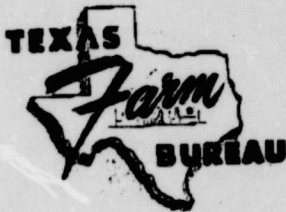


STB FD 32760 (Sub 26) 12-2-98 D 192483

BOARD OF DIRECTORS:



OFFICERS:

BOB STALLMAN
President

DONALD PATMAN
Vice President

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Alamo

192483

P.O. Box 2689 • Waco, Texas 76702-2689 • 254-772-3030

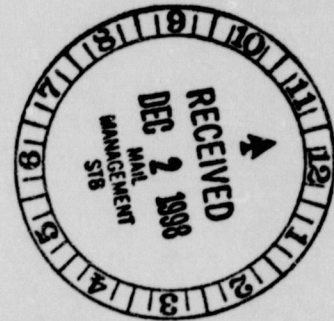
December 2, 1998

Chairman Linda Morgan
Surface Transportation Board
1925 K Street N.W., Room 711
Washington DC 20423

ENTERED
Office of the Secretary

DEC - 3 1998

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Public Record



S1B Finance Docket 32760 - SUB 24

Dear Madam Chairman:

The Texas Farm Bureau respectfully requests the opportunity to present oral testimony in the hearing scheduled for December 15, 1998, regarding the UP/SP Gulf Coast Oversight Proceeding. While not an official party in the case, the Texas Farm Bureau and its members have been directly affected by the merger and subsequent rail congestion. We are most interested in any proposed action to alleviate the rail problems created throughout rural Texas by a lack of rail cars and congestion in the Houston area.

Your approval of this request for appearance would be greatly appreciated.

Sincerely,

Bob Stallman
President

BS:mb

STB

FD

32760 (Sub 26)

12-2-98

D

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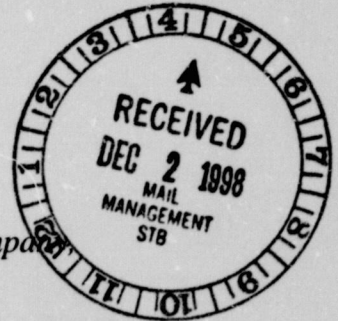
152482

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB 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*



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Office of the Secretary

DEC 02 1998

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Public Record

Houston/Gulf Coast Oversight

NOTICE BY
THE DOW CHEMICAL COMPANY
OF INTENT TO PARTICIPATE
IN ORAL ARGUMENT

D

Pursuant to Decision No. 7 in this proceeding, served November 23, 1998, The Dow Chemical Company ("Dow") hereby notifies the Board of its intention to participate in the oral argument of this proceeding, which is scheduled for December 15, 1998. Dow understands that, as a party having requested affirmative relief, it will be allotted five minutes of time for argument. In addition, Dow will file a summary of its argument, pursuant to Decision No. 7, by 2:00 p.m. on December 11, 1998.

Respectfully submitted,


Nicholas J. DiMichael
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC 20005-3934
Tel. (202) 371-9500
j.moreno@dcwm.com

Attorneys for The Dow Chemical Company

Dated and Due: December 2, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have on this second day of December, 1998, served one copy of *NOTICE BY THE DOW CHEMICAL COMPANY OF INTENT TO PARTICIPATE IN ORAL ARGUMENT* by regular U.S. mail, postage prepaid, upon each of the parties of record, in accordance with the Board's rules of practice.


Susan B. Urban

STB FD • 32760 (Sub 26) 12-2-98 • D 192481

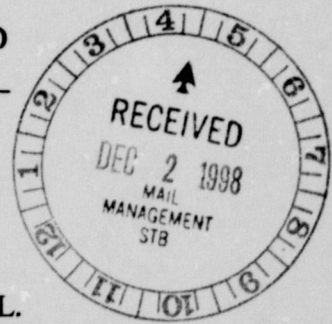
192481

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

UNION PACIFIC CORPORATION, ET AL.
- CONTROL AND MERGER -
SOUTHERN PACIFIC RAIL CORPORATION, ET AL.

[HOUSTON/GULF COAST OVERSIGHT]



ENTERED
Office of the Secretary

DEC 02 1998

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Public Record

**NOTICE BY
E. I. DU PONT DE NEMOURS AND COMPANY
OF INTENT TO PARTICIPATE
IN ORAL ARGUMENT**

Pursuant to Decision No. 7 in this proceeding, which was served November 23, 1998, E.I. du Pont de Nemours and Company hereby notifies the Board of its intention to participate in the oral argument in this proceeding on December 15, 1998.

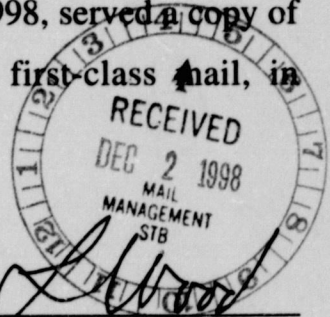
Respectfully submitted,

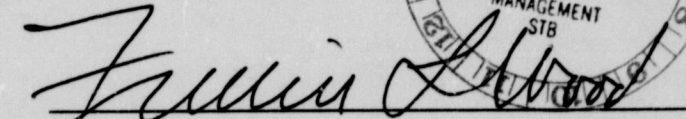
Frederic L. Wood
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC 20005-3934
Tel. (202) 371-9500
Fax (202) 371-0900
e-mail: r.wood@dcwm.com
Attorney for E. I. du Pont de Nemours and
Company

Due and Dated: December 2, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 2d day of December, 1998, served a copy of the foregoing notice on all known parties of record by first-class mail, in accordance with the Rules of Practice.




Frederic L. Wood

ENTERED
Office of the Secretary

DEC 02 1998

Part of
Public Record

STB FD 32760 (Sub 26) 12-2-98 D 192478

1924/78

LAW OFFICES
REA, CROSS & AUCHINCLOSS
SUITE 570

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THOMAS M. AUCHINCLOSS, JR.
LEO C. FRANEY
JOHN D. HEFFNER
KEITH G. O'BRIEN
PRYCE REA, JR.
BRIAN L. TROLANO
ROBERT A. WIMBISH

Office of the Secretary

DEC 02 1998

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DONALD E. CROSS (1923-1986)

December 2, 1998

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



RE: STB Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Corp., et al. [Houston/Gulf Coast Oversight]

STB Finance Docket No. 32760 (Sub-No. 29), The Burlington Northern and Santa Fe Railway Company -- Application for Additional Remedial Conditions regarding Houston/Gulf Coast Area

Dear Secretary Williams:

On behalf of the Brownsville & Rio Grande International Railroad ("BRGI"), I hereby give notice that BRGI, through its undersigned counsel, intends to participate in the oral argument the Board has scheduled for this proceeding for December 15, 1998.

BRGI understands that it may be allotted five minutes of time to present its argument.

Counsel for BRGI certifies that copies of this notice have been served upon all parties of record via first class mail.

Sincerely,

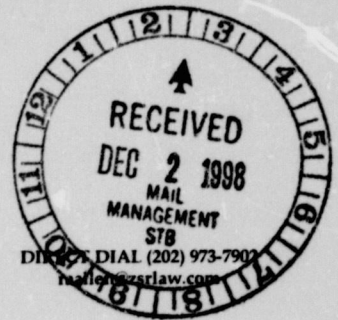
Robert A. Wimbish
Robert A. Wimbish

Counsel for Brownsville & Rio Grande
International Railroad

STB FD • 32760 (Sub 26) 12-2-98 • D 192477

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683



192477
RICHARD A. ALLEN

December 2, 1998

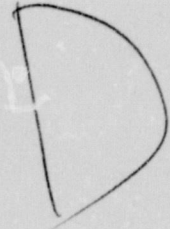
BY HAND

Honorable Vernon A. Williams
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20006

ENTERED
Office of the Secretary

DEC 02 1998

Part of
Public Record



Re: Finance Docket No. 32760 (Sub-No. 26 et al.) Houston/Gulf Coast Oversight

Dear Secretary Williams:

I am writing on behalf of the Texas Mexican Railway Company (Tex Mex) in response to Decision No. 7 regarding oral argument in this proceeding. Tex Mex is one of the parties seeking affirmative relief in this proceeding as a sponsor of the Consensus Plan, and Decision No. 7 has allocated 30 minutes to the Consensus Parties to present argument in support of the Consensus Plan. Decision No. 7 also allocates 15 minutes to the Burlington Northern/Santa Fe Railway Company (BNSF) to argue in favor of the affirmative relief BNSF is seeking, and it allocates 5 minutes each to other parties that have sought conditions for themselves.

One of the conditions sought by BNSF – trackage rights between San Antonio and Laredo -- would have extremely adverse effects on Tex Mex, as Tex Mex has shown in filings opposing that relief. Tex Mex therefore requests the Board to give it five minutes of argument time to respond to BNSF's argument. This requested time would be separate and apart from the time allocated to the Consensus Parties. Inasmuch as the Board has given UP 30 minutes to respond to requests for relief UP believes will adversely affect UP, Tex Mex submits that some allocation of time for it to respond to BNSF is also warranted.

Respectfully submitted,

Richard A. Allen
Attorney for the Texas Mexican Railway
Company

cc: All parties of record

STB FD • 32760 (Sub 26) 12-2-98 D 192470

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

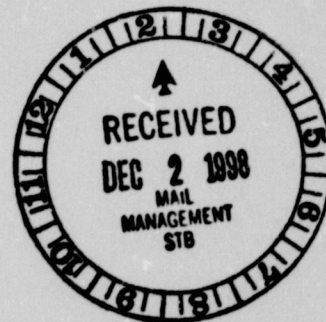
WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES
Direct Dial (202) 778-0642
ejones@mayerbrown.com

ENTERED
Office of the Secretary

DEC 02 1998

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Public Record



December 2, 1998

Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Room 711
Washington, DC 20423-0001

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Re: Finance Docket No. 32760 (Sub-Nos. 26-32)

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five (25) copies of the Notice of Intent to Participate in Oral Argument. Also enclosed is a 3.5-inch disk of such filing in WordPerfect 6.1 format.

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

Sincerely,

Erika Z. Jones/als

Erika Z. Jones

Enclosure

cc: Parties of Record

192470

ENTERED
Office of the Secretary

DEC 02 1998

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-Nos. 26-32)

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

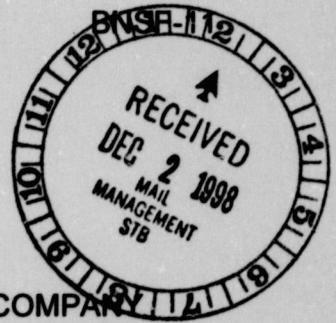
-- CONTROL AND MERGER --

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]

NOTICE OF INTENT TO PARTICIPATE IN ORAL ARGUMENT

Pursuant to Decision No. 7 in this proceeding, served November 23, 1998, The
Burlington Northern and Santa Fe Railway Company hereby gives notice of its intent
to participate in the oral argument scheduled for December 15, 1998.



Respectfully submitted,

Erika Z. Jones/als

Jeffrey R. Moreland
Richard E. Weicher
Michael E. Roper
Sidney L. Strickland, Jr.

Erika Z. Jones
Adrian L. Steel, Jr.
Kathryn A. Kusske
Kelley O'Brien Campbell

The Burlington Northern
and Santa Fe Railway Company
3017 Lou Menk Drive
P.O. Box 961039
(817) 352-2353

Mayer, Brown & Platt
2000 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 463-2000

and

1700 East Golf Road
Schaumburg, Illinois 60173
(847) 995-6887

Attorneys for The Burlington Northern and Santa Fe Railway Company

December 2, 1998

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Notice of Intent to Participate (BNSF-11) is being served, by first-class mail or hand-delivery, on all parties of record in this proceeding.

James J. Hall

STB

FD

• 32760 (Sub 26) 12-2-98 • D 192469

192469

HOUSTON AND GULF COAST RAILROAD
3203 AREBA
HOUSTON, TEXAS 77091

Office of the Secretary
Case Control Unit
STB Finance Docket No. 32760 (Sub No. ²⁶31)
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary

DEC 02 1998

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Public Record



Re: Finance Docket No. 32760 (Sub No. ²⁶31) Union Pacific Corporation, et al. --- Control
and Merger --- Southern Pacific Corporation, et al. Houston/Gulf Coast Oversight

Dear Mr. Secretary:

In accordance with Decision No. 7, served November 23, 1998 in this proceeding, Houston and Gulf Coast Railroad (H&GC) hereby notifies the Board that it intends to participate in the oral argument scheduled for December 15, 1998. H&GC understands that as a party having requested affirmative relief, it will be allotted 5 minutes of time for argument.

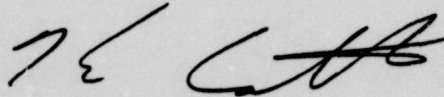
Copies of this document will have been served upon all parties of record.

Sincerely,
Kenneth B. Cotton

HOUSTON AND GULF COAST RAILROAD

CERTIFICATE OF SERVICE

I verify that to the best of my knowledge and belief that the facts presented herein are true to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'KE COTTON', written in a cursive style.

KENNETH B. COTTON

STB FD • 32760 (Sub 26) 11-25-98 • D 192417

192417

SLOVER & LOFTUS

ATTORNEYS AT LAW

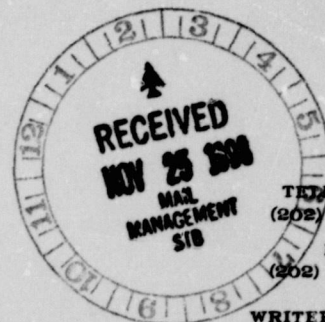
1224 SEVENTEENTH STREET, N. W.

ENTERED WASHINGTON, D. C. 20036

Office of the Secretary

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WRITER'S E-MAIL:

dga@sloverandloftus.com

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C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL

November 25, 1998

D

BY HAND

Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 26)
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corporation et al.--Control and Merger--Southern Pacific Corporation et al. [Houston/Gulf Coast Oversight]

Dear Mr. Secretary:

In accordance with Decision No. 7, served November 23, 1998 in this proceeding, Central Power & Light Company ("CP&L") hereby notifies the Board that it intends to participate in the oral argument scheduled for December 15. CP&L understands that as a party having requested affirmative relief, it will be allotted 5 minutes of time for argument.

Copies of this document have been served upon all parties of record, and also on Administrative Law Judge Grossman.

Thank you for your attention to this matter.

Sincerely,

Donald G. Avery
An Attorney for Central
Power & Light Company

STB FD 32760 (Sub 26) 11-24-98 D 192386

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

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KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

ARVID E. ROACH II

DIRECT DIAL NUMBER

(202) 662-5388

DIRECT FACSIMILE

(202) 778-5388

November 24, 1998



FD 32760 - 26

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Office of the Secretary 28

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D

BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 26*), Union Pacific Corp. -- Control
& Merger -- Southern Pacific Rail Corp. -- Houston/Gulf Oversight

Dear Secretary Williams:

We have received the motion to strike and sur-rebuttal filed by the KCS/Tex Mex on November 10, 1998 in response to UP's October 27, 1998 letter to the Board. This letter will serve as our reply.

In its October 27 letter, UP noted that two items of evidence contained in the rebuttal submitted in support of the "Consensus Plan" were not proper rebuttal testimony. UP thus requested that if the Board considered those points, it also consider UP's brief reply. In their November 10 pleading, KCS/Tex Mex claim that the evidence to which UP responded was proper rebuttal, and thus UP's response should be ignored. We strongly disagree. The new evidence, including the further sur-rebuttal submitted with the November 10 filing, should be stricken, or at the very least the Board should also consider UP's reply.

I.

KCS/Tex Mex say that evidence offered by Messrs. Grimm and Plaistow in the form of a study purporting to calculate UP and BNSF shares of "2-to-1" traffic in the Houston BEA was permissible rebuttal because UP witnesses pointed out in their testimony that KCS/Tex Mex had improperly treated as a homogenous lump the traffic involved in their studies of the Houston "market." See, e.g., Barber v.S., pp. 22-25; Peterson V.S., pp. 19-22. This new study cannot be considered permissible rebuttal. KCS/Tex Mex could have and should have presented in their opening evidence any study taking account of the differing competitive circumstances

* Including related sub-dockets.

Hon. Vernon A. Williams
November 24, 1998
Page 2

affecting Houston-area traffic. Their failure to do so constituted a severe flaw in their case, as UP's witnesses pointed out. The fact that UP witnesses pointed out this fundamental flaw cannot transform KCS/Tex Mex's new study into "rebuttal." KCS/Tex Mex's position -- that a party is entitled to fill, through purported "rebuttal," basic gaps in its affirmative case if its opponent points out those gaps -- makes a mockery of the rules regarding proper rebuttal testimony, and would encourage improper strategic behavior.

Moreover, the new Grimm/Plaistow study cannot be considered permissible rebuttal because it did not in fact respond to the criticisms raised by UP's witnesses in their testimony. The original Grimm/Plaistow "studies" involved a misguided effort to compare pre- and post-merger shares of traffic that BNSF moved from the Houston area to various regions of the country. UP criticized those studies because it is misleading to lump together in a single so-called "market" categories of traffic having radically different competitive characteristics ("1-to-1," "2-to-1," and "3-to-2"). The new Grimm/Plaistow testimony did not counter this point; it simply offered a belated (and fundamentally flawed) study of "2-to-1" shipments alone.

The present situation is thus far different from the case that KCS/Tex Mex rely on to argue that the new Grimm/Plaistow study is proper rebuttal. In that case, in the main UP/SP merger proceeding, the Board rejected KCS' motion to strike various portions of UP's rebuttal testimony because UP was able to demonstrate that the testimony at issue responded to specific claims that could not have been anticipated and that other parties had raised in their testimony. See Decision No. 37, served May 22, 1996. Here, as explained above, the new study does not respond to any evidence -- UP did not offer a study of Houston "2-to-1" traffic in isolation -- and KCS/Tex Mex should and could have performed this type of analysis as part of their affirmative case.

In their November 10 pleading, the Consensus Parties not only attempt to justify the new Grimm/Plaistow study as proper rebuttal, but they also attempt to answer the criticisms contained in UP's October 27 letter by correcting their study and presenting yet another new study. Again, UP believes all of this should be stricken, but offers a few short points in response should the Board elect to consider this still further study. These points are verified by Richard B. Peterson, UP's Senior Director-Interline Marketing and the individual at UP who is principally responsible for the identification of "2-to-1" traffic.

1. KCS/Tex Mex have no answer at all to UP's most basic criticism of the Grimm/Plaistow purported Houston "2-to-1" study: the evidence demonstrates that there has been vigorous competition between UP and BNSF for "2-to-1" traffic, and that all of the major "2-to-1" shippers in the Houston area have benefitted from new competition, though they have elected, after vigorous UP-BNSF competition, to leave most of their traffic with UP. See UP/SP-345, Confidential Appendix C. No "2-to-1" shipper has come forward in this proceeding to claim that there is not effective competition, and many have said there is.

Hon. Vernon A. Williams
 November 24, 1998
 Page 3

2. KCS/Tex Mex respond to UP's criticism that their data included not only shippers that are not "2-to-1" shippers but also shippers that do not even have facilities at the locations described by explaining that they constructed their list of "2-to-1" shippers using data that UP placed in its merger depository in late 1995. KCS/Tex Mex apparently used computer files relating to very early UP efforts to identify "2-to-1" shippers as part of the traffic diversion study for the merger application. However, those data were highly preliminary and inexact, given time and information constraints, as Mr. Peterson explained when he was deposed by KCS, Tex Mex and others during the merger proceeding concerning the ongoing process of arriving at a precise listing of "2-to-1" facilities. KCS/Tex Mex state that they have now corrected the new Grimm/Plaistow study to account for UP's criticisms, but we did not attempt to provide an exhaustive list of shippers that were improperly included or excluded, and thus efforts to correct the study based on the information provided in our October 27 letter were unsuccessful (as we note further below).¹ KCS/Tex Mex also try to avoid the systemic flaws in the Grimm/Plaistow study by arguing (p. 8) that UP should be "estopped" from saying that shippers appearing in UP's early, unrefined data are not "2-to-1" shippers. This is a truly bizarre proposition, because many of the facilities simply do not exist at all and the facility list used by Grimm and Plaistow bears no resemblance to the list that is actually governing, in the real world, BNSF's access to "2-to-1" traffic.²

¹ KCS/Tex Mex also attempt to respond to our criticism that the study was not representative by expanding their study to include the entire Western United States. This newer study, like the earlier version, pervasively misidentifies "2-to-1" shippers. It includes shippers that UP identified in its October 27 letter as non-existent, and it also includes an unexplained further addition of 1.2 million tons to UP's LCRA volumes, see Exhibit E, Terminating Traffic, p. 4, none of which should have been in the study in the first place. (The LCRA traffic accounts for nearly 25% of the UP terminated traffic in the new, purported Western U.S. study). In addition, the new study incorrectly includes traffic originating and terminating at Laredo, Shreveport, Sparks, Reno, Texarkana and West Lake Charles, despite the fact that there are no "2-to-1" facilities at those locations. The study also includes thousands of cars of intermodal and auto traffic that is not "2-to-1." Finally, the expanded study -- a further attempt to bootstrap new and untested evidence into this proceeding long after the record has closed -- ignores the overall traffic data that show that, by BNSF's own calculations of the available market for its trackage rights, BNSF's share is approaching 50%.

² KCS/Tex Mex's misunderstanding of the data they are using provides an excellent example of why this type of study is not appropriate rebuttal -- it would allow presentation of new "evidence" without allowing other parties the opportunity to point out its fundamental flaws. The basic problem appears to be that KCS/Tex Mex have gathered data by first identifying "2-to-1" points and then including all traffic of shippers that moved traffic to and from those points. This process creates two types of errors. First, not all facilities at "2-to-1" points are "2-to-1" facilities -- it depends on whether they had access to both UP and SP prior to the merger. Second, the party listed as the consignee in connection with a particular origination or

Hon. Vernon A. Williams
November 24, 1998
Page 4

3. KCS/Tex Mex respond to UP's observation that none of the "2-to-1" shippers identified in the Grimm/Plaistow study filed a statement supporting the Consensus Plan by arguing that they have received shipper support from some of the shippers listed in the study. But the shippers to which they refer -- Solvay and Lyondell-Citgo Refining -- are not shippers with "2-to-1" facilities at the locations listed, and never should have been on the list in the first place.

II.

KCS/Tex Mex claim that the data submitted by SPI's Larry Thomas regarding transit times were permissible rebuttal because they were "essentially the same" data that Mr. Thomas had previously submitted, but then explain two ways in which the data were different -- the more important of which is that Mr. Thomas added four months of new data in order to make the new claim that UP's service remains far below pre-merger levels (KCS Sur-Rebuttal, p. 13). As we explained in our October 27 letter, those data are so flawed as to be meaningless. Even after UP pointed out these flaws, however, KCS/Tex Mex continue in their sur-rebuttal to misrepresent the facts surrounding the data. We simply ask that if the Board considers these matters, it also consider the following facts:

UP invited the Board to view KCS/Tex Mex's use of charts purportedly comparing UP's pre-merger and post-merger performance on plastics shipments as a test of KCS/Tex Mex's credibility and commitment to honest dealing with the Board. Letter dated October 27, 1998 from A. Roach to V. Williams. KCS/Tex Mex's sur-rebuttal shows that they have failed that test.

KCS/Tex Mex now admit that the charts, prepared by SPI on the basis of data from fewer than a half dozen shippers, measure transit times for a traffic mix that very significantly changed at least three times during the comparison period. From one period to the next, the origins changed, the routings changed, and the number of shippers expanded. This is like complaining that 'United Airlines' service from its Chicago hub deteriorated because United's average flight time increased as it added flights to international designations such as Paris and Hong Kong. Statistically, this is a meaningless exercise. KCS/Tex Mex presented these charts to the Board, to numerous Congressional offices, and to state and local officials without disclosing any of the inconsistencies and defects that render the charts worthless. Undaunted, KCS/Tex Mex continue to ask the Board to rely on them.

All factual statements below are verified by Douglas J. Glass, UP's Assistant Vice President/Business Director, who communicated with SPI for the last year.

termination is not always the party with the facility at that point, and including all of that consignee's traffic compounds the error.

Hon. Vernon A. Williams
November 24, 1998
Page 5

The SPI charts purport to compare UP's pre-merger service with its post-merger service. In fact, they are useless for that purpose. KCS/Tex Mex concede that they filed SPI charts containing at least the following flaws. We suspect there are others, but UP does not have underlying workpapers that would allow us to identify the additional errors.

- KCS/Tex Mex admit that the mix of shipments and routes measured for the pre-merger periods of 1995 and 1996 differ from the mix of shipments and routes measured for the post-merger periods of 1997 and 1998. KCS/Tex Mex admit that the five shippers who provided data to SPI have differing abilities to provide historical information and thus that "participation for 1995 and 1996 is less extensive than for 1997 and 1998." (P. 15.) In fact, the data for 1995 pertain to shipments by only two shippers; the 1996 data are for four shippers; the 1997 data are for five shippers; and KCS/Tex Mex now admit that additional shipments and routes were added at the end of 1997. (P. 15.) As a result, the SPI charts compare a small set of shipments in 1995 with a larger set of shipments from different origins to different destinations in 1996 with a still larger set of shipments from different origins to different destinations in 1997 and still a larger set of shipments in 1998.
- KCS/Tex Mex also acknowledge that the SPI charts include shipments from points not on the Texas Gulf Coast, a fact they did not voluntarily disclose to the Board or other public officials when they presented these charts. They include, for example, shipments from an Iowa origin that represents 7% of the total production capacity reflected in the data. (P. 15.) Significantly, KCS/Tex Mex also acknowledge that these Iowa shipments were not included in the SPI data for pre-merger years, but were added only after December 1997, again skewing the data unpredictably. (*Id.*) KCS/Tex Mex argue that it is reasonable to look at shipments that originate outside the Gulf Coast area, but it certainly is not reasonable to (a) include those shipments only in the post-merger half of the comparison, or (b) claim that the resulting charts reflect the quality of UP service in Texas.
- KCS/Tex Mex acknowledge that they presented to the Board charts labelled "UP Only" even though the transit times are not "UP only" data. The transit times are origin-to-destination transit times over all railroads for whatever traffic mix was being measured at a particular moment. In other words, delays could have occurred anywhere in the United States on any railroad. KCS/Tex Mex counsel, on the basis of no data or other information, assert that all delays must have occurred on UP and that delays on "on the lines of other carriers . . . were of short duration." (*Id.* at 17.) The Board has no reason to believe this self-serving assertion, which ignores events such as a major hurricane that wiped out CSX

Hon. Vernon A. Williams
November 24, 1998
Page 6

operations east of New Orleans and chronic service problems on CSX in the Southeast this year.³

KCS/Tex Mex essentially claim that UP forced KCS/Tex Mex to publish these charts by refusing to provide better data. In itself, this is an admission that the charts are inferior. The notion that UP made KCS/Tex Mex give illegitimate comparisons to the Board, Congress and other officials needs no response.

The assertion that UP "declined" to provide transit time information from UP's data files is simply false. When SPI and UP began meeting in December 1997, SPI said it wanted to gather complete transit times from origin to destination and back regardless of carrier. UP did not then compile origin-to-destination transit time data that included transit times on connecting carriers. A few SPI members did. Moreover, some SPI members indicated that they would feel more comfortable relying on shipper data. The official notes of the first UP-SPI meeting, prepared and distributed by SPI executive director (and KCS/Tex Mex witness) Maureen Healey, state that the parties "agreed" that SPI members were to compile the transit time information, not UP. Had SPI members wanted to use UP's more limited "UP only" data, they already had it. UP was then providing, and continues to provide, on-line transit data to many SPI members showing UP service on all their major shipping corridors. SPI chose not to use UP data.

KCS/Tex Mex also claim that UP failed to point out to SPI the defects in the SPI data. (P. 14.) This is highly misleading. SPI members repeatedly told UP that they were gathering data only to show "directional trends" for all railroads. UP repeatedly stressed that the SPI data could not be used to measure "UP only" performance. SPI members told UP "not to worry" about such misuse of the data. KCS/Tex Mex then reneged on that assurance.

Once UP learned that SPI's charts were being circulated publicly, and that KCS/Tex Mex were using them improperly for the purpose of describing UP on-line performance, it objected strongly. It particularly objected to SPI's labelling of the charts as "UP Only" when the transit times included service over all connecting lines throughout the United States.

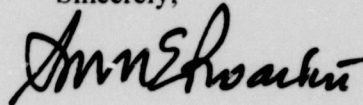
Undeterred by the fact that the SPI charts are unreliable, misleading and mislabelled, KCS/Tex Mex nevertheless urge the Board to use them. KCS/Tex Mex baldly assert, based on the charts, that UP "service levels today are grossly inferior compared to pre-merger levels." (P. 17.) Particularly as applied to chemical shipments from the Texas Gulf Coast, this is a false and irresponsible statement. While UP reports incidents beyond control that

³ We cannot make sense of the 1995 transit times in the SPI charts. The average transit time was as low as only 6 days, well below any average that could include transit times over connecting carriers to the Northeast and Southeast.

Hon. Vernon A. Williams
November 24, 1998
Page 7

affect service for these shipments, such as recent Texas floods that affected shipments to California and continuing congestion on CSX via New Orleans, UP's service for Texas chemical shippers has otherwise been reliable, consistent, and equal to or better than pre-merger service. For example, UP service for Dow Chemical and Exxon is demonstrably better today than before the merger.

Sincerely,

A handwritten signature in black ink, appearing to read "Arvid E. Roach II". The signature is fluid and cursive, with the first name "Arvid" being more prominent than the last name "Roach".

Arvid E. Roach II

cc: All Parties of Record

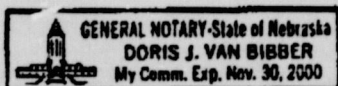
VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Richard B. Peterson, Senior Director-Interline Marketing of Union Pacific Railroad Company, state that the factual information contained in Part I of the foregoing document was compiled by me or individuals under my supervision, that I know its contents, and that to the best of my knowledge and belief those contents are true as stated.

Richard B. Peterson

RICHARD B. PETERSON



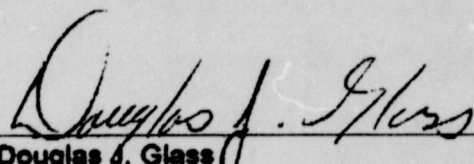
Subscribed and sworn to before me
this 24th day of November, 1998

Doris J. Van Bibber
Notary Public

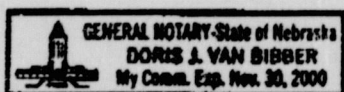
VERIFICATION

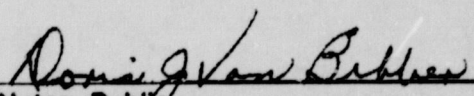
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Douglas J. Glass, being first duly sworn, deposes and says that he is Assistant Vice President /Business Director in the Marketing & Sales Department of Union Pacific Railroad in Omaha, Nebraska, and that he has read Part 2 of the foregoing document, knows the facts asserted therein, and that the same are true as stated.


Douglas J. Glass

Subscribed and sworn to before me this 18th day of November, 1998.




Notary Public

My Commission Expires:

Nov. 30, 2000

STB FD 32760 (Sub 26) 11-20-98 D 192324

MAYER, BROWN & PLATT

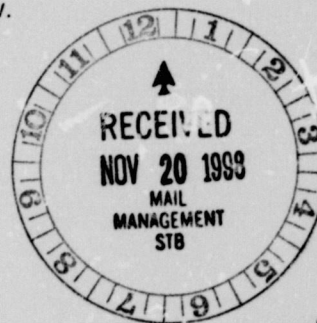
2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES

DIRECT DIAL: (202) 778-0642

ejones@mayerbrown.com



MAIN TELEPHONE

202-463-2000

MAIN FAX

202-861-0473

November 20, 1998

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 711
1925 K Street, N.W.
Washington, D.C. 20423-0001

-192324
-192325
-192326

Re: Finance Docket No. 32760 (Sub-No. 26, 30 and 32)

Dear Secretary Williams:

Attached please find copies of the following additional statements in support of various conditions sought by The Burlington Northern and Santa Fe Railway Company in its Application For Additional Remedial Conditions in the Houston/Gulf Coast area in this proceeding:

ACM, Inc.
Corn Products International
HMM (Hyundai Intermodal, Inc.)
Farmrail System, Inc.
Ferrocaril Mexicano
International Paper Company
Kimberly-Clark Corporation
Louisiana & Delta Railroad, Inc.
Minnesota Corn Processors, Inc.
The Rice Company

ENTERED
Office of the Secretary

NOV 20 1998

Part of
Public Record

CHICAGO BERLIN CHARLOTTE COLOGNE HOUSTON LONDON LOS ANGELES NEW YORK WASHINGTON

INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS

INDEPENDENT PARIS CORRESPONDENT: LAMBERT ARMENIADES & LEE

MAYER, BROWN & PLATT

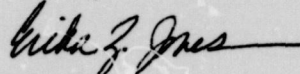
The Honorable Vernon A. Williams

November 20, 1998

Page 2

Originals of these statements are already on file with the Board in the above-referenced proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Erika Z. Jones", with a long horizontal flourish extending to the right.

Erika Z. Jones

Attachments

cc: All Parties of Record (with attachments)

ACM, INC.
281 B MOORE LANE
COLLIERVILLE, TN 38017

October 16, 1998

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

RE: Finance Docket No. 32760 (Sub-No's. 26 and 28)

My name is Carolyn Bledsoe, I am the Traffic Manager of ACM, Inc. Our company is located in Memphis, Tennessee and is in the business of cotton merchandising. We ship cotton from the U.S. to various destinations in Mexico. The routing that we use is determined by the railroad that serves each individual warehouse that the cotton is loaded from.

I am filing this Verified Statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant permanent trackage rights on the UP's San Antonio - Laredo line. I believe that this request will benefit our company and other shippers and will result in service improvements and create meaningful competition for rail shippers to the Laredo Gateway.

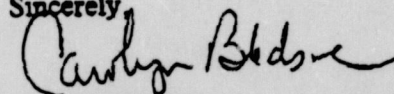
I believe that BNSF's request for trackage rights over the San Antonio - Laredo are designed to ensure that competition at this critical Mexican gateway does not continue to be adversely impacted by UP's south Texas congestion and service problems specifically on the UP's Alcoa to Corpus Christi route.

Granting BNSF trackage rights to the Laredo Gateway through San Antonio will also allow BNSF to bypass the TexMex, with whom BNSF has been unable to conclude a competitive, long term commercial arrangement. We are also concerned that the unexpected lack of competition in the privatized Mexican rail system is preventing shippers from receiving a fully competitive service at the Laredo Gateway.

For all of these reasons, the Board should grant BNSF's request for trackage rights over the San Antonio - Laredo line. This would benefit our company and other shippers, and would result in service improvements to the Laredo Gateway, as well as provide a competitive alternative for shippers.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 16th day of October, 1998.

Sincerely,



Carolyn Bledsoe
ACM, Inc.



November 2, 1998

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

Re: Finance Docket No. 32760, Sub 26 & 28

Dear Mr. Williams:

My name is Thomas Waskiewicz, and I am the Director of North American Logistics for Corn Products International. Our company is a multinational organization, operating plants in Canada, the United States and Mexico, as well as, subsidiary and affiliate locations through out the world. Our Corporate Headquarters is located in Argo, Illinois and our business is the manufacture of corn derived products for the Beverage, Food, Pharmaceutical and Paper industries. In support of the above referenced docket, Corn Products is an active participant and supporter of NAFTA and currently ships product between all three NAFTA countries. As a supporter of the UP/SP merger, Corn Products continues to seek and support issues to increase competition and improve service. We currently ship direct rail and intermodal shipments via the Laredo Gateway and have experience delays as a consequence of congestion along the UP route.

I am filing this Verified Statement in support of The Burlington Northern and Santa Fe Railway's (BNSF) request that the Board grant permanent trackage rights on the UP's San Antonio - Laredo Line. I believe that this request will benefit our company and other shippers and will result in service improvements and create meaningful competition for rail shippers to the Laredo Gateway.

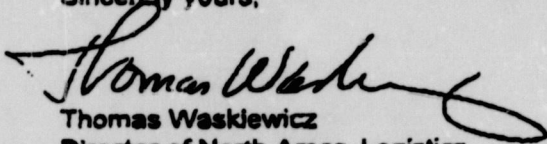
I believe that the BNSF's request for trackage rights over the San Antonio - Laredo line are designed to insure that competition at this critical Mexican gateway does not continue to be adversely impacted by UP's south Texas congestion and service problems specifically on the UP's Alamo to Corpus Christi route.

Granting BNSF Trackage Rights to the Laredo Gateway through San Antonio will also allow BNSF to bypass the TEXMex, with whom BNSF has been unable to conclude a competitive, long term commercial arrangement. We are also concerned that the unexpected lack of competition in the privatized Mexican rail system is preventing shippers from receiving a fully competitive service at the Laredo Gateway.

For all of these reasons, the Board should grant BNSF's request for trackage rights over the San Antonio - Laredo line. This would benefit Corn Products and other shippers, resulting in service improvements to the Laredo Gateway, as well as provide a competitive alternative for all shippers.

I certify under penalty of perjury that this statement is true and correct. Executed this 2nd day of November, 1998.

Sincerely yours,


Thomas Wasklewicz
Director of North Amer. Logistics

cc: Mr. Delane D. Finke
Burlington Northern Santa Fe
1700 East Golf Road
4th Floor
Schaumburg, Illinois 60173



October 14, 1998

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

Re: Finance Docket No. 32760 (Sub-Nos. 26 and 28)

Dear Secretary Williams:

My name is Kee Soo Pakk. I am the president of Hyundai Intermodal, Inc.. Our company is located in Gardena, Ca. and is in the business of rail intermodal transportation service in the U.S., and supports the inland transportation needs of Hyundai Merchant Marine Co., Ltd. with over 305,000 ocean containers of inbound and outbound shipments in North America.

I am filing this statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal. We believe that this request will benefit our company and other shippers and will result in service improvements and needed dispatching flexibility in the Houston terminal.

Specially, this request would permit BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, and not just over the former HB&T East and West Belts. The result would be to reduce congestion caused by BNSF trains staged in the Houston terminal waiting for track time to use the main trackage rights lines they currently share through the terminal and on the former HB&T East and West Belt lines.

This request would create an important safety valve for dispatchers to permit BNSF trains to traverse clear routes in the Houston terminal. It is a reasonable measure to avoid congestion and should pose no harm to UP as it does not give any competitive advantage to BNSF's operations in the Houston terminal.

The request thus stands to benefit all rail carriers operating in the Houston terminal area and the shipping public. It is in everyone's best interest to achieve better service for shippers and to reduce the congestion in the Houston terminal area. Accordingly, the Board should grant BNSF's request.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14th day of October, 1998.

Sincerely,

A handwritten signature in black ink, appearing to read "Kee Soo Pakk", is written over a horizontal line.

Kee Soo Pakk
President

/s/ HYUNDAI INTERMODAL, INC.

Farmrail



Farmrail System, Inc., Post Office Box 1750, Clinton, OK 73601 580-323-1234

October 16, 1998

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

Re: Finance Docket No. 32760 (Sub-Nos. 26 and 28)

Dear Mr. Williams:

My name is George C. Betke, Jr. I am Chief Executive Officer of Farmrail System, Inc. and of its two common-carrier railroad subsidiaries, Farmrail Corporation and Grainbelt Corporation. They operate 354 miles of contiguous light-density trackage, referred to as "Western Oklahoma's Regional Railroad," from headquarters in Clinton, Oklahoma. At least 50% of the traffic base normally is hard red winter wheat, the preferred variety for export, which moves for the most part to Houston and Galveston.

This statement is filed in support of The Burlington Northern and Santa Fe Railway Company's request for trackage rights over certain lines of Union Pacific Railroad Company affecting traffic flows in and through the terminal area of Houston, Texas. The objective is to alleviate ongoing congestion by allowing the use of any available clear route to relieve backups which restrict access to the Houston Public Elevator and cause delays in reaching other Gulf Coast ports and international gateways. Transit times now are extended and irregular, and equipment utilization suffers accordingly.

The domestic railroad industry operates an interconnected system comprised of a few mega-carriers and about 550 small feeder lines that are attempting to coordinate management of a customer-driven service business. Those of us operating branch lines on the fringe of that system compete with truckers providing highly predictable one- or two-day delivery to most destinations. In comparison, we can offer only "best-efforts" transportation with a result that is totally dependent on the performance of a connecting trunk-line railroad. Current best efforts on agricultural and general merchandise traffic simply are not good enough to satisfy customer needs.

Every short line I know has substantial excess capacity - room to grow its business. That growth opportunity, particularly in truck-competitive freight, is constrained by trunk-line congestion in key terminal areas such as Houston that cascades throughout the national

The Honorable Vernon A. Williams

October 16, 1998

Page 2

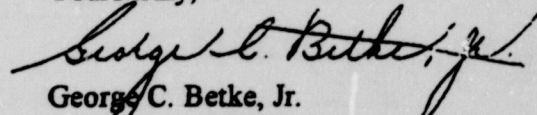
network. Its adverse impact on the velocity of movement is devastating to an industry that is both intensely competitive and capital-intensive. Those bottlenecks must be relieved.

Though some observers attribute ongoing congestion in Houston to poor planning of Class I railroad mergers, I believe the problem is likely to persist as the railroads regain market share in a growing domestic economy and as additional international commerce is directed through the Gulf ports as a result of the North American Free Trade Agreement. This view calls for more than a stop-gap solution to a crisis situation that has not been corrected in nearly two years. The "fix" should not merely deal with current traffic volumes, but anticipate future demand as well.

Coordination of dispatching at the Spring Center was a positive step, and logical sequels are expansion of neutral dispatching territory and joint use of scarce trackage. Since BNSF's requests afford it no access to additional customers, I would hope that traditional "turf" issues can be overridden in the interest of improving the over-all competitiveness of our industry.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 16th day of October, 1998.

Yours truly,


George C. Betke, Jr.
Chairman and Chief Executive Officer

October 16, 1998
DJ-699/98

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

Re. STB Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

Dear Secretary Williams:

I am writing this letter to supplement the September 14, 1998 verified statement executed by Javier Tello Sandoval on behalf of Ferrocarril Mexicano, S.A. de C.V. (known as "FERROMEX") which was contained in Volume IV of UP's Opposition to Condition applications, filed with the Board on September 18, 1998.

In the September 14, 1998 statement, we indicated that FERROMEX opposed BNSF's request for overhead trackage rights over UP's line between San Antonio and Laredo. Although FERROMEX maintains that view, we would like to clarify that FERROMEX fully supports BNSF's request for permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio line for trains destined to Eagle Pass Tx. We believe that this request will benefit our company and as well as shippers and will result in service improvements and needed operational flexibility particularly for traffic using the Eagle Pass gateway.

BNSF's trackage rights on UP's Caldwell-Flatonia-San Antonio line were granted by UP in July, 1997 to permit BNSF to bypass its more congested permanent trackage rights route via Temple-Smithville-San Antonio. We understand that these rights, however, are temporary and cancelable on short notice. In its September 18 filing, UP indicated to the board that it intends BNSF to return to its permanent trackage rights route at some time in the future and commence directional operations on the Caldwell to Flatonia route.

The board must understand the importance of these bidirectional rights to our company and to shippers. These rights have allowed BNSF to use the route that is least congested and most able to handle traffic, and thus have enhanced the consistency in scheduled operations and service provided by BNSF for traffic interchanged with FERROMEX at the Eagle Pass gateway. Indeed, this routing was available to SP pre-merger since it was formerly a SP route, and BNSF's request would simply permit BNSF to replicate the competitive options offered to shippers by the former SP.

For all of these reasons, the Board should grant BNSF's request to maintain these bidirectional overhead trackage rights on a long-term basis. The granting of BNSF's request would ensure appropriate operational flexibility to permit BNSF to provide shippers with a long-term competitive, consistent and reliable service to the Eagle Pass gateway.



Concerning the request of BNSF to make permanent its temporary rights between Caldwell and Placedo, via Flatonia, being this a shorter route to the Tex Mex interchange at Robstown, and the Brownsville gateway to Mexico, FERROMEX opposes the granting of permanent trackage rights in this route for traffic destined to Mexico. We believe this could make less competitive the Eagle Pass gateway to Mexico.

I certify under penalty of perjury that the foregoing is true and correct. Executed this day of October 16, 1993.

Sincerely,


LORENZO REYES RETANA
By FERROCARRIL MEXICANO, S.A. DE C.V.

INTERNATIONAL PAPER

November 14, 1998

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

INTERNATIONAL PLACE I
6400 POPLAR AVENUE
MEMPHIS TN 38197
PHONE 901 763 6000

RE: Finance Docket No. 32760 (Sub-Nos. 26 and 28)

Dear Secretary Williams:

The International Paper Company, as a large rail shipper, applauds your decision to institute a new proceeding as part of the five-year oversight condition imposed in the Union Pacific/Southern Pacific merger decision to examine requests made for additional remedial conditions to the merger.

The International Paper Company is the world's largest paper company, conducting operations throughout the United States from over 650 paper and lumber mills, converting plants, warehouses, distribution centers, retail stores and related sales service support offices. Its manufacturing facilities in the United States produce paper and paper products, including wood-pulp, pulpboard, wrapping and printing papers, converted products, including corrugated boxes, folding cartons, and milk cartons, and wood products, including lumber, plywood, decorative panels and other special products to serve the building trades, as well as chemical products.

International Paper moves these products throughout the United States and North America utilizing the services of a number of transportation vendors. In particular, and as relevant here, International Paper is heavily dependent upon the nation's diminishing number of railroads to satisfy both its inbound and outbound long haul transportation needs. Accordingly, International Paper has been directly affected by the post -1980 trends that have resulted in both a heavy concentration in the rail industry, as well as the ever-diminishing nature of intramodal rail competition, and the concomitant deterioration in rail service quality.

The service meltdown resulting from the UP/SP merger is unprecedented in all aspects. The International Paper Company has suffered economic damages, experienced inconsistent service and unparalleled delays in transit. The Surface Transportation Board ("Board") has rightfully recognized Union Pacific's (UP) inability to promptly and effectively solve the problem and the Board has been wise to implement their oversight powers to review and remediate the service crisis.

The International Paper Company is served by the UP at all six of its primary paper mills in the southwestern United States, (Camden and Pine Bluff, AR; Bastrop, Mansfield and Pineville, LA; and Texarkana, TX). Immediately after the merger in September 1996, contrary to all UP media and public relations announcements, our UP/SP service levels dropped steadily through the Holidays and slowly recovered during the Spring of 1997. In June 1997, we encountered severe transit service problems to the west coast via UP, purportedly generated by systems

integration and consolidation "glitches". In July, overall transit performance started to deteriorate again and by August we were experiencing boxcar supply shortfalls at our southwestern mills, which continues to this day, affecting various mills ability to conduct business and serve their customers. On time transit performance via the UP has been a roller coaster ever since. Please see attached "Rail On Time Transit Performance for 1996 to 1998 YTD". This graph represents 145,000 carload shipments of outbound finished paper products from our mills to customers for the 33 month period noted. Union Pacific' sales, customer service and operating personnel worked feverishly during this period to correct problems and alleviate conditions with which we were suffering, with only limited success. Their management repeatedly made public pronouncements, gave assurances, and made promises, they could not and sadly did not meet. Plants were forced to curtail production or close for periods of time. Truck transportation for long haul moves was substituted at great expense, alternative rail routes were used in the few instances where that still was available; however, in the vast majority of cases we had little choice but to continue to use Union Pacific's service and endure their innumerable, ineffective efforts to bring their operating problems to heel in any reasonable time frame. No shipper should be compelled by reason of regulatory acceptance of what have turned out to be groundless commitments of railroad management or otherwise to face the possibility of any repeat of this "misadventure" in the future.

Where International Paper had the option of using alternative rail carriers during this crisis, we turned to those carriers, KCS and BNSF, in an attempt to preserve some semblance of rail operations in a marketplace numbed from a year of continuous, crippling service dysfunction not seen before on such a grand scale. Where rail alternatives were not available, we were compelled to continue to use UP service. Their overwhelming geographic dominance was gained through their merger with the SP and it has forced us to remain with them despite their intractable service problems and protracted inability to effectively deal with those issues in a timely and responsive manner.

I note in UP's July 1, 1998 Second Annual Report on Merger and Condition Implementation, that UP's attorney incorrectly states on Page 78, footnote 10, that International Paper "strongly opposed the BNSF (trackage) rights during the proceeding (and) now concedes that BNSF is replacing the competition that SP had provided in this (Houston-Memphis) corridor." For the record, International Paper did not so much oppose BNSF trackage rights as much as argue for track ownership by a replacement carrier, and BNSF would have certainly been an acceptable replacement carrier. While the BNSF is making substantive efforts to increase its presence on the line, it must, of course, be recognized that BNSF has to contend with UP operations and dispatch control over the line, something with which the SP did not have to contend and which will limit the BNSF's ability to be the complete replacement for the SP that was envisioned and promised. Because of this very situation, we have not yet been able to come to the conclusion that the BNSF has in fact replaced the SP competition in this corridor.

BNSF through the UP/SP merger obtained rights to serve our mills at Camden and Pine Bluff, Arkansas. Our ability to utilize their services as well as their ability to provide service during this crisis period was limited due to a number of significant issues and impediments. While BNSF's desire to serve our mills was communicated clearly, their ability to do so was constrained by

Hon. Vernon A. Williams
November 14, 1998
Page Three

issues both within their control as well as beyond their control. The expected excess in boxcar equipment supply and locomotive power generated as a result of BNSF's own merger consolidation did not materialize as evidenced by BNSF's subsequent large orders for locomotive power as well as its inability to attract and handle anything but the most modest amount of traffic from these facilities. Notwithstanding the BNSF's overly optimistic pre-merger posturings about expected locomotive and boxcar supply surplus, International Paper is making every reasonable effort to employ BNSF services, as intended by this Board, but has only been able to achieve a modest degree of success. It is simply a fact that BNSF still does not have available the quantity and quality of cars suitable to meet our needs, which the pre-merger competitors UP and SP had.

Of course, it is manifestly unreasonable of us, as well as this Board, to think that BNSF could enter upon the Houston to Memphis scene and immediately serve a score of new customers to the degree and extent developed through years of operating experience and investment decisions of the pre-merger competitors now aligned as a post merger behemoth against the tentative efforts of this new entrant, BNSF, with its access limited to "2-to-1" customers and the need to subordinate its operational requirements to that of the landlord carrier, UP. It seemed plain then and it is clear now that BNSF cannot be the competitive replacement of the SP, as envisioned by the Board, anytime soon. Perhaps at some future date. We can only hope that the Board will respond and deal with all the unresolved competitive issues generated by the UP/SP merger.

Today we wish to inform the Board of operational issues beyond BNSF's control that can and should be changed to correct structural deficiencies in BNSF's rights as well as to improve movement of trains into, out of and through the Houston terminal which will favorably impact BNSF's ability to serve our mills on the Houston to Memphis corridor. For BNSF to be able to be a viable competitor to the merged UP and practicable replacement for the SP, it must gain access to all customers on branchlines as well as shortlines connecting to the Houston to Memphis corridor, formerly SP. One such case is before you today awaiting your action in Finance Docket 32760 (Sub No. 21) wherein the Arkansas, Louisiana, and Mississippi Railroad Company (ALM) seeks access to the BNSF at Fordyce, AR. International Paper strongly supported that pleading in our reply to the ALM's petition. I will not burden the record further on that point, but instead urge the Board to review our comments carefully. We urge your prompt and favorable consideration of these requests. The need to ameliorate serious structural defects in BNSF's rights as well as to alleviate the opportunity for future rail service meltdowns of the type experienced in Houston and radiating out over the whole UP system, cannot be overstated.

The UP/SP service meltdown has made it clear that alternative rail service is necessary to alleviate service problems when they occur, and that it is incumbent on the Board to take steps to preclude its recurrence in the future, here or elsewhere in the U. S. rail network. That this may lead to some lost business to the UP should not be controlling. Customers are not owned by railroads and should not be forced to endure such operational disasters. Therefore, consistent with the Consensus Party Plan and the principles outlined in our letter to the Surface Transportation Board in the matter of finance docket No. 32760 (Sub No. 30) dated August 27,

1998, the International Paper Company supports the following specific requests of the Burlington Northern and Santa Fe Railway:

A. Correct Structural Deficiencies in BNSF's Rights

1. Grant permanent bi-directional trackage rights.

- Caldwell-Flatonia-San Antonio, TX
- Caldwell-Flatonia-Placedo, TX

On the San Antonio route, BNSF's trackage rights are temporary and cancelable on short notice; UP provided these rights to permit BNSF to bypass BNSF's more congested permanent trackage rights route via Temple-Smithville-San Antonio in July, 1997. Depending on congestion on either route, BNSF would like to maintain these rights long-term, permitting BNSF to use whichever route is least congested and most capable, on a day-to-day basis, of permitting BNSF to operate consistent and scheduled operations. In its September 18 filing, UP indicated to the Board that it intends BNSF to return to its permanent trackage rights route at some time in the future and commence directional operations on the Caldwell to Flatonia route. The Board must understand the importance of these bidirectional rights to shippers. These rights have allowed BNSF to use whichever route is least congested and most capable, on a day-to-day basis, and thus enhance the consistency in scheduled operations and service provided by BNSF to shippers like our company.

On the Placedo route, BNSF's rights are also temporary, directional (southbound) and conditional on UP continuing directional operations south of Houston (UP filed with the Board on September 18, that they plan to discontinue it). BNSF would prefer to operate its Corpus Christi/ Brownsville business bi-directionally via this route on a permanent basis, rather than via Algoa if UP discontinues directional operation in this corridor. Operations via the Algoa route, BNSF maintains, brings traffic through the Houston terminal which need not go there; permanently rerouting via Flatonia would move this traffic to a less congested route away from Houston. I believe that BNSF needs to ensure that it can avoid operating over the Algoa route -- even if UP completes proposed capital improvements on that route -- to minimize the risk of delay for its trains.

Having permanent versus temporary trackage rights would also permit BNSF participation, as necessary and appropriate, in needed infrastructure investment (sidings, etc.) on those routes, something BNSF cannot justify when their rights can be canceled on short (15-30 day) notice by UP.

These routes are both former SP routes, which SP used to provide competition to UP. If BNSF has long-term access to these lines, BNSF is duplicating SP's lines, not improving on its competitive position vis-a-vis UP beyond what SP had the potential to do.

2. Harlingen-Brownsville

- Grant BNSF temporary trackage rights over both the UP and SP routes between Harlingen and Brownsville until new bypass trackage is completed north of Brownsville, permitting curtailment of the SP route
- Allow Brownsville & Rio Grande International Railroad (BRGI) to act as BNSF's agent in providing service, Harlingen-Brownsville-Matamoros

This will permit BNSF to commence trackage rights operations to south Texas, discontinue haulage via UP, which has proven unsatisfactory to customers, and provide effective service to both Brownsville and the border crossing. The bypass trackage connection will not be done, at best, until the end of 2000. We understand that BRGI and customers in Brownsville have already indicated their support to correct these structural deficiencies in BNSF's rights.

3. Grant BNSF trackage rights over additional UP lines to permit BNSF to fully join UP's directional operations wherever instituted.

- Fort Worth-Dallas via Arlington
- Houston-Baytown via the UP Baytown Branch

This request is aimed at improving service for BNSF customers, reducing congestion, and eliminating the potential for UP to favor its own traffic over that of BNSF moving on trackage rights lines. Presently, where BNSF has to run bi-directional operations over UP trackage rights lines where UP has instituted directional operations, BNSF trains are delayed when running "against the current" of UP's directional operations until the line is cleared of UP trains. Besides delaying BNSF traffic, UP traffic is potentially delayed while BNSF operates against the UP "current of traffic", consuming more of the line's capacity than a directional operation uses. BNSF views this request as a general principle to be applied wherever such issues exist.

B. Improve movement of trains into, out of, and through the Houston terminal

- 1. Grant BNSF overhead trackage rights on additional UP Houston terminal routes to permit BNSF to bypass congestion and improve through flows, for example, West Junction-Tower 26/Englewood Yard.**

This request would permit BNSF (and TexMex) to operate over any available clear routes through the terminal as determined and managed by the Spring Texas Consolidated Dispatching Center, and not just over the former HB&T East and West Belts, potentially reducing congestion caused by BNSF (and TexMex) trains staged in the Houston terminal waiting for track time to use the main trackage rights lines they currently share through the terminal, the former HB&T East and West Belt lines.

This request thus stands to benefit all rail carriers operating in the Houston terminal area and the shipping public. It is in everyone's best interest to achieve better service for shippers and to reduce the congestion in the Houston terminal area. Accordingly, the Board should grant BNSF's request.

Specifically these BNSF proposed additional conditions are built on the following key themes, which we endorse:

- UP's service crisis affected BNSF's ability to provide viable competition, as expected by the STB (BNSF to replace SP competition to UP), at the new customers BNSF gained access to as a result of the UP/SP merger, i.e. International Paper mills at Camden and Pine Bluff, AR. BNSF cannot provide vigorous competition in an environment of unpredictable and unreliable UP service.
- The STB should ensure that the competitive problems induced by the UP service crisis do not recur, by making clearly targeted structural changes in the UP/SP merger conditions.
- BNSF cannot provide a competitive replacement for SP post-merger if BNSF is unable to use, at a minimum, the same routes used by SP to reach "2-to-1" customers and markets.
- Operating problems, as occurred with UP along the Gulf Coast and unanticipated at the time the UP/SP merger was approved, are amenable to operating solutions.
- Operating solutions can provide near-term service relief without waiting for long-term infrastructure investments to come on line.
- BNSF's proposed structural realignments would shift traffic away from Houston and to less congested routes, freeing up Houston-area rail infrastructure to handle Houston originating and terminating business.
- Expanded neutral switching and dispatching would improve competitive service and reduce the potential for UP favoritism of its traffic versus BNSF's or TexMex' traffic moving over trackage rights or in haulage and reciprocal switch service.
- New overhead trackage rights via UP between San Antonio and Laredo would ensure meaningful competition for shippers at the Laredo gateway.
- BNSF is not here requesting access to any additional customers.

We believe that these requests are complimentary to and supportive of the goals of the Consensus Parties and will produce tangible benefits for Houston shippers and all shippers, International Paper included, located on lines affected by the 1997-1998 UP service crisis by:

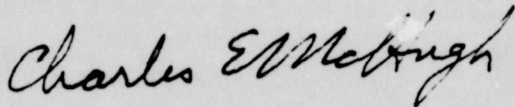
Hon. Vernon A. Williams
November 14, 1998
Page Seven

1. Expanding rail capacity and investment by all the existing rail carriers;
2. Providing neutral and fair dispatch of all rail traffic;
3. Ensuring that all shippers can be served by the rail carriers currently operating in the area; and,
4. Preserving competitiveness by ensuring that adequate rail service alternatives exist in the future.

These four principles are central to our concerns, have been conscientiously advocated and consistently supported by the International Paper Company in proceedings before this Board and its predecessor agency. The importance of alternative rail carriers, neutral switching and neutral dispatching cannot be overstated in today's rail markets. We urge you to bear them carefully in mind as this proceeding goes forward.

Thank you again for your responsive action in initiating this proceeding and we will watch closely as it unfolds in the weeks ahead.

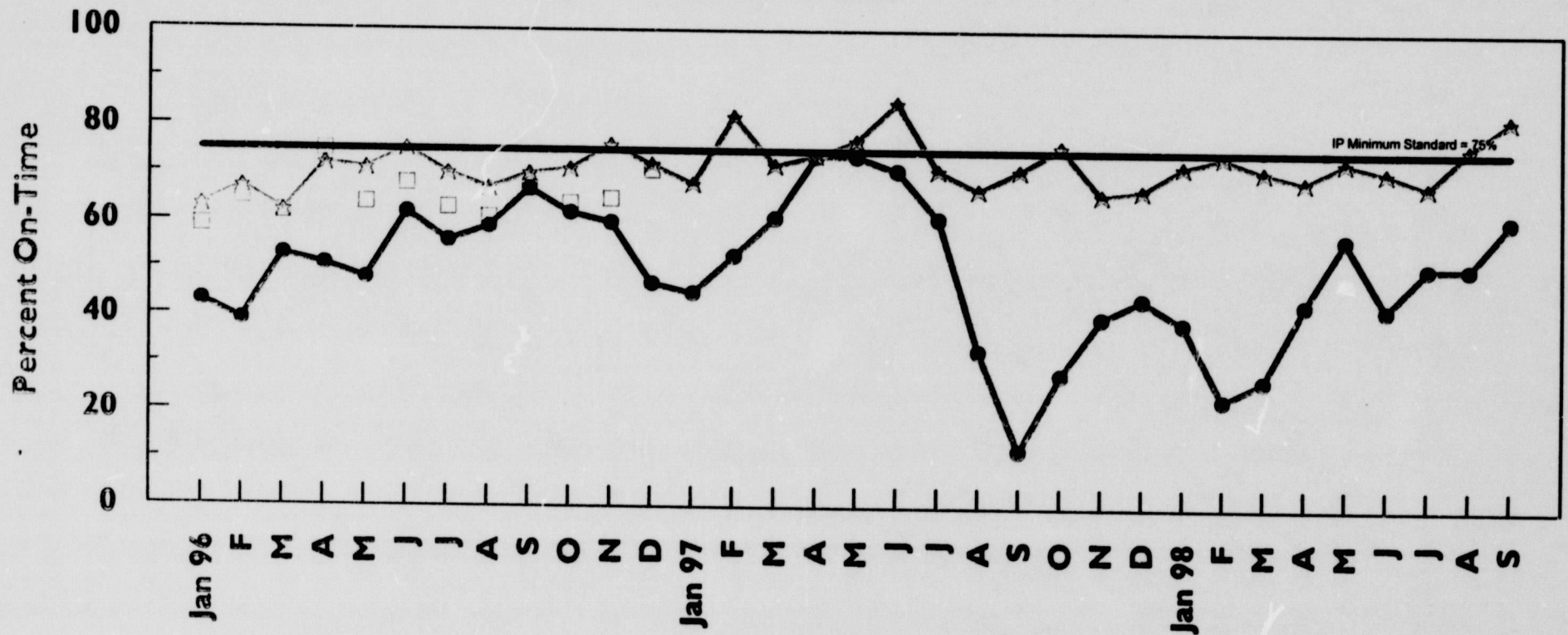
I, Charles E. McHugh, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of the International Paper Company, executed on November 14, 1998.



Charles E. McHugh
Manager, U.S. Distribution Operations

Rail On-Time Transit Performance *

1996- 1998



	Jan 96	F	M	A	M	J	J	A	S	O	N	D	Jan 97	F	M	A	M	J	J	A	S	O	N	D	Jan 98	F	M	A	M	J	J	A	S
SP 96	59	65	62	75	64	68	63	61	67	64	65	71																					
UP 96	43	39	53	51	48	62	56	59	67	62	60	47	45																				
UP/SP 97-98													45	53	61	74	74	71	61	33	12	28	40	44	39	23	27	43	57	42	51	51	61
US RR (-UP)	63	67	62	72	71	75	70	67	70	71	76	72	68	82	72	74	77	85	71	67	71	76	66	67	72	74	71	69	73	71	68	76	82

*Data supplied by railroads

Roswell
1400 Holcomb Bridge Rd.
Roswell, GA 30076-2199
23-October-1998

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

RE: Finance Docket No. 32760
Houston/Gulf Oversight Proceeding

My name is Justin R. Chan. I am a Logistics Coordinator with Kimberly-Clark Corporation, a major U.S. consumer products company with an administrative headquarters in Roswell, Georgia.

Kimberly-Clark is filing this statement in support of the Burlington Northern and Santa Fe Railway's ("BNSF") request in Finance Docket No. 32760, Houston/Gulf Oversight Proceeding, that the Surface Transportation Board grant overhead trackage rights to enable the BNSF to join the directional operations over any Union Pacific Railway ("UP") line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows. As a significant user of BNSF's rail services, Kimberly-Clark believes that this request will benefit our company and other shippers and will result in service improvements and needed operational flexibility.

It is Kimberly-Clark's understanding that under present operations, the BNSF has to run bidirectional operations in certain situations over UP trackage rights lines where UP has instituted directional operations such as over the Fort Worth to Dallas, TX line (via Arlington). In such instances, BNSF trains are delayed when running "against the current" of UP's directional operations until the line is cleared of UP trains. In addition to delaying BNSF traffic, UP traffic is potentially delayed while BNSF operates against the UP "current of traffic", consuming more of the line's capacity than would be utilized with directional operations. These delays to both BNSF and UP traffic adversely impact service to our company and other shippers.

UP's accommodation of its own operational needs -- and later decisions to cease directional running on its lines such as on the former SP Caldwell-Flatonia-Placedo line -- causes disruption to BNSF's operations and inhibits BNSF's ability to provide consistent, predictable and reliable service to our company and other shippers.

Roswell
1400 Holcomb Bridge Rd.
Roswell, GA 30076-2199

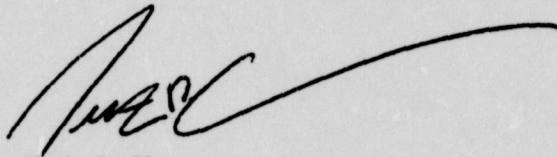
23-October-1998

Page 2

Such significant changes in rail operations not only undermines the competitive rights BNSF was granted but understandably inhibits BNSF's incentive to make capital commitments to enhance service to shippers.

In sum, Kimberly-Clark believes that the BNSF's request would help to alleviate the degradation in service and reduce congestion on the lines over which UP has instituted directional operations. Kimberly-Clark is in favor of this request because it would eliminate the potential for UP to favor its own traffic over that of BNSF moving on trackage rights lines.

For all of these reasons, the Board should grant BNSF's request. It would benefit Kimberly-Clark and other shippers and will result in service improvements for both UP and BNSF.



Justin R. Chan
Fiber Procurement & Logistics
Kimfibers



From Forrest L. Becht, 402 W. Washington St., New Iberia, LA 70560
Phone: Office (318)364-9625, Home: (225)272-9728, Fax: Office (318) 369-1487, Home: (225) 272-9649
e-mail: Office: Fbecht@gwrr.com, Home: flbtrain@earthlink.net

October 21, 1998

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

Dear Secretary Williams:

Please find attached a statement representing Louisiana & Delta Railroad's position on the latest STB oversight hearings for the Union Pacific Railroad and the Houston/Gulf Coast. Our purpose in submitting a statement is that Louisiana & Delta Railroad serves customers of both BNSF and UP – in fact, both railroads compete head-to-head for our customer's business. As a consequence, we are vitally interested in service issues as far west as Houston and beyond that directly affect movement of our customer's shipments.

Please feel free to contact me if the STB has any questions concerning our statement. Thank you.

Cordially,

Forrest L. Becht
President & General Manager

VERIFIED STATEMENT
OF
LOUISIANA & DELTA RAILROAD, INC.

I am the President & General Manager of the Louisiana & Delta Railroad, Inc. We are in the business of owning and operating 112 miles of former Southern Pacific branch lines in south central Louisiana. We also operate via trackage rights on the BNSF/UP mainline from Raceland to Lake Charles, Louisiana. Louisiana & Delta handles 15,000 car loads of business a year and interchanges traffic with both Union Pacific and Burlington Northern Santa Fe.

Louisiana & Delta is vitally interested in and concerned about service problems and issues that may adversely affect movement of our customer's shipments. We must have improved fluidity and reduced congestion for all operations in the area.

Since mid 1997 Louisiana & Delta has lost over 2,000 carloads of business because of Union Pacific's inability to supply cars to load and because of customer dissatisfaction with Union Pacific's transit time. Much of the lost business was the result of congestion in Lake Charles, Louisiana, and Beaumont/Houston, Texas. It is critical that these terminal areas be kept fluid. BNSF's plan, from our perspective, goes a long way towards accomplishing that goal.

We do not support any conditions which would result in the handoff of UP traffic to any other railroad where UP has the potential to invest to handle the traffic safely and efficiently.

We urge the Surface Transportation Board to focus on mechanisms by which the physical handling of traffic can be improved. Operations in the Gulf Coast service area must be kept fluid for us to survive.

I declare under penalty of perjury that the foregoing is true and correct and that I am authorized to file this verified statement.
Dated October 21, 1998.

FLR

Forrest L. Becht
President & General Manager



Minnesota Corn Processors, Inc.

October 26, 1998

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

Re: Finance Docket No. 32760 (Sub-No. 26 and 28)

My name is Gary E. Smith. I am the Transportation Manager for Minnesota Corn Processors which is located in Marshall, MN. Our company is commonly referred as a Corn Wet Milling company. Minnesota Corn Processors is predominately a rail shipper; shipping over 15,000 rail shipments in privately owned tank cars.

As with our prior filing in support of the BNSF position on access to the South Texas Liquid Terminal in San Antonio, TX, we believe it is important to support any initiative that would either preserve or improve the service to our customers. Therefore we support the BNSF's request the STB grant overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the directional flows. We believe that this request will benefit our company and other shippers and will result in service improvements.

One of the important benefits that was to result from the UP/SP merger was that service would be significantly improved by the ability to run directional operations over parts of the new UP line. By making the BNSF conduct bidirectional operations over directional lines contradicts the spirit of the merger. In such instances, BNSF trains are delayed when running "against the current" of UP's directional operations until the line is cleared of UP trains. In addition to delaying the BNSF traffic, UP traffic is potentially delayed while the BNSF operates against the UP traffic consuming more of the line's capacity than would be utilized with directional operations. These delays to both the BNSF and UP traffic adversely impact service to our company and other shippers. Certainly this not what the STB had in mind when the mergers were approved.

In summation we believe that the BNSF request is justified and would help to alleviate the degradation in service and reduce congestion on the line over which the UP has instituted directional operations. We, therefore, request that the STB grant the BNSF request.

Sincerely,


Gary E. Smith
Transportation Manager

The Rice Company

1624 Santa Clara Street, Suite 230
Roseville, California 95661
U.S.A.

Telephone (916) 784-7745
Telex 6730750 BLC UW
Fax (916) 784-7681



WHITE RICE • BROWN RICE • ROUGH RICE

November 3, 1998

Honorable Vernon A. Williams,
Secretary, Surface Transportation Board
1925 K Street NW
Washington DC 20423-0001

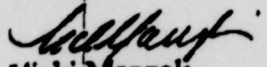
Dear Honorable Vernon A. Williams:

This letter is to lend support to the proposals being made by the Burlington Northern Santa Fe Railroad (BNSF) to reduce the rail congestion in the Gulf Coast area.

We, The Rice Company, believe that BNSF's proposed structural realignment proposal will restore the competitive situation at Laredo as it existed prior to the Union Pacific-Southern Pacific merger. We agree that BNSF should be allowed to seek overhead trackage rights on Union Pacific's line between San Antonio and Laredo. We believe if BNSF is allowed these trackage rights, it will reduce the rail congestion that has persisted in the Gulf Coast area for over a year.

Please feel free to contact us at Tel (916) 784-7745 if you have any questions.

Sincerely,


Vicki Manzoli
Operations Manager



Office of the Chairman

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

FILE IN DOCKET

70-32760

(Sub-No. 26)

August 31, 1998

Ms. Catherine Maruska
Sr. VP -- Chief Administrative Officer
United Sugars Corporation
524 Center Avenue
Moorhead, MN 56560

Re: Rail Regulation Issues

Dear Ms. Maruska:

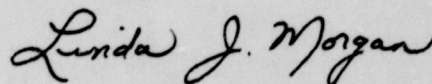
Thank you for your letters expressing your support for the remedial conditions requested by the Burlington Northern and Santa Fe Railway Company (BNSF) during the continuing oversight of the Union Pacific/Southern Pacific merger proceeding. In one of your letters, you express the view that BNSF's requested conditions are similar to the types of competitive access sought by various shippers in the UP/SP general oversight proceeding, the "Houston/Gulf Coast" oversight proceeding, and the Board's proceeding reviewing access and competition in the railroad industry generally. You also urge the Board to consider the application of BNSF's proposals on a broader scale, in particular with respect to six regulatory changes that in your view would enhance competition and improve the rail system.

As the UP/SP general oversight proceeding and the Houston/Gulf Coast oversight proceeding are pending, I cannot specifically address the merits of the BNSF filing as it relates to those cases. More generally, however, the Board has addressed five of the six general issues that you have raised (with the exception of the time limit on emergency service orders, which is set by statute), both in its Ex Parte No. 575 access and competition proceeding, and in other individual proceedings. In Ex Parte No. 575, the Board directed railroads and shipper groups to hold several meetings with an Administrative Law Judge to try to develop changes to competitive access rules, and several of the parties to those discussions have reported back to the Board with their recommendations. In its "bottleneck" decision, the Board required railroads to quote a bottleneck rate whenever a non-bottleneck railroad and a shipper have entered into a contract over an established routing. In its "small rate case" guidelines, the Board indicated that one factor in a rate reasonableness analysis could be rates charged by railroads on comparable traffic. In its "CSX/Norfolk Southern/Conrail Acquisition" proceeding, the Board added competitive conditions to what was already a pro-competitive rail acquisition transaction. And finally, in its Ex Parte No. 575 proceeding, the Board directed large and smaller railroads to meet and negotiate procedures for improving access to small carriers; the parties have held several meetings, and an agreement is near.

The Board will continue to evaluate all proposals such as the ones that you have made to ensure that, within the limits of the law that it administers, its regulatory decisions promote a rail system that provides good service at reasonable rates. In the general UP/SP oversight proceeding and the Houston/Gulf Coast oversight proceeding, the Board will seriously consider all positions that are advanced, and will seek to reach a resolution that is the interest of railroads, shippers, other interested parties, and the Nation as a whole.

For your information, I am enclosing a copy of the Board's April 17, 1998, decision in the Ex Parte No. 575 proceeding, and press releases describing its decisions in the other proceedings I have discussed. I am also having your letters and this response placed in the formal docket in the Houston/Gulf Coast oversight proceeding, the general UP/SP oversight proceeding, and the Ex Parte No. 575 proceeding. If I can be of assistance to you in this or any other matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosures



FILE IN DOCKET

Moorhead, MN

July 8, 1998

Mr. Vernon Williams
Surface Transportation Board
1925 K St. NW
Washington, DC 20423

Dear Mr. Williams:

United Sugars Corporation is a marketing cooperative representing over 4,000 sugar producers in the Upper Midwest and the state of Florida.

We believe any law and/or regulatory decision which decreases competition in the rail industry would be detrimental to the health of both shippers and railroads, and would be in direct opposition to the stated goals of the 1980 Staggers Rail Act. We also believe that any law that attempts to reintroduce the burdensome regulatory concepts that were replaced by the Staggers Act-or re-regulation-would be a serious public policy mistake.

Far from re-regulating the rail industry, we believe we need to move in the opposite direction-one in which shippers in all geographic markets have increased access to rail-to-rail competition when moving their products to market.

In the spirit of moving towards this goal, United Sugars believes the rail industry must begin to move into a competitive environment, where market forces replace government regulation. Such a move must begin gradually, and United Sugars currently supports recommendations that would correct several anti-competitive regulatory decisions that have been handed down in recent years. Specifically, we support changes that would enhance competition by:

1. Granting reciprocal switching and terminal trackage rights;
2. Requiring carriers to quote rates over bottleneck segments;
3. Determining the "reasonableness" of a rate by considering the impact rail-to-rail competition has on similar commodity movements over similar distances;
4. Adopting conditions which promote rail-to-rail competition when evaluating mergers;
5. Removing time restrictions on emergency service orders; and
6. Increasing access to short-line carriers.

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OFFICE OF
CHAIRMAN MORGAN

United Sugars understands that this is not the final answer to the question of how to achieve rail-to-rail competition, but we do believe it is a start in the right direction, and hope that you will give this recommendation serious consideration.

Sincerely,

Catherine Maruska

Catherine Maruska
Sr. VP-Chief Administrative Officer
United Sugars Corporation

Cc: **Honorable Linda Morgan, Chairman**
Honorable Gus Owen, Vice Chairman



524 Center Avenue

Moorehead, MN

56560

July 8, 1998

Mr. Vernon Williams
Surface Transportation Board
1925 K St. NW
Washington, DC 20423

Re: Re-Opened Hearings on UP/SP Merger

Dear Mr. Williams:

United Sugars believes any plan that increases rail competition will be to everyone's benefit, and we support any initiative that would change the current railroad access environment to a more competitive one.

The BNSF requested for consideration to the STB to reopen hearings regarding service and competitive issues in the UP/SP merger. It is clear that the BN is asking for many of the same benefits other shippers have requested, mainly, competitive access. Specifically:

1. BNSF has requested that it be granted trackage rights on UP/SP's lines as necessary to enable BNSF to provide customers with competitive, effective service at reasonable rates. This request is consistent with the United Sugar's position that terminal trackage rights and reciprocal switching should be affirmatively granted within some set distance from an interchange. We believe this position is consistent with BNSF's requests for trackage rights in the following corridors:
 - UP's San Antonio-Laredo line and between Taylor & Milano, TX, permitting BNSF access to the most direct routes in order to service customers.
 - UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo lines.
 - UP routes in the Houston Terminal for all traffic.
 - UP and SP line between Harlingeng and Brownsville in order to provide effective service.

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CHAIRMAN MORGAN

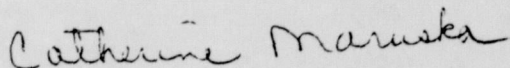
2. BNSF has also requested that neutral switching supervision on the former Baytown Branch be established to allow BNSF to provide customers with competitive service. Because neutral switching is a means for ensuring trackage rights which can effectively increase competitive access, United Sugars supports this proposal.
3. Finally, BNSF has requested joint neutral dispatching over UP & SP routes. Because neutral dispatching can ensure customer service in a competitive environment, United Sugars supports this proposal.

BNSF's proposals for alleviating the service crisis in Texas illustrate the need for greater emphasis to be placed on increasing competition so that market forces can replace government regulation in as many instances as possible. Further, United Sugars urges policy makers to consider the application of BNSF's proposals and similar policy changes on a national scale. Specifically, we urge changes that would enhance competition by:

1. Granting reciprocal switching and terminal trackage rights within a specified distance;
2. Requiring carriers to quote rates over bottleneck segments;
3. Determining the "reasonableness" of a rate by considering the impact rail-to-rail competition has on similar commodity movements over similar distances;
4. Adopting conditions which promote rail-to-rail competition when evaluating mergers;
5. Removing time restrictions on emergency service orders; and
6. Increasing access to short-line carriers.

Thank you for your consideration of our views on the pending BNSF requests.

Sincerely,



Catherine Maruska
Sr. VP - Chief Administrative Officer
United Sugars Corporation

Cc: Honorable Linda Morgan, Chairman
Honorable Gus Owen, Vice Chairman



Office of the Chairman

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

FILE IN DOCKET

JD-32760

August 31, 1998 (Sub-70-21)

Ms. Catherine Maruska
Sr. VP -- Chief Administrative Officer
United Sugars Corporation
524 Center Avenue
Moorhead, MN 56560

Re: Rail Regulation Issues

Dear Ms. Maruska:

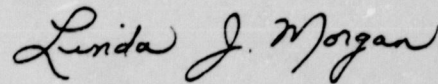
Thank you for your letters expressing your support for the remedial conditions requested by the Burlington Northern and Santa Fe Railway Company (BNSF) during the continuing oversight of the Union Pacific/Southern Pacific merger proceeding. In one of your letters, you express the view that BNSF's requested conditions are similar to the types of competitive access sought by various shippers in the UP/SP general oversight proceeding, the "Houston/Gulf Coast" oversight proceeding, and the Board's proceeding reviewing access and competition in the railroad industry generally. You also urge the Board to consider the application of BNSF's proposals on a broader scale, in particular with respect to six regulatory changes that in your view would enhance competition and improve the rail system.

As the UP/SP general oversight proceeding and the Houston/Gulf Coast oversight proceeding are pending, I cannot specifically address the merits of the BNSF filing as it relates to those cases. More generally, however, the Board has addressed five of the six general issues that you have raised (with the exception of the time limit on emergency service orders, which is set by statute), both in its Ex Parte No. 575 access and competition proceeding, and in other individual proceedings. In Ex Parte No. 575, the Board directed railroads and shipper groups to hold several meetings with an Administrative Law Judge to try to develop changes to competitive access rules, and several of the parties to those discussions have reported back to the Board with their recommendations. In its "bottleneck" decision, the Board required railroads to quote a bottleneck rate whenever a non-bottleneck railroad and a shipper have entered into a contract over an established routing. In its "small rate case" guidelines, the Board indicated that one factor in a rate reasonableness analysis could be rates charged by railroads on comparable traffic. In its "CSX/Norfolk Southern/Conrail Acquisition" proceeding, the Board added competitive conditions to what was already a pro-competitive rail acquisition transaction. And finally, in its Ex Parte No. 575 proceeding, the Board directed large and smaller railroads to meet and negotiate procedures for improving access to small carriers; the parties have held several meetings, and an agreement is near.

The Board will continue to evaluate all proposals such as the ones that you have made to ensure that, within the limits of the law that it administers, its regulatory decisions promote a rail system that provides good service at reasonable rates. In the general UP/SP oversight proceeding and the Houston/Gulf Coast oversight proceeding, the Board will seriously consider all positions that are advanced, and will seek to reach a resolution that is the interest of railroads, shippers, other interested parties, and the Nation as a whole.

For your information, I am enclosing a copy of the Board's April 17, 1998, decision in the Ex Parte No. 575 proceeding, and press releases describing its decisions in the other proceedings I have discussed. I am also having your letters and this response placed in the formal docket in the Houston/Gulf Coast oversight proceeding, the general UP/SP oversight proceeding, and the Ex Parte No. 575 proceeding. If I can be of assistance to you in this or any other matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosures



FILE IN DOCKET

50+ Center Avenue

Moorhead, MN

56560

OFFICE OF
CHAIRMAN MORGAN

JUL 13 4 05 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

July 8, 1998

Mr. Vernon Williams
Surface Transportation Board
1925 K St. NW
Washington, DC 20423

Dear Mr. Williams:

United Sugars Corporation is a marketing cooperative representing over 4,000 sugar producers in the Upper Midwest and the state of Florida.

We believe any law and/or regulatory decision which decreases competition in the rail industry would be detrimental to the health of both shippers and railroads, and would be in direct opposition to the stated goals of the 1980 Staggers Rail Act. We also believe that any law that attempts to reintroduce the burdensome regulatory concepts that were replaced by the Staggers Act-or re-regulation-would be a serious public policy mistake.

Far from re-regulating the rail industry, we believe we need to move in the opposite direction-one in which shippers in all geographic markets have increased access to rail-to-rail competition when moving their products to market.

In the spirit of moving towards this goal, United Sugars believes the rail industry must begin to move into a competitive environment, where market forces replace government regulation. Such a move must begin gradually, and United Sugars currently supports recommendations that would correct several anti-competitive regulatory decisions that have been handed down in recent years. Specifically, we support changes that would enhance competition by:

1. Granting reciprocal switching and terminal trackage rights;
2. Requiring carriers to quote rates over bottleneck segments;
3. Determining the "reasonableness" of a rate by considering the impact rail-to-rail competition has on similar commodity movements over similar distances;
4. Adopting conditions which promote rail-to-rail competition when evaluating mergers;
5. Removing time restrictions on emergency service orders; and
6. Increasing access to short-line carriers.

United Sugars understands that this is not the final answer to the question of how to achieve rail-to-rail competition, but we do believe it is a start in the right direction, and hope that you will give this recommendation serious consideration.

Sincerely,

Catherine Maruska

Catherine Maruska
Sr. VP-Chief Administrative Officer
United Sugars Corporation

Cc: Honorable Linda Morgan, Chairman
Honorable Gus Owen, Vice Chairman



524 Center Avenue

Moorehead, MN

56560

July 8, 1998

Mr. Vernon Williams
Surface Transportation Board
1925 K St. NW
Washington, DC 20423

Re: Re-Opened Hearings on UP/SP Merger

Dear Mr. Williams:

United Sugars believes any plan that increases rail competition will be to everyone's benefit, and we support any initiative that would change the current railroad access environment to a more competitive one.

The BNSF requested for consideration to the STB to reopen hearings regarding service and competitive issues in the UP/SP merger. It is clear that the BN is asking for many of the same benefits other shippers have requested, mainly, competitive access. Specifically:

1. BNSF has requested that it be granted trackage rights on UP/SP's lines as necessary to enable BNSF to provide customers with competitive, effective service at reasonable rates. This request is consistent with the United Sugar's position that terminal trackage rights and reciprocal switching should be affirmatively granted within some set distance from an interchange. We believe this position is consistent with BNSF's requests for trackage rights in the following corridors:
 - UP's San Antonio-Laredo line and between Taylor & Milano, TX, permitting BNSF access to the most direct routes in order to service customers.
 - UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo lines.
 - UP routes in the Houston Terminal for all traffic.
 - UP and SP line between Harlingeng and Brownsville in order to provide effective service.

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BOARD
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OFFICE OF
CHAIRMAN MORGAN

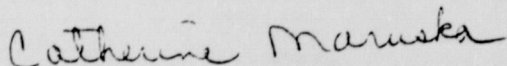
2. BNSF has also requested that neutral switching supervision on the former Baytown Branch be established to allow BNSF to provide customers with competitive service. Because neutral switching is a means for ensuring trackage rights which can effectively increase competitive access, United Sugars supports this proposal.
3. Finally, BNSF has requested joint neutral dispatching over UP & SP routes. Because neutral dispatching can ensure customer service in a competitive environment, United Sugars supports this proposal.

BNSF's proposals for alleviating the service crisis in Texas illustrate the need for greater emphasis to be placed on increasing competition so that market forces can replace government regulation in as many instances as possible. Further, United Sugars urges policy makers to consider the application of BNSF's proposals and similar policy changes on a national scale. Specifically, we urge changes that would enhance competition by:

1. Granting reciprocal switching and terminal trackage rights within a specified distance;
2. Requiring carriers to quote rates over bottleneck segments;
3. Determining the "reasonableness" of a rate by considering the impact rail-to-rail competition has on similar commodity movements over similar distances;
4. Adopting conditions which promote rail-to-rail competition when evaluating mergers;
5. Removing time restrictions on emergency service orders; and
6. Increasing access to short-line carriers.

Thank you for your consideration of our views on the pending BNSF requests.

Sincerely,



Catherine Maruska
Sr. VP - Chief Administrative Officer
United Sugars Corporation

Cc: Honorable Linda Morgan, Chairman
Honorable Gus Owen, Vice Chairman



524 Center Avenue

Moorehead, MN

56560

July 8, 1998

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Surface Transportation Board
1925 K St. NW
Washington, DC 20423

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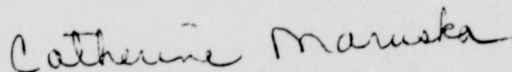
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Sincerely,



Catherine Maruska
Sr. VP - Chief Administrative Officer
United Sugars Corporation

Cc: Honorable Linda Morgan, Chairman
Honorable Gus Owen, Vice Chairman

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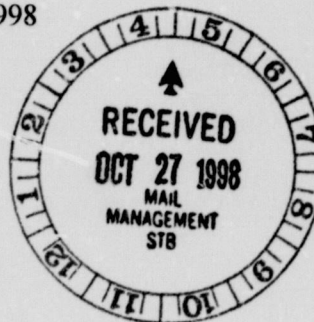
(202) 778-5388

October 27, 1998

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BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 26 and Related Sub-Dockets)

Dear Secretary Williams:

We have received and reviewed the rebuttal filings of the parties seeking additional merger-related conditions in the above-captioned proceeding. We are very strongly averse to burdening the Board and the record by tendering additional, sur-reply materials, and thus we have taken a very broad view of what could fairly be characterized as rebuttal testimony. Even under that view, however, there are two items of evidence, both contained in the rebuttal submitted in support of the "Consensus Plan," that are entirely new and that could have been presented in the opening testimony. Accordingly, we respectfully request that if the Board considers those points, it also consider the following brief reply.

I.

In their rebuttal verified statement, Messrs. Grimm and Plaistow present an analysis of traffic moving to and from "2-to-1" shippers in the Houston BEA. Their analysis is not proper rebuttal -- it is new evidence, and could have been submitted in the initial "Consensus Plan" filing, in which case UP would have had an opportunity to respond to it. The following is a brief response:

1. The new Grimm/Plaistow study is riddled with fundamental errors. It includes as "2-to-1" shippers many companies that do not have "2-to-1" facilities, or any facilities at all, at the locations indicated. For example, the study includes data for Chevron and Fina at East Baytown, but neither company has any East Baytown facilities. Messrs. Grimm and Plaistow also provide data for a number of other "Baytown" shippers, such as Advanced Aromatics, Air Products, ALCOA, Hi Port, Jim Huber and Texas Petrochemicals, that do not, in fact, have Baytown facilities. The study also includes data for shippers, such as Carlisle Plastics at Victoria, Texas, that are located at "2-to-1" points, but that are not "2-to-1" shippers because they were exclusively served before the merger. In addition, and crucially, the study includes as a "2-to-1" shipper the Lower Colorado River Authority ("LCRA") at Halsted, Texas. LCRA was

Hon. Vernon A. Williams
October 27, 1998
Page 2

not subject to the Board's "2-to-1" contract reopener condition, and, because of a contract, the vast majority of its traffic has not yet become available to BNSF. See Decision No. 57, served Nov. 20, 1996, p. 6. LCRA is responsible for some 78% of the UP-terminated traffic included in the study. Also, the study contains data for shippers not located in the Houston BEA. For example, Mobil's Amelia, Texas, facility is located in the Port Arthur/Beaumont BEA, not the Houston BEA. And the study lists a number of shippers that moved no traffic via either UP or BNSF and do not have "2-to-1" facilities in the Houston BEA. Why these shippers are listed is a complete mystery.

2. The Grimm/Plaistow study can hardly be considered representative of the experiences of "2-to-1" shippers throughout the Western United States. There are few "2-to-1" shipper facilities in the Houston BEA. See UP/SP-357, Peterson V.S., chart following p. 21. The study presents data for fewer than 20 of the approximately 600 "2-to-1" facilities that are open to BNSF.

3. Apart from the LCRA traffic discussed above, most of the traffic identified in the Grimm/Plaistow study was shipped by just four chemical shippers: Amoco, Exxon and Chevron at Mont Belvieu and Bayer at Eldon. As we have previously described, there has been vigorous competition between UP and BNSF for this business, and UP retained most of the business only because it provided these shippers with substantial rate reductions and other benefits under the spur of BNSF competition. See UP/SP-345, Confidential Appendix C, pp. C1 (Amoco), C2 (Bayer), C4 (Chevron), C5 (Exxon). Exxon filed a statement in this proceeding in which it specifically indicated that it is "satisfied with the effectiveness of conditions imposed by the [STB] to maintain competition at Exxon's sites in the Houston area." Imperial Holly and Texas Petrochemicals, two other "2-to-1" shippers on the Grimm/Plaistow list, also filed statements supporting UP. In contrast, none of the shippers on the Grimm/Plaistow list that actually have "2-to-1" facilities in the Houston BEA has filed a statement supporting the "Consensus Plan."

4. Finally, during the service crisis, UP did not hold shippers to their contracts if alternative routings would help ease the crisis. However, as we have previously explained, the service crisis resulted in congestion that affected the entire Houston area, including BNSF operations. It is therefore not surprising that traffic did not shift from UP to BNSF -- it reflects operating realities resulting from the service crisis, not a failure of competition related to the merger conditions.

II.

In his rebuttal verified statement, Larry L. Thomas, President of SPI, presents data regarding UP transit times. This data is new evidence and it is grossly misleading. Mr. Thomas asserts that "transit time measurements developed by a partnership effort of SPI and UP" show that UP's service remains far below pre-merger levels. Although UP did willingly participate in a partnership effort with SPI, the data displayed by SPI are a wholly inaccurate mish-mash of unrelated numbers. UP has repeatedly pointed out to SPI the defects in these data, and has repeatedly supplied correct information to SPI, which SPI has ignored.

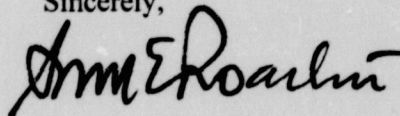
Hon. Vernon A. Williams
October 27, 1998
Page 3

The SPI data include the following errors:

- The transit times shown for one period of time pertain to different mixes of shippers and different routes than the transit times for other periods of time. They compare apples to oranges to pineapples.
- Some of the shipments measured do not originate in Texas at all. Some of the measurements include shipments originating, for example, in Clinton, Iowa.
- SPI's portrayal of data for 1995 and 1996 show identical transit times for shipments from origin to to final destination as for shipments from origin to interchange. This is physically impossible. UP pointed out the error, but SPI never responded. The 1995 and 1996 data are worthless.
- SPI characterizes transit time as "UP Only," even over 70% of the traffic is interline business that originates or terminates on a railroad other than UP, such as NS, CSX or Conrail, and even though the transit times for this traffic often reflect congestion, delays, flooding and other problems on these other railroads. UP asked SPI to cease this misrepresentation, but SPI ignored UP's requests.

It is bad enough that SPI prepared inaccurate and misleading charts. It is even more objectionable for SPI to attribute the data in part to UP. It is worse still that SPI actively distributes these charts with full knowledge of the errors. The fact that SPI and other Consensus Parties continue to rely on misleading and inaccurate portrayals of transit times, notwithstanding the fact that UP has provided accurate information, should raise the most serious questions about the credibility of the Consensus Parties' filings.

Sincerely,



Arvid E. Roach II

cc: All Parties of Record

STB FD • 32760 (Sub 26) 10-27-98 • D 191915

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1201 PENNSYLVANIA AVENUE, N. W.

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OCT 28 1998

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October 27, 1998

ARVID E. ROACH II

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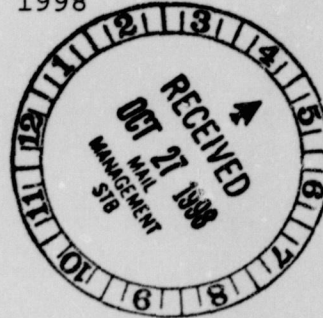
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BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 711
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Finance Docket No. 32760 (Sub-No. 26
& Related Sub-Dockets)

Dear Secretary Williams:

This will represent Union Pacific's reply to the "Consensus Parties' Request for Oral Argument" (KCS-16, etc.), filed October 23, 1998.

The Request comes curiously late in the day and, on our view, does not make a persuasive case for further delaying this proceeding by holding an oral argument on a date more than a month in the future. UP is eager to have the matters at issue in this proceeding resolved. As the record is very fully developed and the real dispute is over whether the Board should abandon long-established legal principles, it appears questionable to us whether oral argument would be productive.^{1/}

That said, whether to hold oral argument is a matter entirely committed to the Board's sound discretion. Union Pacific certainly has no objection to the holding of oral argument, and, should the Board find an oral argument useful, we stand ready to review and discuss the considerations that overwhelmingly compel the denial of the various condition requests that have been submitted in this proceeding.

Sincerely,

Arvid E. Roach II

^{1/} The Board has not found oral argument to be required in order to decide numerous UP/SP oversight and condition matters since approval of the merger in August 1996.

STB FD 32760 (Sub 26) 10-27-98 D 191869

Knightsbridge Drive
Hamilton, Ohio 45020
513 868-4974, Fax: 513 868-5778

Richard E. Kerth
Transportation/Distribution Manager—Commerce, Regulatory Affairs
and Organizational Improvement
Corporate Transportation/Distribution



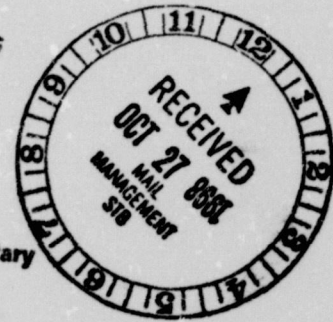
October 16, 1998

Office of the Secretary
Surface Transportation Board
Case Control Unit
Attn.: STB Docket No. 32760 (Sub. -No. 26)
1925 K Street, N.W.
Washington, D.C. 20423-0001

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re: Union Pacific Corporation, et. Al – Control and Merger –Southern Pacific Rail
Corporation, et. Al; Houston / Gulf Coast Oversight [STB Finance Docket No. 32760
(Sub. No. 26)]

Dear Mr. Secretary:

Enclosed is the statement of Champion International Corporation presenting rebuttal comments to UP/SP 361, Applicants Reply to Comments in Finance Docket No. 32760 (Sub. No. 21), dated September 30, 1998. Please note that Champion filed its September 15 comments (CIC-2) under Sub. No. 26 proceeding because our comments / requests for conditions would affect the UP/SP network in the Houston and Gulf Coast region. UP, however, chose to respond to those comments (and also to the comments of our 50% subsidiary, the Angelina & Neches River Railroad (ANR-2), in the general oversight proceeding captioned as Sub. No. 21.

An original and twenty-five (25) copies are enclosed, along with a 3.5 inch computer disk containing a copy of the Statement in WordPerfect 5.0 format which can be converted into 7.0 format. One copy has also been sent to UP's representative, Administrative Law Judge Stephen Grossman, and all parties on the Service List.

Sincerely,

Richard E. Kerth
Richard E. Kerth

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 PROCEEDING

**REPLY TO COMMENTS OF UNION PACIFIC RAILROAD AND SOUTHERN PACIFIC
RAILROAD BY CHAMPION INTERNATIONAL CORPORATION AND ITS SHORTLINE
RAILROAD SUBSIDIARY OPERATION: MOSCOW, CAMDEN & SAN AUGUSTINE
RAILROAD**

Champion International Corporation ("Champion") and the Moscow, Camden & San Augustine Railroad ("MC&SA") hereby submit these rebuttal comments to Applicants Reply to Comments, UP/SP-361 in Finance Docket No. 32760 (Sub. No. 21), dated September 30, 1998. Please note that Champion filed its September 15 comments (CIC-2) under the Sub. No. 26 proceeding because our comments are more directly related to the UP/SP network in the Houston and Gulf Coast region. UP, however, chose to respond to our comments and also to the comments of our 50% subsidiary, the Angelina & Neches River Railroad (ANR-2), in the general oversight proceeding captioned as Sub. No. 21.¹ For our purposes here, we again designate our filing as part of the Houston and Gulf Coast region proceeding because any reconfiguration of the existing UP/SP network in the Houston /Gulf Coast region would have its greatest impact on our operations.

In our earlier comments, Champion and MC&SA complain that we are not receiving consistent local service on UP/SP's directionally operated Lufkin subdivision between Houston and Shreveport. Champion pointed to the fact that operation of both Burlington Northern Santa Fe ("BNSF") trains and UP/SP trains on this line has impacted our business. Due to a lack of consistent rail service, we have

increased our truck shipments to the maximum operational extent. We also have sought other reload alternatives to take our product to market to avoid UP/SP rail service. UP/SP agrees that its service has not met our expectations² and cites a number of steps to improve local service on the line: doubling of local service between Shreveport and Lufkin; relocation of Lufkin subdivision dispatching from Omaha to Spring, and plans (emphasis added) for assigned locomotives for local service between Houston and Lufkin. Doubling of local service may help the A&NR and its customers at Lufkin but it does nothing for Champion's facilities at Camden and Corrigan because they are served from Houston. The jury is still out on whether the assignment of locomotives for local service between Houston and Lufkin and dispatching through the Spring Dispatching Center will cure the obvious service defect. We believe these are worthy of consideration but they are not a substitute for reliable, consistent service. As we earlier indicated, "Champion wants and needs consistent local service restored to our operations in order that we are able to take our products into our marketplace." UP suggests that a condition requiring daily local train service to our company or every short line in east Texas—or elsewhere—is an economic issue. In order that the record is clear, Champion is not asking for any more than we enjoyed before the merger of UP and SP. As we indicated in our earlier statement, local train LEF 51 is designated to provide northbound service for movement of primarily empty cars three times per week—Monday, Wednesday, and Friday. The same train, but designated as LEF 50 when in southbound service, picks up loaded cars on its way back to Houston on Tuesday, Thursday, and Saturday. This is the consistent local service we desire here; it is the same service we enjoyed prior to the merger. This is not a new condition. We are asking that service be restored. We raise the issue in this proceeding because we believe there are parties, (e.g. "Consensus Plan" (Sub.- No. 30)) that seek new conditions that would reconfigure the existing UP/SP network in Houston and the Gulf Coast. If the Board is to consider those conditions, some accommodation for local service must be structured into the overall scheme.

Champion has also proposed that our short line, MC&SA, be permitted to switch our plant at Corrigan, Texas. In its reply, UP/SP describes the dispute as economics not suitable for the Board's resolution. UP/SP's contention is simply not true. Because of the service problems in east Texas which ultimately led to the Board's Directed Service Order No. 1518, Champion has verbally suggested to our UP representatives that we mutually explore MC&SA switching of Corrigan and the redeployment of UP's crew to another more critical service area. UP's immediate response to our suggestion was they did not have time to fully consider the matter while they were dealing with the Houston / Gulf Coast crisis. In late May, 1998 two UP representatives and one Champion representatives physically walked the property at Corrigan in order for UP to understand our proposal. Having received no response to

¹ Finance Docket No. 32760 (Sub.-No. 21) UP/SP-361, page 2; page 84 -92, Item F. Champion and A&NR

² UP/SP361, page 84

proposal, the subject was again raised with UP/SP during its Short Line Workshop in late August. At no time prior to its reply here has the UP/SP raised the subject of economics—only the need to study labor implications. Champion contends that UP/SP has not been responsive to our proposal. Champion raised the issue in this proceeding to show the Board that Champion is trying to help itself where feasible and practical when UP/SP fails to deliver service. For clarity of record, Champion did not ask the Board to resolve this issue as UP/SP suggests in its response.

Champion takes strong exception to the UP/SP reply to the derailment situations at our Corrigan facility. UP/SP contends that Champion's trackage at Corrigan was so badly deteriorated that UP refused to switch the plant until Champion performed essential maintenance to make the track safe. On a weekly basis, employees of the MC&SA Railroad inspect the track, pavements, switches, frogs, ties, culverts, and drainage facilities at Corrigan and perform maintenance as required. State and federal track inspectors also inspect these facilities on a regular basis. **Champion has not and will not allow our track to deteriorate as suggested by UP/SP's reply.** It is the policy of Champion to maintain a safe and healthful work environment for all employees, all service providers (including railroads), to protect our property against accidental losses, and to comply with all applicable laws and regulations pertaining to safety and health matters.

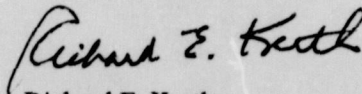
The fact is UP/SP has assigned SP locomotive 7295 to switching service at Corrigan. This locomotive is an EMD GP40M, 3000 horsepower, 4 axle locomotive, 59' 2" in length. We contend that the locomotive is probably too large for switching 1,390 feet of track on a flat service (little grade). We did not have the frequency of derailments prior to the assignment of this particular locomotive.

SUMMARY

Champion and the MC&SA maintain its support for consistent, reliable service for our operations in East Texas served locally by UP/SP from Houston. Champion cannot endorse any additional competitive conditions which would be counterproductive to the service we desire and deserve or decrease from the service level experienced prior to the merger. The BNSF and UP/SP reached an agreement, for the sake of overall merger competition, that permits both UP/SP and BNSF to operate southbound trains in the Lufkin subdivision between Shreveport and Houston. We have shown, and UP/SP has agreed, that consistent service to our operations has been impacted by this agreement. While UP/SP is taking a number of steps to improve local service, this amounts only to a promise of service on terms UP/SP suggests which is not necessarily what the customer wants or needs. We urge the Board to maintain continued and vigilant oversight of the UP/SP merger with continued emphasis on Houston, the

Gulf Coast, and east Texas. For the foregoing reasons, the Board should order the UP/SP to provide consistent local service to Champion and other east Texas industries in the same manner as pre-merger.

Respectfully submitted,



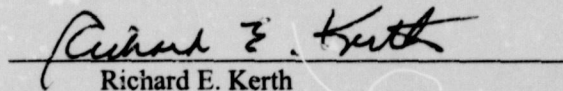
Richard E. Kerth
Transportation Manager - Commerce & Regulatory
Affairs

CHAMPION INTERNATIONAL CORPORATION
101 Knightsbridge Drive Hamilton, OH 45020

October 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document have been served this 16th day of October, 1998, by first class mail, postage prepaid, upon all parties of record in the oversight proceeding.


Richard E. Kerth

STB

FD

32760

(Sub 26)

10-21-98

D

191769

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1887



MAIN TELEPHONE
202-463-2000
MAIN FAX
202-861-0473

ERIKA Z. JONES

DIRECT DIAL (202) 778-0642
ejones@mayerbrown.com

October 21, 1998

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 711
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary

OCT 22 1998

Part of
Public Record

Re: Finance Docket No. 32 760 (Sub-No. 26, 30 and 32)

Dear Secretary Williams:

Please note the following errata in BNSF's Rebuttal Evidence and Argument in Support of Requests for Additional Remedial Conditions, filed October 16, 1998, in the above-referenced proceeding:

Page 1, footnote 1:

Insert the word "and" after the word "Branches" in line 3, place a period after the word "Houston" in line 3, and delete the remainder of the footnote thereafter.

The corrected footnote 1 now reads: "BNSF has determined to withdraw from the Board's consideration at this time its requests for: (i) neutral switching supervision on the former SP Sabine and Chaison Branches; and (ii) PTRAs operation of the UP Clinton Branch in Houston."

A corrected page 1 is attached hereto for the convenience of the Board.

Page 15, line 7:

Change "to ensure" to "so".

Page 32, line 4:

Change "could" to "to".

MAYER, BROWN & PLATT

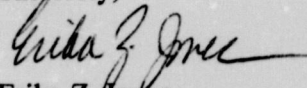
October 21, 1998

Page 2

Tab 1, Verified Statement of Ernest L. Hord, page 7, line 13:

Delete "this".

Sincerely,

A handwritten signature in cursive script, appearing to read "Erika Z. Jones", written in dark ink.

Erika Z. Jones

Attachment

cc: All Parties of Record (with encl.)

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

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]

**BNSF Rebuttal Evidence And Argument
In Support Of Requests For Additional Remedial Conditions**

The Burlington Northern and Santa Fe Railway Company ("BNSF") submits this rebuttal evidence and argument in further support of its request that the Surface Transportation Board (the "Board") impose the additional remedial conditions proposed in its July 8, 1998 Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area ("Application").^{1/}

^{1/} BNSF has determined to withdraw from the Board's consideration at this time its requests for: (i) neutral switching supervision on the former SP Sabine and Chaison Branches; and (ii) PTRAs operation of the UP Clinton Branch in Houston.

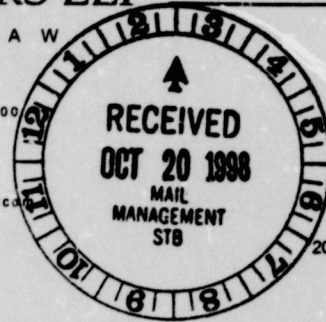
STB FD 32760 (Sub 26) 10-20-98 D 191715

191715

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

NATIONSBANK PLAZA
600 PEACHTREE STREET, N.E. - SUITE 5200
ATLANTA, GEORGIA 30308-2216
TELEPHONE: 404-885-3000
FACSIMILE: 404-885-39[FAX]
INTERNET: william.mullins@troutmansanders.com



202-274-2953

William A. Mullins, Esq.

October 20, 1998

VIA HAND DELIVERY

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

ENTERED
Office of the Secretary

OCT 20 1998

Part of
Public Record

D

RE: *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 Transportation Company, SPCSL Corp. And The Denver and Rio Grande Western Railroad Company, Houston/Gulf Coast Oversight Proceeding*
Federal Docket No. 32760 (Sub No. 26)

Dear Secretary Williams:

Enclosed for filing in the above captioned matter, please find an original plus twenty six (26) copies each of the Errata to Rebuttal Evidence and Argument in Support of the Consensus Plan, both the "Highly Confidential" version, and a "Public" Version

Please date stamp the enclosed extra copy and return them to the messenger for our files. If you have any questions please do not hesitate to contact me at (202) 274-2953.

Sincerely,

William A. Mullins, Esq.

Enclosures

cc: Parties of Record

191715

CMA-7 SPI-7
RCT-6 TCC-7
TM-23 KCS-14

"Public" Version

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-No. 26)*



ENTERED
Office of the Secretary

OCT 20 1998

**Part of
Public Record**

**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 PROCEEDING

**ERRATA TO REBUTTAL EVIDENCE AND ARGUMENT IN
SUPPORT OF THE CONSENSUS PLAN**

**THE CHEMICAL MANUFACTURERS
ASSOCIATION**

**THE SOCIETY OF THE PLASTICS INDUSTRY,
INC.**

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS CHEMICAL COUNCIL

THE TEXAS MEXICAN RAILWAY COMPANY

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

October 20, 1998

(* and embraced sub-dockets)

CMA-7 SPI-7
RCT-6 TCC-7
TM-23 KCS-14

"Public" Version

**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 PROCEEDING

**ERRATA TO REBUTTAL EVIDENCE AND ARGUMENT IN
SUPPORT OF THE CONSENSUS PLAN**

The Consensus Parties hereby submit the following changes to the Rebuttal Evidence and
Argument in Support of the Consensus Plan filed in this proceeding, on October, 16 1998.

ERRATA

**Public - Volume II
(CMA-5; SPI-5; RCT-4; TCC-5; TM-21; KCS-12)**

Page 9, Figure 3

Insert New Figure 3

**"Highly Confidential" - Volume III
(CMA-6; SPI-6; RCT-5; TCC-6; TM-22; KCS-13)**

Figure 8
Figure 9

Insert New Figure 8
Insert New Figure 9

These revisions were necessary for three reasons:

(1) The UP traffic tapes for the first half of 1998 reported *****REDACTED*****

*****REDACTED*****

*****. From secondary sources, it has now been confirmed that these reportings

were in error. As a result, *****REDACTED*****

*****REDACTED*****. This brought the tonnage market shares in

line with the carload market shares.

(2) Our consultants had been previously unable to locate a 2-to-1 UP terminations file that listed the receiver. On late Friday, October 16, a file was located in previous traffic tapes so that necessary changes were made to reflect additional 2-to-1 shippers and correct spellings of certain shippers. These changes primarily resulted in lengthening the 2-to-1 shipper list, but added very few cars and tons and did not affect the UP and BNSF market shares.

(3) Our consultants had been previously unable to locate a 2-to-1 SP terminations file that listed the receiver. On Sunday, October 18, a file was located in previous traffic tapes so that necessary changes were made to reflect additional 2-to-1 shippers and correct spellings of certain shippers. These changes primarily resulted in lengthening the 2-to-1 shipper list, but added very few cars and tons and did not affect the UP and BNSF market shares.

TABLE 3
MARKET SHARES HOUSTON ORIGINATIONS/TERMINATIONS
FROM/TO 2-TO-1 LOCATIONS
JANUARY - JUNE, 1998

	Originations		Terminations	
	Cars	Tons	Cars	Tons
BN	8.8%	8.7%	9.3%	9.4%
UP	91.2%	91.3%	90.7%	90.6%
Total	100.0%	100.0%	100.0%	100.0%

Summary of 1st Half of 1998 2-to-1 Traffic Originating in the Houston BEA

SP1.C6

Shipper

Location	UP Originating Traffic		BNSF Originating Traffic		UP Market Share		BNSF Market Share	
	Cars	Tons	Cars	Tons	Cars	Tons	Cars	Tons

REDACTED

HIGHLY
CONFIDENTIAL

Summary of 1st Half of 1999 2-to-1 Traffic Originating in the Houston BEA

<u>SPLCs</u>	<u>Shippers</u>	<u>Location</u>	<u>UP Originating Traffic</u>		<u>BNSF Originating Traffic</u>		<u>UP Market Share</u>		<u>BNSF Market Share</u>	
			<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>

REDACTED

HIGHLY
CONFIDENTIAL

Summary of 1st Half of 1998 2-to-1 Traffic Terminating in the Houston BEA

<u>SPLCs</u>	<u>Receiver</u>	<u>Location</u>	<u>UP Terminating Traffic</u>		<u>BNSF Terminating Traffic</u>		<u>UP Market Share</u>		<u>BNSF Market Share</u>	
			<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>

REDACTED

HIGHLY
CONFIDENTIAL

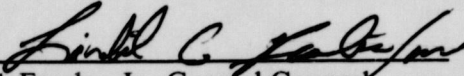
Summary of 1st Half of 1998 2-to-1 Traffic Terminating in the Houston BEA

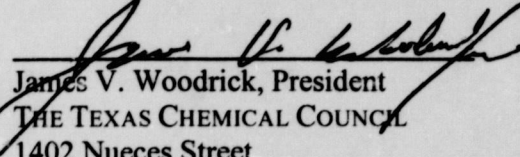
<u>SPLCs</u>	<u>Receiver</u>	<u>Location</u>	<u>UP Terminating Traffic</u>		<u>BNSF Terminating Traffic</u>		<u>UP Market Share</u>		<u>BNSF Market Share</u>	
			<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>	<u>Cars</u>	<u>Tons</u>

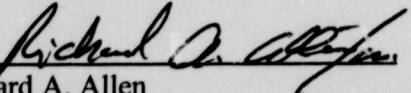
REDACTED

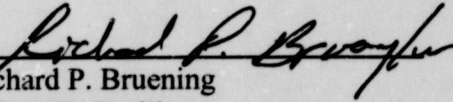
**HIGHLY
CONFIDENTIAL**

Respectfully submitted and signed on each party's behalf with express permission,

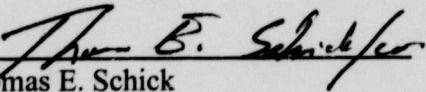

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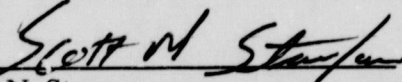

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Robert K. Dreiling
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ATTORNEYS FOR THE TEXAS MEXICAN
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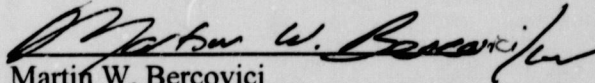

Thomas E. Schick
The Chemical Manufacturers Association
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William A. Mullins
David C. Reeves
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ATTORNEYS FOR THE CHEMICAL
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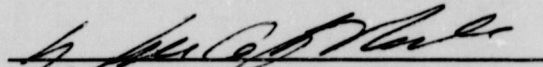

Martin W. Bercovici
Keller & Heckman
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001
Tel: (202) 434-4144
Fax: (202) 434-4651

ATTORNEYS FOR THE SOCIETY OF PLASTICS
INDUSTRY, INC.

.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of "Public" version of the **"ERRATA TO REBUTTAL EVIDENCE AND ARGUMENT IN SUPPORT OF THE CONSENSUS PLAN"** was served this 20th day of October, 1998, by hand delivery to counsel for Union Pacific Railroad Company, counsel for Burlington Northern and Santa Fe Railway Company, the Port Terminal Railway Association, and the Houston Belt & Terminal Railway Company, by first class mail upon all other known parties of record in the Sub-No. 26 oversight proceedings and that a true copy of the "Highly Confidential" version was served on parties who have signed the appropriate confidentiality undertaking.



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

STB FD 32760 (Sub 26) 10-19-98 D 191676

191676

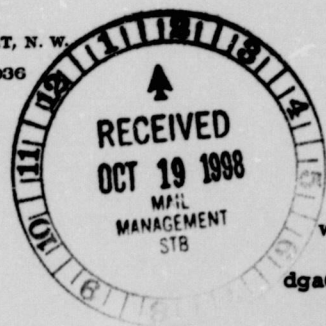
SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL



TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

dga@sloverandloftus.com

October 19, 1998

BY HAND DELIVERY

Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 26)
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

ENTERED
Office of the Secretary

OCT 19 1998

Part of
Public Record

D

Re: STB Finance Docket No. 32760 (Sub-No. 26)
Union Pacific Corporation et al. -- Control
And Merger -- Southern Pacific Corporation
Et al. [Houston/Gulf Coast Oversight]

Dear Mr. Secretary:

On October 16, 1998, Carla J. Mitcham, General Manager, Fuel & Energy Management, for Houston Lighting & Power Company filed a "Verified Statement in support of BNSF's Joining UP's Directional Operations." The filing included a facsimile version of the verification page to the Verified Statement. Enclosed for filing please find the original executed verification page, which we request be substituted for the facsimile version.

Thank you for your attention to this matter. We apologize for any inconvenience that the above may have caused.

Sincerely,

Donald G. Avery
An Attorney for Houston
Lighting & Power Company

Enclosure

Houston Lighting & Power Company

A Division of Houston Industries Incorporated



STATE OF TEXAS)
) SS:
COUNTY OF Harris)

Carla J. Mitcham, being duly sworn, deposes and says that she has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated, except as to those statements made on information and belief, and as to those, that she believes them to be true.

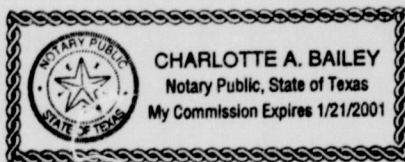
Carla J. Mitcham
Carla J. Mitcham

Subscribed and sworn to before me
this 15th day of October, 1998.

Charlotte A. Bailey

Notary Public for the County of Harris, Texas

My Commission expires 1-21-2001.

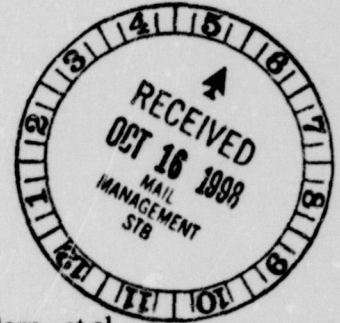


STB FD 32760 (Sub 26) 10-16-98 D 191648

October 15, 1998

Commonwealth
Consulting
Associates

Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No.26)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



Re: STB Finance Docket No. 32760 (Sub-No. 26)
Union Pacific Corp., et al. - Control & Merger - Southern Pacific Corp., et al.

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

(Sub-No. 28) Burlington Northern and Santa Fe Railway Company—
Terminal Trackage Rights—Texas Mexican Railway Company

(Sub-No. 29) Burlington Northern and Santa Fe Railway Company—
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and twenty-five copies of the Shell Oil Company and Shell Chemical Company Rebuttal In Support of Requested Conditions. Also enclosed is a 3.5 inch diskette, containing the Joint Rebuttal in a format which may be converted to Word Perfect 7.0.

Copies of this Joint Rebuttal are also concurrently served on all other parties of record.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David L. Hall".

David L. Hall

ENTERED
Office of the Secretary

OCT 19 1998

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.

FINANCE DOCKET NO. 32760
UNION PACIFIC CORP., ET AL. -- CONTROL & MERGER --
SOUTHERN PACIFIC RAIL CORP., ET AL.
HOUSTON/GULF COAST OVERSIGHT PROCEEDING

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

(Sub-No. 28) Burlington Northern and Santa Fe Railway Company—
Terminal Trackage Rights—Texas Mexican Railway Company

(Sub-No. 29) Burlington Northern and Santa Fe Railway Company—
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan

JOINT REBUTTAL OF
SHELL OIL COMPANY AND SHELL CHEMICAL COMPANY
IN SUPPORT OF REQUESTED CONDITIONS

Due Date: October 16, 1998

Brian P. Folker
Manager of Products Traffic
Shell Chemical Company
One Shell Plaza
Post Office Box 2463
Houston, Texas 77252

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.

FINANCE DOCKET NO. 32760
UNION PACIFIC CORP., ET AL. -- CONTROL & MERGER --
SOUTHERN PACIFIC RAIL CORP., ET AL.
HOUSTON/GULF COAST OVERSIGHT PROCEEDING

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

(Sub-No. 28) Burlington Northern and Santa Fe Railway Company—
Terminal Trackage Rights—Texas Mexican Railway Company

(Sub-No. 29) Burlington Northern and Santa Fe Railway Company—
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan

JOINT REBUTTAL OF SHELL OIL COMPANY AND SHELL CHEMICAL
COMPANY IN SUPPORT OF REQUESTED CONDITIONS

Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell"), in response to the opportunity afforded by the Surface Transportation Board (Board or STB) by its Decision served August 4, 1998 in Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al., Houston/Gulf Coast Oversight Proceeding, hereby file a joint rebuttal in support of certain of the requested conditions which have been accepted for consideration by the Board. Both companies are Corporations, the address of which is One Shell Plaza, Post Office Box 2463, Houston, Texas 77252.

I-INTRODUCTION

Shell interest in Gulf Coast Region rail operations stems from the fact that Shell ships and/or receives in excess of 20,000 rail cars to and from the region annually. Approximately 12,500 of these shipments occur to and from our petrochemical plant at Deer Park, Texas. The balance of the Shell rail traffic ships to or from other Houston/Gulf Coast region facilities.

Shell operations were significantly impacted by the UP service meltdown in the western United States and particularly in the Houston/Gulf Coast region. For this reason Shell participated in the STB Emergency Service Order Proceedings related to the UP service failure. We saw the introduction of competition on a limited basis provide a measure of relief from the crisis.

Shell recognized the need for a permanent solution to the concentration of market power in the hands of one railroad which contributed to this crisis. Therefore when the Board instituted this proceeding Shell seized the opportunity to participate in a process which would result in the implementation of policies which will ensure that Gulf Coast shippers never have to endure a disaster of the magnitude of the UP service meltdown.

In that vein the Shell Companies filed a Joint Request for New Remedial Conditions in this proceeding on July 8, 1998. Shell also filed Joint Comments on September 18, 1998 pertaining to the requests for new conditions which were submitted by (1) the Texas Mexican Railway Company (Tex Mex), Kansas City Southern Railway Company (KCS), certain shipper and governmental interests (jointly referred to herein as "Consensus Group"); (2) the Burlington Northern and Santa Fe Railway Company (BNSF); and (3)

certain individual shippers. Those filings supported, by and large, the objectives and operational strategies of the plan filed by the Consensus Group (Consensus Plan) on July 8, 1998. We also expressed support for certain new conditions requested by the BNSF (BNSF Plan) which was filed on the same date.

Shell has reviewed the comments of various parties on the conditions proposed in the Consensus Plans, BNSF Plan and the individual shipper plans. This Joint Rebuttal addresses the Opposition to Condition Applications filed by UP, as well as some the comments filed by BNSF, CSX and NS. Support for the Shell recommendations which follow is found in the Verified Statement of David L. Hall, attached hereto.

OPPOSITION TO CONDITION APPLICATIONS

The comments which were submitted by UP and other railroads in opposition to the conditions contain nothing which casts doubt on the support for the positions we espoused in our September 18 filing. In its comments UP refuses to take any major level of responsibility for the service meltdown, placing the blame on other railroads, economic conditions and infrastructure, among other things. UP does however take full credit in its comments for solving the crisis.

The main objective of the UP comments seems to be to protect its monopoly franchise. The UP opposes every condition proposed by the Consensus Group and BNSF. It justifies this opposition with claims that it can handle all the traffic which it has mishandled in the past.

UP declares the service crisis over, as it has done so many times in the past. It even claims that service is back to "normal." Perhaps by redefining normal to use 1997 as a baseline, UP can justify this statement. However, Shell does not consider that its transit times have returned to normal when they are not yet as good as those provided by the "decrepit" SP which UP derided throughout its comments.

BNSF comments are interesting in that while BNSF wants to protect its part of the Houston pie from KCS/Tex Mex, it also wants to apply the Consensus Group principles to compete in the UP monopoly franchises. CSX and NS filed statements in order to preclude the establishment of a precedent where the Board rectifies problems created by unforeseen ramifications of merger decisions.

As previously stated, none of the comments submitted by railroad opponents to new conditions are more than self serving attempts to protect their monopoly franchises obtained through recent railroad consolidations. Those comments should be considered by the Board in that light.

CONCLUSION

Shell supports the railroad realignment proposal for Houston and the Gulf Coast Area that has been submitted by the Consensus Group. Shell has always advocated the need for rail competition to provide a level of service that meets the shipping public's need, consistent with a reasonable level of rates that adequately compensates the railroads performing the service. Implementation of the portions of the Consensus Plan we supported in our September 18 filing would help alleviate the dangerous concentration of market power which contributed to the Gulf Coast Region rail service disaster. The sole exception to Shell support for the Consensus Plan was to the possibility that the implementation of any of the items in the plan would involve the taking of property. We reiterate that position in this filing. Shell does not condone the taking of property nor support the forced sale of assets.

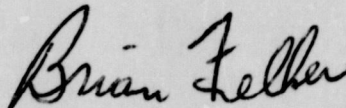
Shell also supports the principle of directional trackage rights espoused by BNSF. A carrier which has been granted trackage rights between two points must not be required to fight the flow of traffic when directional running is established. In such a case the tenant must be granted access to the lines necessary to participate in directional traffic flows between the two points for which traffic rights were originally granted.

Finally, Shell believes that the principles of competition can best be advanced through access to a third railroad, neutral switching and neutral dispatching, and not through solutions crafted solely for individual industry shippers.

It is the responsibility of the Board to take the action necessary to insure that the conditions which contributed to the Gulf Coast Region railroad service meltdown are altered in such a way that we are never faced with another such disaster. The opportunity is before the Board to rectify the lack of competition which contributed to the meltdown of Gulf Coast Region railroad service. We urge the Board to take advantage of that opportunity by approving the requested conditions as recommended above.

Respectfully submitted,

SHELL CHEMICAL COMPANY
For itself and as Agent for Shell Oil Company
By its Manager of Products Traffic

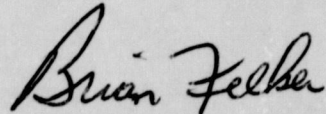
A handwritten signature in dark ink, appearing to read "Brian Felker". The signature is written in a cursive, flowing style.

Brian P. Felker
One Shell Plaza
Houston, Texas 77252

Dated: October 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 1998, copies of the Joint Rebuttal in Support of Requested Conditions of Shell Oil Company and Shell Chemical Company were served by first class mail, postage prepaid, in accordance with the rules of the Surface Transportation Board on Arvid E. Roach II, Esq., Covington & Burling, Administrative Law Judge Stephen Grossman, Federal Energy Regulatory Commission and all other parties of record.



**Brian P. Felker
Manager of Products Traffic
Shell Chemical Company
One Shell Plaza
Post Office Box 2463
Houston, Texas 77252**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 32760
UNION PACIFIC CORP., ET AL. -- CONTROL & MERGER --
SOUTHERN PACIFIC RAIL CORP., ET AL.
HOUSTON/GULF COAST OVERSIGHT PROCEEDING**

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

**(Sub-No. 28) Burlington Northern and Santa Fe Railway Company—
Terminal Trackage Rights—Texas Mexican Railway Company**

**(Sub-No. 29) Burlington Northern and Santa Fe Railway Company—
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area**

**(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan**

VERIFIED STATEMENT

OF

DAVID L. HALL

I - IDENTIFICATION AND QUALIFICATIONS OF AFFIANT

My name is David L. Hall. I am President of COMMONWEALTH CONSULTING ASSOCIATES, with offices at 13103 F.M. 1960 West, Suite 204, Houston, Texas, 77065. COMMONWEALTH CONSULTING ASSOCIATES provides management consulting services, including practice areas in logistics and information systems. A detailed statement of my qualifications may be found in Appendix A of my initial Verified Statement in this proceeding, dated September 18, 1998.

II - INTRODUCTION

This Verified Statement is submitted in support of the positions of Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell"), as set forth above by Brian P. Felker. The Joint Rebuttal is in response to the comments filed by certain parties of record¹ on September 18, 1998 regarding requests for new conditions which were accepted for consideration by the Surface Transportation Board (Board or STB) in its decision served August 4, 1998 in Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al., Houston/Gulf Coast Oversight Proceeding.

¹ Commonwealth received comments on the requests for new conditions filed by Allied Rail Unions, Angelina & Neches River Railroad Company, Brotherhood of Maintenance of Way Employees, Burlington Northern & Santa Fe Railway Company, CSX Corporation, Champion International Corporation and its subsidiary, Moscow, Camden & San Augustine Railroad, Greater Houston Partnership, National Association of Railroad Passengers, Norfolk Southern Corporation and Norfolk Southern Railway Company, Port of Houston Authority, Texas Mexican Railway Company, Union Pacific Corporation and its subsidiaries Union Pacific Railroad Company and Southern Pacific Rail Corporation, United States Department of Transportation and United Transportation Union.

The rebuttal of the Shell Companies addresses the comments which were submitted by (1) Union Pacific Corporation and its' subsidiaries Union Pacific Railroad Company and Southern Pacific Rail Corporation (UP); (2) Burlington Northern and Santa Fe Railway Company (BNSF); (3) Norfolk Southern Corporation and Norfolk Southern Railway Company (NS); and (4) CSX Corporation (CSX).

III - BACKGROUND

United States railroad industry consolidation has resulted in a concentration of market power that would be unimaginable in any other industry. Two duopolies have been created. West of the Mississippi River the UP and BNSF railroads dominate the market for rail services, with one or the other handling virtually every carload which moves in this region. A similar situation has been created in the East with the approval of the purchase of Conrail by CSX and NS.

However, these are not duopolies in the sense that in each market the consumer of rail services has a choice of carriers for each move such as might be the case in an airline duopoly. For example, if a duopoly existed in the air passenger market between two cities, the consumer would have a choice as to the carrier. In the same case the consumer of rail services would have to enjoy service from two carriers at both the origin plant and the destination customer facility. For the preponderance of the rail service in the U.S., this is not the case. In most cases the origin and/or the destination is served by only one carrier which precludes choice for the consumer of the service on either end.

Therefore, the majority of the origin-destination pairs within each of these duopolies actually represent monopoly franchises for a single carrier. That is the importance of this case to the UP. It is a concern for the preservation of the monopoly franchises they have been allowed to assemble and not whether their customers are receiving the best possible service, in the safest possible manner, at competitive prices.

While the other three major rail carriers have slightly different agendas in the instant case, the underlying purpose of their filings is the same; protection of monopoly franchises. The statements of each of the carriers are addressed below.

The STB, imposed a five year oversight condition on approval of the UP purchase of the SP and retained jurisdiction to impose additional remedial conditions on the merger if those already imposed proved insufficient. It is obvious from the events which have occurred since control of the SP was ceded to the UP in September, 1996 that the original conditions of the merger were grossly inadequate.

Lack of competition was, to a great degree, responsible for Gulf Coast Region service crisis which spread to other parts of the UP system. If adequate competition had been mandated for the Gulf Coast Region, a system meltdown would have been less likely for several reasons. First, competition forces companies to focus outward, on the customer, rather than inward. The merger with the SP eliminated much of UP's Gulf Coast Region competition. Rather than focusing on its customer base following purchase of SP, the UP focus was internal. Priority was placed on cost cutting and system rationalization in order to justify merger costs rather than focusing on customers and their requirements. When the crisis occurred, the UP internal focus became more intense

as management resources were trained on maintenance of monopoly franchises through the exclusion of other carriers.

Second, the concentration of resources in the hands of one carrier (UP) guaranteed regional meltdown in the event of severe service problems for that carrier. If adequate competition had been maintained in Houston and the surrounding region, other carriers would have been available to take up the slack as the UP began having problems. The regional service meltdown would have approached neither the breadth nor depth we experienced had railroad service alternatives had been immediately available to the effected shippers.

The Board, based on the best information available to it at the time, approved the merger of the UP and SP subject to competitive conditions which have now proved inadequate. However, there have been unforeseen ramifications from the decision which the Board must now correct. The inability of the UP to effectively operate the franchise it was granted and subsequently to fulfill its common carrier obligations as it gridlocked an entire region, make clear the mistake of concentrating such enormous market power in the hands of a single carrier.

The Board has rightfully provided the opportunity to correct this mistake. The desire of UP to protect its monopoly franchises notwithstanding, the correct course of action is to implement conditions which will preclude the occurrence of a disaster similar to the one the Gulf Coast Region has experienced over the past eighteen months.

UP's Opposition to Condition Applications

UP has shown its true concern throughout the service crisis which it created with its mishandling of the SP purchase and consolidation. When the Gulf Coast meltdown began to take shape in the first quarter of 1997, UP first denied that there was a crisis. As the crisis became worse during the summer of 1997, UP made excuses and consistently underplayed the significance of the meltdown in its public statements. In the fall UP fiercely resisted STB intervention in the form of an emergency service order. Throughout the term of the order, UP fought its extension, always claiming that operations would return to normal, by the next month.

The UP concern was not "the public interest," nor was it the financial losses suffered by its customers due to higher transportation prices, lower equipment utilization, lost business opportunities and plant shutdowns. The UP was solely preoccupied with protecting its monopoly franchises by resisting even emergency trackage rights for those carriers which could help alleviate the crisis caused by UP.

UP has filed predicable comments on the conditions requested by the Consensus Group, BNSF and others. The weight given these comments must be limited to the pounds of paper they consume however, as they represent a four volume effort to obscure the issues before the Board.

The UP filing is a monument of corporate self-absorption, filled with avoidance of responsibility, self-aggrandizement and historical revisionism. UP begins by praising STB for its actions in handling the UP service meltdown. Particularly citing STB Emergency Service Order 1518 the UP touts "measured but decisive action" by the

Board.² The praise continues for the next two pages. This is the same UP which fought vigorously against ESO 1518, maintaining that STB intervention was unnecessary.

The UP deflects responsibility for the service crisis to any and every other party that it could possibly blame, including the BNSF, SP, Mexican traffic, and "the economy" to name a few.³ It admits only two errors, "both of them reversed within two weeks."⁴

UP also takes full credit for solving the service crisis.⁵ No credit is given to the STB, to the other railroads which took the pressure off by handling part of its traffic or to shippers which were forced to find alternative modes. No, "...the crisis is over, and the merger deserves the credit for this good news."⁶ In fact the service crisis has diminished in the Houston/Gulf Coast area, though service is by no means back to normal. The improvement is due in no small part to many of the initiatives which were implemented as a result of ESO 1518 and that under consideration in this docket as permanent conditions. It is not because of the self serving action of the UP.

The UP backs up its assertions with Verified Statements from numerous consultants and railroad personnel. One such statement, by Mr. Dennis J. Duffy, Executive Vice President-Operations for UP, makes the claim that "[T]here is no-service related reason to grant the conditions requested by other railroads or customers in this proceeding."⁷ To back this up Mr. Duffy provides the Board with measurements of UP

² UP's Opposition to Condition Applications - Volume 1, Page 2

³ UP's Opposition to Condition Applications - Volume 1, Pages 63-70

⁴ UP's Opposition to Condition Applications - Volume 1, Page 68

⁵ UP's Opposition to Condition Applications - Volume 1, Pages 70-75

⁶ UP's Opposition to Condition Applications - Volume 1, Pages 74-75

⁷ UP's Opposition to Condition Applications - Volume 3, V.S of Dennis J. Duffy, Page 2

performance. It is important for the Board to realize that the way the railroad measures performance and the way shippers measure performance are very different. A railroad is interested in the on-time performance of its trains. Shippers are interested in transit time; how long it takes to move a car, from the time it is picked up until it is finally placed on the customer's track. When Shell instituted its "Railroad Performance Measurement" program covering nine major railroads serving Shell across the United States and asked railroads to provide transit time measurements the railroads invariably brought glowing statistics concerning the "on-time" percentage of their trains, much like Mr. Duffy presents in his statement. However, the transit time measurement on an individual cars or block of cars from date of shipment to constructive placement at destination is basis upon which Shell gauges on-time performance.

Mr. Duffy provides statistics for the movement of Shell products from Deer Park to the gateways of East St. Louis and New Orleans. According to Mr. Duffy "Service to Shell has returned to normal levels."⁸ In September 1998 Mr. Duffy reports that loaded cars were averaging 3.75 days from Deer Park to New Orleans. Prior to the merger when Shell shipped either via the UP or the SP it was taking 3 days from date of pickup to placement to constructive placement or placement for interchange in New Orleans, which is 25% higher than what transit time should be. We don't know whether Mr. Duffy is measuring train time from Deer Park to New Orleans or car time from the Shell plant to constructive placement. He may not have included the terminal time. As for loaded cars

⁸ UP's Opposition to Condition Applications - Volume 3, V.S of Dennis J. Duffy, Page 7

from Deer Park to East St. Louis all Mr. Duffy gives is a percentage improvement (78% since the worst month) which tells us absolutely nothing.

Mr. Duffy's was the only Shell specific testimony regarding UP performance. The bottom line is that UP performance will only reach optimal levels when they experience the pressure of competition.

Volume Four of the UP comments is a compilation of over 500 letters of support solicited by UP from other railroads, shippers and government officials. Many of the letters in that volume were drafted from a form letter that UP provided which talked about letting "UP fight its way out" of problems and that we should not "weaken UP at a time when it has already suffered large financial and traffic losses." Most of the letters are not even from entities connected in any way with, or affected by, rail competition in the Gulf Coast Region. This entire volume should be given no weight.

The BNSF comments seek to preclude the Consensus Group from obtaining any of the conditions sought. BNSF comments are interesting in that while BNSF wants to protect its part of the Houston pie from KCS/Tex Mex, it also wants to apply the Consensus Group principles to compete in the UP monopoly franchises. CSX and NS filed statements in order to preclude the establishment of a precedent where the Board rectifies problems created by unforeseen ramifications of merger decisions.

The statements filed by the railroads as comments in opposition to the proposed conditions in this proceeding provide no basis for rejecting those conditions. Despite lofty rhetoric in its comments about "public interest," private property and the constitution, the UP objective remains the same; preservation of its monopoly franchises. The Board

should ignore the UP rhetoric and take action which would prevent a recurrence of the UP service disaster, as recommended in the statement of Brian P. Felker heretofore.

VERIFICATION

COUNTY OF HARRIS)

) ss:

STATE OF TEXAS)

DAVID L. HALL, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and the same are true as stated.

Signed: _____

David L. Hall

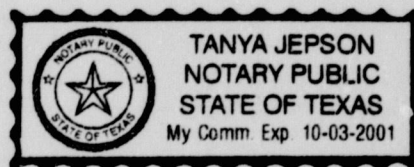
Subscribed and sworn to before me this 15th day of October, 1998

Tanya Jepson
Notary Public

My Commission expires:

10/3/01

(SEAL)



STB FD 32760 (Sub 26) 10-16-98 D 191647

REDACTED -- TO BE FILED UNDER PUBLIC RECORD

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

*Union Pacific Corporation, Union Pacific Railroad Company
And Missouri Pacific Railroad Company*

ENTERED
Office of the Secretary

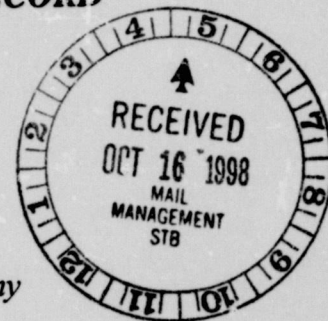
OCT 19 1998

Part of
Public Record

- 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*

**Reply to UP's Opposition to
Dow's Request for Additional Conditions**



D

The Dow Chemical Company ("Dow") hereby responds to the "Opposition to Condition Applications" of the Union Pacific Railroad Company, filed September 18, 1998. Dow filed a "Request for Additional Conditions" (DOW-1) on July 8, 1998 in response to the Board's Decision No. 1 in the above referenced proceeding. Dow seeks two conditions that would grant The Burlington Northern and Santa Fe Railway Company ("BNSF") access to its Freeport, Texas chemicals and plastics production complex. These conditions would help to remedy the anti-competitive effects of the merger between the Union Pacific Railroad ("UP") and the Southern Pacific Railroad ("SP") (collectively referred to as the now merged carrier "UP" unless used in a pre-merger context) that have contributed to the service crisis on the Gulf Coast. Dow's

response is comprised of this "Reply" and the "Rebuttal Verified Statement of William L. Gebo" ("Gebo Rebuttal V.S.").

Introduction and Summary

This proceeding was initiated by the Board to determine "whether there is any relationship between the market power gained by UP through the merger and the failure of service that has occurred here, and, if so, whether the situation should be addressed through additional remedial conditions." Decision No. 1 at 5. Dow contends that, because the UP/SP merger consolidated much of the rail infrastructure that is necessary to provide service to Gulf Coast chemical shippers in a single carrier, there was no effective alternative to the UP when the service crisis began. BNSF's high dependence upon the congested UP infrastructure prevented it from being a "safety valve" for UP's overburdened system. Furthermore, BNSF's limited access only to the former SP's "2-to-1" traffic base has not provided it with sufficient traffic volumes to justify major investments in its own infrastructure in the region.

Dow's conditions are designed to partially address these unintended competitive consequences of the merger. In its Opposition to those conditions, however, the UP attempts to shoehorn Dow's requests into the "open access" camp without really addressing the substance and benefits of Dow's conditions. Dow's conditions would allow the large volume of traffic from Freeport to serve both (1) as a "safety valve" for diverting a large volume of traffic off of the UP system in times of service problems and (2) as an incentive to BNSF to construct its own additional infrastructure in the Gulf

Coast. In fact, BNSF and Dow already have made infrastructure commitments if BNSF obtains access to Dow at Freeport. (DOW-1, Gebo V.S., Ex. 6)

Argument

UP's objections to Dow's requested conditions follow three principle themes. First, UP contends that the service crisis in the Houston/Gulf Coast area is over and thus there is no need for additional conditions. Second, UP argues that the merger is not relevant to Dow's conditions. Third, UP contends that Dow's conditions will cause more harm than good. Each of these contentions is addressed below.

I. UP SERVICE AT DOW'S FREEPORT FACILITY REMAINS AT UNACCEPTABLY LOW LEVELS.

UP relies extensively upon the Board's decision in STB Service Order No. 1518 (Sub-No. 1), released July 31, 1998, concluding that the service emergency in the Houston area is over. It is premature, however, for the UP to declare that the entire crisis is over or that it won't surface again. While service may have improved for many shippers, it has not returned to normal pre-crisis levels. Moreover, the service crisis, while less extreme, certainly is not over at Dow's Freeport facility. Dow repeatedly has emphasized that service to Freeport remains below acceptable levels.¹ This fact has been the impetus behind Dow's request that additional conditions be imposed upon the merger.

In the Verified Statement of William L. Gebo, included in DOW-1, Dow made an extensive evidentiary showing of UP's continuing poor performance levels for Freeport traffic. UP has not questioned the accuracy of Dow's data. Indeed, much of the data

¹ See Letter to Secretary Williams from Dow's Counsel in Service Order No. 1518 (Sub-No. 1), dated September, 14, 1998.

analyzed by Mr. Gebo was provided to Dow by the UP. (DOW-1, Gebo V.S. at 4) Rather, UP has played a game of "hide the ball." Whereas Mr. Gebo analyzed the traffic data as it pertained to UP service at Freeport, the UP has chosen to include traffic data for all of Dow's facilities combined. (UP/SP-356 at 232-33) The UP's only breakout of data by facility is for Dow's Plaquemine, Louisiana chemicals and plastics production complex. (*Id.*) But, Dow has publicly acknowledged that UP service at Plaquemine, its second largest facility after Freeport, has shown substantial and sustainable signs of improvement. (DOW-1, Gebo V.S. at 3) UP's inclusion of Plaquemine traffic data clearly is intended to obscure the unsatisfactory service still received at Freeport.

UP's service to Freeport remains quite poor, particularly on westbound traffic. In fact, UP's most congested westbound traffic corridors are not even included in UP's performance data because UP is short-hauling itself on these corridors. (DOW-1, Gebo V.S. at 6) The omission of these highly congested corridors artificially inflates UP's performance statistics. This selective use of data by the UP should be recognized for its many substantial deficiencies.

Dow Witness Gebo has submitted a Rebuttal Verified Statement that more directly responds to the UP's selective use of data. For example, the UP has presented on-time performance data for only 23 of 40 strategic corridors that Dow and UP jointly have selected to monitor, without even identifying which of the 23 corridors it uses. (Gebo Rebuttal V.S. at 2) Many of those corridors are experiencing on-time delivery levels well below and some are as low as (*Id.*) The UP also has included data for Dow's Plaquemine facility, which is not even the subject of Dow's Request for Additional

Conditions. (*Id.*) Furthermore, whereas Dow has identified west coast strategic corridors as the most afflicted, the UP all but ignores those by choosing instead to focus on corridors to the major eastern gateways. (UP/SP-358, Duffy V.S. at 2-3, 4)

In the few places where the UP acknowledges that its service is below par, it has some explanation or excuse. For example, the UP claims that its poor on-time performance to Chicago has been due to a temporary transition in its transportation plan. (*Id.* at 4) It also claims that slow service to California destinations has been due to the implementation of TCS on the Sunset route. (*Id.* at 3) This is part of a continuing series of excuses that UP has given to Dow, other shippers, and the Board. Such excuses have become all too commonplace during this crisis. Shippers no longer can determine when UP's explanations are legitimate or just an attempt to buy more time with shippers or the Board. They want solutions, not more excuses.

In the final analysis, the Board's conclusion that the service crisis is over in the Houston/Gulf Coast region does not automatically preclude a grant of Dow's conditions. Clearly, service has not been adequately restored to some shippers, including Dow's Freeport complex. Furthermore, just because the service crisis may be over for the moment does not mean that the underlying causes have been identified and remedied. In Decision No. 1, the Board identified a lack of infrastructure as a fundamental underlying cause of the service crisis and invited parties to propose conditions that could address that problem. There still remains a tremendous dearth of adequate infrastructure in the region to handle existing traffic levels and most of the existing infrastructure still is owned and

operated by the UP. Thus, the original purpose behind this proceeding remains even if the current service crisis does not.

II. UP'S SERVICE CRISIS IS DIRECTLY ATTRIBUTABLE TO MARKET POWER GAINED AS A RESULT OF THE MERGER.

UP's second objection to Dow's requested conditions is that Dow has not connected the service crisis to any increase in UP's market power resulting from the merger. This statement simply is false. Dow has presented two different ways in which the service crisis is connected to the market power gained by UP through the merger.

First, the merger of the UP and the SP consolidated the only two rail carriers in the region with significant independently owned infrastructure. This eliminated a significant "safety valve" that could have prevented an isolated service problem from exploding into a full-blown crisis across the entire western half of the United States. For example, if the same service meltdown had occurred on the SP prior to the merger, shippers at competitively served points would have been able to switch their traffic volumes off of the SP and onto the UP. In addition to providing those shippers with immediate relief, this shift in traffic would have benefited captive SP shippers by reducing traffic volumes, and hence congestion, on the SP. The ability of the UP infrastructure to absorb some of SP's traffic was a "safety valve" that took some of the pressure off of the SP system during times of crisis.

The merger eliminated this "safety valve." The original conditions imposed by the Board sought only to replicate SP competition at "2-to-1" points by granting BNSF access to those points via trackage rights. The Board, however, gave little or no consideration to

BNSF's infrastructure. Thus, when UP service problems arose in the Houston/Gulf Coast area after the merger, BNSF, the only carrier left to absorb a shift in traffic, could not do so effectively because of its over-dependence upon the UP infrastructure to handle this traffic. The elimination of the only competing rail carrier with an independent infrastructure is a direct result of the UP/SP merger.

This leads to Dow's second argument that BNSF lacks sufficient incentive to construct new infrastructure in the region because its traffic base is restricted to only a portion of SP's pre-merger traffic base. Both UP and the Board acknowledge that more infrastructure is needed in the Houston/Gulf Coast area. More importantly, as demonstrated in Dow's first point, a good portion of that infrastructure needs to be constructed by the BNSF. Yet, the only definitive infrastructure proposals submitted thus far are from the UP pursuant to an order from the Board. That proposal calls for \$1.4 billion of investment over 5 years, which the UP certainly cannot bear and should not bear alone. Ex Parte No. 573, "Union Pacific's Report on Houston and Gulf Coast Infrastructure" (May 1, 1998), pp. 1-2. The UP has not responded to this point at all.

Dow's requested conditions address both connections between the UP's market power and the service crisis. First, Dow's Freeport facility could help to make BNSF a substitute "safety valve" for this and future service crises in the region. As the largest chemicals and plastics production complex in the United States, Freeport offers a substantial volume of traffic that could be diverted from the UP system. Freeport's location also would ensure that BNSF would not be overly dependent upon UP trackage rights to access Dow's facilities, thereby minimizing potential disruptions to BNSF

service during a UP service crisis. Furthermore, Freeport's large traffic volume would allow the Board to address the "safety valve" issue in a limited manner by focusing its conditions only upon a single shipper location. Second, if Dow's condition is granted, Dow and BNSF have committed jointly to construct a rail yard to handle Dow's traffic.

The UP, however, takes a different and highly skewed view of what it means to connect the service crisis to its new found market power. UP's position seems to be that it must use its market power to deliberately cause the service crisis for some monopolistic gain. (UP/SP-356 at 61) Even the UP recognizes the absurdity of this argument, and yet, it contends that such a showing is necessary before additional conditions can be imposed. (*Id.*) The market power that UP possesses is the ability to suffer prolonged service failures and not have to be concerned with the loss of significant traffic volume. UP's shippers, particularly chemicals and plastics shippers, have had no option but to continue tendering traffic to UP as its service fell to record low levels. Even "2-to-1" shippers who, in theory, could switch their service to BNSF could not in fact escape UP's service problems since BNSF was forced to operate great distances over UP lines via trackage rights.

UP also contends that Dow's conditions cannot be granted because the merger did not directly reduce the number of carriers serving Freeport, which was captive to UP both before and after the merger. This fact, however, ignores the broader scope of this proceeding, which is to address the underlying causes of the service crisis. Moreover, this fact is not a *per se* bar to granting Dow's requests. Short of divesting SP's lines and selling them to BNSF, there is no other way to increase BNSF's traffic base except by

granting some shippers additional competition. Dow's requested conditions are the least intrusive of all the conditions requested in this proceeding.

The Board has strongly disfavored divestiture throughout the UP/SP merger proceeding. Moreover, the Board has bent over backwards to avoid divestiture even by granting some shippers new competition through the transload condition originally imposed upon this merger. *See* Decision No. 61, Finance Docket No. 32760 (served Nov. 20, 1996). When the potential harm is great and there is no other way to rectify that harm to shippers, the Board can and has imposed conditions that result in increased competition over pre-merger levels.

III. DOW'S CONDITIONS COULD INCREASE INFRASTRUCTURE INVESTMENT IN THE HOUSTON/GULF COAST AREA.

UP inaccurately asserts that Dow's conditions would adversely affect the total level of infrastructure investment in the Houston/Gulf Coast region. More specifically, UP claims that the loss of Dow's Freeport traffic would undermine its own investment capability and incentives by depriving it of revenues that it receives from Dow's Freeport traffic. There are several flaws in UP's logic, however.

UP claims that it will lose _____ in revenue if BNSF captures Dow's Freeport traffic. (UP/SP-357, Barber V.S. at 30) If the Board grants Dow's conditions, however, that does not automatically mean that BNSF would be awarded any, much less all, of Dow's Freeport traffic. UP and BNSF would be expected to competitively bid for the traffic. UP, at the very least, would retain its single line hauls for approximately 25% of Dow's traffic. UP also might be more competitive than BNSF on some interline rail

movements. Thus, UP would not stand to lose all of the Freeport revenue that it claims is at risk.

If UP should lose some of Dow's Freeport traffic to BNSF, UP will not need to invest in significant additional infrastructure to serve Dow. As a result, UP could divert those funds to other infrastructure improvements that might otherwise have been deferred or not constructed at all. UP has proposed over \$1.4 billion in infrastructure improvements. Clearly it cannot construct all of these improvements immediately. To the extent that BNSF can help shoulder that burden, additional infrastructure could be constructed more quickly. Moreover, Dow would be contributing its financial resources towards additional infrastructure that BNSF would construct to serve Freeport, thereby increasing the overall pool of money available for such investments.

The most important factor, which UP fails to recognize, is that the infrastructure will be more evenly spread between two competing carriers. Thus, even if UP correctly has concluded that its own investment capability will be undermined, its loss is BNSF's gain and that gain will help to equalize the infrastructure distribution in the Houston/Gulf Coast area.

Conclusion and Request for Additional Conditions

Dow requests that the STB impose the following additional remedial conditions upon the UP/SP merger in order to help alleviate the unacceptable service problems that Dow is suffering at Freeport and to alleviate the competitive causes of those service problems on the Texas Gulf Coast:

1. Haulage rights for BNSF on the Freeport Industrial Spur between the UP mainline at Angleton, Texas and Dow's chemicals and plastics production complex at Freeport, Texas, with
 - (a) the right for Dow and/or BNSF to construct and interconnect a storage and gathering yard with the UP line near Angleton or another point to be determined later, along with
 - (b) the requirement that UP efficiently interchange Dow's traffic with BNSF at Angleton or at another point where Dow and/or BNSF constructs such interchange and gathering yard, and along with
 - (c) haulage rates and terms to be established pursuant to the terms of the Settlement Agreement between UP and BNSF that was imposed by the STB as a condition to the UP/SP merger.
2. In addition, if the STB desires to foster significant additional investment by BNSF and to provide even more thorough relief that bypasses critical "choke points" on the UP system, Dow asks the Board to permit a build-out to and interconnection with the UP mainline between Chocolate Bayou and Angleton, Texas at a point to be determined later.

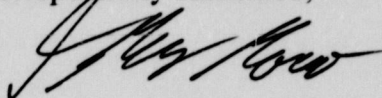
These conditions are less intrusive and disruptive to UP operations than divestiture; will address the competitive issues that contributed to the service problems; and will reduce congestion on the UP system. BNSF access to Freeport traffic will grant Dow effective near-term relief from UP's chronic service failures; will help give UP the breathing room it needs to attempt to rectify its problems; and will establish a solid foundation for the type of healthy competition that can prevent similar service emergencies from recurring in the future

The UP has argued that the build-in called for by the second condition will never be constructed if BNSF obtains access to Freeport via haulage rights under the first

condition. (UP/SP-356 at 234) In its Request for Relief, however, Dow indicated that the first condition would only be temporary if the second condition also were granted. (DOW-1 at 20) Dow emphasized only that relief needs to be long-term rather than short-term in order for Dow and BNSF to make significant infrastructure investments. (*Id.* at 21) Nevertheless, in order to address the UP's concern, Dow would agree to a 10-year limitation on the first condition, after which time the condition would be subject to review by the STB to determine, if a build-in has not yet been constructed, whether such construction is imminent. A minimum 10-year period is necessary in order to give Dow and BNSF sufficient time to amortize their investment in the rail yard that would be constructed under the first condition.

WHEREFORE, Dow asks that its request for additional remedial conditions upon the UP/SP merger be granted.

Respectfully submitted,



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October 16, 1998

Attorneys for The Dow Chemical Company

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*

**REBUTTAL
VERIFIED STATEMENT OF
WILLIAM L. GEBO**

My name is William L. Gebo and I am Manager, North American Rail Services Procurement for The Dow Chemical Company ("Dow"). I previously submitted a Verified Statement in this proceeding as part of Dow's "Request for Additional Conditions," dated July 8, 1998 (DOW-1). I am submitting this rebuttal verified statement in response to information and data submitted by the Union Pacific Railroad Company ("UP") in "UP's Opposition to Condition Applications," dated September 18, 1998 (UP/SP-356).

In my initial verified statement, I submitted traffic data to demonstrate that UP's service at Dow's Freeport, Texas facility remains at unacceptably low levels over a year after the service crisis began. My data was narrowly focused upon the Freeport facility because that is the only major Dow facility where UP service has not shown sufficient improvements and Freeport, therefore, is the focal point of Dow's requested conditions.

In reply to my initial verified statement, the UP submitted the Verified Statement of Dennis J. Duffy, UP's Executive Vice President-Operations. Through the selective use of data Mr. Duffy and the UP attempt to show that UP service to Dow is back to normal and therefore Dow's requested conditions are not warranted. In addition, Mr. Duffy and the UP attempt to mask UP's true performance at Freeport by lumping Freeport data with data from Plaquemine, Dow's next largest facility. I will respond to each of these misrepresentations through this verified statement.

First, Mr. Duffy, at page 4 of his verified statement, states that the UP tracks on-time performance in 23 strategic corridors that Dow selected and that Dow's shipments have arrived on-time more than 90% of the time since June 1998. The UP actually tracks on-time performance in over 40 strategic corridors that Dow and the UP jointly selected. Approximately 26 of those corridors relate to Freeport and at least 14 relate to Plaquemine. Mr. Duffy has not identified which corridors he refers to in his statement. The facts are that several of the corridors serving Freeport have seen on-time delivery levels between June and September 1998, including some as low as

The UP ignores those corridors and attempts to improve appearances at Freeport by including traffic corridors that serve Plaquemine.

Next, Mr. Duffy talks about transit times from Plaquemine to Chicago and New Orleans. I already am on record stating that UP service has returned to near pre-crisis levels at Plaquemine. My testimony and Dow's requested conditions in this proceeding are directed solely to Freeport. What Mr. Duffy and the UP have to say about Plaquemine simply is irrelevant.

Mr. Duffy also discusses transit times between Plaquemine and Freeport being just below pre-crisis levels. However, over 90% of that traffic moves from Plaquemine to Freeport rather than the other way around. This measure, therefore, is a more appropriate measure of service at Plaquemine, not Freeport.

Finally, as I mentioned in my initial verified statement, the worst service corridors from Freeport are to the west coast. The main corridor for Dow's Freeport traffic runs from Houston to Sweetwater, Texas. Dow still is shipping much of that traffic by marine vessel and via the BNSF pursuant to a short-hauling arrangement with UP that allows BNSF to pick-up the traffic in Houston rather than Sweetwater. The UP, however, has informed Dow that it wants to end that short-hauling arrangement, despite the fact that its transit time is only averaging 55% on-time performance from June through September 1998 on the small amount of Dow traffic that still does transit that corridor. If UP cannot provide normal service over that corridor for this small amount of Dow traffic today, how will it do so after Dow's large traffic volumes are added back into the mix?

Several other strategic Dow west coast corridors also continue to experience poor service from the UP. Their actual transit times from June through August 1998 have remained double that of transit times from the pre-crisis level in the first half of 1997.

This data shows that Freeport continues to receive unacceptable service from the UP. I believe that Dow's requested conditions would help to address some of the underlying reasons why the service crisis erupted in the first place and is slow to disappear.

VERIFICATION

STATE OF

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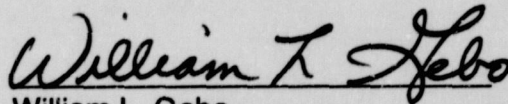
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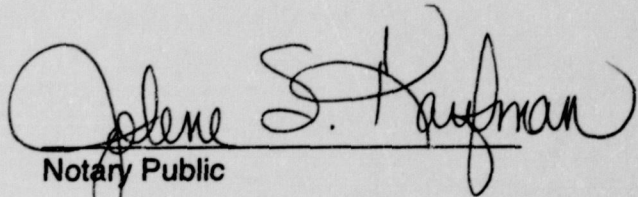
COUNTY OF

:

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


William L. Gebo

Subscribed and sworn to before me, a Notary Public, this 1st day of October, 1998.

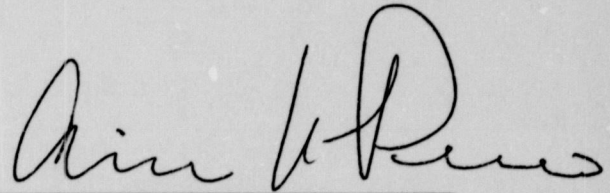

Notary Public

My Commission expires: 10-16-2001

JOLENE S. KAUFMAN
NOTARY PUBLIC, MIDLAND COUNTY, MICHIGAN
MY COMMISSION EXPIRES OCTOBER 16, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to UP's Opposition to Dow's Request for Additional Conditions has been served by first class mail, postage pre-paid, on all parties of record in this proceeding this 16th day of October, 1998.

A handwritten signature in cursive script, appearing to read "Aimee L. DePew", written over a horizontal line.

Aimee L. DePew

STB FD 32760 (Sub 26) 10-16-98 D 191645



DONELAN CLEARY
WOOD & MASER, P.C.

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Public Record



October 16 1998

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, D.C. 20423

D

Re: STB Finance Docket No. 32760 (Sub-No. 26), *Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corporation et al. [Houston/Gulf Coast Oversight]*

Dear Secretary Williams:

Please accept for filing in the above referenced proceeding the original plus twenty-five (25) copies of the Rebuttal Argument in Support For Conditions Submitted On Behalf of The National Industrial Transportation League. The League's filing is also being submitted on a 3.5 inch diskette, formatted in WordPerfect 7.0.

One additional copy of the League's filing is also provided to be date and time stamped and returned to the messenger for delivery to our office.

Sincerely,

Karyn A. Booth

Attorney for
The National Industrial Transportation League

cc: All Parties of Record

0124/484

ATTORNEYS AND COUNSELORS AT LAW

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NITL-5

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

UNION PACIFIC CORPORATION, et al.
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION et al.
[HOUSTON/GULF COAST OVERSIGHT]

REBUTTAL ARGUMENT IN SUPPORT OF
CERTAIN REQUESTS FOR CONDITIONS

submitted on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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ENTERED
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Public Record

*Attorneys for
The National Industrial Transportation League*

Dated: October 16, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

UNION PACIFIC CORPORATION, et al.
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION et al.
[HOUSTON/GULF COAST OVERSIGHT]

REBUTTAL ARGUMENT IN SUPPORT OF
CERTAIN REQUESTS FOR CONDITIONS

submitted on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

In accordance with procedural schedule established by the Surface Transportation Board ("Board") in this proceeding, the National Industrial Transportation League ("League") hereby submits its Rebuttal Argument in support of certain proposed conditions that pertain to rail service in the Houston/Gulf Coast area by the Union Pacific Railroad Company ("UP").¹

I. INTRODUCTION

This proceeding was instituted on March 31, 1998 to consider further conditions for rail service provided by the UP in the Houston/Gulf Coast region. In that decision ("Decision No. 1"), the Board indicated that it would examine whether there is any

¹ The "UP" refers to the railroad that has survived the merger between the Union Pacific Corporation, Union Pacific Railroad Company and associated railroads and the Southern Pacific Rail Corporation, Southern Pacific Transportation Company and associated railroads which was approved by the Board in Decision No. 44 in Finance Docket No. 32760. Unless otherwise indicated, references throughout this filing to "UP" shall refer to the combined UP/SP rail system.

relationship between the service failures that occurred in the area during the implementation of the UP/SP merger and the market power obtained by the UP as a result of the merger. Decision No. 1, p. 8. The Board stated that it would "thoroughly explore anew the legitimacy and viability of longer-term proposals for new conditions to the merger as they pertain to service and competition in that region." *Id.*, p. 5. The League believes that the Board is clearly correct in asserting its continuing jurisdiction over this transaction, and believes that there is no unfairness to any party in doing so.

On July 8, 1998, the League responded to the Board's request for information and evidence by submitting its Comments and Request for Remedial Conditions. In its filing, the League set forth its view that there is a relationship between the market power gained by the UP and the service failures in the Houston/Gulf Coast area, and that there is a need for new remedial conditions to address the competitive and service problems. The League, however, did not at that time set forth its own specific requests for new remedial conditions to be adopted by the Board. Rather, it discussed four general principles relating to rail service in the Houston/Gulf Coast area that it believed the Board should follow in evaluating various requests for new conditions made by the other parties to this proceeding. These principles included: (1) the establishment of neutral switching; (2) making permanent the authority granted to the Texas Mexican Railway Company ("Tex Mex")/Kansas City Southern Railway Company ("KCS") in the Houston/Gulf Coast region issued in STB Service Order No. 1518 and granting additional authority that would enable the Tex Mex/KCS to operate effectively in the area; (3) the expansion of overhead trackage rights to permit access by The Burlington Northern and Santa Fe Railway Company ("BNSF"), Tex Mex, and other carriers to additional shippers and short lines and to improve efficient operations in the region; and (4) encouragement of plans that provide for increased infrastructure in the Houston/Gulf Coast Area. See, Comments and Request for Remedial Conditions

submitted on behalf of the National Industrial Transportation League, July 8, 1998, at pp. 13-17.

The League indicated in its July 8 filing that it would examine the proposals submitted by the other parties to this proceeding and would inform the Board in October as to which, if any, conditions it believes should be adopted. Accordingly, in this filing the League identifies those requests for conditions that it believes best fulfill the principles outlined in its July 8th filing, and that should be ordered by the Board.

II. THE NEED FOR AND THE PROCESS OF IDENTIFYING ADDITIONAL REMEDIAL CONDITIONS

The Board is well aware that the League has long been concerned about the competitive situation that would result in the Houston/Gulf Coast area if the primary competitive counterweight to the additional market power that UP was acquiring as a result of the transaction were to be limited to trackage rights granted to other carriers. See, Comments, Evidence and Requests for Conditions submitted on behalf of the National Industrial Transportation League, March 29, 1996. Other parties, notably the Department of Transportation and the Department of Justice, shared that concern.

Over the past year, those concerns have not abated, but have instead increased as a result of the UP's service failures, which have clearly handicapped other carriers in the region that were supposed to provide, via trackage rights, a competitive alternative to UP's market power. Accordingly, the League believes that the Board needs to seriously examine additional remedial conditions that would more effectively replace the competition formerly provided by the SP in the region, and provide alternatives to shippers to insure more reliable service.

In light of this long-standing concern, the League carefully analyzed various proposals for additional conditions filed on July 8 in this proceeding, including the joint proposal filed by the KCS/Tex Mex, the Chemical Manufacturers Association, the Society of the Plastics Industry, Inc., the Railroad Commission of Texas, and the Texas

Chemical Council; the BNSF's Application for Addition Remedial Conditions; and the proposals of Formosa Plastics Corporation, E.I. DuPont de Nemours and Company, and the Dow Chemical Company. On September 16, 1998, the League's Railroad Transportation Committee convened in Washington, D.C. to discuss, among other matters, the various proposed conditions and to identify those conditions, if any, that the members of the Committee believed were most consistent with the principles that the League had developed and that appeared to present a workable approach to solving the competitive and service problems in the Houston/Gulf Coast region.

It was the conclusion of the Committee that additional competition is needed in the Houston/Gulf Coast area, and that such competition would help to prevent a recurrence of the rail service failures in the region. It was the view of the Committee that while UP's current service in the area is improved over service provided during the heart of the crisis in late 1997 and early 1998, transit times are still experiencing significant day-to-day variability. It was also the consensus of the Committee that UP's service has plainly not reached the level that was provided to shippers in the Houston/Gulf Coast area before Union Pacific's merger with Southern Pacific Transportation Company.

The Committee further concluded that the Emergency Service Order issued by the Board did lead to improved service in the area, but that there is a need for a more permanent solution to ensure that shippers receive efficient, reliable and competitive rail transportation service in the future. The Committee agreed with the Board that there are significant rail infrastructure problems in and around Houston, and that substantial infrastructure improvements are required to provide shippers with effective rail transportation. The Committee expressed its concern that, if UP is solely responsible for fixing these infrastructure problems, a complete solution will take many years. The members of the Committee believe that shippers cannot afford, and should

not be forced, to wait for the service that was promised to flow immediately from the merger.

However, it is most important to emphasize that the Committee did not believe that infrastructure problems are the sole issue in the Houston/Gulf Coast area. Indeed, the Railroad Transportation Committee, in assessing the competitive situation on September 16, 1998, concluded that BNSF and the Tex Mex are not currently effective competitors to UP, particularly in view of UP's control of the large majority of rail facilities in the Houston/Gulf Coast rail marketplace. The Committee believed that additional rail competition is the only means of guaranteeing reasonable rail rates and effective rail service for shippers in the area. The Committee believed, then, that additional conditions are necessary and prudent to insure a competitive and effective rail transportation marketplace in the region. Accordingly, the League recommends, as a result of the Committee's thorough consideration of this matter, that the conditions that are set forth in the following section of this Rebuttal, be adopted by the Board.

III. REBUTTAL IN SUPPORT OF CERTAIN PROPOSALS FOR ADDRESSING COMPETITIVE AND SERVICE PROBLEMS IN THE HOUSTON/GULF COAST REGION

There were two types of proposals submitted to the Board on July 8: general proposals submitted by rail and/or shipper interests that deal broadly with the competitive and service problems in the region; and proposals submitted by individual shippers that address more specifically situations in particular locations but which have the potential to ameliorate some of the service and competitive problems in the region. The first type includes the plan submitted jointly by the KCS/Tex Mex, the Chemical Manufacturers Association, the Society of the Plastics Industry, Inc., the Railroad Commission of Texas, and the Texas Chemical Council, as well as the plan submitted by the BNSF. The second type includes the proposals submitted by The Dow Chemical

Company, E.I. Dupont de Nemours and Company, and the Formosa Chemical Company. The League in this Rebuttal discusses each group of proposals separately.

A. Recommendations Regarding Broad Shipper And/Or Railroad Plans

The League supports the adoption of the following elements of the broad-based joint proposal and the application submitted by the BNSF:

1. The Board Should Permanently Lift the Traffic Restrictions Imposed Upon the Trackage Rights Granted to the Tex Mex In the UP/SP Merger Decision.

In the UP/SP Merger decision, the Board granted the Tex Mex trackage rights over UP/SP's Corpus Christi and Robstown, TX to Beaumont line, but limited those rights to traffic transported via a prior or subsequent movement over Tex Mex' Laredo to Corpus Christi line. When the Board issued its Emergency Service Order No. 1518 during the midst of the UP's service crisis, it removed the Tex Mex' traffic restrictions to enable some Houston/Gulf Coast shippers to route their traffic over the Tex Mex, rather than the UP. The League believes that the temporary action by the Board to remove the local service restrictions imposed on the Tex Mex trackage rights did serve to improve the competitive and service difficulties occurring in the Houston/Gulf Coast region.

Hence, the League supports the adoption of a condition that would make the removal of the traffic restrictions on the Tex Mex trackage rights permanent. The adoption of such a condition would improve the competitive rail options for a number of shippers. It would enable some shippers that have been dissatisfied with UP's rail service, and that have access to the Tex Mex' trackage rights, to shift their traffic away from the UP's congested rail lines. Moreover, this condition would encourage Tex Mex to provide increased investment in the area as a means of attracting shipper business.

While the League supports adoption of this condition by the Board, it believes that the Tex Mex should be required to pay compensation to UP for the lifting of the restriction. Should the Board adopt this condition, it should therefore require UP and

Tex Mex to negotiate an agreement by a date certain, pursuant to which Tex Mex would pay UP reasonable compensation for the lifting of the traffic restrictions. If the parties cannot not reach agreement by the date established by the Board, the Board should undertake to set the compensation terms.

2. The Board Should Grant Permanent Trackage Rights To Tex Mex Over the UP's "Algoa Route" Between Placedo and Algoa, TX and over the BNSF Line Between Algoa and TN&O Junction.

In the Emergency Service Order No. 1518 and the Board's Supplement No. 1 to that Order, the Tex Mex also received temporary trackage rights over the UP's Algoa Route between Placedo and Algoa, TX and the BNSF line between Algoa and TN&O Junction. These rights enabled the Tex Mex to operate in conjunction with the directional running of trains established by UP to help alleviate congestion in and around Houston. The League supports making these trackage rights permanent to continue efficient train operations.

The granting of this condition would also improve Tex Mex' competitive position as a supplier of rail transportation in the Houston/Gulf Coast area. By increasing competition in the region the Board would be creating an environment whereby railroads other than the UP would be willing to invest in the region to upgrade the infrastructure. The League believes that the Board should adopt this condition in an effort to create the opportunity for other rail carriers, such as Tex Mex, to compete for additional market share, which would encourage such investment.

3. The Board Should Restore Neutral Switching in Houston for All Industries Formerly Served By the HBT and Currently Served By the PTR A With Such Switching Service To Be Provided By PTR A.

In its July 8 filing, the League suggested that the Board rely on neutral switching as an effective means of providing service and competition. The above condition is consistent with that approach. This condition would provide for neutral switching in

Houston by authorizing the Port Terminal Railroad Association ("PTRA") to provide neutral switching to all shippers located upon its own lines as well as the lines of the former Houston Belt & Terminal Railway Company ("HBT"). The League believes that the imposition of such a condition would contribute to providing a permanent solution to the interrelated service and competitive problems in the Houston/Gulf Coast region. Indeed, the League believes that dissolution of the HBT was an error, and the imposition of the above condition would rectify that error. By allowing the PTRA to provide such neutral switching services, efficiency in terminal operations should be enhanced. Neutral switching by the PTRA for all industries formerly served by the HBT would alleviate concerns by Tex Mex and BNSF regarding discriminatory switching practices by the UP.

Shippers would also benefit from enhanced competition and highly efficient switching operations that could be expected to result from imposition of this condition. Using a neutral switching operator to coordinate terminal operations is commonly used in other urban settings, and is a highly effective means of handling the pick-up and deliveries of rail cars and the assembly of trains.² By improving the efficiency of terminal switching operations, the Board would help reduce the stress on the already overworked Houston terminal infrastructure. Accordingly, the League believes that permitting neutral switching as described herein would reduce the occurrence of congestion and other service failings.³

² Indeed, the Board has just recently approved a transaction involving Conrail, Norfolk Southern, and CSX, in which NS and CSX are establishing "Shared Asset Areas" that bear many of the marks of a neutral switching operation.

³ In this connection, the Board should further condition this element by insisting that, prior to the restoration of neutral switching, the PTRA should assure the Board that its car location reporting is of equal capability to and consistent with the systems of all Class I carriers in the area, in order to allow it to provide effective terminal switching services.

4. The Board Should Establish Neutral Dispatching Within the Neutral Switching Area To Be Administered By the PTRA and Grant All Railroads Serving Houston Terminal Trackage Rights Over All Tracks Within the Neutral Switching and Dispatching Area.

The League supports the adoption of a condition that would establish neutral dispatching by PTRA in the same area and for the same reasons that it supports the adoption of the prior condition that would establish neutral switching operations. Like neutral switching, enabling the PTRA to provide neutral dispatching of trains would promote efficient train operations. Requiring the grant of terminal trackage rights for all railroads operating within the Houston Terminal area would further facilitate efficient routings by the neutral dispatcher. In addition, the granting of this condition would reduce the occurrence of discriminatory dispatching and preferential treatment by the UP toward its own trains, as has been alleged by Tex Mex and BNSF. Ensuring neutrality in train dispatching would resolve these competitive and service problems.

5. The Board Should Require UP and BNSF to Provide for Tex Mex' Full Voting Membership on the PTRA Board and Restore the Port of Houston Authority as a Full Voting Member of the Board.

In order to ensure that switching and dispatching provided by the PTRA is performed without a bias toward one or more carriers that serve as a member of the PTRA, the Board should require the UP and BNSF to provide for Tex Mex' full voting membership on the PTRA Board and to restore the Port of Houston as a full voting member. The League supports the imposition of this condition to encourage balanced switching and dispatching operations in the Houston Terminal area served by the PTRA and the former HBT. The League understands that the Port of Houston sold its voting rights to participate on the PTRA Board; if that is the case, then the Port of Houston should be required to pay compensation for the restoration of those voting rights.

6. The Board Should Require UP to Sell to Tex Mex its Line Between Rosenberg and Victoria, TX On Reasonable Terms and Conditions. Upon Reconstruction of the Line, Tex Mex Should Grant UP and BNSF Trackage Rights Over the Line. The Board Should Grant Tex Mex Related Trackage Rights Over the Two Miles on the South End of the Line Between Milepost 87.8 and the Point of Connection at UP's Port LaVaca Branch.

The Board should require UP/SP to sell to Tex Mex its line between Rosenberg and Victoria, TX on reasonable terms and conditions, and upon reconstruction of the line, Tex Mex should grant UP and BNSF trackage rights over the line. In addition, the Board should grant Tex Mex related trackage rights over the two miles on the south end of the line between milepost 87.8 and the point of connection at UP's Port LaVaca Branch at Victoria.

The Board has been particularly cognizant of the need for investment in Houston area rail infrastructure. Indeed, the Board has identified inadequate infrastructure as a primary cause of the UP's service crisis. By imposing this condition, the Board would be adding significant new infrastructure to the Houston/Gulf Coast area. As stated by the League in its July 8 filing, "in view of the need to encourage increased rail investment in the Houston/Gulf Coast region, the League believes that the Board should look particularly favorably on plans presented by carriers, shippers or other parties that envision increased investments in infrastructure, even if these plans also envision an expansion of access to shippers in the area." NITL Comments, p. 16. This proposal would allow Tex Mex to perform safer and more efficient rail service, while also avoiding operations over heavily congested portions of UP's Sunset Route.

In adopting this condition to the UP/SP merger, the Board should also stipulate that if Tex Mex and UP are unable to agree upon reasonable terms and conditions for the sale of the line that the Board will initiate a proceeding for the purpose of establishing reasonable terms of sale.

7. The Board Should Make Provision for Tex Mex To Develop An Existing Yard in Houston.

The League supports the adoption of a condition that would enable Tex Mex to acquire or develop yard space in Houston. The League believes that it is important for Tex Mex to have access to a rail yard in order to enable it to achieve substantial operating efficiencies. However, the League believes that the Board need not identify a specific yard that should be acquired by the Tex Mex. Rather, the Board should make provision for the Tex Mex to develop a yard in the Houston area, which could include acquiring a yard from another rail carrier upon reasonable terms and conditions, or requiring Tex Mex to purchase land to develop a yard of its own, should suitable land be available. Should the Board establish a condition for the development of a new rail yard in Houston by the Tex Mex, it should ensure that such process of development not interfere with existing shippers' operations in the Houston area.

8. The Board Should Require UP to Allow KCS and Tex Mex to Construct a New Rail Line on UP's Right Of Way Between Dawes and Langham Road in Beaumont, TX, Subject To Certain Conditions.

The Board should authorize KCS/Tex Mex to undertake to construct a new rail line, and thereby increase capacity, for traffic moving between Houston and Beaumont. The line would be constructed on existing UP right of way, and subsequent to its construction, KCS/Tex Mex would deed the line to UP in exchange for UP's Beaumont Subdivision. UP and BNSF would receive overhead and local trackage rights over the Beaumont Subdivision and Tex Mex would retain overhead rights on UP's Lafayette Subdivision. The League supports the adoption of this proposed condition because it would improve the rail infrastructure east of Houston and reduce the occurrence of traffic congestion. Construction of the new rail line would also improve train operations, increase efficiencies, and strengthen Tex Mex' ability to compete for traffic.

9. The Board Should Order Neutral Switching Supervision on the Former SP Baytown and Cedar Bayou Branches and on the Former SP Sabine and Chaison Branches Serving the Beaumont-Port Arthur, TX area. The Neutral Switching Supervisor Should be Selected by the Parties Unless They Are Unable to Agree. In Which Event the Neutral Switching Supervisor Would Be Selected by an Arbitrator.

As explained by BNSF in its Application, due to the institution of UP directional operations on the Baytown and Cedar Bayou Branches for traffic flows to and from Houston, local switching operations for customers located on such lines and to which BNSF has access have been severely hampered. BNSF Application, Rickershauser V.S., pp. 21-26. In order to improve the local switching service being received by shippers, BNSF has been forced to institute its own direct switching operations for Baytown Branch customers that it serves, despite the existence of UP switching operations on such lines that it provides on its own behalf or on behalf of BNSF via haulage or reciprocal switching. *Id.*

The direct BNSF switching operations have resulted in duplicative multi-carrier switching for Baytown Branch customers and have also increased the number of trains operating over the line. *Id.* In addition, BNSF is required to "operate 'against the UP directional flow' in order to place and pull cars between Dayton, Baytown, and East Baytown." *Id.* at 25. Nevertheless, BNSF was required to institute such local switching service in order to provide more reliable and timely service to its customers. *Id.*

The proposed condition would reduce or eliminate the chaotic and inefficient multi-switching operations that presently exist for Baytown Branch shippers and should be adopted by the Board. It would improve the switching and operating conditions of UP and BNSF by placing operations over the Baytown and Cedar Bayou Branches under the direction of a neutral switching operator. The effect of such a condition would be to greatly enhance operating efficiencies for shippers' traffic by reducing the number of train movements over the branches, and encourage competitive rail service.

To the extent that the Board finds that similar problems could be expected to occur with respect to future BNSF operations over the Sabine and Chaison Branches, the League supports the existence of neutral switching operations for those lines as well.

10. The Board Should Order PTRAs Operation of the UP Clinton Branch in Houston for Service to the Houston Public Elevator.

BNSF has recommended the adoption of the above condition in order to ameliorate the operational difficulties it has experienced in serving the Houston Public Elevator. BNSF asserts that it has been unable to provide timely, reliable or competitive service to the Houston Public Elevator due to delays resulting from inefficient coordination of operations over the Clinton Branch and UP preferential treatment of its own trains. BNSF Application, *Rickershauser V.S.*, p. 27. Allowing the PTRAs to supervise and control Clinton Branch operations would help to cure these problems, leading to improved competitive service to the Houston Public Elevator.⁴

11. The Board Should Grant BNSF Trackage Rights On Additional UP Lines for BNSF to Operate Over Any Available Clear Routes Through the Terminal as Determined and Managed by the Spring Consolidated Dispatching Center, Including the SP Route between West Junction and Tower 26 Via Chaney Junction.

The imposition of such a condition would improve BNSF's ability to provide shippers with competitive and reliable transportation service. As explained by BNSF, in operating through the Houston terminal area today, it is limited to movements over UP's highly congested East Belt or West Belt lines, even though more fluid alternative routes are available. Adoption of the above proposed condition would increase BNSF efficiencies by allowing the carrier to operate over any available clear route in the

⁴ The adoption of the proposed condition would also not appear to adversely impact UP's competitive position since BNSF has recommended that facilities that BNSF does not currently serve, should not be open to new reciprocal switching service. BNSF Application, *Rickershauser V.S.*, p. 27.

congested Houston terminal area. Transit times could be expected to improve and shippers may once again receive service consistent with the pre-merger levels.

The BNSF serves as the primary competitive alternative to UP's transportation service in the Houston/Gulf Coast area and the Board should seek to ensure that the service it provides is not unduly hampered by UP's control over the Houston infrastructure. By adopting the above proposed condition, the Board would assist BNSF in being the vigorous and effective competitor as was intended when the Board granted BNSF trackage rights over various UP's lines in Decision No. 44 in the UP/SP merger.

12. The Board Should Order the Coordinated Dispatching of Operations Over the UP and SP Routes Between Houston and Longview, TX, and Houston and Shreveport, LA, by the Spring Consolidated Dispatching Center.

The League also supports the adoption of coordinated dispatching of UP and BNSF trains over the important routes between Houston and Longview, TX and Houston and Shreveport, LA. The existence of such dispatching would improve train scheduling and coordination and would improve operating efficiencies in and out of the Houston area. These benefits, in turn, would lead to overall better service for shippers. UP has accepted this condition and apparently has already transferred the Houston to Shreveport route and part of the Houston to Longview route to the Dispatching Center. The Board should consider establishing a reasonable period of time for requiring the transfer of the remaining line segment to the Dispatching Center.

B. Shipper Specific Proposals

A number of shipper parties have also presented proposals to the Board to address the competitive shortcomings and related service failings that exist in the Houston/Gulf Coast area. Among these parties are E.I. DuPont de Nemours and Company ("DuPont"), the Dow Chemical Company ("Dow"), and Formosa Plastics Corporation ("Formosa"), each of which operates plants and facilities in the

Houston/Gulf Coast region. As explained in their previous filings, these shippers each are captive to the UP for their rail transportation service and each have been adversely impacted by the UP's service disruptions and failings. Accordingly, these shippers have requested the Board to adopt conditions that would remedy the specific problems that they have sustained and continue to endure. The League supports the requests for conditions made by DuPont, Dow, and Formosa for the following reasons.

DuPont has requested the imposition of various conditions related to its LaPorte Plant located south of Houston. These conditions would serve to restore unrestricted reciprocal switching options at the plant, remove certain restrictions preventing neutral switching operations and reciprocal switching for intrastate transportation, and call for the development of a viable service plan for the facility. DUPX-1, p. 6. DuPont also requests the Board to make permanent the authority granted to the Tex Mex in its Emergency Service Order to access Houston shippers served by the PTRRA and to allow Tex Mex access to industries open to reciprocal switching on the UP. *Id.* The requests for conditions made by DuPont are consistent with the principles identified by the League in its July 8th filing and should be adopted by the Board. Specifically, the conditions would ensure efficient and competitive transportation service by providing for neutral switching. They would also provide the Tex Mex with access to additional traffic, thereby strengthening its competitive standing in the region.

Dow has requested the Board to: (1) grant BNSF permanent haulage rights on the Freeport Industrial Spur between the UP mainline at Angleton, TX and Dow's Freeport, TX complex with (a) the right for Dow and/or BNSF to construct and interconnect a storage and gathering yard with UP near Angleton or later determined alternative point, (b) the requirement that UP efficiently interchange Dow's traffic with BNSF at Angleton or an alternative point where Dow and/or BNSF constructs such interchange and gathering yard, and (c) haulage rates and terms to be established under the Settlement Agreement between UP and BNSF derived in the UP/SP merger

proceeding; and (2) permit a build out by BNSF to and an interconnection with the UP mainline between Chocolate Bayou and Angleton, TX, at a point to be determined. DOW-1, p. 3.

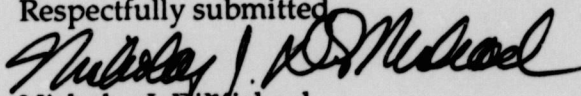
These conditions seek to address the competitive problems and service difficulties sustained at Dow's chemicals and plastics production complex at Freeport, TX, which is captive to UP. If granted, Dow's requested conditions would serve to alleviate congestion over UP's rail lines by promoting the development of independent rail infrastructure to be operated by BNSF. Dow's conditions would not only reduce BNSF's reliance on UP's infrastructure but would increase BNSF's traffic base, thereby assisting BNSF to becoming the effective and vigorous competitor to UP as was anticipated by the Board when it approved the UP/SP merger. These conditions should be adopted by the Board.

Finally, Formosa, a chemicals and plastics manufacturer, requests the Board to adopt a condition that would enable BNSF to serve Formosa's Point Comfort Plant located in Formosa, TX via the trackage rights BNSF currently maintains over UP's Algoa and Corpus Christi, TX line. Formosa Comments and Requests for Remedial Conditions, p. 7. Formosa, which is also captive to the UP, explains in its filing the inadequate service it has received from the UP following the UP/SP merger and the severe damages it has suffered due to its lack of competitive options. The League supports the adoption by the Board of Formosa's requested condition as it would help alleviate the competitive and service problems existing in the Gulf Coast at Formosa's facility. It would provide Formosa with an alternative to the UP's poor service and would increase efficiencies and reduce congestion on UP's line between Corpus Christi and Houston, by allowing for expedited switching at Formosa's Point Comfort plant.

IV. CONCLUSION

The League respectfully requests the Board to adopt the remedial conditions identified above in the UP/SP merger proceeding, in order to effectively address the service and competitive rail transportation problems in the Houston/Gulf Coast area.

Respectfully submitted



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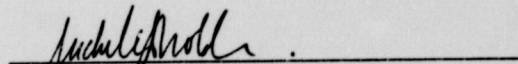
Attorneys for

The National Industrial Transportation League

Dated: October 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have on this 16th day of October, 1998, served copies of the foregoing submitted on behalf of The National Industrial Transportation League on all known parties of record by first class mail, postage prepaid, or by hand delivery.


Michelle J. Nolder

STB

FD

32760

(Sub 26)

10-16-98

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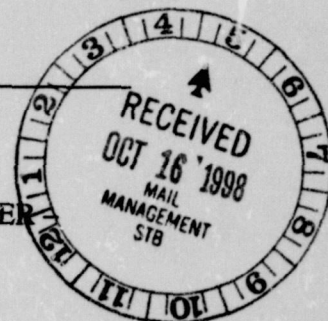
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DUPX-2

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 26)



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OCT 19 1998

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UNION PACIFIC CORPORATION, ET AL - CONTROL AND MERGER
SOUTHERN PACIFIC RAIL CORPORATION, ET AL)

[HOUSTON/GULF COAST OVERSIGHT]

REBUTTAL IN SUPPORT OF
REQUEST FOR NEW REMEDIAL CONDITIONS
by
E. I. DUPONT DE NEMOURS AND COMPANY

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Due Date and Dated: October 16, 1998

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 26)

UNION PACIFIC CORPORATION, ET AL – CONTROL AND MERGER – SOUTHERN
PACIFIC RAIL CORPORATION, ET AL)

[HOUSTON/GULF COAST OVERSIGHT]

REBUTTAL IN SUPPORT OF
REQUEST FOR NEW REMEDIAL CONDITIONS
by
E. I. DUPONT DE NEMOURS AND COMPANY

DuPont believes its July 8, 1998 Request For New Remedial Conditions is clearly the kind of request that the Board was contemplating when it agreed to examine new conditions to the Union Pacific/Southern Pacific (UP/SP) merger related to rail service in the Houston/Gulf Coast area. There is clearly a relationship between the market power acquired by UP as a result of the merger with SP approved by the Board and the failure of service that has afflicted DuPont and hundreds of other shippers in the Houston and Gulf Coast areas. As the Board explicitly acknowledged in Corrected Decision No. 1 (at 5) in this proceeding, the Board must exercise its clear authority to impose additional remedial conditions in such circumstances.

BACKGROUND

The 1997-1998 virtual shutdown of rail service in the Houston/Gulf Coast area that followed the UP/SP merger placed a number of DuPont's supply chains in jeopardy. DuPont's LaPorte (TX) Plant, and several other downstream operations were each placed in the position of being competitively harmed because of these rail disruptions. Alternative, non-traditional and expensive strategies to maintain supplies of critical feedstocks were developed and implemented during this time in an attempt to meet internal and external customer demands.

While the DuPont LaPorte Plant is open to reciprocal switching by UP for interstate shipments, the post-UP/SP merger switching service at LaPorte has proven to be unusable. DuPont is thus limited in its ability to exercise self-help through use of competitive alternatives during periods of rail service disruptions. This is the direct result of the changes that occurred in the competitive situation in the Houston area because of the UP/SP merger. The Board's willingness to consider new conditions to the merger provides DuPont with the opportunity to solve this problem by establishing neutral switching.

PROPOSED REMEDIES

The five remedies proposed by DuPont are aimed at specific, merger-related service and competitive deficiencies that impact our LaPorte Plant, which is located at the UP rail station of Strang (TX). We believe DuPont's proposed remedies address the need for a long term solution in a way that is discrete and limited in application.

In its July 8 filing, DuPont requested the Board to:

(1) Remove the restriction prohibiting the Port Terminal Railroad (PTRA) from serving the DuPont Plant. This restriction was approved by the Interstate Commerce Commission in 1962 in Finance Dockets Nos. 21883 and 22049;

(2) Order the UP and PTRA to work out a mutually acceptable service plan for the facility;

(3) Order the UP, if not done voluntarily, to restore DuPont's unrestricted switching options;

(4) Remove the obsolete restriction which prohibits reciprocal switching for intrastate transportation; and

(5) Authorize the Texas Mexican Railway (Tex Mex) to retain permanently the right to access both: (a) Houston customers served by both the former Houston Belt and Terminal's (HBT) successors and the Port Terminal Railroad Association, and (b) industries open to reciprocal switching in Houston.

NEUTRAL SWITCHING IS A NECESSITY FOR EFFICIENT AND EFFECTIVE COMPETITION

UP has acknowledged in its Opposition that its Tex Mex reciprocal switching operations resulted in slow service and lengthy transit times. It conceded that this switching service is an "awkward, multi-segment move that UP has no reason to make in the normal course of business." UP Opposition at 239, note

91. DuPont had similar experiences with UP performance when attempts were made to exercise Burlington Northern Santa Fe (BNSF) reciprocal switching options. UP does not dispute this BNSF experience nor does it offer it assurances that reciprocal switching service improvements are likely. Thus, UP has explicitly conceded that it has no incentive or motivation to assure efficient access by DuPont to the competitive alternatives supposedly available to DuPont's LaPorte plant whenever UP's service does not meet DuPont's needs. DuPont believes that neutral switching performed by the PTRA (which passes by DuPont's plant rail lead on the same track as UP) remains the best means of providing a legitimate and viable long term solution to rail service disruptions.

DuPont does not dispute UP's statement that our LaPorte Plant was SP-served and part of an agreement that explicitly maintained DuPont's status as SP-served. However, UP does not mention that this arrangement was part of an agreement that was executed decades ago when DuPont had access to all six of the then Houston area line-haul railroads. Now, because of ineffective UP reciprocal switching service, DuPont essentially has workable access to no railroad other than UP.

DuPont believes that neutral switching by the PTRA remains the best means of providing for a legitimate and viable long term solution to rail service disruptions; disruptions that were not evident before the UP/SP merger.

While DuPont fully recognizes and places a high value on the diligent efforts of the UP to work with DuPont during the recent service crisis, we cannot agree that new and remedial merger conditions are not warranted; especially as relates to unrestricted neutral switching services at our LaPorte Plant.

DUPONT LAPORTE INTERSTATE SWITCHING OPTIONS

In its response to DuPont's Request for New Conditions, UP contends that it did not unfairly deprive DuPont of a Tex Mex option. We do not agree.

UP cites Decision 47 of Finance Docket No. 32760 as the basis for its conclusion that the Board clearly was not granting Tex Mex access to shippers such as DuPont. We believe that the Board's intent in this decision was to exclude shippers physically located on the trackage rights lines. The Board's decisions were not intended to deny access to all carriers serving the Houston area to shippers such as DuPont who

were open to interstate reciprocal switching. Shippers that are located within the larger Houston terminal area, but served by UP, rather than the former HBT or the PTRRA, should not be deprived of competitive alternatives that were available just because they received reciprocal switching from the UP and not HBT or PTRRA. It is not logical nor consistent that the Board would deliberately prescribe such preferential Tex Mex access to Houston area interstate shippers on the former HBT or PTRRA, and not similar interstate shippers on the UP.

DuPont believes that its peculiar status (as one of the few open industries located on a former SP point rather than on the former HBT or PTRRA) resulted in its unintentionally "falling through a crack" during the Board's UP/SP merger deliberations. This Houston/Gulf Coast Oversight proceeding is the proper vehicle for remedying this most curious of Houston access anomalies.

Furthermore, it should be noted that UP has indeed granted Tex Mex reciprocal switching options in Houston. Item 3360.20-Series, Tariff UP 8005-D, provides for specific UP reciprocal switching application for movements between the Houston Public Grain Elevator #2 and interchange with the Tex Mex. See Exhibit 6 to DuPont's July 8 Request. This is the same item that UP published restricting DuPont's LaPorte Plant access via reciprocal switching only to BNSF. But the SP tariff which was superseded by this UP tariff did not provide any access to Tex Mex to the grain elevator, even though it did provide for DuPont's access to all line haul carriers serving Houston. Compare Item 5090, Tariff ICC SP 9500-D, attached as Exhibit 9. Thus, UP's claim in its Opposition (at 237) that it was only "preserving the pre-merger status quo" is flat out wrong. It has given Tex Mex access to the grain elevator, but chose not to give it access to DuPont's LaPorte Plant. UP is thus plainly exercising its newly-acquired market power in the Houston market to grant access via reciprocal switching to the customers of its choosing. DuPont's request for restoration of access via reciprocal switching to all line-haul carriers in Houston is the real action that is necessary to restore the pre-merger status quo.

DuPont's interstate reciprocal switching alternative is not contested by the UP. The former SP reciprocal switching tariff provision applicable to DuPont is long-standing and historically one that has been

unrestricted in carrier application. Former SP Tariff 9500-Series provided DuPont with unlimited interstate reciprocal switching using any of the available Houston area railroads.

Only with the cancellation of SP Tariff 9500-Series and the subsequent establishment of new provisions in a UP switching tariff did DuPont find itself with limitations related to named line-haul carrier options ex-Strang.

It is noteworthy to underscore that DuPont's interstate reciprocal switch position exclusively on the UP is very much a peculiar exception among Houston shippers. Most other industries in Houston with access to interstate rail carriers are located on the former HBT or the PTRR. We believe granting DuPont access to Tex Mex (restricted for shipments to/from Mexico at present and unrestricted if permanent Houston access is granted to the Tex Mex) will provide Houston parity and is consistent with the original intent and wording of the SP 9500-Series Tariff.

DUPONT LAPORTE RESTRICTED RECIPROCAL SWITCHING STATUS

UP believes that the existing restrictions prohibiting reciprocal switching for intrastate transportation should be retained noting that these restrictions were a "bargained-for arrangement." UP Opposition at 238, note 90. Regrettably, DuPont was not a party to these negotiations nor do we believe that they remain relevant. These arrangements were no doubt a product of a time when state regulations governed intrastate shipments and when Houston carrier options were considerably greater. The Act now provides for federal preemption over matters related to intrastate rail transportation 49 U.S.C. §10501(b) There is no merit to UP's reliance on archaic distinctions between intrastate and interstate reciprocal switching. This peculiar distinction should be removed by the Board.

CONCLUSIONS

DuPont believes it has both a right and a business obligation to employ all legitimate available options for self-help when railroad service deteriorates, such as occurred with UP in 1997-1998. In the case of the DuPont's LaPorte Plant, the primary option is DuPont's well-established and uncontested right to reciprocal switching for interstate rail shipments. As documented in our original Request For New

Remedial Conditions, dated July 8, 1998, DuPont was unable to exercise this option because of the poor service and routing provided by the UP.

UP does not dispute DuPont's claim of poor reciprocal switch service and admits that one of these moves represented an "awkward, multi-segment move." This internal routing is a UP---not DuPont---choice for UP's own efficiency and convenience, and which it has no incentive to change. The PTRAs pass directly by the DuPont facility and could easily provide an alternative and satisfactory service.

With the significant reduction of the number of railroads serving Houston, DuPont's situation has changed dramatically such that we are now competitively harmed by losing the ability to protect our business and customer interests during a rail service collapse.

Further, even if no service crisis exists, DuPont still has a legitimate right to benefit from competition from BNSF (and any other railroad serving Houston) for new or improved business via the established reciprocal switch arrangements. Today, such an option is precluded by the additional 2-4 days of inventory and rail cars required to accommodate a circuitous UP Houston terminal routing for reciprocal switch movements. Such circuitry and additional transit time make this a non-viable option for DuPont. Operationally, the poor connections between UP and PTRAs for shipments to Pak-Tank at Deer Park (TX) also frequently result in rail transit delays and additional costs to DuPont for empty pre-booked space on export parcel tankers.

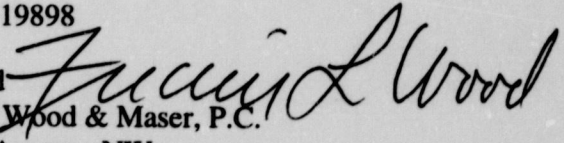
Furthermore, DuPont believes the interstate-only application of this reciprocal switch option is an anachronism from a pre-Staggers Act period of time. No justification can be found for continuing this kind of artificial distinction and restriction.

The remedy DuPont seeks is discrete, narrow, and limited. DuPont does not seek broader competitive access than already exists, nor does it wish to cause any economic harm to UP. DuPont seeks only the ability to control its own destiny through more effective use of rights and alternatives that already exist.

Respectfully submitted,

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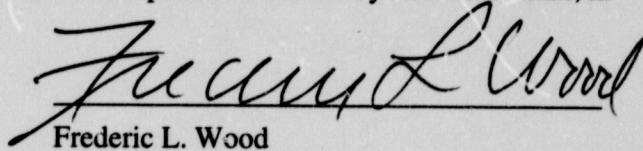
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Due Date and Dated: October 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of October, 1998, served a copy of the foregoing rebuttal in support of request for relief on all known parties of record by first-class mail, in accordance with the Rules of Practice.


Frederic L. Wood

SOUTHERN PACIFIC TRANSPORTATION COMPANY

1st Revised Page.....118 ICC SP 9500-D
 Cancels Original Page.....118

SECTION 12

INDUSTRIES OPEN TO RECIPROCAL SWITCHING

This Section lists only Industries for which SP Lines will provide Reciprocal Switching as defined in Section 15.

(A)(R)(C) The industries are listed by State, Switching Station (Inter-change), Adjacent Station (rail location of the industry) and then alphabetical.

(A)(R)(C) Numbers following both the switching and adjacent stations are FSAC numbers as shown in the Open and Prepay Station List. Numbers following name of industries defines the location of the industry by zone and track.

For Explanation of (other) abbreviations and reference marks, see Item 50000.

Issued: May 3, 1996

Effective: June 16, 1996

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 Southern Pacific Transportation Company
 One Market Plaza
 San Francisco, California 94105
 -118-

Correction 87

SOUTHERN PACIFIC TRANSPORTATION COMPANY		ICC SP 9500-D
2nd Revised Page.....134 Cancels 1st Revised Page....134		
SECTION 12 - INDUSTRIES OPEN TO RECIPROCAL SWITCHING		ITEM
<u>TEXAS (A - H) - (Continued)</u>		
SWITCHING STATIONS	INDUSTRIES OPEN TO RECIPROCAL SWITCHING (ADJACENT STATION)	
GALVESTON (36200)	(GALVESTON - 36200) Freeport Sulphur Company (0112) Sullivan Warehouse (0141) Texas International Terminals (0125)	5080 (Con- clud- ed)
HARLINGEN (31500)	(HARLINGEN - 31500) Alamo Forest Products (0196) Georgia-Pacific Corporation (0195) Valley Co-op Oil Mill Incorporated (0170)	
<u>TEXAS (HOUSTON)</u>		
SWITCHING STATIONS	INDUSTRIES OPEN TO RECIPROCAL SWITCHING (ADJACENT STATION)	
HOUSTON (35000) (Continued)	(DAYTOWN - 36800) Exxon Company USA 3525 Dacker Incorporated (5982)	5090 (Con- tin- ued)
	(GALENA PARK - 35070) American Plant Food Company (6703) Arrow Terminal Company (6604) Delta Steel Incorporated 8415 Clinton Drive (6403) Exxon Energy Chemical 8230 Stedman Street (6401) GATX Terminal (General American Transportation) (6916) Helman Incorporated (6603) Houston City of, 12555 Clinton Drive (6945) Houston Public Grain Elevator 02 (6801) Paktank Corporation (690) (R)Stavodering Service Of America (SSA) (6806) Texaco Lubricants Company (6935) United States Gypsum Company (6706)	
(Continued)		
For Explanation of (other) abbreviations and reference marks, see Item 500P9.		
Issued: September 11, 1996		Effective: September 11, 1996
Issued by: Manager - Publications Southern Pacific Transportation Company One Market Plaza San Francisco, California 94105 -134-		
		Correction 218

STB FD 32760 (Sub 26) 10-16-98 D 191640

191640

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October 16, 1998

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BY HAND

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Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 26)
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

D

Re: STB Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corporation et al.--Control and Merger--Southern Pacific Corporation et al. [Houston/Gulf Coast Oversight]

Dear Mr. Secretary:

Enclosed for filing in the captioned proceeding please find an executed original and twenty-five (25) copies of the "Rebuttal Evidence and Argument of Central Power & Light Company In Support of Request for Supplemental Condition."

Also enclosed is a computer diskette with this filing in Wordperfect 5.1 format, which is compatible with Wordperfect 7.0.

Copies of this document have been served upon all parties of record, and also on Administrative Law Judge Grossman.

Thank you for your attention to this matter.

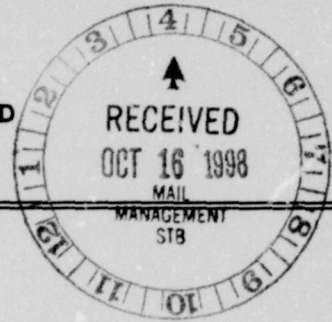
Sincerely,

Donald G. Avery
An Attorney for Central
Power & Light Company

Encl.

181640

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

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

[HOUSTON/GULF COAST
OVERSIGHT]

REBUTTAL EVIDENCE AND ARGUMENT
OF CENTRAL POWER & LIGHT COMPANY
IN SUPPORT OF REQUEST FOR SUPPLEMENTAL CONDITION

OF COUNSEL:

Slover & Loftus
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Washington, DC 20036

Dated: October 16, 1998

CENTRAL POWER & LIGHT COMPANY
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By: William L. Slover
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ENTERED
Office of the Secretary

OCT 19 1998

Part of

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

UNION PACIFIC CORPORATION,)	
UNION PACIFIC RAILROAD COMPANY,)	
AND MISSOURI PACIFIC RAILROAD)	
COMPANY--CONTROL AND MERGER--	)	Finance Docket No. 32760
SOUTHERN PACIFIC RAIL CORPORATION,	)	(Sub-No. 26)
SOUTHERN PACIFIC TRANSPORTATION)	
COMPANY, ST. LOUIS SOUTHWESTERN)	
RAILWAY COMPANY, SPCSL CORP.,	)	[HOUSTON/GULF COAST
AND THE DENVER AND RIO GRANDE	)	OVERSIGHT]
WESTERN RAILROAD COMPANY)	
)	

**REBUTTAL EVIDENCE AND ARGUMENT
OF CENTRAL POWER & LIGHT COMPANY
IN SUPPORT OF REQUEST FOR SUPPLEMENTAL CONDITION**

Central Power & Light Company ("CP&L") hereby submits this, its rebuttal evidence and argument in support of its request for a condition allowing the Burlington Northern Santa Fe Railroad ("BNSF") to deliver unit coal trains to CP&L's Coletto Creek power plant over the lines of the Union Pacific Railroad ("UP").

This submission consists of the rebuttal verified statements of witnesses **Marguerite C. Mills** and **George L. Stern**, each of whom submitted testimony on behalf of CP&L on July 8, plus a rebuttal statement by witness **Mark D. Werner**, Director of Fuels, Generation Control and Bulk Power Sales at City Public Service of San Antonio, Texas, who responds to assertions by UP witness Handley regarding the impact of two-carrier service at other Texas power plants. These verified statements are followed by argument of counsel.

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

PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is Marguerite C. Mills and I am the Director, Solid Fuels for Central and South West Services, Inc. ("CSWS"). My business address is 1616 Woodall Rodgers Freeway, Dallas, Texas 75202.

Q. ARE YOU THE SAME MARGUERITE MILLS WHO PRESENTED TESTIMONY IN THIS PROCEEDING ON JULY 8, 1998 ON BEHALF OF CENTRAL POWER & LIGHT COMPANY?

A. Yes, I am.

Q. HAVE YOU REVIEWED THE TESTIMONY AND ARGUMENT THAT UP FILED
IN THIS PROCEEDING ON SEPTEMBER 18?

A. I have read the non-confidential portions of UP's filing that addressed CP&L's condition request.

Q. DIRECTING YOUR ATTENTION THEN TO THE VERIFIED STATEMENT OF UP WITNESS HOWARD HANDLEY, AT PAGES 57-78 HE STATES THAT UP'S SERVICE TO COLETO CREEK HAS "IMPROVED ENORMOUSLY," AND THAT UP IS NOW DELIVERING MORE THAN 100% OF CP&L'S REQUIREMENTS FOR BOTH COLORADO AND POWDER RIVER BASIN COAL. IS THAT TRUE?

A. It is true that UP's service has improved since the worst days of early summer, and that for the last few weeks UP has been able to keep up with Coletto Creek's day-to-day coal consumption. However, it would be a mistake to conclude from this that UP's service difficulties with respect to our coal shipments, and our consequent inability to rely on UP for adequate coal deliveries, is over.

In the first place, while UP has been delivering increased volumes of coal to Coletto Creek since July, its cycle times have remained significantly above target levels: UP Witness Duffy claims (at page 9) that UP's cycle times on CP&L's Colorado coal shipments declined to 209 hours in August, but even if true (and our figures do not match his), this is still substantially slower than the trains were operating prior to the onset of UP's service problems. UP has been able to maintain adequate delivery volumes only by supplying, at its own cost, two additional trainsets dedicated to Coletto Creek service. Unfortunately, UP will have no obligation to keep those trainsets in service once it works off the remainder of its deficit contract tons from 1997, and we

are concerned that our deliveries will suffer again if and when those trains are removed from service.

An additional cause for concern arises from UP's demonstrated inability to maintain and solidify service improvements to Coletto Creek at earlier points in its service recovery program. As I testified on July 8, we have seen UP cycle times and coal deliveries at Coletto Creek improve significantly on more than one occasion in the past year, only to have them get worse again as soon as UP turned its attention to other problem areas. If, as UP seems to be saying, the rail properties it inherited from SP have inadequate reserve capacity to handle unexpected demands or disruptions, our Coletto Creek operations will remain precarious, subject to an ever-present risk of coal delivery shortfalls, so long as UP alone can serve the plant. We cannot sit back quietly and expose our ratepayers to such a risk.

Q. **MR. HANDLEY ALSO REFERS TO "CP&L'S UNEXPECTED DEMAND FOR AN ADDITIONAL 500,000 TONS OF COLORADO COAL." DO YOU KNOW WHAT HE IS TALKING ABOUT?**

Presumably he is referring to the fact that, as I testified on July 8, UP's service problems have forced CP&L to delay its planned shift toward using more PRB coal and less Colorado coal, because we needed to concentrate on Colorado coal in order to maximize Btu deliveries with our available trainsets. I don't know how he can characterize that change

as "unexpected," however, since we told UP representatives about it before the year began, and we have not departed in any material fashion from the revised tonnage projections we gave them at that time. Moreover, total volumes shipped were not increased by this change, since increased Colorado tonnages were more than offset by reduced tonnages of [lower-Btu] PRB coal.

Q. **MR. HANDLEY CONCLUDES BY SUGGESTING THAT BNSF SERVICE TO COLETO CREEK WOULD INTERFERE WITH UP COAL DELIVERIES TO THE PLANT, AND WOULD CAUSE INTERFERENCE WITH OTHER TRAFFIC ON UP'S LINES. WOULD YOU CARE TO RESPOND?**

A. Yes. First of all, Mr. Handley claims that UP has had problems with BNSF interference at other jointly-served utilities, including specifically San Antonio's plant at Elmendorf, Texas. He provides no specifics, however, and Mr. Mark Werner, the City Public Service Board of San Antonio ("CPSB") official responsible for supervising coal transportation arrangements at Elmendorf, testifies unequivocally in his verified statement being filed today that CPSB has not experienced any significant interference or conflicts as a result of having both BNSF and UP serving its plant. More fundamentally, Mr. Werner also testifies that having BNSF service available has increased overall deliveries, and not reduced them as Mr. Handley suggests would happen at Coleta Creek.

Mr. Handley also states BNSF would have to operate into Victoria from the East [South], rather than from the West (North), as UP does, and that BNSF trains would therefore be facing in the wrong direction to get onto the Coleta Creek branch, necessitating a 14-mile detour to a point where BNSF could run its engines around the train. This in turn would interfere with other traffic on the lines, he says.

This is a red herring, for two (2) independent reasons: first, because it presumes that BNSF will lose its right to operate from Caldwell south to and through Victoria and be relegated to a relatively circuitous routing from the south; and second, because it overstates the difficulties that BNSF would face if in fact it were forced to reach Victoria from the south.

CP&L's requested condition was for BNSF to be allowed to access Coleta Creek from the north, just as UP does. The requested routing was via Caldwell and thence south through Flatonina to Victoria and thence west to Coleta Creek. Because BNSF was already operating in a southbound direction on that same line from Caldwell to and through Victoria, our requested condition would only add 16 miles of trackage rights to what was already in place. In that regard I note that BNSF's July 8 filing in this docket requested that its

interim trackage rights over the Caldwell-Victoria line be made permanent.

Plainly, if BNSF is allowed to operate CP&L'S unit coal trains into Victoria from the north just as UP does, which is what CP&L requested, there will be no interference whatsoever with other traffic on those lines. UP does not suggest otherwise. Instead it assumes that the STB will let it boot BNSF off the Caldwell-Victoria line, and then complains that the routing to which BNSF would then be relegated would cause interference. But of course any such interference would be of UP's own making, and it should not be heard to complain about it.

Even if BNSF is forced to reach Victoria from the south, UP's claims of resulting interference are overstated. No reason appears why BNSF could not either run around the train (or "wye" it, as witness Stern suggests) in the yard in Victoria, rather than going 14 miles beyond Victoria to reach a siding; UP itself ran around the Coletto Creek empties in Victoria for quite some time earlier this year, in order to move them south as part of its directional running arrangements. Alternatively, an additional turnout could be installed (at BNSF or CP&L expense) to expedite BNSF access from the south.

All in all, the "problems" Mr. Handley points to are the sort of routine joint facilities issues that one would expect experienced railroad officers to be able to resolve easily through good faith negotiations.

Q. DIRECTING YOUR ATTENTION NOW TO UP'S "NARRATIVE," AT PAGE 39 UP'S ATTORNEYS DISPARAGE CP&L'S CONDITION REQUEST AS "'OPEN ACCESS' BY BNSF," AND CONTEND THAT CP&L'S EVIDENCE OF HARM FROM THE MERGER IS CONTRADICTED BY THE FACTS. HOW DO YOU RESPOND?

A. UP is wrong, on both counts. This case is not about "open access," if by that one means "competitive" access aimed at obtaining lower rate levels.¹ This is about service reliability. We would not be here today if UP had been providing CP&L with the consistent, efficient service over the past twelve months that CP&L had every right to expect. We would withdraw our request for conditions tomorrow if UP could guarantee us consistent, quality service in the future. Unfortunately, UP has thus far been unwilling to offer CP&L any service standards for 1998 coal volumes. If that is an indication of how little confidence UP has in its ability to maintain and improve rail service to Coletto Creek, I submit, CP&L's concerns and condition request are both amply-justified.

¹I continue to be amazed about how "open access" is such a scare word to the Board. Where other federal regulatory agencies such as FERC are proudly endorsing and aggressively promoting open access for the industries they regulate, this agency stands alone in its hostility to the concept -- so much so that UP evidently believes it can color the Board's attitude toward its opponents by tagging them as proponents of open access.

Nor has UP refuted CP&L's showing of harm from the merger. UP claims that BNSF refused to help UP out by taking over all of the coal trains UP offered it, and that this disproves CP&L's contention that competing origin carriers would have stepped in to help if the service crisis had arisen prior to the merger.² WRONG! As I testified on July 8, BNSF did offer to take over operation of CP&L's PRB coal trains, but UP refused to let it do so. Accordingly, whatever may have transpired with respect to UP's other, unspecified unit coal train movements, clearly BNSF stood ready and willing to help UP out on the trains to Coletto Creek, and but for the merger its offer would clearly have been accepted, for all the reasons CP&L's witness Heller explained on July 8.

The bottom line is, a year of inadequate and unreliable service to Coletto Creek by UP, amply documented in CP&L's opening evidence and unchallenged by UP, finally forced CP&L to file its July 8 condition request seeking relief through BNSF access to Coletto Creek. BNSF was (and hopefully remains) ready and willing to help out, and but for UP's takeover of SP, BNSF's offer would surely have been accepted. Nevertheless, UP could get rid of this case tomorrow if it would provide CP&L with meaningful guarantees of reli-

²Curiously, UP's narrative cites to witness Handley's verified statement at page 58 to support its argument, but no such discussion appears in Mr. Handley's statement.

able, efficient service (that is, reasonable cycle times reflecting a commitment to the efficient use of CP&L's generating and rail assets). Failing that, the Board should intervene, as CP&L has requested, and allow BNSF to provide that service backup.

Q. DO YOU HAVE ANYTHING FURTHER TO TELL THE BOARD?

A. No, that completes my testimony.

VERIFICATION

STATE OF TEXAS)

§

COUNTY OF DALLAS)

MARGUERITE C. MILLS, being duly sworn, deposes and says that she
has read the foregoing Verified Statement, knows the contents thereof, and that the same
are true as stated.

Marguerite C. Mills
Marguerite C. Mills

Subscribed and sworn to
before me this 15th day
Of October, 1998.

Bettie M. Houston
Notary Public in and for the
State of Texas

My Commission Expires 10/23/2001



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

UNION PACIFIC CORPORATION,)	
UNION PACIFIC RAILROAD COMPANY,)	
AND MISSOURI PACIFIC RAILROAD)	
COMPANY--CONTROL AND MERGER--	)	Finance Docket No. 32760
SOUTHERN PACIFIC RAIL CORPORATION,	)	(Sub-No. 26)
SOUTHERN PACIFIC TRANSPORTATION)	
COMPANY, ST. LOUIS SOUTHWESTERN)	
RAILWAY COMPANY, SPCSL CORP.,	)	[HOUSTON/GULF COAST
AND THE DENVER AND RIO GRANDE	)	OVERSIGHT]
WESTERN RAILROAD COMPANY)	
)	

**REBUTTAL VERIFIED STATEMENT OF
GEORGE L. STERN**

Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.

A. My name is George L. Stern, and I am a transportation consultant with offices in Birmingham, Michigan.

Q. ARE YOU THE SAME GEORGE STERN WHO TESTIFIED ON BEHALF OF CENTRAL POWER & LIGHT COMPANY IN THIS PROCEEDING ON JULY 8?

A. Yes.

Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW UNION PACIFIC'S RESPONSE, FILED SEPTEMBER 18, TO CP&L'S REQUEST FOR A CONDITION?

A. Yes, I have read UP's discussion of CP&L's request in its "Narrative" and in the verified statements of its witnesses Duffy and Handley.

Q. IN YOUR JULY 8 TESTIMONY, YOU CONCLUDED THAT ALLOWING BNSF TO DELIVER UNIT COAL TRAINS TO COLETO CREEK WAS "QUITE

FEASIBLE OPERATIONALLY," AND THAT DOING SO WOULD BOTH SPEED UP THOSE COAL DELIVERIES AND REDUCE CONGESTION ON UP. DOES UP AGREE WITH YOU?

- A. No, UP's witness Handley asserts that operation of BNSF coal trains to Coletto Creek would be difficult and would increase congestion.

Q. CAN YOU EXPLAIN THIS DISCREPANCY?

- A. Yes, it's quite simple. My testimony was based on the assumption that BNSF-operated coal trains would move over the same route that UP-operated trains do from Caldwell, Texas south to Victoria, and then west to Coletto Creek. This is the most sensible route, and BNSF was already operating trains over UP from their connection at Caldwell south to and through Victoria. The only additional trackage rights that BNSF would require to serve Coletto Creek would be over the 16-mile Coletto Creek branch from Victoria to the plant.

Mr. Handley, by contrast, assumes that BNSF-operated coal trains would have to reach Victoria from the south, because BNSF has permanent trackage rights over that line, but only temporary trackage rights over UP between Victoria and points north. (However, BNSF is asking the STB to make the latter trackage rights permanent). This routing change is the source of the alleged operating difficulties and interference problems which he describes.

Q. DOES UP DISPUTE YOUR TESTIMONY THAT ALLOWING BNSF TO OPERATE COAL TRAINS TO COLETO CREEK VIA THE CALDWELL-VICTORIA-COLETO CREEK ROUTE WOULD BE OPERATIONALLY FEASIBLE AND WOULD HELP REDUCE CONGESTION?

A. No, it doesn't. It simply assumes away that option. Whatever the merits of UP's approach from an advocacy standpoint, however, from an operational perspective it makes no sense at all. When it is clear that BNSF-operated coal trains could get on UP's lines at Caldwell and then operate from there south to Victoria and Coletto Creek just as the UP-operated trains they replace do today, without creating any operational difficulties or interference whatsoever, no competent railroader would choose instead to route them circuitously to come in from the south -- especially if doing so would create the operational and interference problems UP complains about.

Q. SPEAKING OF WHICH, DO YOU AGREE WITH UP WITNESS HANDLEY'S LIST OF THE PROBLEMS THAT BNSF ACCESS FROM THE SOUTH WOULD TRIGGER?

A. No. I do agree that routing BNSF coal trains to Coletto Creek from the south would be more circuitous and inefficient than bringing them in from the north as I have recommended would be, and I agree that the "wrong-way" turnout to the Coletto Creek branch in Victoria would then have to be dealt with. However Mr. Handley greatly overstates the magnitude of this problem and the difficulties that BNSF and UP would encounter in resolving it.

In the first place, there is no reason for BNSF-operated trains from the south to have to go an additional 14 miles beyond Victoria in order to run the engines around the train. There is ample trackage in Victoria itself to do a run-around, and I understand that UP conducted such run-arounds there when it was operating empty unit trains from Coletto Creek south to Placedo as part of its directional running arrangements. Better yet, BNSF could wye the trains in Victoria by using the turnout between the Placedo and Bloomington lines, then backing the train north past the switch to the Coletto Creek branch, then moving forward onto the branch. Indeed, if BNSF uses distributed power, it might not have to turn the train at all: it could simply have a qualified engineer get on the rear locomotive in Victoria and run the train backwards onto the branch.

Now, each of these operating alternatives would entail some delay and consequent interference with other traffic (though nothing like Mr. Handley's 28-mile detour would cause). Therefore, if BNSF must be limited to reaching Victoria from the south, a more permanent solution would be the installation of an additional, "right-way" turnout to the Coletto Creek branch. I presume that either BNSF or CP&L would be willing to pay for such a turnout under these circumstances.

Q. **HAS ANYTHING YOU'VE READ IN UP'S REPLY EVIDENCE AND ARGUMENT CAUSED YOU TO CHANGE YOUR MIND ABOUT YOUR RECOMMENDATION**

THAT BNSF BE ALLOWED TO OPERATE UNIT COAL TRAINS ALL THE WAY TO COLETO CREEK?

A. No, I continue to believe that granting such access will improve the reliability and efficiency of coal deliveries to Coletto Creek, and at the same time lessen somewhat the pressure points on UP's infrastructure, locomotive fleets, and manpower involved in this movement. UP will always have the inside track on CP&L's coal shipments, so long as it can handle the traffic efficiently. This is so because, as I testified on July 8, UP will remain the only carrier capable of originating CP&L's Colorado coal shipments, and thus it alone will be able to offer package arrangements for handling all of CP&L's traffic. As a practical matter, therefore, the BNSF access I have recommended would function as a safety valve, providing a measure of protection for those times when UP cannot handle all of CP&L's traffic efficiently.

Q. **DO YOU HAVE ANYTHING ELSE TO ADD?**

A. No, that completes my testimony.

VERIFICATION

STATE OF MICHIGAN)

OAKLAND COUNTY)

I, George L. Stern, declare that I have read the foregoing statement, know the contents thereof, and that the same are true.

George L. Stern

Sworn to and signed before me
this 14 day of October 1998

Kathleen M. McGrain
Notary Public

My commission expires: 2-16-2002

KATHLEEN M. MCGRAIN
Notary Public, Oakland County, MI
My Commission Expires Feb. 16, 2002

**VERIFIED STATEMENT
OF
MARK D. WERNER**

My name is Mark D. Werner. My business address is 145 Navarro Street, San Antonio, Texas 78205. I am employed as Director of Fuels, Generation Control and Bulk Power Sales at City Public Service of San Antonio, Texas ("CPSB"). My responsibilities include supervision of coal supply and coal transportation arrangements for CPSB's 1385-Megawatt Deely/Spruce Generating Station at Elmendorf, Texas ("Deely/Spruce").

The Deely/Spruce Station consumes approximately 6 million tons of low-sulfur coal per year, which CPSB purchases from producers in Wyoming's Powder River Basin ("PRB") and ships by rail in unit trains. We are fortunate to be able to ship coal via both of the large western rail carriers -- Burlington Northern Santa Fe ("BN") and the Union Pacific ("UP") -- because both have the right to serve our plant, and of course both serve mines in the PRB.

I have been asked by Central Power & Light Company (CP&L) to review and comment on a portion of Mr. Howard Handley's September 18, 1998 verified statement in this proceeding, in which he states (at page 58) that

BNSF access to this [CP&L's] 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. ...

I don't know what Mr. Handley means by "often" in the quoted passage; certainly occasional "bunchings" of the sort Mr. Handley describes are to be expected, regardless of the number of carriers involved (CPSB utilizes a private switching contractor to unload unit trains, and therefore neither BN nor UP leaves its crews with the trains during unloading), and we have had no indication that UP was experiencing a disproportionate number of delays. In any case, what I do know is that our two-carrier service has worked very well, with BN providing CPSB with over 700,000 tons of increased coal deliveries over the past 12 months. BN deliveries have supplemented the UP shipments, not reduced deliveries as Mr. Handley seemingly implies. Simply stated, BN deliveries helped us offset inadequate UP deliveries which have persisted for over a year.

VERIFICATION

STATE OF TEXAS)
COUNTY OF BEXAR) SS:

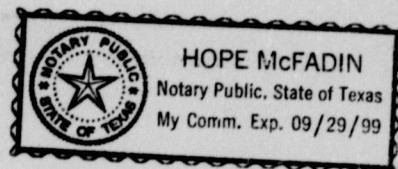
MARK D. WERNER, being duly sworn, deposes and says that
he has read the foregoing statement, knows the contents thereof,
and that the same are true as stated.



Mark D. Werner

Subscribed and sworn to before me
this 13 day of October, 1998.

Hope McFadin
Notary Public in and for
the State of Texas.



My Commission Expires 1999

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

UNION PACIFIC CORPORATION,)	
UNION PACIFIC RAILROAD COMPANY,)	
AND MISSOURI PACIFIC RAILROAD)	
COMPANY--CONTROL AND MERGER--	)	Finance Docket No. 32760
SOUTHERN PACIFIC RAIL CORPORATION,	)	(Sub-No. 26)
SOUTHERN PACIFIC TRANSPORTATION)	
COMPANY, ST. LOUIS SOUTHWESTERN)	
RAILWAY COMPANY, SPCSL CORP.,	)	[HOUSTON/GULF COAST
AND THE DENVER AND RIO GRANDE	)	OVERSIGHT]
WESTERN RAILROAD COMPANY)	
)	

ARGUMENT

1. **Introduction.**

In its July 8 submission, CP&L demonstrated that UP's service crisis had caused, and was continuing to cause, serious harm to CP&L, constricting coal deliveries to its Coletto Creek power plant to such an extent that CP&L had been forced to reduce generation for a substantial period in order to avoid running out of coal. CP&L further showed that letting BNSF take over responsibility for a portion of CP&L's coal traffic -- specifically, the portion originating in the Powder River Basin -- would both increase CP&L's coal receipts and help relieve congestion on UP. Finally, CP&L showed that whether or not UP's merger with Southern Pacific Transportation Company ("SP") had contributed to the magnitude of the subsequent service meltdown, clearly the merger had magnified its impact on CP&L, by restricting CP&L's ability to obtain help from other carriers.

UP's response, filed September 18, sounded three now-familiar themes. First and foremost, UP asserted that its service crisis is over -- UP is now delivering all of the coal CP&L asks for, it says, and accordingly there is no longer any need to consider remedial conditions such as those requested by CP&L. Second, UP argued that CP&L was really seeking "open access" for BNSF, and asserted that its experience during the service crisis disproved CP&L's contention that the UP/SP merger restricted its ability to obtain help from origin carriers when SP ran aground. Third, UP claimed that allowing BNSF to serve CP&L's power plant would cause significant interference with other traffic on the lines at issue.

As we shall see, UP's first argument, that the crisis has ended and CP&L therefore no longer has any need for relief, is at best a half-truth. UP's second and third arguments are completely without merit.

2. UP Service to Coleta Creek Remains Tenuous and Sub-Par.

According to CP&L witness Mills, UP's coal deliveries to Coleta Creek have indeed improved markedly since July 8.¹ (RVS Mills at 2.) However, UP's cycle times -- though better than they were at the height of the crisis -- are still worse than normal, and UP has been able to maintain adequate delivery volumes only by paying for the addition of two extra trainsets to

¹Is it mere coincidence that the first sustained improvement in UP's service for CP&L occurred immediately after CP&L filed its supplemental condition request in this proceeding?

the CP&L service. If UP withdraws those trainsets, as it will shortly have a right to do, CP&L's coal supply will again be at risk. (Id.)

Adding to CP&L's concern, Mills notes, is the fact that UP service has appeared to improve on previous occasions during the crisis, only to backslide again. UP's continuing unwillingness to commit to any service standards for its 1998 coal deliveries to Coletto Creek suggests that it, too, may fear further problems on this traffic. (RVS Mills at 7.) If UP's delivery volumes fall off again after this proceeding ends and the spotlight moves elsewhere, CP&L could once again find itself forced to curtail generation, to the detriment of its customers. Having BNSF service available as a safety valve for part of CP&L's coal requirements is the best -- and indeed, the only -- way to protect against such harm.

3. UP's Response Confirms CP&L's Showing of Harm from the UP/SP Merger.

Perhaps predictably, UP contends that what CP&L is really seeking is "'open access' by BNSF," and that in any event CP&L is not entitled to any relief from UP's service deficiencies because they are allegedly unrelated to the UP/SP merger. (UP Narrative at 39-40.)

UP is wrong on both counts. Witness Mills succinctly puts the "open access" accusation to rest:

This case is not about "open access," if by that one means "competitive" access aimed at obtaining lower rate levels. This is about service reliability. We would not be here

today if UP had been providing CP&L with the consistent, efficient service over the past twelve months that CP&L had every right to expect. We would withdraw our request for conditions tomorrow if UP could guarantee us consistent, quality service in the future.

(RVS Mills at 7.)

UP's attempt to disprove CP&L's claim of harm from the merger by pointing to its actual experience during the subsequent service crisis, backfires. UP asserts that during the crisis it asked BNSF to take over operation of "as many coal sets bound to Texas receivers as possible," but "BNSF agreed to handle only a few trainsets." (UP Narrative at 39-40.) This, UP suggests, undercuts CP&L's claim that but for the merger CP&L could have obtained help from BNSF when UP (or SP) began having difficulties.

CP&L agrees that its showing of harm should be evaluated in light of what happened during the post-merger service crisis, but notes that this experience confirms CP&L's showing rather than undercuts it. Specifically, whatever might have happened with the unspecified other Texas coal movements to which UP counsel refer,² BNSF did offer to handle CP&L's coal traffic, and UP turned that offer down. (RVS Mills at 8.) As CP&L's witness Heller explained in his July, 8 testimony, a pre-merger, independent SP would have had no similar motivation to protect UP by rejecting help from BNSF.

²UP offers no evidence to back up its counsels' claim: though the Narrative refers to witness Handley's statement at page 58, Mr. Handley never mentions the point.

4. UP's Claim that BNSF Service to Coletto Creek Would Interfere with Other Traffic on UP's Lines Must be Rejected, Because Any Such Problems Would be Self-Inflicted.

At the outset it is important to note that UP does not claim that BNSF operation of unit coal trains to Coletto Creek via the Caldwell-Victoria line, as CP&L proposed, would cause any operational problems or interference. Instead it starts with the (unstated) assumption that it will be allowed to exclude BNSF from the Caldwell-Victoria line (even though BNSF has been operating over the line and has requested in this proceeding that its trackage rights be made permanent), so that BNSF would have to reach Victoria from the south, via the Placedo-Victoria line over which BNSF has permanent access rights. (UP Narrative at 231-32; Handley VS at 58.) UP then proceeds to discuss operational difficulties and resultant interference that, it claims, would result if BNSF served Coletto Creek via that route.

The permanent status of BNSF's operating rights over the Caldwell-Victoria line is obviously an issue that transcends CP&L's individual condition request in this proceeding. CP&L respectfully submits, however, that even if UP prevails on that issue, forcing a reroute of requested BNSF service to Coletto Creek via the more circuitous Placedo route, it should not then be heard to complain about any problems or interference that its actions have caused.

In any event, as witnesses Stern (RVS Stern at 3-4) and Mills (RVS Mills at 6-7) point out, UP's claims of interference from BNSF service via Placedo are greatly exaggerated; in reali-

ty, BNSF could wye the trains (or run around them) in Victoria, causing minimal delays; and construction of an additional turnout at BNSF's or CP&L's expense would eliminate even those modest delays. (RVS Stern at 4.)³

5. Conclusion.

For the reasons set forth in CP&L's initial Request for Supplemental Condition filed July 8 and in this Rebuttal, CP&L respectfully urges the Board to grant BNSF the right to deliver PRB coal to CP&L's generating station at Coletto Creek, Texas, over UP's tracks, as an additional condition on its approval of the UP/SP merger.

Respectfully submitted,

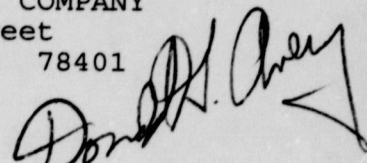
CENTRAL POWER & LIGHT COMPANY
539 N. Carancahua Street
Corpus Christi, Texas 78401

OF COUNSEL:

Slover & Loftus
1224 Seventeenth St., NW
Washington, DC 20036

Dated: October 16, 1998

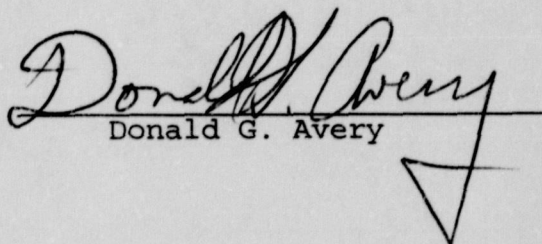
By: William L. Slover
Donald G. Avery
1224 Seventeenth Street, NW
Washington, DC 20036
(202) 347-7170



³UP also alludes to interference problems it has supposedly experienced at other generating plants in Texas that are served by both UP and BNSF, and suggests that letting BNSF serve Coletto Creek could cause similar problems and actually reduce rather than increase deliveries. This claim is directly refuted by witness Mark Werner of the City Public Service Board of San Antonio in his verified statement filed herewith. San Antonio's plant at Elmendorf, Texas is one of the two plants where UP claims to have experienced BNSF interference, but Mr. Werner states that BNSF coal deliveries have greatly increased the total volume of coal San Antonio has been able to obtain, helping to offset inadequate UP deliveries.

Certificate of Service

I hereby certify that I have this 16th day of October, 1998, caused copies of the foregoing "Rebuttal Evidence and Argument of Central Power & Light Company in Support of Request for Supplemental Condition" to be served by first-class mail upon all parties of record in this proceeding, as recorded on the official service list issued by the Surface Transportation Board.


Donald G. Avery

STB FD • 32760 (Sub 26) 10-16-98 D 191639

191639

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
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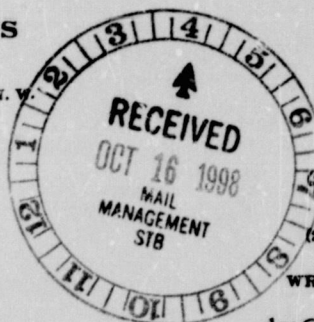
SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

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Office of the Secretary

OCT 19 1998

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Public Record

October 16, 1998



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WRITER'S E-MAIL:

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BY HAND

Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 26)
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corporation et al.--Control and Merger--Southern Pacific Corporation et al. [Houston/Gulf Coast Oversight]

Dear Mr. Secretary:

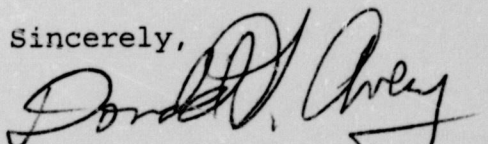
Enclosed for filing in the captioned proceeding please find an executed original and twenty-five (25) copies of a "Verified Statement in Support of BNSF's Joining UP's Directional Operations," submitted on behalf of Houston Lighting and Power Company ("HL&P") by Carla J. Mitcham, HL&P's General Manager, Fuel & Energy Management.

A computer diskette with this filing in Wordperfect 5.1 format will be filed separately.

Copies of this document have been served upon all parties of record, and also on Administrative Law Judge Grossman.

Thank you for your attention to this matter.

Sincerely,

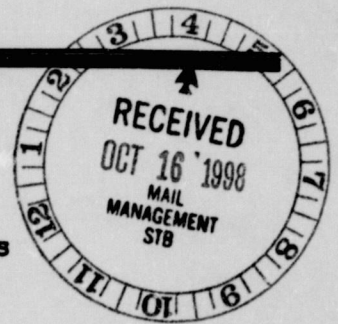

Donald G. Avery
An Attorney for Houston
Lighting & Power Company

Encl.

Houston Lighting & Power Company

A Division of Houston Industries Incorporated

Verified Statement in Support of BNSF's
Joining UP's Directional Operations



My name is Carla J. Mitcham, I am General Manager, Fuel & Energy Management at Houston Lighting & Power Company ("HL&P"), a division of Houston Industries Incorporated. HL&P owns and operates the Limestone Generating Station ("Limestone Station"), an electric generating plant located near Jewett, Texas.

Currently, the Limestone Station is fueled primarily by local lignite. However, HL&P is considering the use PRB coal at the plant. Such coal would be delivered by the Burlington Northern and Santa Fe Railway Company ("BNSF"), which is currently the only carrier serving the plant.

Due to our possible expansion of the use of PRB coal, I am filing this statement in support of BNSF's request that the Board grant BNSF overhead trackage rights over the UP line between Fort Worth and Dallas, Texas (via Arlington), to enable BNSF to join the directional operations recently instituted by UP between Fort Worth and Waxahachie, Texas. HL&P believes that its future shipping interests and those of other shippers will benefit from the resulting service improvements and operational flexibility. I understand that, at the moment, BNSF has trackage rights over UP

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Houston Lighting & Power Company

A Division of Houston Industries Incorporated

between Fort Worth and Waxahachie and that the line is now used for southbound and northbound movements by the BNSF. The southbound BNSF traffic must run counter to the UP directional operations. BNSF could better join in UP's directional flow plans for this route if it was provided trackage rights on UP's main line route between Fort Worth and Dallas via Arlington, Texas, which would minimize delays to both carriers and customers such as HL&P.

As I stated, in the future, HL&P may use BNSF direct service to provide PRB coal to the Limestone Station. If BNSF trains are forced to operate against the directional flow on the UP line between Fort Worth and Waxahachie, service to the Limestone Station could be adversely impacted due to delays in this area. To avoid that result, HL&P supports BSNF's request for overhead trackage rights over UP's line between Forth Worth and Dallas via Arlington to join in the directional operations in the area.

The Board should grant BNSF's request because (i) it will result in service improvements for both UP and BNSF thereby benefitting HL&P and other shippers; and (ii) it represents another important step toward preventing the severe congestion problems that plagued the Houston/Gulf Coast area and much of Texas over the past year.

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.....
Houston Lighting & Power Company

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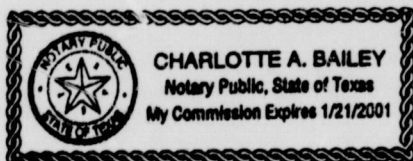
STATE OF TEXAS)
) SS:
COUNTY OF Harris)

Carla J. Mitcham, being duly sworn, deposes and says that she has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated, except as to those statements made on information and belief, and as to those, that she believes them to be true.

Carla J. Mitcham
Carla J. Mitcham

Subscribed and sworn to before me
this 15th day of October, 1998.

Charlotte A. Bailey
Notary Public for the County of Harris, Texas
My Commission expires 1-21-2001.



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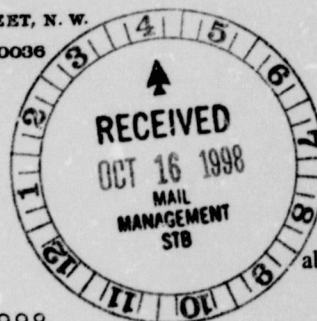
ANDREW B. KOLESAR III

PETER A. PFOHL

ENTERED
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October 16, 1998

BY HAND DELIVERY

The Hon. Vernon A. Williams
Secretary
Case Control Unit
Attn: STB Finance Docket
No. 32760 (Sub-Nos. 26 & 29)
Surface Transportation Board
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-Nos. 26 & 29)
UP/SP Oversight -- Houston/Gulf Coast Area

Dear Mr. Secretary:

Enclosed for filing in the above-referenced proceeding please find an original and twenty-five (25) copies of the Rebuttal of Texas Utilities Electric Company in Support of BNSF's Remedial Condition No. 6 (TUE-24). A conforming computer disk is also enclosed.

Finally, we also have enclosed an additional copy of this filing to be date-stamped and returned to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Andrew B. Kolesar III

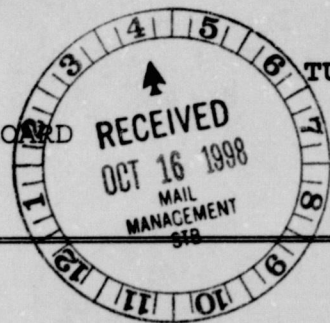
Enclosures

Office of the Secretary

OCT 16 1998

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BEFORE THE
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 32760
(Sub Nos. 26 & 29)

[Houston/Gulf Coast
Oversight]

191636 / 191637

**REBUTTAL OF TEXAS UTILITIES ELECTRIC COMPANY
IN SUPPORT OF BNSF'S REMEDIAL CONDITIOI. NO. 6**

TEXAS UTILITIES ELECTRIC COMPANY

By: John W. McReynolds
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1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: October 16, 1998

Attorneys for Texas Utilities
Electric Company

UNION PACIFIC CORPORATION,)	
UNION PACIFIC RAILROAD COMPANY,)	
and MISSOURI PACIFIC RAILROAD)	Finance Docket No. 32760
COMPANY -- CONTROL AND MERGER --)	(Sub Nos. 26 & 29)
SOUTHERN PACIFIC RAIL CORPORATION,)	
SOUTHERN PACIFIC TRANSPORTATION)	[Houston/Gulf Coast
COMPANY, ST. LOUIS SOUTHWESTERN)	Oversight]
RAILWAY COMPANY, SPCSL CORP.,)	
and THE DENVER AND RIO GRANDE)	
WESTERN RAILROAD COMPANY)	
)	

Pursuant to the Surface Transportation Board's Decision No. 6 in this proceeding served on August 4, 1998, Texas Utilities Electric Company ("TU Electric") submits this Rebuttal in Support of The Burlington Northern and Santa Fe Railway Company's ("BNSF") Request No. 6, which BNSF submitted in its July 8, 1998 Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area ("BNSF Application"). BNSF's Request No. 6 seeks overhead trackage rights on Union Pacific Railroad Company's ("UP") line from Fort Worth to Dallas (via Arlington).¹ TU Electric supports BNSF's request because it will ameliorate specific merger-related harm caused by UP's

¹ This line is more specifically identified as UP's Fort Worth to Dallas #1 and #2 main tracks from MP 245.7 at Tower 55 at Fort Worth to MP B215.21 at Forest Avenue at Dallas. See BNSF Application, Verified Statement of Mr. Ernest L. Hord, at 19.

unilateral decision to impose changed directional running operations in Texas.

BACKGROUND

BNSF's Request No. 6 impacts rail service to TU Electric's Big Brown Station. That station traditionally has used locally mined lignite as its boiler fuel. TU Electric, however, presently is planning to supplement its lignite fuel with sub-bituminous western coal produced in the Powder River Basin of Wyoming ("PRB").

TU Electric is committed to obtaining competitive and efficient coal transportation service from the PRB to its Big Brown Station. To that end, TU Electric recently solicited transportation offerings from BNSF and UP to haul over one million tons of PRB coal annually from the PRB to the station.

BNSF's initially planned PRB-to-Big Brown coal routing (shown schematically at Exhibit __ (TDC-2) to the attached Verified Statement of Mr. Thomas D. Crowley ("Crowley V.S.")) called for TU Electric coal trains (both loaded and empty) to move between Fort Worth and Waxahachie, Texas via the trackage rights that BNSF holds over UP's Fort Worth-to-Waxahachie line.² BNSF now informs TU Electric, however, that because of UP's announced decision to run the Fort Worth-Waxahachie line directionally (with all UP traffic moving in a generally northern

² This line is a former line of the Southern Pacific Transportation Company ("SP").

direction), BNSF will be forced to run TU Electric coal trains via an alternative routing (shown schematically at Exhibit __ (TDC-3)) that will utilize the DART commuter line between Fort Worth and Dallas.

In order to avoid having TU Electric (and other similarly situated shippers') trains move over the congested DART line, BNSF's Request No. 6 asks the Board to grant BNSF trackage rights over UP's line between Fort Worth and Dallas (shown schematically at Exhibit __ (TDC-4)). With these rights in place, BNSF would move loaded TU Electric trains over UP's Fort Worth-Dallas line (and then from Dallas to Waxahachie over BNSF's own line) and would move empty trains "with-the-flow" via UP's Waxahachie-Fort Worth line.

UP opposes BNSF's Request No. 6. See UP's September 18, 1998 Opposition to Additional Conditions ("UP Opposition"), at 122-28. UP does not dispute that its proposed directional running of the Fort Worth-Waxahachie line will require BNSF to shift traffic to the DART line, but claims that it has the post-merger power to impede BNSF's Texas operations by unilaterally imposing directional running schemes.

ARGUMENT

I. UP's Plan Would Significantly Injure BNSF and TU Electric

UP's plan to operate the Fort Worth-Waxahachie line in a directional manner will force BNSF to route loaded TU Electric coal trains over the DART commuter lines. This routing will

create an operational nightmare to both BNSF and TU Electric because the DART line is used to move commuter trains. In fact, there is only a very narrow window for BNSF to move other traffic over the line. As Mr. Crowley explains:

. . . on weekdays between the hours of 6 a.m. and 9 a.m. and the hours of 4 p.m. and 7 p.m., DART trains run approximately every twenty to thirty minutes in each direction. Moreover, on weekdays between the hours of 9 a.m. and 4 p.m., and the hours of 7 p.m. and midnight, DART trains run approximately every hour in each direction. Given these frequent schedules, the possibility of BNSF running a coal train over this line between 6 a.m. and midnight without encountering significant congestion would be extremely remote. The only practical weekday window of time therefore would be the midnight to 6 a.m. time period. Needless to say, these restrictions would greatly limit the effectiveness of a BNSF service alternative for TU Electric.

Crowley V.S. at 3.³

UP's plan to operate the Fort Worth-Waxahachie line in a directional manner therefore also will cause serious competitive harm to BNSF and TU Electric by limiting the effectiveness of one of the potential providers of rail service to Big Brown.

³ BNSF, of course, would fare no better moving "against-the-flow" on the direct Fort Worth-Waxahachie line. As Mr. Crowley notes in his statement, BNSF would require approximately two (2) hours to move each coal train across the Fort Worth-Waxahachie segment under normal conditions. Crowley V.S. at 4. Given the anticipated high volume of UP traffic moving in the generally northward direction from Waxahachie to Fort Worth, BNSF would experience great difficulty in attempting to obtain such a window of time to move a coal train in the southward direction to Big Brown. Moreover, this "upstream" movement would be likely to undermine the efficiency gains that UP hopes to achieve by converting to directional running on this line segment.

In particular, by forcing BNSF to utilize a significantly disadvantaged routing from Fort Worth to Waxahachie, UP's action would undermine the potential competitive benefit associated with BNSF's existing trackage rights.

II. Granting BNSF's Requested Relief
Would Ameliorate this Harm

If the Board grants the relief that BNSF seeks in its Request No. 6, BNSF would be able to serve TU Electric without encountering the operational difficulties associated with moving coal trains over a commuter line. As such, a grant of this request also would offer significant competitive benefits to shippers in this region.

The Board previously has shown a willingness to prevent UP from upsetting the competitive balance that it shares with BNSF. For example, in approving the merger of UP and SP, the Board imposed a five-year oversight condition to assure the effectiveness of the BNSF Settlement Agreement, upon which it relied heavily as a justification for approving the merger. See, e.g., Decision No. 44 at 102-103.⁴

In addition, with specific regard to TU Electric's Martin Lake Station, the Board went beyond TU Electric's request

⁴ See id. at 146 ("We impose as a condition to approval of this merger oversight for 5 years to examine whether the conditions we have imposed have effectively addressed the competitive issues they were intended to remedy. We retain jurisdiction to impose additional remedial conditions if, and to the extent, we determine that the conditions already imposed have not effectively addressed the competitive harms caused by the merger.").

for conditions in the underlying UP/SP merger proceeding to grant rights that would enable BNSF to engage in directional running (so as to compete on a more even basis with UP's service):

We add that, although TUE sought only a Shreveport interchange, we are allowing a Texarkana interchange as well, to allow BNSF's routings of TUE coal trains to connect with the additional BNSF trackage rights provided for in the CMA agreement. This also will facilitate BNSF's directional running of these trains.

Id. at 186.⁵ This same approach is necessary here to assure that UP does not undermine the competitive balance in the Dallas-Fort Worth area.

Rather than contesting the operational benefits that would be associated with BNSF's request, UP professes concern regarding the possibility that BNSF will attempt to steal business away from UP that is located along the latter's main line between Fort Worth and Dallas. Specifically, UP notes that this line "serves a major automotive facility that BNSF would be thrilled to serve, along with many other industries." UP Opposition at 127. UP believes that BNSF is engaged in an ongoing effort (in cooperation with shippers) to transform overhead

⁵ The CMA agreement, referenced in this excerpt from Decision No. 44, required UP to modify the BNSF Settlement Agreement to permit BNSF to join UP in the directional running of trains between Houston and Memphis. The Board characterized this modification as permitting a "major improvement" in BNSF's operations in this corridor. Decision No. 44 at 135-36.

trackage rights into full rights to service any customer along a given line:

BNSF can benefit from "open access" opportunities without ever initiating requests for such access itself. Instead, a pattern of step-by-step movement toward "open access" is already well-established. We have seen it in operation repeatedly, and we are seeing it in this proceeding. First, BNSF obtains overhead operating rights. Then, a shipper located on the line asks BNSF for service, relying in part on the fact that "BNSF already has the authority to run trains on the UP line." . . .

Id. at 126.

This argument is irrelevant to the question of the overall effectiveness of the competitive balance created as a result of the UP/SP merger. Nevertheless, TU Electric submits that it is possible for the Board to craft relief to BNSF's request in a manner that restricts the type of encroachment upon traditional business that UP fears, yet still preserves the competition between BNSF and UP in this important region.

CONCLUSION

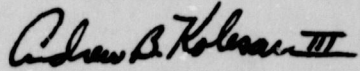
For the foregoing reasons, TU Electric submits that the Board should grant BNSF's Application for Remedial Condition No. 6, thus enabling BNSF to provide a competitive, efficient rail

service alternative for TU Electric, and thus reducing congestion in this sensitive area.

Respectfully submitted,

TEXAS UTILITIES ELECTRIC COMPANY

By: John W. McReynolds
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Wooldridge
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Dated: October 16, 1998

Attorneys for Texas Utilities
Electric Company

UNION PACIFIC CORPORATION,)	
UNION PACIFIC RAILROAD COMPANY,)	
and MISSOURI PACIFIC RAILROAD)	Finance Docket No. 32760
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COMPANY, ST. LOUIS SOUTHWESTERN)	Oversight]
RAILWAY COMPANY, SPCSL CORP.,)	
and THE DENVER AND RIO GRANDE)	
WESTERN RAILROAD COMPANY)	

My name is Thomas D. Crowley. I am a professional economist and President of the economic consulting firm of L.E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314. My qualifications and experience are attached to this verified statement as Exhibit ____ (TDC-1).

The purpose of this statement is to provide the Board with the factual background for Texas Utilities Electric Company's ("TU Electric") Rebuttal in Support of the Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area of The Burlington Northern and Santa Fe Railway Company ("BNSF"). In particular, I will explain the negative operational and competitive impacts of Union Pacific Railroad Company's ("UP") proposal to operate its line from Fort Worth to Waxahachie, Texas in a directional fashion. I also will comment upon the relief that BNSF has requested to remedy this problem (i.e.,

trackage rights over UP's Fort Worth to Dallas #1 and #2 main tracks from MP 245.7 at Tower 55 at Fort Worth to MP B215.21 at Forest Avenue at Dallas).

BNSF has the ability (at least theoretically) to route coal trains from Fort Worth to TU's Big Brown Electric Generating Station ("Big Brown") in two ways.¹ First, BNSF can route this traffic over a rail line between Fort Worth and Dallas (which is now owned and used by the DART commuter service), and then south from Dallas to Waxahachie. As I will discuss in greater detail below, this alternative is significantly constrained by DART's operating requirements. Second, BNSF can utilize its Board-imposed trackage rights over the more direct UP's Fort Worth to Waxahachie segment. As a result of UP's recently announced intention to convert to directional operations over this segment, however, the effectiveness of BNSF's trackage rights will be negated. BNSF will face significant operating challenges in its

¹ My Exhibits ____ (TDC-2) through (TDC-4) are maps depicting the following operating situations:

- TDC-2: BNSF's intended manner of providing service to Big Brown prior to UP's announcement that it would engage in directional running over the Fort Worth to Waxahachie segment
- TDC-3: BNSF's service option via the DART line from Fort Worth to Dallas
- TDC-4: BNSF's intended manner of providing service to Big Brown if successful in obtaining trackage rights over UP's line from Fort Worth to Dallas via Arlington

effort to provide competitive rail transportation service for PRB coal destined to Big Brown.

A. Fort Worth to Dallas on the DART Line

DART currently operates over a rail line between Irving and Dallas, and plans to extend its commuter train operations to Fort Worth by the year 2000. These operations impose considerable constraints on any alternative use of this line. Specifically, on weekdays between the hours of 6 a.m. and 9 a.m. and the hours of 4 p.m. and 7 p.m., DART trains run approximately every twenty to thirty minutes in each direction. Moreover, on weekdays between the hours of 9 a.m. and 4 p.m., the hours of 7 p.m. and midnight, DART trains run approximately every hour in each direction. Given these frequent schedules, the possibility of BNSF running a coal train over this line between 6 a.m. and midnight without encountering significant congestion would be extremely remote. The only practical weekday window of time therefore would be the midnight to 6 a.m. time period. Needless to say, these restrictions would greatly limit the effectiveness of a BNSF service alternative for TU Electric.

B. Fort Worth to Waxahachie via UP's Line

BNSF has trackage rights on UP's line between Fort Worth and Waxahachie, Texas (41 miles). At the time of the underlying UP/SP merger proceeding, UP operated this rail line bi-directionally. Recently, however, UP announced that it intends to operate the Fort Worth to Waxahachie segment on a

directional basis. Specifically, UP will use this line only for traffic moving in the generally northward direction from Waxahachie to Fort Worth. As a result, if BNSF were to utilize this line to deliver coal to Big Brown, it would be required to move loaded trains against UP's directional flow.

If we assume a normal average train speed of twenty miles per hour and a distance over this segment of forty miles, we see that each BNSF unit coal train would shut down the entire Fort Worth-Waxahachie rail line for approximately two hours. Depending upon the amount of traffic that UP plans to handle directionally from Waxahachie to Fort Worth, the need to occupy UP's line for two hours for each BNSF train could severely hinder BNSF's access this line.

* * *

If BNSF is forced to use either of the two rail lines described in this statement to move unit coal trains to Big Brown, transit times will be longer and deliveries will be erratic. Moreover, if BNSF elects to utilize the UP's direct line between Fort Worth and Waxahachie, these operations will impede UP's operations as well. Given the tremendous difficulty occasioned by UP's operational collapse in the Houston/Gulf Coast region (and beyond), I believe that the Board would be well advised to grant BNSF's request, and thereby to ease the threat of future congestion in the area.

If permitted to utilize the UP line from Fort Worth to Dallas, BNSF would be positioned to provide an efficient service alternative for TU Electric. This alternative, of course, would greatly improve not only BNSF's operations, but also would facilitate smoother UP directional operations from Waxahachie to Fort Worth. Finally, I would observe that UP does not contest the adverse service impact that would arise through BNSF's upstream operations on this segment, and does not contest the operational benefits that would be associated with BNSF's requested condition.

STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering Association.

The firm of L. E. Peabody & Associates, Inc. specializes in solving economic, marketing and transportation problems. As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating and accounting procedures utilized by railroads in the normal course of business.

STATEMENT OF QUALIFICATIONS

Additionally, I have inspected both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from the Powder River Basin to various utility destinations in the midwestern and western portion of the United States. These field trips were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal, both inbound raw materials and outbound paper products to and from paper mills, crushed stone, soda ash, aluminum, fresh fruits and vegetables, TOFC/COFC traffic and numerous other commodities handled by rail.

I have presented evidence before the Interstate Commerce Commission ("ICC") in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs. I have submitted evidence applying the ICC's and Surface Transportation Board's ("STB")^{1/} stand-alone cost procedures in "Coal Trading,"^{2/} "DP&L,"^{3/} "Westmoreland"^{4/}, and WTU^{5/} along with other proceedings before the ICC.^{6/}

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the ICC for the development of variable costs for common carriers,

^{1/} The STB is the successor organization to the ICC.

^{2/} ICC Docket No. 38301S, Coal Trading Corporation v. Baltimore & Ohio Railroad, et al., ("Coal Trading").

^{3/} ICC Docket No. 38025S, The Dayton Power and Light Company v. Louisville and Nashville Railroad Company ("DP&L").

^{4/} ICC Docket No. 38301S (Sub-No. 1), Westmoreland Coal Sales Company v. Denver and Rio Grande Western Railroad Company, et al., ("Westmoreland").

^{5/} STB Docket No. 41191, West Texas Utilities Company v. Burlington Northern Railroad Company ("WTU").

^{6/} ICC Docket No. 40224, Iowa Public Power and Light Company v. Burlington Northern Railroad Company; ICC Docket No. 37029, Iowa Public Service Company v. Burlington Northern, Inc.; ICC Docket No. 39386, The Kansas Power and Light Company v. Burlington Northern Railroad Company and Union Pacific Railroad Company; ICC Docket No. 38783, Omaha Public Power District v. Burlington Northern Railroad Company; Docket No. 36180, San Antonio, Texas, Acting By and Through Its City Public Service Board v. Burlington Northern Railroad Company, et al.; ICC Docket No. 41185, Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company ("APS"); STB Docket No. 41989, Potomac Electric Power Company v. CSX Transportation, Inc.

STATEMENT OF QUALIFICATIONS

including Burlington Northern Railroad Company,^{7/} with particular emphasis on the basis and use of Rail Form A. I have utilized Rail Form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.^{8/}

I have also analyzed in detail, the Uniform Railroad Costing System ("URCS") and presented the results of my findings to the ICC in Ex Parte No. 431, Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations. I have been involved in the URCS process, either directly or indirectly, since the first interim report of the contractors was released. Throughout this process, I have consistently asked for and reviewed the support and workpapers underlying the different developmental stages of the formula. I received and presented comments in February 1982 on the ICC's Preliminary 1979 Rail Cost Study. In December 1982, the ICC released the

^{7/} The following two (2) cases are examples of litigation before the ICC where I developed and presented Burlington Northern Railroad Company's variable costs of handling unit coal trains. These two cases involve the most detailed examination of the variable cost of moving coal in unit train service of any proceeding thus far brought before the ICC. The first example involved the variable cost of service evidence I presented on behalf of the City of San Antonio, Texas in ICC Docket No. 36180, San Antonio, Texas, Acting By and Through its City Public Service Board v. Burlington Northern Railroad Company, et al., 1 I.C.C. 2d 561 (1986) ("San Antonio"). In that case, the ICC extensively analyzed the variable costs for a unit train movement of coal on the Burlington Northern Railroad Company from the Powder River Basin, Wyoming to San Antonio, Texas. Also I presented the variable cost of service evidence in ICC Docket No. 38783, Omaha Public Power District v. Burlington Northern Railroad Company 3 I.C.C. 2d 123 (1986) ("OPPD"), in which the ICC developed the variable costs for the unit train movement of coal from the Powder River Basin, Wyoming to Arbor, Nebraska on the Burlington Northern Railroad Company. In San Antonio, the ICC found that the variable cost of service as of the first quarter of 1984 was \$12.62 per ton, just 46 cents higher than my cost calculation of \$12.16 per ton and substantially lower than Burlington Northern Railroad Company's calculation of \$17.54 per ton. In OPPD, the ICC determined variable cost for the first quarter of 1985 was \$5.31 per ton, just 11 cents higher than my calculation of \$5.20 per ton, and substantially lower than Burlington Northern Railroad Company's calculations of \$6.53 per ton.

^{8/} Rail cost finding has been the cornerstone of this firm. Dr. Ford K. Edwards the senior partner of the firm Edwards & Peabody*, was the major architect in the development of Rail Form A. Mr. Peabody carried on this tradition of innovative cost finding until his retirement in 1983. Mr. Peabody's work included participation in the Tennessee Valley Authority's ("TVA") computerization of Rail Form A. Mr. Peabody was a member of a committee of transportation consultants which was organized to assess the TVA procedure in order to make available more complete and simplified input data for the Rail Form A computer program.

* Subsequent to the retirement of Dr. Edwards in 1965, the firm name was changed to L. E. Peabody & Associates, Inc.

STATEMENT OF QUALIFICATIONS

Uniform Rail Costing System, 1980 Railroad Cost Study which I reviewed along with the workpapers supporting that study and the entire developmental stage of URCS which was the basis for my Ex Parte No. 431 comments.

I have frequently presented both oral and written testimony before the Interstate Commerce Commission, Surface Transportation Board, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations, including interest. Recently, I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented testimony in a number of court and arbitration proceedings concerning the level of rates and rate adjustment procedures in specific contracts.

I have participated in every major ICC and STB rulemaking proceeding since the mid-seventies, including each phase of Ex Parte No. 290 (Sub-No. 2), (Sub-No. 4), (Sub-No. 5) and (Sub-No. 7). On a number of occasions my predecessor, L. E. Peabody, Jr., and I have submitted evidence to the Commission concerning the determination of the Rail Cost Adjustment Factor ("RCAF") and the need for a productivity adjustment to properly reflect the change in railroad costs.^{2/}

^{2/} L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, July 17, 1980; L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No.-2), Railroad Cost Recovery Procedures, August 20, 1980; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2),

STATEMENT OF QUALIFICATIONS

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges. In particular, I have advised utilities on the theory and application of different types of rate adjustment mechanisms for inclusion in coal transportation contracts.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out,

Railroad Cost Recovery Procedures, January 9, 1981; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, July 9, 1982; L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures -- Productivity Adjustment, October 25, 1982; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, February 11, 1985; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, March 28, 1985; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2) Railroad Cost Recovery Procedures, March 12, 1986; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2) Railroad Cost Recovery Procedures, March 12, 1987; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, December 16, 1988; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, January 17, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment-Implementation, May 26, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4) and Ex Parte No. 290 (Sub-No. 7), Railroad Cost Recovery Procedures -- Productivity Adjustment, June 1, 1989; Thomas D. Crowley's Verified Statement, Ex parte No. 290 (Sub-No. 5) (89-3), Quarterly Rail Cost Adjustment Factor, June 13, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment -Implementation, June 26, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures - Productivity Adjustment, August 14, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures - Productivity Adjustment, August 29, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 5) Quarterly Rail Cost Adjustment Factor, September 18, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment Implementation, April 5, 1991; Thomas D. Crowley's Verified Statement, Ex Parte 290 (Sub-No. 2) Railroad Cost Recovery Procedures, November 9, 1992; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, November 30, 1992; and, Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7) Productivity Adjustment - Implementation, January 7, 1994.

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brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

I have been, or am currently, involved in the negotiation of transportation or coal supply contracts for over forty-five (45) utilities which burn coal or lignite produced in the west. These utilities purchase coal or lignite produced in Colorado, Illinois, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Texas, Utah and Wyoming. Generating stations operated by these utilities are located in the following twenty-one (21) states: Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, Texas, Wisconsin, and Wyoming.

As a result of assisting coal users in the eastern and western portions of the United States, I have become familiar with operations and practices of the rail carriers that move coal over the major coal routes in the United States as well as their cost and pricing practices.

I have developed different economic analyses for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, the Fertilizer Institute, The Society for the Plastics Industry and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various economic problems.

STATEMENT OF QUALIFICATIONS

In the three most recent rail mergers presented to the ICC/STB involving BN/ATSF,^{10/} UP/SP^{11/} and CSX/NS/Conrail^{12/}, I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

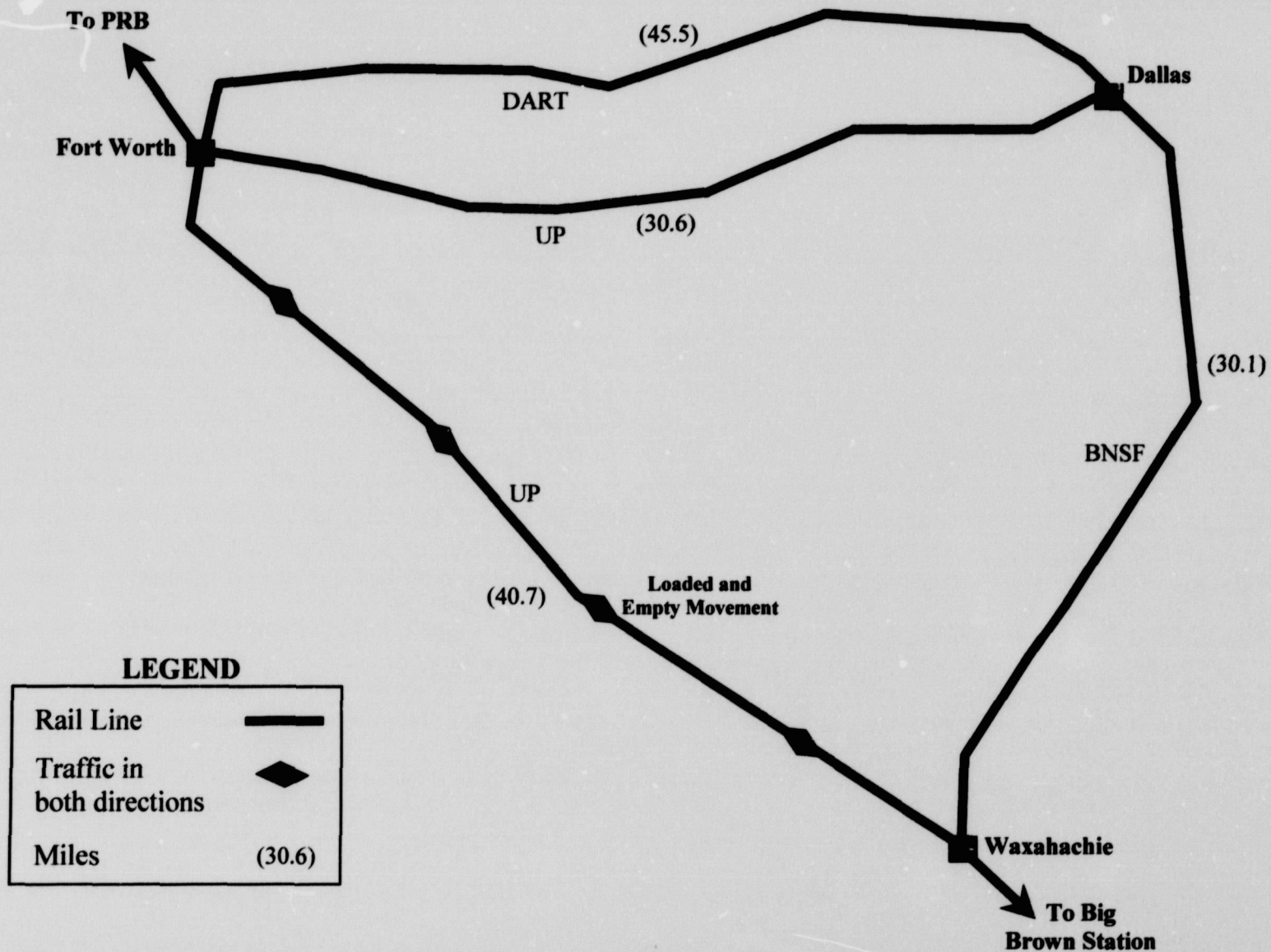
I have participated in various proceedings involved with the division of through rates. For example, I participated in ICC Docket No. 35585, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al. which was a complaint filed by the northern and midwestern rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and midwestern rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, Notice of Intent to File Division Complaint by the Long Island Rail Road Company.

^{10/} ICC, Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, served August 23, 1995 ("BN/ATSF").

^{11/} STB, Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, served August 12, 1996 ("UP/SP").

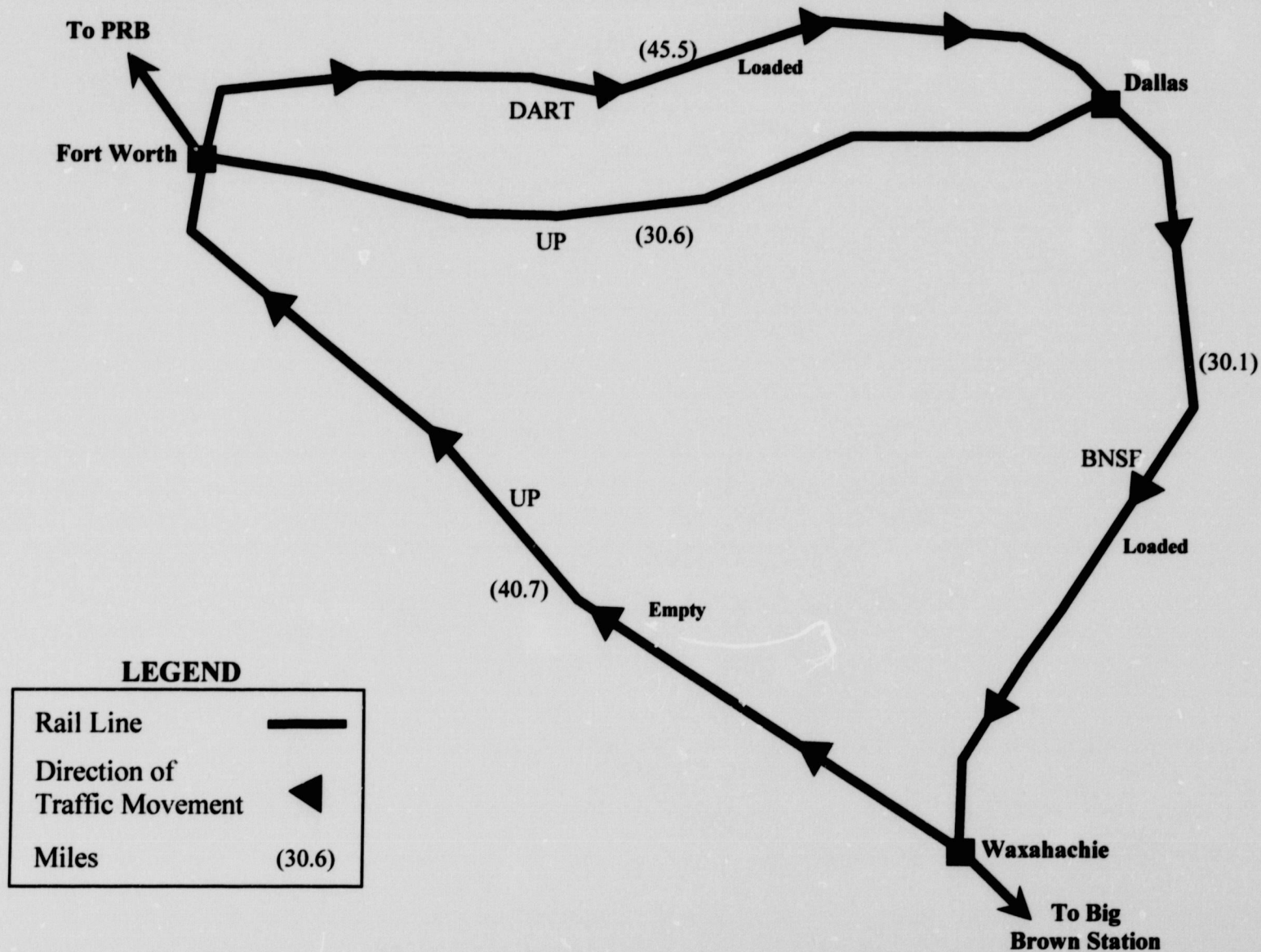
^{12/} STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation ("CSX/NS/Conrail").

Schematic of BNSF's Movement Between Fort Worth and Waxahachie Using Trackage Rights Over UP and Assuming UP's Bi-directional Operation



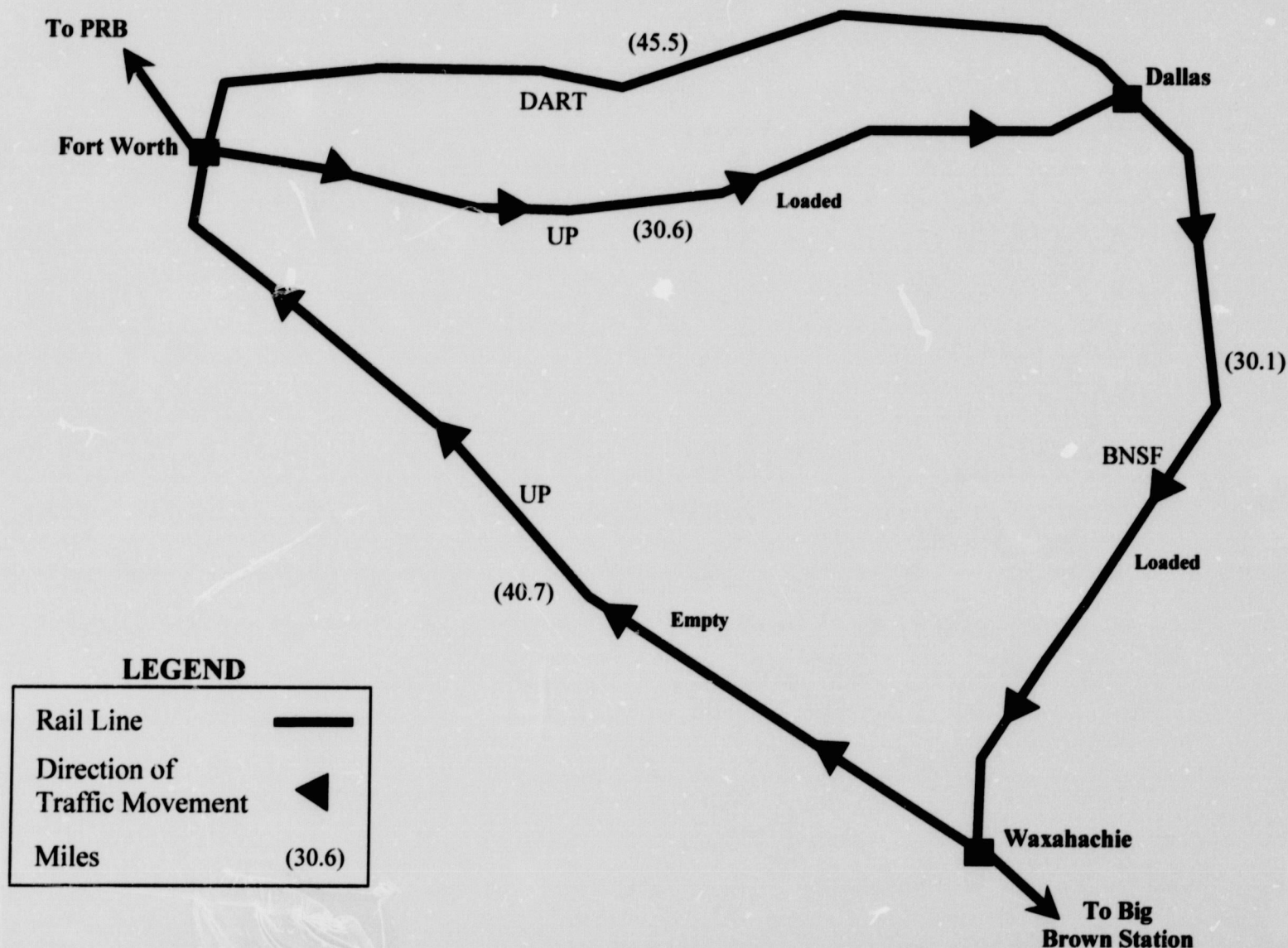
L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

Schematic of BNSF's Required Detour Over DART Assuming UP's Directional Running From Waxahachie to Fort Worth



L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

Schematic of BNSF's Potential Movement Using Requested Trackage Rights Over UP Between Fort Worth and Dallas



L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

THOMAS D. CROWLEY, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

Thomas D. Crowley

Sworn to and subscribed
before me this 15th day
of October, 1998.

Witness my hand and official seal.

June M. Smith
Expiration 12/31/1998

CERTIFICATE OF SERVICE

I hereby certify that this 16th day of October, 1998, I have caused a copy of the foregoing document to be served via first-class mail, postage-prepaid, upon all parties of record to this proceeding, and upon the following:

Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044

Admin. Law Judge Stephen Grossman
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, D.C. 20426



Andrew B. Kolesar III

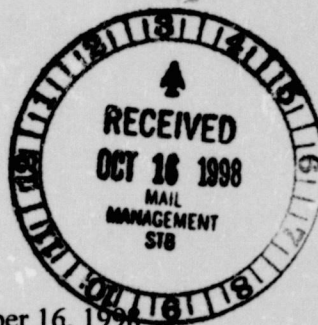
STB FD • 32760 (Sub 26) 10-16-98 • D 191635

191635

BRACEWELL & PATTERSON, L.L.P.
ATTORNEYS AT LAW

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ALBERT B. KRACHMAN
PARTNER



October 16, 1998

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73272 581 400

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

D

Via Hand Delivery

Re: Finance Docket 32760 (Sub-No. 26), *Union Pacific Corp., et al.--*
Control and Merger -- Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and twenty-five copies of Capital Metropolitan Transportation Authority's Rebuttal to Union Pacific's Opposition to Request for Limited Remedial Condition. Also enclosed is a 3.5 inch diskette that contains the text of this filing and the text of exhibits in WordPerfect 6.0 format. We are also submitting, in a separate envelope, duly designated, a Highly Confidential version of the pleading and attachments.

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

Very truly yours,

Bracewell & Patterson, L.L.P.

Albert B. Krachman

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Public Record

OCT 16 1998

ENTERED
Office of the Secretary

ENTERED
Office of the Secretary

OCT 16 1998

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Public Record

BRACEWELL & PATTERSON, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

The Honorable Vernon A. Williams

October 16, 1998

Page 2

bcc: Mr. Joe Ramirez
Ms. Sallie Crosby
Capital Metropolitan Transportation Authority

191635



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S
REBUTTAL IN SUPPORT OF
REQUEST FOR LIMITED CONDITION**

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Phone: (202) 828-5800

Counsel for the Capital Metropolitan
Transportation Authority

ENTERED
Office of the Secretary

OCT 16 1998

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Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Union Pacific Corporation, Union Pacific	§	
Railroad Company, and Missouri Pacific	§	
Railroad Company -- Control and Merger	§	
-- Southern Pacific Rail Corporation,	§	
Southern Pacific Transportation Company,	§	Finance Docket No. 32760
St. Louis Southwestern Railway Company,	§	(Sub-No. 26)
SPCSL Corp., and the Denver and Rio	§	
Grande Western Railroad Company	§	

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S
REBUTTAL IN SUPPORT OF
REQUEST FOR LIMITED REMEDIAL CONDITION**

Pursuant to the Surface Transportation Board's ("the Board") Decision No. 12, Capital Metropolitan Transportation Authority ("CMTA" or "Capital Metro") hereby submits this Rebuttal in Support of CMTA's Request for Limited Remedial Condition, CMTA-1, filed July 8, 1998 ("Request"). In that Request, Capital Metro asked the Board to grant the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company ("BNSF") an interchange with the Central of Tennessee Railway & Navigation Company, Incorporated d/b/a the Longhorn Railway Company ("Longhorn") at McNeil, Texas, and a 4.4 mile extension of BNSF's trackage rights from Round Rock to McNeil. As set forth in its Request and supporting documentation, the Limited Condition is necessary to save short line service in the Austin area, which is threatened by the market power UP obtained, and has abused, since the merger.

On September 18, 1998, UP filed its Opposition to Condition Applications, UP/SP-356, ("Opposition"), claiming, *inter alia*, that Capital Metro's Request is without justification. In its Opposition, UP asserts that: (i) the service difficulties at Elgin did not result from any exercise of market power; (ii) the service difficulties UP has experienced have been overcome; (iii) notwithstanding severe and obvious faults with the Elgin interchange, the service at Elgin is satisfactory and effective; (iv) an interchange between Longhorn and BNSF at McNeil would cause operating problems; and (v) CMTA and Longhorn are only requesting a McNeil interchange to further their own business objectives. (Opposition at 239-246).

As shown below, none of UP's arguments have merit, and Capital Metro has indeed satisfied its burden of demonstrating more than adequate justification for granting the Limited Condition. Specifically, Longhorn's service difficulties are in fact directly related to UP/SP's exercise of market power. The evidence is that UP has embarked on a course designed to bankrupt Longhorn, by simultaneously isolating Longhorn's shippers and offering below tariff rates to Longhorn's competitors. The evidence is also compelling that the condition necessary to create competition at the Elgin interchange has not been met, and that an interchange with BNSF at McNeil is not only feasible, but the only appropriate solution to the service reduction that resulted from the merger. Further, the evidence shows that the severe service problems have not been remedied -- the crisis is not over. Finally, through UP's failure to address in its Opposition Capital Metro's showing that the Limited

Condition is in the public interest and is warranted under the Terminal Facilities standards, UP concedes that finding. Unquestionably, preserving short line service in the Austin area is in the public interest.

For the reasons set forth below, and in Capital Metro's Request for Limited Remedial Condition, the Board should grant Longhorn and interchange with BNSF at McNeil, and should grant the requested 4.4 mile extension of BNSF's trackage rights from Round Rock to McNeil.

I. ARGUMENT

A. Longhorn's service problems and the need for the Limited Condition are related to UP/SP's exercise of market power.

Without foundation, UP asserts in its Opposition that "the service difficulties of which CMTA complains are not the product of any merger-caused increase in market power." UP's Opposition at 241. The undisputed facts are, however, that as a result of the market power gained by UP in the merger, and the resulting widespread service failures, BNSF could not run through trains through Elgin, a key assumption underlying the selection of Elgin as the interchange point. This changed and unanticipated circumstance destroyed Elgin as an adequate 2-1 replacement point. In turn, the failure of Elgin as a competitive substitute suffocated Longhorn, stifled its ability to remain economically viable and fulfill Capital Metro's common carrier obligation, and precipitated CMTA's filing the Request for Limited Condition. There has however been a further change of circumstance which relates directly

to the claims made by UP in its opposition. Most recently, using its market power, UP administered to a weakened Longhorn what UP must have hoped was a coup de grace. Specifically, as noted in the Verified Statement of Donald T. Cheatham, UP has recently offered Georgetown Railroad Company and Texas Crushed Stone transportation rates well below their tariff for shipments of aggregate to the Houston area. (Cheatham V.S. at 1) This move made Longhorn's captive aggregate shippers' products non-competitive in the booming Houston market, stifling the demand for Longhorn's cars. As noted by R.L. Banks & Associates:

And there was no demand for equipment because UP's pricing has made LHRR customers unable to compete. (see Cheatham V.S.) UP may as well have told us 'We had to destroy the village to save it. We had to kill off the business to adequately supply it.'

Is this paranoia? This week, the lead article in *Rail Business*, headlines 'Is UP Trying to Squeeze Small Shippers?' warns:

Smaller rail customers who ship only a few cars annually may want to keep a lookout: rumblings began in July that to eliminate some of its service headaches, UP was putting the squeeze on low volume shippers. . .

That was nearly four months ago. Now the pesky subject has surfaced again, according to at least one industry source. Apparently the refusal to renew contracts was not limited to a few cases, as UP officials maintained, but rather was an organized effort by UP sales and marketing officials to phase out marginal traffic.¹

¹*Rail Business*, Vol. 4 No. 40 October 12, 1998 *Is UP Trying to Squeeze Small Shippers?* The entire article is reproduced with permission of Fieldston Publications, Inc., as Attachment 2 to the R. L. Banks Statement.

Since Longhorn was already operating at a loss, these actions are likely to bankrupt the railway and end freight train service on the Giddings/Llano, leaving Capital Metro with an unfulfilled common carrier obligation. These devastating effects on Longhorn² are the direct by-product of a chain reaction triggered first by the merger, then by UP's abuse of market power. By bringing BNSF to McNeil, the Limited Condition will ameliorate some of the effects of this chain reaction, and give CMTA and Longhorn a fighting chance to preserve short line service in Austin and the surrounding area.³

²Donald Cheatham has testified:

UP's solution to Longhorn's complaints about insufficient car availability was not to timely furnish more cars, but to crush Longhorn's business altogether so Longhorn's needs would be reduced and later eliminated. Coincidentally, just as UP's filing before the STB became due, the situation UP created could be conveniently cited by UP as evidence that UP was meeting or exceeding Longhorn's needs. UP wanted to be able to report to the STB that Longhorn turned cars away. What UP left out from its filing however, was that it had inflicted a near fatal blow to Longhorn's business to make UP's own numbers look better in the STB filing. It is easy for UP to meet Longhorn's rail car needs if UP has crippled Longhorn's business and because of rate manifestations, there is no longer any demand.

(Cheatham V.S. at 2).

³Granting the Limited Condition would enforce, not reverse, the Board's prior rulings on this matter. As noted by R.L. Banks:

First, CMTA is not seeking a reversal of any decision made by the Board. It is seeking quite the opposite: 1) *enforcement* of the Board's order granting rights under § 8i of the BNSF agreement which were enunciated in Decision 44; and 2) remedies pertaining to harm inflicted by UP *subsequent* to the two decisions referred to and of a character to which this proceeding is intended to address.

(Banks V.S. at 2-3).

In its opposition, UP suggests, wrongly, that UP faces more competition for Longhorn's traffic, now than before the merger. In fact, UP's only putative competition, BNSF, takes no rock out of the Longhorn service area in any appreciable quantities, perhaps twenty (20) cars per month, and brings in only lumber and beer. (Cheatham V.S. at 2). Although one of the conditions for the merger was the availability of BNSF through trains at Elgin, BNSF has been unable to provide such trains due to the UP merger related congestion south of Austin. UP claims that through trains are not feasible for rock cars. While this is true for the loads of perhaps forty (40) rock cars, it is not true for the typically small number of cars carried on the Longhorn, averaging eight to 15 at a time. (Banks V.S. at 9).

BNSF would conduct more business with Longhorn absent the rail congestion south of Austin caused by UP traffic or if it were permitted to interchange with Longhorn at McNeil. UP is therefore in a position to exclude its only competitor from true competition and then to provide inadequate service to Longhorn, whose ability to provide timely, reliable and cost effective rail service to its shippers has been, and continues to be, eroded by UP's systemic organizational and operational failures.

The result of such market power abuse is that Longhorn is down to a current average of twelve cars per week interchanged with the UP. (Cheatham V.S. at 2). As stated by Mr. Cheatham:

UP's abusive strategy is transparent: On one hand, though its opposition of CMTA's application, UP is depriving Longhorn and its captive shippers of any competitive Class I Alternative at McNeil, and on the other hand, UP is simultaneously taking advantage of its ability to isolate and damage Longhorn's customers by offering special discounts to the Georgetown Railroad and Texas Crushed Stone, the combination having the predictable effect of bankrupting Longhorn. As a consequence, Longhorn is down to a current average of 12 cars per week from the UP. And, of course, Longhorn cannot survive on these meager number of cars. This is a patent abuse of market power.

UP is thus in complete control of Longhorn's fate, and has decided in favor of its failure. Without the Longhorn, UP will simplify operations in the Laredo/Austin corridor, and will gain maximum utilization out of existing facilities and equipment. It will be able to focus on large volume movements, replacing single car movements with blocks and blocks with unit trains. It is more convenient for UP to eliminate the Longhorn and end freight traffic on the Giddings/Llano, despite the harm that will cause to the Austin area.

B. Longhorn's service difficulties have not been overcome.

Incredibly, UP devotes two sentences to support its claim that the near catastrophic service difficulties that have plagued Longhorn's ability to serve its shippers, have now been overcome. According to UP, its claim is borne out by testimony that UP has been able to supply Capital Metro (sic) with all the equipment it needs, and has even had to take back unused equipment for which Longhorn did not have space. (Opposition at 241). At best, UP's argument is disingenuous. As stated by Longhorn:

More recently, in apparent retaliation for LHRR support of CMTA's application, it is my understanding that UP has recently offered Georgetown Railroad Company and Texas Crushed Stone transportation rates well below its current tariff for shipments of aggregate to the Houston area. As a result of this pricing decision, made with knowledge of Longhorn's precarious financial position and with knowledge of the effects of such tactics on the competitiveness of Longhorn's shippers, one of Longhorn's prime customers, Pioneer Concrete, returned empty rail cars to Longhorn, stating that it could not afford to ship aggregate on Longhorn's line at Longhorn's and UP's existing rates. This rate manipulation has cost Longhorn, since August, an additional _____, which was paid by COT from sources that were reserved to pay me personally. These cumulative losses will quickly lead to insolvency for Longhorn. (Cheatham V.S. at 1).

Thus, UP's claim that it is returning unused equipment is not evidence that service difficulties have been remedied, but only evidence of Longhorn's decrease in business since UP implemented these pricing tactics. R.L. Banks & Associates has commented that:

We had argued in July that the long-term consequences of UP's service failures to the Giddings-Llano line would include defection of shippers, inability to complete intended capital improvements, eventual abandonment of freight operations. We argued that these would occur even with the restoration of adequate service by UP unless compensatory relief is provided quickly. We are now witnessing an escalation of the downward spiral UP has put in motion; UP's response is to tell us that the emergency is over. Don't worry. Be happy. (Banks V.S. at 7).

Moreover, UP does not provide adequate service to Longhorn even in the few instances that they interact. UP has consistently and repeatedly failed to return Longhorn's forty (40) cars in one block or in a timely fashion. (Cheatham V.S. at 3). Worse yet, UP insists on running all traffic through Taylor and then interchanging at Hearne, which entails

an additional, unnecessary, week each way. As a consequence, a move to Houston and back which should ordinarily take two weeks now takes four. When interchanges do occur at Elgin, UP only provides cars carrying fertilizer. *Id.*

C. Service at Elgin does not create the intended level of competition.

UP contends that BNSF service at Elgin is more than adequate to satisfy the Board-ordered competitive service. (Opposition at 242). UP mischaracterizes the testimony of Mr. Cheatham when it claims that Longhorn has "acknowledged" the effectiveness of BNSF's interchange of traffic at Elgin. *Id.* UP's contention that Elgin can handle 25-40 car cuts is without basis. Without traversing on the main line, Elgin cannot handle any more than twelve (12) cars. (Cheatham V.S. at 4). It is only by utilizing the main line, and blocking the Giddings/Llano line and disrupting other operations towards Giddings, that Longhorn can interchange 25 to 40 cars at a time. But as the evidence presented has amply shown, this process is extremely awkward and disruptive.

The Opposition has also alleged that despite the current problems at Elgin, there is nothing to prevent Longhorn or BNSF from constructing new facilities. (Opposition at 243). This argument is without merit. First, this ignores the physical constraints at Elgin. The Elgin interchange is in the middle of the town adjacent to several buildings. The improvement costs would be excessive. Second, UP's position ignores that its own service

failures make investment at Elgin imprudent. As long as BNSF is prevented from running through trains by UP's congestion south of Austin, improvements would not be warranted. Third, all indications are that UP will continue to restrict the number of cars interchanged at Elgin through its complete failure to provide meaningful, reliable scheduling. For example, while recently trying to work out a schedule for BNSF, UP announced that it was going to provide Longhorn with windows for operations to facilitate a tie program. The schedule was expected to become effective approximately three weeks ago, and has been a complete failure. BNSF has repeatedly been forced to sit idle in a single located for up to 12 to 15 hours, wasting valuable crew and equipment time. (Cheatham V.S. at 2).

D. An interchange with the Burlington Northern/Santa Fe Railroad Company ("BNSF") at McNeil is not only feasible, but the only appropriate solution to the reduction in competition that resulted from the merger.

In its Opposition, UP claims that an interchange between Longhorn and BNSF at McNeil is not justified because it would cause "significant operating problems." (Opposition at 245). UP complains that the requested interchange would require BNSF to institute a new, second, local train service between Temple and McNeil using UP's Austin Subdivision, an already congested line on UP's system. Without factual support, UP simply concludes that there is insufficient capacity on this line for two local services.

The time constraints involved for a local train to transport rock cargo back and forth from Temple to McNeil are not difficult to overcome. (Cheatham V.S. at 4). With reasonable scheduling and advance notice, it would be a simple matter to impose an interchange schedule that would easily permit BNSF to interchange with Longhorn without interference with UP. *Id.* In addition, UP has ignored the possibility of Longhorn or UP providing a local service train to Kerr from McNeil in order to alleviate traffic.

UP also concludes, again without support, that the infrastructure at McNeil is inadequate to support interchange between Longhorn and two carriers. UP argues that the only feasible alternative is for Longhorn to construct new interchange trackage at McNeil. McNeil has an extensive siding with 2 switches. Switching at McNeil is tremendously easier than at Elgin due to the long sidetrack and the absence of businesses in the immediate adjacent area. *Id.* Any examination of the McNeil interchange would reveal that the sidetrack and switching facilities are more than sufficient to allow an interchange program with BNSF. *Id.* On this issue, R.L. Banks has stated:

UP makes the tiresome argument that a BNSF interchange at McNeil would be operationally infeasible. (Brief, p. 245) UP has never responded to the points raised over the past two and half years that:

- McNeil would not bear any incremental traffic as all Giddings-Llano traffic had been interchanged at McNeil already.
- CMTA and LHRR were not averse to discussing alternatives to relieve any real or imagined difficulties -

including having the interchange occur at Kerr with UP or LHRP providing local switching service.

- UP's claim, in its initial opposition to CMTA's requested conditions that directional running, purportedly since instituted, would alleviate congestion at McNeil.
- The total traffic to be interchanged with BNSF at McNeil would be at most 1/3rd of one percent of mainline traffic.
- The complexities of the McNeil interchange pale in comparison with those instituted elsewhere in effectuating the UP-SP merger, including those which the Board has simply ordered that the affected parties "work out" such as at Shreveport. (Banks V.S. at 8).

Even if McNeil were not currently adequate for such an interchange, assuming the STB grants the Application and allows Longhorn to survive, both Longhorn and BNSF are financially committed to provide enhancements which are reasonably necessary to allow for interchange with BNSF at McNeil. (Cheatham V.S. at 4).

E. The Condition Should be Granted Under the Terminal Facilities Standards at 49 U.S.C. § 11102.

In its Request, Capital Metro invoked the statutory standards of 49 U.S.C. § 11102 as an alternative basis of authority for the Board to grant the Limited Condition. As set forth more completely in that filing, the McNeil interchange area is a terminal facility within the meaning of the statute, the Limited Condition is in the public interest and would not cause substantial impairment of UP's operations. Because the requested interchange with BNSF

at McNeil is practicable, the Board has the authority, and should exercise such authority, to permit Longhorn to interchange with BNSF at McNeil and to grant Longhorn the 4.4 mile extension of trackage rights. Curiously, UP elected not to address Capital Metro's argument at all in its Opposition. The reasons for UP's silence can only be the subject of speculation. However, the *fact* that Capital Metro's argument was not opposed ought to be taken by the Board as a concession of the propriety of relying on the statute as a basis to grant the Limited Condition.

F. Capital Metro's Request for Limited Condition is Motivated Exclusively by Concerns Related to the Merger

Finally, UP baldly asserts that the Limited Condition is not justified because Capital Metro is pursuing the request solely for private business reasons. (Opposition at 244). To make such a claim requires UP and the Board to ignore completely the Capital Metro and Longhorn's records in these and prior proceedings.

UP claims first that Longhorn would like to eliminate its traffic between McNeil and Elgin and that it has not utilized the "long-out-of-service" station at Giddings because the route east of McNeil only holds twenty (20) per cent of Longhorn's business, so that it is unprofitable for Longhorn to continue its operations between McNeil and Giddings. (Handly V.S. at 54). In fact, Longhorn is reestablishing the station at Giddings and has placed 10,000

new crossties east of Elgin for that purpose.⁴ With supplies from CMTA, Longhorn has spent the majority of this year repairing the track to suitable, usable standards between Austin and Giddings. Longhorn, which is already operating at a loss, would not be spending money putting in ties where it did not intend to conduct business. Longhorn is planning to operate at Giddings in order to assist its shippers with better rates for that distance.

As to CMTA's purpose, CMTA desires to ensure the availability of freight rail service in the Austin area, since without the McNeil interchange, Longhorn will not survive. Shippers are now using alternative means of transportation to ship their cargo (*i.e.* trucks) due to the poor railway service on the Giddings/Llano line. If the Condition is not granted, Longhorn will likely fail, eliminating freight train service in the Austin area. The unavailability of rail service will increase traffic on the public highways, will damage the rock quarry industry west of Austin, and will have severe effects on CMTA's future operations and budgets, since CMTA may be burdened with a common carrier obligation it cannot fulfill.

⁴Longhorn reached Agreement with the Southern Pacific in June 1996 for an interchange at Giddings.

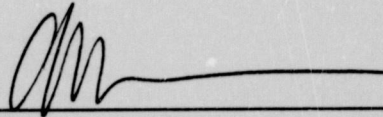
III. CONCLUSION

Granting this limited condition is essential to the public interest and to the survival of short line freight train service in the Austin area. Reduced to its essentials, the nominal 4.4 miles of trackage rights CMTA seeks is the only condition standing between competitive line-haul rail service, and a monopoly for the merged UP/SP serving a metropolitan area with a million inhabitants. If this monopoly is allowed to continue, freight traffic on the Giddings/Llano line will not be able to continue due to economic impracticability.

The circumstances have changed since CMTA filed its Responsive Application in 1996. UP experienced a service debacle which nearly bankrupted Longhorn, and then embarked on a pricing strategy designed to eliminate Longhorn's customer base. UP has abused its market power, and has done everything within its formidable powers to end short line service in the Austin Metropolitan Area. The requested Limited Condition is narrowly tailored to allow Longhorn's survival, while imposing no meaningful burden on UP.

For all these reasons, the Court should grant CMTA's Request for Limited Remedial Condition.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'AK', followed by a horizontal line.

Albert B. Krachman
Charles S. McNeish
Bracewell & Patterson, L.L.P.
2000 K Street, N.W.
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Counsel for Capital Metropolitan
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CERTIFICATE OF SERVICE

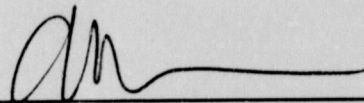
I certify that on this 16th day of October, 1998, a copy of the foregoing Rebuttal of Capital Metropolitan Transportation Authority was served by hand-delivery to:

Erika Z. Jones, Esq.
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and by First Class Mail the Parties of Record designated on the service list attached to Decision No. 15, as amended.



Joint Rebuttal Verified Statement
Of
Robert L. Banks and David J. Shuman

We are Robert L. Banks and David J. Shuman, both consultants at the firm of R.L. Banks & Associates, Inc., transportation economists and engineers, located at 1717 K Street, NW, Washington, DC. Our respective positions with the firm are Chief Executive and Managing Director. We testified twice earlier in this proceeding on behalf of Capital Metropolitan Transportation Authority of Austin, TX ("CMTA"); first in May of 1996 in Sub. No. 10¹ and, twenty-six months subsequently, in this *Houston/Gulf Coast Oversight* Subdocket.² We have now been asked by CMTA to respond to objections raised by Union Pacific Railroad (UP) in its Opposition filing of September 18, 1998.

Reduced to its essentials, UP's opposition argues that there is no problem, there never was a problem related to the merger, and the patchwork remedy at Elgin is sufficient. UP also claims operational difficulty with a BNSF interchange at McNeil. Rather than dare exhibit a scintilla of a moral or commercial consciousness, UP has chosen to trivialize CMTA's position,³ while taking a very cavalier attitude towards the facts.⁴

¹ Joint Rebuttal Verified Statement of Robert L. Banks and David J. Shuman, Rebuttal of CMTA, CMTA-11, May 14, 1996. STB Finance Docket 32760 (Sub. No. 10) [*Responsive Application, CMTA*]. This testimony was submitted in response to those portions of Merger Applicants' Rebuttal filing of April 29, 1996 addressed to CMTA's Responsive Application and request for conditions.

² Joint Verified Statement of Robert L. Banks and David J. Shuman; CMTA Request for Limited Conditions, July 8, 1998. STB Finance Docket 32760, (Sub No. 26) [*Houston/Gulf Coast Oversight*]. This statement was prepared pursuant to CMTA's request that we evaluate the consistency of its proposed modified conditions with the Board's economic and regulatory standards for approval.

³ This is the charitable view of the lack of effort made in UP's arguments,

UP opens its argument in opposition with clear and convincing evidence that it misses the point entirely. According to UP, "CMTA seeks a reversal of the Board's two decisions holding that there was no justification for a condition requiring that UP permit Longhorn to interchange with BNSF at McNeil instead of Elgin." (Brief, p. 239)

First, CMTA is not seeking a reversal of any decision made by the Board. It is seeking quite the opposite: 1) *enforcement* of the Board's order granting rights under §8i of the BNSF agreement which were enunciated in Decision 44; and 2) remedies pertaining to harm inflicted by UP *subsequent* to the two decisions referred to and of a character to which this proceeding is intended to address. Any fair reading of CMTA's July submission could not miss these points. Anyone not entombed in a biosphere these

which is most uncharacteristic of the normally well-oiled and well-regarded UP legal team. It has only led to deepen our frustration, especially given our hopefulness that attitudes would change after Chairman Morgan's admonishment in Ex Parte 575, which bears repeating:

Over the past several months, I have visited with many individual shippers and smaller railroads that are very concerned about their unresponsive, and even arrogant, dealings with the larger railroads and what that means for the future. The railroad industry cannot ignore this reality, and I would hope that the Class I's will address the very real concerns of the shipping public.

(Opening Statement Of Chairman Linda J. Morgan, STB Hearing On Rail Access And Competition Issues, April 2, 1998.)

* UP characterizes CMTA's reasoning requesting relief as follows: "CMTA points to ...two reasons: UP's service difficulties, especially Longhorn's difficulties in obtaining adequate empty equipment from UP, and (2) Longhorn's supposed difficulties interchanging with BNSF at Elgin." (Brief, p. 240)

past two years might have known that something must have occurred which prompted the Board to institute these oversight hearings.⁵ Except for UP.

Meanwhile, Longhorn is financially hemorrhaging. According to unaudited financial statements supplied by Longhorn, the railroad's 1998 net income through October 12 is a negative [REDACTED] on revenues of [REDACTED]. We have little sympathy when UP whines to the Board about having to cut dividends. When UP's annual losses become proportionately equivalent to those of Longhorn - or about \$2 billion per year - then we might reevaluate our level of concern.

Adequacy of Facilities at Elgin

As far as UP is concerned, the Board said no to McNeil in 1996 and that's all there is to it. Elgin is adequate, period. UP's brief states that any shortcomings at Elgin could be remedied as "the Board has expressly found that there was no obstacle to the construction by BNSF or Longhorn of "any new facilities." (Brief p. 243) This is precisely what UP argued two years ago - Longhorn and BNSF were free to build new facilities. Two years ago, that may have been a reasonable expectation. But not today, not last year, and without some radical change, not in the future.

UP does not, possibly because it cannot, respond to CMTA's contentions that its service failures have been the direct cause of the loss of financial viability of any investment in Elgin facilities.⁶ UP does not care to address the matter of changed

⁵ UP evidently needs once again to be reminded of the purposes of this proceeding: *"given the gravity of the service situation, [the Board] should thoroughly explore anew the legitimacy and viability of longer-term proposals for new conditions to the merger as they pertain to service and competition in that [Houston - Gulf Coast] region...to impose additional remedial conditions if those previously afforded prove insufficient..."*

⁶ *UP's argument in opposition utterly ignores its own responsibility for the debacle in the west. This is consistent with UP's willingness to be "embarrassed" by the slow rate of recovery, but prefers to lay responsibility*

circumstances - that there has indeed developed an obstacle to the upgrading of the Elgin interchange - and UP is that obstacle. But what if the financing for the facilities upgrade could be found? Would the most excellent interchange facilities in the world be worth a rusted tie plate if the trains couldn't get there? Could UP inform us when conditions will be so improved that BNSF can start running its service though Elgin, as promised in 1995?

UP's Arguments As to Lack of Nexus with the Merger Based On Extraordinary Historical Revisionism

UP makes much of the fact that CMTA's operator has not reestablished service to Giddings, as if the UP's undermining of Longhorn's finances now, somehow, is a justification to deny modification of conditions. Witness Handley's hyperbole in which he refers to the Giddings interchange as "long-out-of-service" (Handley, p. 54) may be excused because he surely has had other things on his mind in the few months he has been on assignment in Texas, but it is still unfortunate that he repeats deliberately misleading assertions of prior UP witnesses that were so carefully corrected earlier in this proceeding.

for the disaster on "inadequate infrastructure" or "a capacity problem" as though this "infrastructure" is somehow apart from and unrelated to the UP corporate entity. For example: *"I am acutely embarrassed, and our company is embarrassed, at the time it has taken to recover from our congestion crisis. We had absolutely nothing to gain from projecting a faster recovery than could be accomplished. Decades of prior experience told us that our projections were correct. But reality has been telling us something else. We have learned in the most painful possible way a lesson that is of critical importance in the present proceeding. That lesson is that the railroad industry faces a severe capacity problem."* Verified Statement of Richard K. Davidson, President UP, Ex Parte No. 575, *Review of Rail Access and Competition Issues*, March 12, 1998.

However, what is not excusable in our view is UP's allegation of hidden agendas behind CMTA and LHRR's submission, to wit: "It is apparent that the real motivation for CMTA's and Longhorn's renewed request for a McNeil interchange has nothing to do with the UP/SP merger, and everything to do with their own business objectives. Longhorn would like to escape having to maintain its line between McNeil and Elgin... and CMTA would like to remove Longhorn's freight traffic from the segment between McNeil and Elgin." (Brief, p. 244.)

This repeats UP's self-serving reading of Decision No. 69, which is so extensively cited. The Board addressed at length Longhorn's desire to interchange at Giddings, thirty more miles of line to maintain. Since then, Longhorn has placed 10,000 new crossties *east* of Elgin, despite the fact that virtually all of Longhorn's traffic originates or terminates *west* of McNeil, and purchased three locomotives for the express purpose of serving an *extended*, not contracted right-of-way.⁷ Is this rehabilitation and investment activity consistent with an intent to abandon the segment from McNeil to Elgin? Does Longhorn plan on trucking its traffic from McNeil to Elgin? Perhaps with rubber-tired GP-9s?

Longhorn had reached an agreement with SP to interchange traffic at Giddings in 1996, just prior to consummation of the merger. CMTA strenuously opposed the petition of Austin & Northwestern Railroad Company (AUNW), Longhorn's predecessor, to discontinue service between Smoot and Giddings (Docket No. AB-410). Yet UP smugly asserts that CMTA and Longhorn have some sort of secret agenda here, to allow it to abandon track in the *middle* of the Giddings-Llano line.

UP's arguments, without factual basis reveal that UP's own business objectives may include, *inter alia*, the elimination of Longhorn's prickly presence.

UP Argues That There No Longer Is A Service Deficiency

⁷ Telephone discussion with Donald T. Cheatham, *op cit*.

It is difficult to choose as to which claim of UP's is most galling. The Board is informed: *"The service difficulties have been overcome. In particular, UP has been able to supply CMTA with all the empty equipment it wants, and has on several occasions had to take back unused equipment for which Longhorn did not have space."* (Brief, p.241) In fact, LHRR, has, in recent weeks, received all the equipment it needed, and more, quite simply because there was no longer any demand for it. And there was no demand for equipment because UP's pricing has made LHRR customers unable to compete. (see Cheatham V.S.) UP may as well have told us *"We had to destroy the village to save it. We had to kill off the business to adequately supply it."*⁸

Is this paranoia? This week, the lead article in *Rail Business*, headlined "Is UP Trying to Squeeze Small Shippers?" warns:

Smaller rail customers who ship only a few rail cars annually may want to keep a lookout: rumblings began in July that to eliminate some of its service headaches, UP was putting the squeeze on low volume shippers...

*That was nearly four months ago. Now the pesky subject has surfaced again, according to at least one industry source. Apparently the refusal to renew contracts was not limited to a few cases, as UP officials maintained, but rather was an organized effort by UP sales and marketing officials to phase out marginal traffic."*⁹

Even were the service crisis as it afflicts LHRR truly over, UP never addresses the focus of the complaint: tremendous damage has been done, financial resources

⁸ LHRR traffic data amply confirms the fall-off in business that has coincided with the supposed end of service difficulties with UP. As indicated in Attachment 1, August 1998 carloadings (409) were down 24.7 percent from the previous August; September carloadings (324) were down 27.0 percent. LHRR's per-car losses have been escalating, from \$ [REDACTED] in July to \$ [REDACTED] in August to \$ [REDACTED] in September - generating an expense to revenue ratio in excess of 1.75.

⁹ *Rail Business*, Vol. 4 No. 40 October 12, 1998 *Is UP Trying to Squeeze Small Shippers?* The entire article is reproduced with permission of Fieldston Publications, Inc. as Attachment 2.

intended for the upgrading of the line have evaporated in keeping Giddings-Llano freight service afloat during UP's extended affliction. The punch to the gut was temporary; the damage done to internal organs permanent. The missed rent payment was temporary, the eviction permanent. How does UP intend to make CMTA and LHRR whole?

We had argued in July that the long-term consequences of UP's service failures to the Giddings-Llano line would include defection of shippers, inability to complete intended capital improvements, eventual abandonment of freight operations. We argued that these would occur even with the restoration of adequate service by UP unless compensatory relief is provided quickly. We are now witnessing an escalation of the downward spiral UP has put in motion; UP's response is to tell us that the emergency is over. Don't worry. Be happy.¹⁰

The Adequacy of the McNeil Interchange

UP makes the tiresome argument that a BNSF interchange at McNeil would be operationally infeasible. (Brief, p.245) UP has never responded to the points raised over the past two and half years that:

- McNeil would not bear any incremental traffic as all Giddings-Llano traffic had been interchanged at McNeil already.
- CMTA and LHRR were not averse to discussing alternatives to relieve any real or imagined difficulties - including having the interchange occur at Kerr with UP or LHRR providing local switching service.

¹⁰ As UP also asserts that CMTA's true interests are in closing down freight operations that would interfere with prospective passenger movements, it is curious that CMTA has not joined UP in opposing its own request for modified conditions.

- UP's claim, in its initial opposition to CMTA's requested conditions, that directional running, purportedly since instituted, would alleviate congestion at McNeil.
- The total traffic to be interchanged with BNSF at McNeil would be at most 1/3rd of one percent of mainline traffic.
- The complexities of the McNeil interchange pale in comparison with those instituted elsewhere in effectuating the UP-SP merger, including those which the Board has simply ordered that the affected parties "work out" - such as at Shreveport.

Given UP's responsibility in creating the necessity of improved interchange arrangements between LHRR and BNSF, the equitable solution is clear: UP should construct or finance the construction of any new facilities which are required to facilitate switching operations, and should feel free to add any sidings or tracks required to relieve UP of any unpalatable interference with its own operations.

Conclusion

There are no longer any illusions that UP values the traffic generated on the Giddings-Llano line. It should by now be crystal clear that CMTA is not seeking what is commonly termed "open" or "forced" competitive access. There are no longer illusions that BNSF and UP would challenge each other for the privilege of hauling Austin's traffic. UP's strategy is quite clear - to simplify operations, gain maximum utilization out of existing facilities and equipment, to play to its strengths - it must focus ever more on large-volume movements, replace single car moves with blocks and blocks with unit trains.¹¹ From UP's perspective, the eight to fifteen assorted cars a day formerly generated on the Giddings-Llano line (under normal circumstances, most efficiently handled in through train service, and not requiring the dedicated local service

¹¹ Mr. Cheatham reported, in the previously cited telephone discussion, the seemingly absurd demand by UP that Longhorn assemble 40-car blocks to obtain competitive rates and service.

necessitated by the coagulation of the UP network) are not worth saving. Period. This is not a question of injecting competition where none was before - this is a question of whether UP need bear any responsibility towards a rail line which has been placed on the verge of collapse solely because of UP's service failure.

It is now highly likely that without a UP-sponsored rescue, or perhaps ordered inclusion, otherwise viable freight operations on the Giddings-Llano line will indeed soon permanently cease.

Rail BUSINESS

Volume 4 No. 40

October 12, 1998

Is UP Trying To Squeeze Small Shippers?

Smaller rail customers who ship only a few rail cars annually may want to keep a lookout: rumblings began in July that to eliminate some of its service headaches, UP was putting the squeeze on low-volume shippers by refusing to renew contract rates on volumes less than 20 cars/year. At that time, UP officially said it was doing nothing of the sort.

That was nearly four months ago. Now the pesky subject has surfaced again, according to at least one industry source. Apparently, the refusal to renew contracts was not limited to a few cases, as UP officials maintained, but rather was an organized effort by UP sales and marketing officials to phase out marginal traffic.

"[UP officials] in fact had a meeting over a year ago, in September or October," claimed an industry source in the Southwest. "They literally got together and said, 'We're going to slough off on this business.' They thought that anything done at that time would go unnoticed and they'd be in a position to be selective."

In talks over the past month, the railroad's stance has remained the same, this source said. "Essentially, they said, 'We'll handle what we will handle and the heck with the rest.'"

The issue was also raised at the recent AAR shipper outreach meeting in Houston, where one shipper said the railroad was "operating in a sold-out mode" with the attitude, "Let's get rid of as many [small] shippers as we can."

UP spokesman John Bromley said he was unaware of any such meeting last fall. "I have no idea. We have meetings all the time," he said, stressing he wasn't being facetious. "We're always meeting with various grain and shipper groups."

But this apparently was a meeting of UP's sale and marketing arms. "It's basic business. It's no secret in the rail industry," Bromley said. "I don't think there's anything new going on here."

Bromley said UP has no official or unofficial policy to cut the rug out from smaller shippers.

However, Bromley conceded the railroad has encouraged smaller shippers, for "economy of scale" reasons, to extend the length of track at their private loading zones. "We encourage them to expand facilities so they can load on bigger trains," he said. "[But] we don't force them to do anything."

A Look Back

Whispers of the hubbub began last summer, when one Texas chemical shipper told RB her contract was eliminated. She'd been moving one rail car 41 miles at a contract rate of \$1,200. With her small customer contract eliminated in early July, she faced a \$3,000 bill under a railroad tariff to move the product the same distance.

"It's going to hurt the smaller shipper," she said at the time, adding that she may have to switch from leased cars to over-the-road. While UP has the legal authority not to renew the contract rate, the shipper thought it was a less-than-stellar public relations move — and to make things worse, she said, UP waited for the contract to expire before notifying her company of the change.

"I think it's an insult from a company that has already cost people a lot of money," she said, referring to UP's prior poor service. "It's like pouring salt on the wound." More problematic is the fact that in this case, the product — sulfuric acid — can only be transported in a tanker. That means truck options will be more limited as well as more costly.

"There are some cases where we might tell shippers a tariff rate may be more attractive to them than the contract rates," Bromley said at the time, and confirmed again last week. "But there is no systemic effort to eliminate small shippers."

Scrambled Signals?

But that may depend on who you talk to. "My [UP] rep called me...and told me this was a new policy," the chemical shipper insisted in July. "She said the contracts that weren't moving enough volume weren't worth the time and cost of administering them."

"That doesn't surprise me," said a Texas scrap metals shipper, though he had received no word from UP to date. "Their criteria, unofficially, has been [to ship] many more than 20 cars annually. What we've noticed since the merger is, more and more, [smaller shipments are] the kind of traffic they're trying to push into tariffs."

UP chemical tariff rates are calculated using a scale formula that factors the weight of a rail car and the distance the car travels, said another Texas chemical shipper. "It's [tariff] based on what you'd find in a truck rate, not a typical rail rate," he said.

Based on comments from UP officials and fellow shippers, "I get the impression from UP [that] they want to do away with rates like [BNSF] did: go to one flat rate whether you ship 50 cars or one car," said one lumber shipper.

But in July, Bromley insisted, contrary to comments made about both going to a flat-rate plan and eliminating contracts on small customers, "We have no systemwide plan to do what some of these people say that we're doing." When pressed more recently, Bromley said there has been no "announced policy" to eliminate smaller shippers.

The chemical shipper has since solved her transportation cost problem by finding a shortline that was not captive to UP, but she's not out of the woods yet. "I have two [UP] contracts coming up [for renewal] in four months that are closed," the shipper said.

VERIFICATION

DISTRICT OF COLUMBIA)
) ss:
CITY OF WASHINGTON)

Robert L. Banks, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Robert L. Banks
Robert L. Banks

Subscribed and sworn to
before me this 5th day
of October, 1998.

Elizabeth Maurer
Notary Public, DC

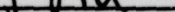
My commission expires:

June 1, 2009

VERIFICATION

DISTRICT OF COLUMBIA)
) ss:
CITY OF WASHINGTON)

David J. Shuman, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.


David J. Shuman

Subscribed and sworn to
before me this 15th day
of October, 1998.

Elizabeth Mauer
Notary Public, DC

My commission expires:

June 1, 2001

STATEMENT OF DONALD T. CHEATHAM

I. INTRODUCTION

My name is Donald Thomas Cheatham. I am Chairman, as well as operations General Manager of the Central of Tennessee Railway & Navigation Company Incorporated ("COT"), which is the certificated operator of a shortline railroad in Nashville, Tennessee, owned by the Cheatham County Rail Authority ("CCRA"), as well as, of a more regional railroad in Texas, the "Giddings-Llano Line," owned by the Austin, Texas Capital Metropolitan Transportation Authority ("CMTA"). ("COT" operates the Texas railroad under the legally assumed name of the Longhorn Railroad Company ("LHRR")). I am also General Counsel for that referenced railroad company.

I am providing this testimony in further support of Capital Metropolitan Transportation Authority's Request for Limited Conditions filed with the Surface Transportation Board on July 8, 1998. In my capacity as operator of the Giddings-Llano line, I have carefully reviewed the Opposition filing by UPSP dated September 18, 1998, including the testimony of witness Handley, who never spoke to me, or to my knowledge any employee of Longhorn Railroad before or after his furnishing testimony on the operation and motivations of Longhorn Railroad.

II. TESTIMONY

In Longhorn's last statement in support of the CMTA application, Longhorn pointed out that Longhorn was in financial difficulty as a result of UP's inability or unwillingness to provide adequate service on its own, while simultaneously restricting BNSF's ability to serve Giddings-Llano as intended via trackage rights. Longhorn stated that the Surface Transportation Board's intervention was essential to the survival of the company, as UP has evidenced no inclination to help find a solution outside the regulatory process. Since the filing of my affidavit on July 8, in my opinion, UP has abused its market power and taken oppressive and retaliatory action which ultimately can only have the effect of bankrupting Longhorn and impairing the competitiveness of Longhorn's aggregate shippers.

Historically, following the approval of the controlled transaction, UP experienced severe service difficulties, where it absorbed significant direct losses. After this, there was an alleged shortage of suitable equipment for the customers. This resulted in lost opportunities to LHRR of approximately [REDACTED] as well as the incursion of additional losses of approximately [REDACTED].

More recently, in apparent retaliation for LHRR support of CMTA's application, it is my understanding that UP has recently offered Georgetown Railroad Company and Texas Crushed Stone transportation rates well below their current tariff for shipments of aggregate to the Houston area. As a result of this pricing decision, made with knowledge of Longhorn's precarious financial position and with knowledge of the effects of such tactics on the competitiveness of Longhorn's shippers, one of Longhorn's prime customers, Pioneer Concrete, returned empty rail cars to Longhorn, stating that it could not afford to ship aggregate on Longhorn's line at Longhorn's and UP's existing rates.

This rate manipulation has cost Longhorn, since August, an additional [REDACTED] which was paid by COT from sources that were reserved to pay me personally. These cumulative losses will quickly lead to insolvency for Longhorn.

As a result of UP's pricing tactics, Longhorn has been forced to adjust its rates downward some 30 % on average in order to have any traffic at all. UP's rate adjuster for aggregates in Texas, Curt Johnson, related to me on October 12, 1998 that he had increased all of the aggregate rates in Texas across the board by 3%, this past July of 1998. He subsequently offered to one of our new customers a discount, furthering UP's predatory pricing scheme. He in fact stated that he did not want that discounted rate out in the market. In my opinion, these manipulations of the marketplace by UP are apparent violations of the antitrust laws, state and federal.

After Longhorn adjusted its rates to \$4 for every UP \$1, it is now experiencing some resurgence of business. Longhorn, however, was unable to function profitably at the old rates, and will certainly not survive with the new lower rates and decreased traffic. UP's assertion that decreased Longhorn traffic was solely due to market conditions is also refuted by Longhorn's resurgence of business after decreasing its prices. The market conditions were created by UP so that it could cut its own losses at the expense of the Texas shippers, whom it disfavors, for whatever reason. The fact remains that UP through its own department has demonstrated that it controls the market in Texas aggregates, as it controls the railroads, the equipment, and the rates. It also can, as in the instance of LHRR, quite easily exercise unfair market power over the smaller connecting carriers.

Given this background, it is completely disingenuous for UP to claim that Longhorn is returning rail cars because UP is furnishing more than Longhorn needs. The facts are that UP has been strangling Longhorn's business through pricing decisions which, whatever their intent, would also serve to eliminate any further inconvenience in having to serve Giddings-Llano shippers. UP's solution to Longhorn's complaints about insufficient car availability was not to timely furnish more cars, but to crush Longhorn's business altogether so Longhorn's needs would be reduced and later eliminated. Coincidentally, just as UP's filing before the STB became due, the situation UP created could be conveniently cited by UP as evidence that UP was meeting or exceeding Longhorn's needs. UP wanted to be able to report to the STB that Longhorn turned cars away. What UP left out from its filing however, was that it had inflicted a near fatal blow to Longhorn's business to make UP's own numbers look better in the STB filing. It is easy for UP to meet Longhorn's rail car needs if UP has crippled Longhorn's business and because of rate manifestations, there is no longer any demand. This is a reprehensible abuse of market power.

UP's abusive strategy is transparent: On one hand, though its opposition of CMTA's application, UP is depriving Longhorn and its captive shippers of any competitive Class I alternative at McNeil, and on the other hand, UP is simultaneously taking advantage of its ability to isolate and damage Longhorn's customers by offering special discounts to the Georgetown Railroad and Texas Crushed Stone * the combination having the predictable effect of bankrupting Longhorn. As a consequence, Longhorn is down to a current average of 12 cars per week from the UP. And, of course, Longhorn cannot survive on these meager number of cars. This is a patent abuse of market power.

UP's assertion that it faces more competition for Longhorn's traffic than before the merger is ludicrous. BNSF takes little, if any rock out of the Longhorn service area, in any appreciable quantities, perhaps 20 cars a month, at most. BNSF brings in lumber and beer. Most outbound traffic shipped through BNSF is from Chemical Lime in Marble Falls, Texas.

UP's added competition claim is rebutted by the facts that there has been a near total absence of marketing effort from UP, in contrast to BNSF. For example, when BNSF learned that it possibly had a right to interchange on this railroad, it sent down about 10 marketing representatives. After the Elgin designation was given, it sent down another 10 marketing representatives, and Longhorn has had two meetings with them in Ft. Worth. In contrast, in the two and one half years that Longhorn has been in operation, I have had two, or so, meetings with a UP rock representative, but none for lumber, beer or wastepaper.

Similarly, UP's claim that it has imposed no restrictions on the number of trains BNSF can operate is in error. Their restrictions have come in the form of a failure to provide any meaningful schedules. Recently, while trying to work out a schedule for BNSF to serve Elgin, UP announced that they were going to have to give Longhorn windows for operations due to a tie program. The schedule was supposed to go into effect about 3 weeks ago, however it was a failure. BNSF has repeatedly been forced to sit out awaiting UP dispatcher clearance, for as many as 12-15 hours, wasting crew time at tremendous expense. UP has not kept the schedule that it has provided, frustrating Longhorn in its attempts to comply in the program and schedule.

It is also false that service difficulties have been overcome. UP could rarely could get Longhorn our 40 cars back in one block, which were sent out that way by Longhorn, and could never could get them back to us in a timely manner. UP insists on taking everything through Taylor, and then interchanging it at Hearne, as if the SP still exists, which is costing a week of time both ways. So what was ordinarily a 2 week move to Houston and back, now takes three to four weeks. In addition, UP refuses to interchange anything other than fertilizer to Longhorn at Elgin, as they state, "...Everything must go through Taylor, anyway...."

UP now states that there will be no advantage at Giddings either, as UP alleges it will have to go back to Hearne, due to the configuration of the Giddings interchange, which totally belies its own previous filings with the STB in regard to itself, Longhorn and BNSF. UP, after exercising its market power, is now communicating to Longhorn that it is in its best interests to dissolve its operation, if Longhorn can not cut it.

UP's statement that LHRR wants to give up all traffic to Elgin for business purposes is also unfounded. Longhorn has spent the majority of this year fixing the track to suitable, usable standards between Austin and Giddings. Longhorn, which is already operating at an imponderably large loss, would not be spending money putting in ties where it did not intend to conduct business. Longhorn is planning to operate at Giddings in order to assist its shippers with better rates for that distance. Longhorn's share of the tariff out of Burnet and vicinity is greater than the UP's in the same direction to Houston through Giddings, assuming the carrier does not go back to Hearne, which is in any event still closer to Houston than Taylor.

Also without basis is UP's claim that Elgin can handle 25-40 car cuts. There is not enough room at Elgin to park anymore than 12 cars, without fouling the mainline to Giddings.

By forcing Longhorn to interchange with BNSF at Elgin UP is assuring that there will be difficulty for Longhorn to use effectively Giddings, as an interchange point with UP. Longhorn has a valid, verible interchange agreement with SP (assumed by UP in the controlled transaction) at Giddings. Now UP says that they can not give good rates for Longhorn's shippers through Giddings interchange with them.

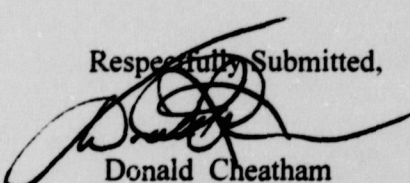
Importantly, the configuration at McNeil will not lead to operational difficulties if an interchange with BNSF is established. McNeil has an extensive siding with 2 switches. Switching at McNeil is tremendously easier than Elgin due to the long sidetrack and the absence of businesses in the immediate adjacent area. The time constraints involved for a local train to transport rock cargo back and forth from Temple to McNeil are not difficult to overcome. With reasonable scheduling and advance notice, it would be simple to impose an interchange schedule that would easily permit BNSF to interchange with Longhorn without interference with the UPSP. The infrastructure at McNeil is already adequate to support interchange between Longhorn and two carriers. Any examination of the McNeil interchange would reveal that the sidetrack and switching facilities are more than sufficient to allow an interchange program with BNSF. The McNeil interchange is more than adequate to handle a BNSF and UP shared switching arrangement. Longhorn will more easily be able to schedule moves in conjunction with BNSF traffic. Schedules have, however, become a thing of the past with the UP, and they obviously want everyone to eliminate schedules, as they are an anathema now to UP.

Both Longhorn, (if the STB grants the Application and allows Longhorn to survive) and Capitol Metro are committed financially to provide enhancements which are reasonably necessary to allow for interchange with BNSF that McNeil.

Finally, to reemphasize again, Longhorn, and short line service in the Austin area simply cannot survive without BNSF having trackage rights and an interchange at McNeil. Due to UP's actions, Longhorn has hemorrhaged financially. We ask only for 4.4 miles of trackage rights for BNSF, a ridiculously small extension from the current configuration or at least the opportunity to negotiate a more palatable solution if UP is unable to accept such a de minimus strain on their network.

Pursuant to 28 United States Code Section 1746, as well as, 49 Code of Federal Regulations. "I declare under penalty of Perjury under the Laws of the United States of America that the foregoing is true and correct."

Respectfully Submitted,



Donald Cheatham