by PTRR or HBT from their contracts so they could route traffic over BNSF or Tex Mex. That order has now expired but while it was in effect some traffic was diverted away from UP. Tex Mex says that in the period January through June 1998 it originated 1,105 loads in Houston due to the emergency service order (KCS-2, Turner VS at 233) and UP estimates that BNSF originated up to 300 cars a month (or up to 1,800 for the six-month period) (Peterson Reply VS in Opposition to the Joint Petition for a Further Service Order in Service Order No. 1518 (Sub-No. 1), July 1998, at 4). In total, therefore, BNSF and Tex Mex originated as much as 2,905 loads during the six-month period ended June 1998 under the Order's contract-opener provision.

This falls far short of explaining UP's reduced traffic share in the first six months of 1998 as compared with the prior six months. Between those two periods UP's Houston-originated loads fell by 31,630, which means that the added loads handled by BNSF and Tex Mex by virtue of the emergency service order account for only 9.2% of UP's fewer outbound



moves. (Of total loads originated by all carriers at Houston January-June 1998 the contract-opener mandate accounted for less than 1%.) With UP's share of Houston-originated loads having declined by 10.3 percentage points between July-December 1997 and January-June 1998, the service order contract-opener provision explains less than one percentage point of this shrinkage in UP share.

What of congestion during the service crisis -- does this explain UP's diminished share of originated traffic at Houston and BNSF's gain? The answer is no and the basic reason is that all the railroads serving Houston -- BNSF and Tex Mex no less than UP -- were caught up in the service snarl. No railroad in the area had a "clear path" free from congestion. You can see this in the data. In its Houston-Memphis corridor (see Exhibit 3 supra) BNSF's traffic surged between the commencement of its service in January 1997 and about October 1997 (loaded units rose from 533 in January to 3,390 in October). Then, however, as service congestion worsened, BNSF's Houston-Memphis traffic fell. In November 1997 its loaded units declined to 2,920, rose slightly in December (though to a level still below that of October), then held close to or below the October volume through April.

As service began to improve in the spring, BNSF's Houston-Memphis traffic began again to increase, with May loads rising above those of October and resuming the upward trajectory observed before service congestion set in. These