

STB FD 32760 (Sub 26) 9-18-98 D 191189

Mac A. Fleming
President



William E. LaRue
Secretary-Treasurer

Brotherhood of Maintenance of Way Employees

Affiliated with the A.F.L.-C.I.O. and C.L.C.

September 18, 1998



VIA MESSENGER

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

Re: Union Pacific Corp., Union Pacific R.R., and Missouri Pacific R.R.—Control & Merger—Southern Pacific Rail Corp., Southern Pacific Trans. Co., St. Louis Southwestern Ry., SPCSL Corp., and the Denver & Rio Grande Western R.R. — FD No. 32760 (Sub-No. 26)

Dear Secretary Williams:

Enclosed for filing with the Board are the original and 25 copies of the Brotherhood of Maintenance of Way Employees' (BMWE) comments in response to the "Consensus Plan" presented by the Chemical Manufacturers Association, the Railroad Commission of Texas, the Texas Mexican Railway Company ("Tex-Mex"), the Society of the Plastics Industry, Inc., the Texas Chemical Council and the Kansas City Southern Railway Company ("KCS").

Please stamp the extra enclosed copy as received and return it to me with the messenger. Also, enclosed is a diskette containing BMWE's submission formatted in WordPerfect 7.

If you have any questions, please call me.

ENTERED
Office of the Secretary

SEP 18 1998

Part of
Public Record

Enclosures

cc: Mac A. Fleming
William A. Bon
All Parties of Record

Respectfully submitted,

Donald F. Griffin
Asst. General Counsel

William A. Bon, General Counsel
26555 Evergreen Rd., Suite 200
Southfield, MI 48076-4225
Telephone (248) 948-1010
FAX (248) 948-7150

Donald F. Griffin, Assistant General Counsel
10 G Street, N.E., Suite 460
Washington, D.C. 20002-4213
Telephone (202) 638-2135
FAX (202) 737-3085

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT

COMMENTS OF THE BROTHERHOOD OF
MAINTENANCE OF WAY EMPLOYEES

Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance
of Way Employes
10 G Street, N.E., Suite 460
Washington, DC 20002
(202) 638-2135

William A. Bon
General Counsel
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Rd., Suite 200
Southfield, MI 48076
(248) 948-1010

Dated: September 18, 1998



COMMENTS OF THE BROTHERHOOD OF
MAINTENANCE OF WAY EMPLOYEES

The Brotherhood of Maintenance of Way Employes ("BMWE") presents the following brief comments in response to the "Consensus Plan" presented by the Chemical Manufacturers Association, the Railroad Commission of Texas, the Texas Mexican Railway Company ("Tex-Mex"), the Society of the Plastics Industry, Inc., the Texas Chemical Council and the Kansas City Southern Railway Company ("KCS").¹ BMWE neither opposes nor supports the Consensus Plan or any of the other requests submitted in this proceeding. BMWE's primary concern is that no harm befall maintenance of way forces currently working in the Houston/Gulf Coast region.

The Board began this proceeding pursuant to its 5 year oversight condition imposed in Decision No. 44, served August 12, 1996, in the main proceeding. According to the Board, "the service emergency in the Houston/Gulf Coast region remains ongoing is well known. Given these circumstances, the Board will invoke its oversight jurisdiction over the UP/SP merger to consider new conditions to the merger . . ." Decision No. 1 (corrected), served May 19, 1998 at 5. The Board admonished any

¹The other requests submitted by interested parties, with the exception of the Houston and Gulf Coast Railroad ("H&GC"), do not involve transactions with an apparent impact upon maintenance of way forces.

party seeking divestiture of rail lines from UP to frame its request to the same standards of an "inconsistent application" that would be presented in a merger proceeding. Id. at 6. The Consensus Plan is the only request that seeks divestiture of some of UP's rail lines in the Houston/Gulf Coast region.² However, the Plan omits any mention of its potential impact on maintenance of way forces working in the Houston/Gulf Coast region even though the operational changes proposed in the Plan undoubtedly will impact maintenance of way employees.

On January 1, 1998, maintenance of way forces of the former Southern Pacific ("SP") and Union Pacific ("UP") were consolidated in the Houston/Gulf Coast region. That major, voluntary undertaking caused disruption to employees as seniority districts were consolidated, and former SP employees were required to work under and become familiar with the Missouri Pacific-BMWE collective bargaining agreement.

BMWE had opposed the UP/SP merger because of our concern that the merger would adversely impact employees of both carriers. Recently, the UP admitted to the layoff of 600 maintenance of way employees, about 6% of its maintenance of way

²As the Board noted in its Decision No. 6, served August 4, 1998, the H&GC application contains "no evidence in support" of the requested conditions. BMWE will not comment on that facially meritless application. Accordingly, BMWE is limiting its response to the Consensus Plan, the one request that has an apparent immediate affect on maintenance of way forces in the Houston/Gulf Coast area.

workforce, in order to cut costs in order to show a small profit for the third quarter of this year. "In Cost Cutting Move, UP Plans to Lay Off 600", Journal of Commerce, September 10, 1998. The Consensus Plan seeks to stir the pot again in the Houston/Gulf Coast area. Should the Board find that some or all of the Consensus Plan is in the public interest, BMWWE submits the Board also must ensure that the interests of maintenance of way forces affected by the Plan are fully protected under the New York Dock conditions.³

The Consensus Plan proposes two line transfers: 1) a forced sale of UP's out of service line between Rosenberg and Victoria, Texas to the Tex-Mex; (Item 6) and 2) a forced swap of the UP's Beaumont Subdivision in exchange for a Tex-Mex/KCS constructed parallel line to UP's existing line in the Lafayette Subdivision between Dawes and Langham Road, Beaumont, Texas (Item 8).⁴ Additionally, the Consensus Plan seeks a grant of trackage rights to the Port Terminal Railroad Association ("PTRA") throughout the limits of the old Houston Belt Terminal Railroad ("HBT") (Item 2). Finally, the Plan seeks forced trackage rights over the UP's Galveston Subdivision for the PTRA (Item 3). There is not one

³The protective conditions contained in New York Dock Ry.-Control-Brooklyn Eastern Dist. Term., 360 I.C.C. 60, aff'd sub nom., New York Dock Ry. v. U.S., 609 F.2d 83 (2d Cir. 1979).

⁴The Plan also seeks the forced transfer of UP's Booth Yard in the Houston Terminal to Tex-Mex (Item 7).

mention in all of these requests of their possible impact on maintenance of way forces currently working in those areas.

The forced swap of the UP's Beaumont Subdivision to the Tex-Mex/KCS would affect the 30-40 maintenance of way employees currently working on that line. Declaration of Roger D. Sanchez at ¶4.⁵ Nothing in the Consensus Plan discusses what will happen to those employees when their jobs are cut off following the transfer of the line.

Additionally, while the Consensus Plan blandly states that the UP's out of service line between Rosenberg and Victoria will be restored to Federal Railroad Administration Class 4 track standards by the Tex-Mex, the Plan is silent as how this upgrade will be done. Presently, the Tex-Mex operates with a depleted maintenance of way force that is inadequate to perform maintenance and construction on the existing Tex-Mex lines without significant amounts of subcontracting. Sanchez Decl. at ¶5. The reduction of Tex-Mex's unionized maintenance of way forces has occurred since December 1996. Then, Tex-Mex employed about 40 people in its maintenance of way operations. Id. at ¶6. In August 1998, that number had been reduced to 20. Id. Tex-Mex has not hired anyone in the maintenance of way department since 1996. If Tex-Mex is trying to attrite its unionized maintenance

⁵The Declaration of Roger D. Sanchez is attached at Exhibit 1.

of way workforce, it is violating its legal obligations under the Railway Labor Act, 45 U.S.C. §151, et seq.. If Tex-Mex has reduced its forces because it cannot afford a 40 man force for existing lines, it would make Tex-Mex's claims about rehabilitation of the Rosenberg to Victoria line less than credible. In either event, the Board cannot approve this item of the Plan without additional information from Tex-Mex.

The proposed forced grant of trackage rights to the PTRA also is problematic. The HBT is gone. In late 1997, the HBT's maintenance of way forces were apportioned between the UP and The Burlington Northern Santa Fe Railway Company ("BNSF"). Declaration of Bill R. Palmer at ¶3.⁶ Of the 30 HBT maintenance of way employees, eight (8) transferred to BNSF, the remainder transferred to the UP and now hold seniority rights within the consolidated Palestine Division. Id. The PTRA employs about 30-35 maintenance of way employees. Id. Again, the Consensus Plan is silent as to the impact the grant of trackage rights to the PTRA will have on these employees.

Any inconsistent application must contain a labor impact statement. 49 C.F.R. §1180.6. The Consensus Plan does not contain a statement of the possible impacts upon maintenance of way employees affected by the various items in the Plan. While the Labor Impact Statement incorporated in the Plan contends "the

⁶The Declaration of Bill R. Palmer is attached as Exhibit 2.

Consensus Parties anticipate no adverse effect on applicant carriers' employee" and therefore the issue of protective agreements is moot" (Consensus Plan at 100), the Plan is too glib.

The Consensus Parties do not even mention possible adverse impacts on UP, Tex-Mex or PTRS employees. Instead, the Plan suggests that "to the extent that the requested conditions result in an adverse impact on employees of UP, UP would be required to provide, with respect to those employees, the applicable labor protection already imposed by the Board as part of the main UP/SP proceeding." Consensus Plan at 100-01. That "solution" does not protect the interest of the employees. The Board initiated this proceeding because it believes "the service emergency in the Houston/Gulf Coast region remains ongoing." Decision No. 1 (corrected) at 5. The Consensus Parties presented their plan in an effort to resolve this perceived service problem. Those Parties and this Board must ensure that if the Plan is adopted in whole or in part, the maintenance of way employees working in the region are protected. Simply dumping any protective obligations upon the UP is not a solution. The Board should expressly state that the New York Dock conditions are applicable to all maintenance of way employees affected by the Plan. The Board should also include a provision that any protective obligations created by the Plan are guaranteed by the applicants, even if the

Certificate of Service

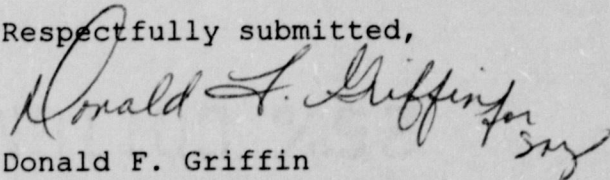
I hereby certify that today I served a copy of the foregoing
Comments by first class mail upon all parties of record.

Donald F. Griffin for Emp
Donald F. Griffin

Dated: September 18, 1998

employees make their claims to a carrier that is not one of the Consensus Parties. Placing the protective burden on the applicants will help ensure that the Plan is implemented in a manner that causes the least harm to employees because the applicants will have a substantial financial stake in ensuring that result. BMW respectfully submits this result would provide a fair and equitable arrangement to protect the interest of all maintenance of way employees in the Houston/Gulf Coast region.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Donald F. Griffin".

Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance of
Way Employees
10 G Street, N.E., Suite 460
Washington, DC 20002
(202) 638-2135

Dated: September 18, 1998

Exhibit 1

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT

DECLARATION OF ROGER D. SANCHEZ

1. I hold the elected position of General Chairman of the Southern Pacific Atlantic Federation ("Federation"), Brotherhood of Maintenance of Way Employees ("BMWE"). Prior to the merger of the Union Pacific and Southern Pacific, the Federation represented, for collective bargaining purposes, maintenance of way employees employed by the Southern Pacific "Eastern Lines" (east of El Paso, Texas), the St. Louis Southwestern Railway ("Cotton Belt"), and the Oklahoma, Kansas, Texas Railroad. Today, the Federation is one of a number of subordinate BMWE organizations representing maintenance of way employees on the merged

Union Pacific system. Also, the Federation represents maintenance of way employees working for the Texas Mexican Railway ("Tex-Mex").

2. I have reviewed the various filings in this proceeding and have given special attention to the so-called "Consensus Plan" submitted by the Chemical Manufacturers Association, the Railroad Commission of Texas, Tex-Mex, The Society of the Plastics Industry, Inc., the Texas Chemical Council, and the Kansas City Southern Railway Company ("KCS").
3. Item 8 of the Consensus Plan proposes an exchange of UP's Beaumont Subdivision to KCS/Tex-Mex when those two carriers complete construction of a parallel line built alongside UP's existing Lafayette Subdivision. This proposal could harm employees holding seniority rights on both subdivisions.
4. The transfer of the Beaumont Subdivision to KCS/Tex-Mex would have an immediate impact on the 30 to 40 maintenance of way employees currently working on the line. Their UP jobs would be abolished and nowhere in the Consensus Plan is there any discussion of the fate of these employees. For example, does KCS/Tex-Mex contemplate that they will be subject to a New York Dock implementing agreement permitting

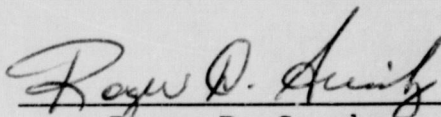
them to follow their work? Or, do KCS/Tex-Mex consider any adverse impact upon these employees to be UP's concern only? The Board should not consider the Consensus Plan until the applicants detail how these employee concerns will be resolved.

5. Item 6 of the Consensus Plan proposes that UP be forced to sell its out of service line between Rosenberg and Victoria to Tex-Mex. While the Plan proposes an upgrade to this line to FRA Class 4 track standards, the Plan is silent as to how this upgrade will be done. Presently, the Tex-Mex operates a depleted maintenance of way force that is inadequate to perform maintenance and construction on existing Tex-Mex lines without significant amounts of subcontracting.
6. In December 1996, Tex-Mex employed about 40 people in its maintenance of way department. In August of this year, that number was down to 20, with an additional 20-25 subcontractors being used to augment the maintenance of way forces. While Tex-Mex's manpower needs have not dropped since 1996, its unionized maintenance of way force has been reduced by half. Indeed, Tex-Mex has not hired anyone into the department since 1996. In my opinion, Tex-Mex is trying to attrite its own maintenance of way forces to zero and

subcontract all maintenance of way work.

7. The Federation continues to submit claims under the existing collective bargaining agreement in order to remedy Tex-Mex's continuing violations of the agreement it made with the BMWWE regarding subcontracting. Tex-Mex's liability under these claims, if sustained, now amounts to at least \$500,000. The Consensus Plan does not discuss these issues which directly involve Tex-Mex's financial condition and its ability to safely maintain and operate the lines of railroad it seeks to obtain.
8. I cannot comment further on the Consensus Plan because of its silence on employee impacts generally. I believe the Board should require the parties supporting the Plan to detail what impact this Plan will have on employees, especially those in the maintenance of way department.

I, Roger D. Sanchez, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this declaration. Executed on September 16, 1998.



Roger D. Sanchez

Exhibit 2

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT

DECLARATION OF BILL R. PALMER

1. I hold the elected position of General Chairman of the Missouri Pacific System Federation ("Federation") of the Brotherhood of Maintenance of Way Employees ("BMWE"). The Federation represented maintenance of way employees working for the former Missouri Pacific Railroad prior to the Union Pacific/Southern Pacific merger. Now, the Federation is one of a number of subordinate BMWE organizations representing maintenance of way employees on the merged Union Pacific Railroad Company ("UPRR") system. The Federation also represents maintenance of way employees working for the

Kansas City Southern Railway Company and The Port Terminal Railroad Association ("PTRA").

2. I have had the opportunity to review the various applications filed in this proceeding, and have given special attention to the "Consensus Plan" submitted by The Chemical Manufacturers Association, the Railroad Commission of Texas, the Texas Mexican Railway Company, The Society of the Plastics Industry, Inc., the Texas Chemical Council and the Kansas City Southern Railway Company. I must note that the Consensus Plan is silent as to its impact on maintenance of way employees in the Houston/Gulf Coast area.
3. In order to remedy the shortcomings in information presented in the Consensus Plan, the Board should be aware that PTRA presently employs about 30-35 maintenance of way employees. Also, in 1997, the UPRR and the Burlington Northern Santa Fe Railway Company ("BNSF") dissolved the separate maintenance of way operations of the Houston Belt & Terminal Railway Company ("HBT"). The HBT formerly employed about 30 maintenance of way employees: 8 of those employees transferred to BNSF, the remainder transferred to the UPRR and hold seniority in the consolidated Palestine Division.

4. The interests of these employees deserve to be respected. Accordingly, the Board should not consider the Consensus Plan until the applicants account for the Plan's impact on maintenance of way employees. At a minimum, these employees should be protected by the New York Dock conditions.

I, Bill R. Palmer, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this declaration. Executed on September 17, 1998.



Bill R. Palmer

STB FD 32760 (Sub 26) 9-18-98 D 191228

September 17, 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

191228

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

191229

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

191230

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

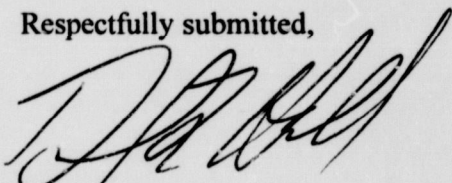
191231

Dear Secretary Williams:

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

Copies of these Joint Comments are also concurrently served on all other parties of record.

Respectfully submitted,


David L. Hall

ENTERED
Office of the Secretary

SEP 21 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 COMMENTS OF
SHELL OIL COMPANY AND SHELL CHEMICAL COMPANY

Due Date: September 18, 1998

**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
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

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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 COMMENTS OF

SHELL OIL COMPANY AND SHELL CHEMICAL COMPANY

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 joint comments regarding the requests for new 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 - SHELL INTEREST

Shell owns and operates a petrochemical plant at Deer Park, Texas which generates approximately 12,500 annual rail carloads, inbound and outbound. In addition, Shell ships to and receives from other Houston/Gulf Coast region facilities approximately 8,000 annual rail carloads. Because of the global nature of our business, Shell operations worldwide have been significantly impacted by the UP service meltdown in the western United States and particularly in the Houston/Gulf Coast region. The inability of the UP to provide timely and efficient rail service has delayed deliveries to customers. Shell plants have also experienced delays in the inbound shipment of raw materials. This has resulted in disrupted production processes and, in one case, a Shell plant shutdown.

It is our belief that these degraded service levels are a direct consequence of the diminution of rail competition in the Houston/Gulf Coast region. It is in Shell's interest, and indeed in the interest of the U.S. economy, to restore rail competition to this vitally important industrial region. By instituting this proceeding the Board has positioned itself to implement policies which will facilitate the restoration of Houston/Gulf Coast region rail competition. With this thought in mind we would like to offer our comments concerning the requests for new conditions that have been filed and accepted by the Board proposing permanent rail realignment of the existing UP/SP network in the Houston/Gulf Coast region.

II - INTRODUCTION

The Shell Companies filed a Joint Request for New Remedial Conditions in this proceeding on July 8, 1998. That filing supported the objectives and operational strategies of the Consensus Plan, filed on the same date. 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.

These Joint Comments also reiterate our support for the objectives of the Consensus Plan. In addition we have analyzed the plans submitted by The Burlington Northern & Santa Fe Railway Company (BNSF), E. I. DuPont de Nemours and Co., Dow Chemical Co., Formosa Plastics Corp., Central Lighting & Power Co., Greater Houston Partnership, Capital Metropolitan Transportation Authority and Houston & Gulf Coast Railroad.

These Joint Comments provide the Shell Companies position and recommendations regarding the Consensus Plans and certain elements of the BNSF plan. Shell reserves comment on the balance.

Support for the Shell recommendations which follow is found in the Verified Statement of David L. Hall, attached hereto.

III - SHELL RECOMMENDATIONS REGARDING REQUIREMENTS FOR NEW CONDITIONS

CONSENSUS PLAN

Shell recommends adoption and implementation, with modifications as noted below, of the Consensus Plan proposed by representatives of the Chemical Manufacturers Association (CMA), Society of Plastics Industries (SPI), Texas Chemical Council (TCC), Texas Railroad Commission (TRC), Texas Mexican Railway Company (Tex Mex), and the Kansas City Southern Railway Company (KCS). The STB should:

- Permanently adopt the following provisions of Emergency Service Order No. 1518 dated October 31, 1997, as extended by Supplement 1 issued December 4, 1997 and Supplement 2 issued February 25, 1998, collectively referred to as ESO 1518 herein;
 - ◇ Issue permanent authority to the Tex Mex to receive and transport any traffic to or from shippers served by The Port Terminal Railway Company (PTRA) or the former Houston Belt & Terminal Railway Company (HBT), as granted temporarily under ESO 1518. This would remove the requirement imposed in Decision No. 44 of the UP/SP merger which denied Tex Mex access to such traffic unless it had prior or subsequent movement on the Tex Mex between Corpus Christi and Laredo.
 - ◇ Establish permanent Tex Mex trackage rights over the UP between Placedo and Algoa, Texas and over the BNSF between Algoa and

TN&O Junction with a trackage rights fee equivalent to that established for BNSF over UP track in UP/SP Merger Decision No. 44.

- Restore neutral switching lost in Houston with the dissolution of HBT by UP and BNSF and open the Houston/Gulf Coast region to competition. With PTRAs as the neutral switch carrier, the neutral switching area should include;
 - ◊ All industries and trackage served by the former HBT.
 - ◊ All industries and trackage served by the PTRAs.
 - ◊ All shippers located on the former SP Galveston Subdivision between Harrisburg Junction and Galveston.
 - ◊ Galveston over both the UP and former SP routes between Houston and Galveston, and including all industries located along these lines.
- Grant PTRAs access to the former SP and UP yards at Strang and Galveston to facilitate service to local industries, as well as the switching and classification of rail cars for those railroads which interchange with PTRAs.
- Require neutral dispatching, located, managed and administered by the PTRAs within the neutral switching area.
- Grant all railroads serving Houston terminal trackage rights over all tracks within the neutral switching area to enable PTRAs to route trains in the most efficient manner.
- Require UP and BNSF to restore the Port of Houston Authority as a full voting member of the PTRAs Board and add the Tex Mex to the PTRAs Board.

- Facilitate the sale by UP to Tex Mex of the former SP line between Milepost 0.0 at Rosenberg and Milepost 87.8 at Victoria, Texas. While the Consensus Plan advocates requiring UP to sell this track, Shell would prefer the parties agree to the transfer of this asset at a mutually acceptable price. If no such agreement can be reached the matter should be submitted to arbitration.
- Require reconstruction of the Rosenberg to Victoria line by Tex Mex and grant UP and BNSF trackage rights over that line when complete.
- Grant Tex Mex trackage rights over the UP line between Milepost 87.8 and the UP Port Lavaca Branch at Victoria with a trackage rights fee equivalent to that established for BNSF over UP track in UP/SP Merger Decision No. 44.
- Require Tex Mex to relinquish current trackage rights on the UP Glidden Subdivision between Tower 17, Rosenberg and Flatonia upon commencement of Tex Mex operations over the Rosenberg-Victoria line as set forth above.
- Facilitate the sale by UP to Tex Mex of Booth Yard in Houston. While the Consensus Plan advocates requiring UP to sell this Yard, Shell would prefer the parties agree to the transfer of this asset at a mutually acceptable price, under mutually acceptable conditions. If no such agreement can be reached the matter should be submitted to arbitration.
- Facilitate Tex Mex/KCS construction of a new rail line along the right of way adjacent to the UP Lafayette Subdivision between Dawes and Langham Road in Beaumont and the subsequent exchange of this line for the UP Beaumont Subdivision between Settegast Junction, Houston and Langham Road,

Beaumont, with BNSF and UP trackage rights over Settegast Junction to Langham Road and Tex Mex trackage rights between Dawes and Langham Road. While the Consensus Plan advocates requiring UP to participate in this transaction, Shell would prefer the parties agree to the transaction under mutually acceptable conditions. If no such agreement can be reached the matter should be submitted to arbitration.

BNSF PLAN

Shell recommends adoption and implementation, with modifications as noted below, of the BNSF plan. The STB should:

- Grant BNSF overhead trackage rights over any UP line(s) necessary to eliminate a disadvantage imposed by UP dictation of directional operations on lines where BNSF has existing trackage rights. For example;
 - ◇ Grant permanent bi-directional trackage rights on Caldwell-Flatonia-San Antonio Line.
 - ◇ Grant permanent bi-directional trackage rights on Caldwell-Flatonia-Placedo Line.
- Establish neutral switching supervision of the Baytown/Cedar Bayou Branch.
- Establish neutral switching supervision of the Sabine/Chaison Branch.
- As part of a Houston Terminal area neutral switching district, assign PTRAs operation on the UP Clinton Branch in Houston (Houston Elevator).

IV - CONCLUSIONS

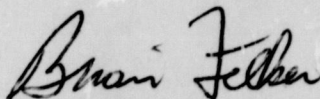
Shell supports the railroad realignment proposal for Houston and the Gulf Coast Area that has been submitted by the Consensus Group. Shell has always advocated the need for rail competition to provide a level of service that meets the shipping public's need, consistent with a reasonable level of rates that adequately compensates the railroads performing the service. We feel there is a definite need for the Tex Mex to have access to Houston Terminal shippers. And by access, we mean equal access and not being treated like a "step child". To insure everyone has an equal opportunity, the Board needs to assign the PTRR to perform neutral switching and dispatching in the Houston Terminal. However, we do not advocate the seizure of property to accommodate this railroad realignment.

Shell also supports the BNSF's general principle of being granted directional trackage rights when and where the UP unilaterally imposes "directional operations". The BNSF must be permitted to "go with the flow" and opposed to "swimming upstream".

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.

Respectfully submitted,

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

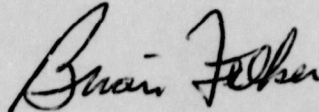
A handwritten signature in dark ink, appearing to read "Brian Felker". The signature is fluid and cursive, with the first name "Brian" and last name "Felker" clearly distinguishable.

Brian P. Felker
One Shell Plaza
Houston, Texas 77252

Dated: September 17, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 1998, copies of the Joint Comments 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 hereto.

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 Comments are in response to the requests for new conditions filed by certain parties of record¹ on July 8, 1998 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 requests for new conditions filed by The Consensus Group (The Chemical Manufacturers Assoc., The Railroad Commission of Texas, The Texas Mexican Railway Company, The Society of the Plastics Industry, Inc., The Texas Chemical Council, and The Kansas City Southern Railway Company), The Burlington Northern & Santa Fe Railway Company, E. I. DuPont de Nemours and Co., Dow Chemical Co., Formosa Plastics Corp., Central Lighting & Power Co., Greater Houston Partnership, Capital Metropolitan Transportation Authority and Houston & Gulf Coast Railroad.

III - SCOPE OF JOINT SHELL COMMENTS

The comments of the Shell Companies address 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.

The Board assigned Sub Numbers in the instant Docket to the requests for new conditions which it accepted for consideration. The Docket Sub Numbers are addressed in the Sections of this Statement as follows:

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

V - THE BURLINGTON NORTHERN SANTA FE RAILROAD APPLICATIONS; (Sub-No. 28) *Burlington Northern and Santa Fe Railway Company—Terminal Trackage Rights—Texas Mexican Railway Company and* (Sub-No. 29) *Burlington Northern and Santa Fe Railway Company—Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area*

The Tex Mex and KCS plan to rehabilitate the line between Rosenberg and Victoria, Texas was assigned Sub-No. 27, Texas Mexican Railway Company and Kansas City Southern Railway—Construction Exemption—Rail Line Between Rosenberg and Victoria, TX by the Board. This plan for submitted by the Consensus Group under Sub-No. 30 and my comments regarding that plan are found in Section IV below.

The Houston and Gulf Coast Railroad submitted a proposal for trackage rights and forced line sales which the Board accepted for consideration as (Sub-No. 31) Houston &

Gulf Coast Railroad—Application for Trackage Rights and Forced Line Sales. Shell reserves comment on this proposal at the present time.

The Capital Metropolitan Transportation Authority submitted a request for limited remedial conditions which the Board accepted for consideration as (Sub-No. 32) Capital Metropolitan Transportation Authority—Responsive Application—Interchange Rights. Shell reserves comment on this proposal at the present time.

Several shippers submitted individual plans to enhance access to competition at specific plant sites. Shell reserves comment on the specifics of these plans at this time. It is Shell's position that all shippers will benefit if true rail to rail competition is re-introduced to the Houston Gulf Coast Region by providing access to a third linehaul railroad, reinstituting neutral switching and introducing neutral dispatching.

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

The request for adoption of new conditions submitted by the Consensus Group, styled, and referred to hereinafter, as Consensus Plan, was assigned Sub Number 30 of the instant Docket by the Board. The Consensus Plan is evaluated by the individual item numbers as submitted by the Consensus Group.

ITEM 1(a) - Remove the restriction which prohibits Tex Mex from moving traffic between Corpus Christi/Robstown and Beaumont, Texas other than that traffic which has a prior or subsequent movement on the Tex Mex between Corpus Christi/Robstown and Laredo.

When the Board approved the UP/SP merger, a condition of that approval granted the Tex Mex trackage rights which permitted them to serve Houston area shippers and/or consignees. However, a restriction was added to the trackage rights granted the Tex Mex which limited the Houston area traffic it could handle to that which had a prior or subsequent movement over the Tex Mex Corpus Christi-Laredo line.

With the advent of the UP/SP service problems after the merger, eventually resulting in issuance of STB Emergency Service Order (ESO) 1518, this restriction was removed and Tex Mex was permitted to serve any shipper and/or consignee in the Houston Terminal that was switched by either the PTRR and/or the HBT.

Permanent removal of this restriction is crucial if we are to restore true rail to rail competition in the Houston/Gulf Coast area. At the present a duopoly exists in the Houston Gulf Coast Region, as in much of the western United States, with nearly all of the rail traffic divided up between UP and BNSF. In actuality the Houston Gulf Coast is

closer to a true monopoly with UP controlling 9 of the 11 mainlines serving Houston.

The addition of the Tex Mex to the Houston market without restrictions on the class of customer served will promote rail to rail competition in the Houston Gulf Coast Region. This increased competition will benefit shippers and railroads alike, including the UP/SP and the BNSF.

ITEM 1(b) - Maintain the trackage rights granted to Tex Mex over the UP Algoa Route and over the BNSF between Algoa and TN&O Junction.

The Tex Mex trackage rights from Corpus Christi/Robstown to Beaumont require it to traverse a circuitous route. The trackage rights granted Tex Mex by the Board from Robstown to Houston (an east-northeast movement) require the Tex Mex to operate over the old Southern Pacific (SP) Sunset Line. To reach that line Tex Mex must head north-northwest out of Placedo through Victoria to Flatonia before heading east to Houston over the Sunset Line.

In addition to the handicap faced by Tex Mex trying to handle Laredo to Beaumont traffic over a circuitous route, there is significant congestion on the Sunset Route. Being forced to travel one of the UP's most heavily congested traffic lanes into and out of Houston is a further handicap to the Tex Mex providing efficient and cost effective service from Laredo to Beaumont.

In November 1997 the UP initiated directional routing to facilitate movement over its Brownsville Subdivision. In so doing UP severely impaired both the Tex Mex and BNSF operations to the Laredo gateway. Both railroads were experiencing delays of as much as 24 hours waiting for permission from the UP to move their trains against the

now uni-directional flow of the UP.

Implementation of directional running could have been a positive step for all shippers, consignees and railroads in the Houston Gulf Coast Region by helping to relieve congestion. However, the UP refusal to grant the Tex Mex and the BNSF directional trackage rights to accommodate their revised operations contributed to the congestion in the region. Rather than act in a reasonable fashion, even in an emergency situation where Houston was almost in gridlock, UP abused its monopoly power by implementing directional operations to the detriment of BNSF, Tex Mex and the shippers and consignees in the Houston area. It took ESO 1518 to give both the BNSF and the Tex Mex trackage rights over the Algoa route and subsequently facilitate the UP's directional running south and west of Houston.

To help relieve the congestion in the Houston Gulf Coast Region caused by the UP service meltdown, the Tex Mex was granted temporary trackage rights, under the provisions of ESO 1518, between Placedo and Algoa (UP Algoa Route). To accommodate the directional running implemented by UP, Tex Mex was later given trackage rights, under the same service order, between Algoa and T&NO Junction on the BNSF.

The Consensus Group is requesting the Tex Mex be granted permanent trackage rights between Placedo and Algoa (UP) and Algoa and T&NO Junction (BNSF).

Shell concurs with the Consensus Group that the Tex Mex should be granted permanent trackage rights over the Algoa Route, and then Algoa to TN&O Junction, to insure efficient operation for all carriers. The trackage rights granted as a condition of the UP/SP merger are based on a circuitous routing which is counterproductive in terms of

transit time, use of fuel, labor and other resources.

In addition, directional running cannot be implemented effectively where one or more carriers are forced to go against the directional flow of the UP. Because of the UP arrogance engendered by its monopoly position, it took ESO 1518 to give both the BNSF and the Tex Mex trackage rights over the Alcoa route and subsequently facilitate the UP's directional running south and west of Houston. Permanent trackage rights, such as those requested by the Consensus Group would add to the efficiency of rail operations in the Houston Gulf Coast Area and reduce the ability of UP to abuse its monopoly position in the region.

ITEM 2 - Restore neutral switching in Houston by granting PTR A trackage rights over the old HBT Lines and use of appropriate yards.

For over 90 years Houston shippers and consignees were able to avail themselves of neutral switching in the Houston area. However, the duopoly of UP/SP and BNSF unilaterally stopped neutral switching with the dissolution of the HBT.

Since the dissolution of the HBT, UP mismanagement of the switching in the Houston area has exacerbated congestion and foreclosed competitors from efficient movement of cars through the Houston terminal area.

For example, the Tex Mex must currently interchange their PTR A traffic to the UP at Congress Yard, which is located on the old West Belt in the downtown Houston area, rather than to interchange the traffic directly to the PTR A at Basin Yard. The subsequent UP movement of the Tex Mex traffic from Congress Yard to Basin Yard for interchange to the PTR A is an extremely low priority.

As a shipper who is served by the PTR A and ships via the Tex Mex, Shell has experienced the delays associated with UP neglect of this crosstown switch. UP is concerned first and foremost with attempting to move their own traffic and so understandably does not place priority on delivering the traffic of other railroads. UP does not allow Tex Mex to deliver traffic directly to the PTR A on the East Belt at Basin Yard because of the congestion in that area.

In a Verified Statement submitted by Harlan Ritter of KCS, in support of the Consensus Plan, Mr Ritter highlights, at page 6, other problems that the Tex Mex has experienced with switching service provided by UP;

- Lost and misrouted cars.
- Loaded cars that the Tex Mex interchanged to the UP and which UP subsequently returned to the Tex Mex in interchange as an empty, when in fact the car was never delivered to consignee to unload;
- UP unwillingness to locate Tex Mex cars in the terminal area and to switch them to a customer, forcing Tex Mex to locate a car from outside the terminal area and interchange it to UP for delivery to the Tex Mex's shipper; and
- Empty cars that were interchanged to the UP by the TexMex for delivery to a Tex Mex customer's plant for loading, were appropriated by the UP and given to its customer for loading and shipment over the UP, leaving the Tex Mex customer waiting for delivery of an empty car.

BNSF traffic is also affected negatively by both the congestion which has resulted from the inability of the UP to switch the Houston Terminal area and the precedence UP has given its own traffic following the dissolution of the HBT. BNSF problems are aggravated by the refusal of UP to allow the use of alternate routes, even when they are

available, in order to avoid congestion.

For example, in the Verified Statement submitted by Mr. Ernest L. Hord in the BNSF Application for Remedial Conditions, Mr. Hord states, at page 20 "UP will not permit BNSF to use alternate routes, even though they are available unless prior trackage rights agreements are in place with respect to those routes." While this would seem to be a reasonable request, the arrogance engendered by the monopoly position UP enjoys in the Houston area results in decisions which penalize railroad customers as well as competitors.

This attitude is counterproductive for shippers, consignees and railroads in the Houston /Gulf Coast area as well as contributing to the continuation of the grid lock that has gripped the west since the UP/SP merger. Neutral switching would eliminate the favoritism which is now shown UP traffic, to the detriment of its competitors.

Neutral switching has worked in major railroad terminals such as Chicago and St. Louis for many years. In addition, in the acquisition of Conrail, CSXT and NS are implementing neutral switching through the creation of Conrail Shared Asset Areas. Neutral switching is a key ingredient to restoring competition to the Houston Gulf Coast Area.

ITEM 3 - Expand the neutral switching area by granting PTRAs trackage rights between Harrisburg Junction and Galveston and the use of rail yards at Strang and Galveston.

Shell has a plant located in Deer Park which is already served by the PTRAs. Shell supports this item of the Consensus Plan because rail to rail competition would be facilitated by expanding the neutral switching area to serve shippers on the Houston Ship

Channel. Enhanced competition would benefit all shippers in the area through improved service.

The use of Strang Yard is a key for the efficient handling of traffic to and from the Ship Channel. Trains can be made up and shipped directly from Strang and empties can be returned directly to Strang thereby eliminating and bypassing the major yards in Houston, which have been a cause of the bottleneck and gridlock in the Houston Terminal.

ITEM 4 - Require neutral dispatching in the Houston neutral switching area, to be located, managed and administered by the PTRA.

Neutral dispatching and neutral switching go hand-in-hand. A neutral switching area without neutral dispatching is an invitation for preferential treatment of the dispatcher's traffic. Discrimination in dispatching is inevitable where neutral dispatching is not established. The Consensus Plan and BNSF filings are replete with allegations of UP discrimination.

Neutral dispatching is essential to fair and unfettered rail to rail competition. Fair and unfettered competition will maximize service efficiencies and eliminate instances of gridlock such as have occurred under UP monopoly of Houston Terminal switching and dispatching.

ITEM 5 - Expand the PTRA Board to four (4) members, including the Tex Mex and the Port of Houston as full members of the PTRA Board.

The proposed Board would guarantee that the operations of the PTRA with respect to neutral switching and dispatching would be fair to all three of the linehaul

railroads serving the Houston area. Inclusion of the Houston Port Authority would involve the organization representing a segment of the business community which helps plan for and facilitates the booming international trade segment of the Houston economy.

ITEM 6 - Require the UP to sell the old SP out-of-service line between Rosenberg, TX and Victoria, TX and grant two miles trackage rights over the UP, to the UP's Port Lavaca Branch.

It is the contention of the Consensus Group that the abandonment of this line, granted the SP by the Interstate Commerce Commission, was never consummated. The Consensus Group contends that the Board therefore has jurisdiction over the line and should require that it be sold to Tex Mex under reasonable terms and conditions.

Tex Mex proposes to upgrade this line and use it in lieu of the trackage rights granted in the UP/SP merger from Victoria to Flatonia and then on to Houston over the Sunset Route. This new route would add additional capacity to the Houston Gulf Coast Area railroad infrastructure. In addition, Tex Mex would reduce the circuitry of its route from Laredo to Houston and avoid the heavily traveled Sunset Route. The rehabilitation of this line would eliminate circuitous routing miles by 16 % between Houston and Laredo. This line would also be of benefit for directional routing that is being implemented by the UP.

UP has indicated a willingness to sell the line and has negotiated with Tex Mex concerning the purchase price. The UP offer to sell, however, is significantly higher than the Tex Mex offer to buy.

Shell concurs that upgrading the track between Rosenberg and Victoria will enhance Houston Gulf Coast railroad operations and increase competition. Since the UP

has offered to sell the line, Board involvement would not require forced divestiture, only facilitation of negotiation on sale price. As a last resort the parties could submit the matter of the sale price to binding arbitration.

ITEM 7 - Require UP to sell or lease an existing rail yard in Houston to Tex Mex.

At the present time there are thirty-three railroad yards in the Houston area. Of those thirty-three rail yards, UP operates twenty-one, PTRC operates eight and BNSF operates four. Tex Mex does not have access to a rail yard in Houston.

In order to function effectively a railroad must be able to classify and block cars to make up trains. In order to accomplish these tasks a railroad must have a yard of sufficient size to accommodate the activities involved.

At the present time the closest yard to Houston to which Tex Mex has access is located in Beaumont, TX. As such the Tex Mex is forced to take any traffic that they pick up in Houston to KCS yard in Beaumont where the freight is switched, classified and blocked for linehaul movement. Southbound traffic originating in Houston and moved for classification and placement in a train must then return through Houston. This is grossly inefficient and needlessly adds traffic to an already congested area.

The Consensus Plan requests that Booth Yard be made available to Tex Mex. We concur that Tex Mex needs access to a switch yard in Houston. However, as stated by Mr. Feiker above, Shell does not advocate the taking of property to accomplish this objective.

The fact that Tex Mex does not have a yard in which to classify rail cars in the Houston area represents an oversight by the Board in the UP/SP merger decision. The Board should have imposed conditions in the UP/SP merger which provided Tex Mex

with a rail yard to handle the Houston business which resulted from the trackage rights granted in the merger.

As previously mentioned a railroad is hard pressed to compete effectively without a switch yard. The granting of permanent trackage rights in the merger indicated the desire of the Board that Tex Mex become a viable competitor in Houston. It is now time to rectify the Board's oversight by making a switch yard available to the Tex Mex. This would be accomplished if the Board facilitated as sale or lease of Booth Yard to Tex Mex. If no agreement can be reached between Tex Mex and UP, the matter should be submitted to arbitration.

ITEM 8 - Permit the KCS/Tex Mex to build a new line on right of way of the UP Lafayette Subdivision from Beaumont to Houston, subject to certain conditions.

The Consensus Group proposes a plan whereby Tex Mex and KCS would build a new line adjacent to the existing UP Lafayette Subdivision line (on UP right-of-way) from Dawes, outside of Houston, to Langham Road near Beaumont. Upon completion of the new line the Tex Mex will deed the new line to the UP in exchange for the UP Beaumont Subdivision line from Settegast Junction outside of Houston to Beaumont. Tex Mex would retain trackage rights over Lafayette Subdivision between Houston and Beaumont while providing trackage rights to UP and BNSF over the Beaumont Subdivision line from Settegast Junction to Beaumont.

This item of the Consensus Plan would increase capacity between Houston and Beaumont and should increase competition as well. Both of these factors should lead to improved service and more efficient pricing.

IV - The Burlington Northern Santa Fe Railroad Applications

(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

As a result of the UP/SP merger, the BNSF was granted certain trackage rights over various UP routes with the objective of maintaining the same level of rail competition as existed prior to the merger. Shell supports BNSF efforts to retain its competitive position in the Houston Gulf Coast area.

In order to maintain that competitive position, the BNSF must be afforded the flexibility of modifying its trackage rights to facilitate the UP plan of directional operations. The BNSF must not be expected to rigidly adhere to their assigned trackage rights when the UP unilaterally imposes directional operations on tracks over which BNSF has been awarded trackage rights. To require BNSF to go against the UP directional flow runs counter to the objectives of directional operations.

The BNSF has requested permanent trackage rights on Caldwell-San Antonio and Caldwell-Flatonina-Placedo Lines. This request is justifiable based on the fact that the UP has initiated directional operations on these lines. If the Board does not concur with this request, the BNSF will be forced to go against the normal flow of traffic on the highly congested UP Temple-Smithville-San Antonio route and would have to route its southbound traffic back through Houston and then south over the Algoa route.

As a shipper who has a plant located in the Houston area, Shell would certainly not want BNSF be forced to route their southbound traffic through the Houston Terminal. Such a requirement would be detrimental to efforts to relieve congestion in Houston.

Further magnifying the negative impact of routing its traffic through Houston, BNSF would also be forced to go against the directional northbound flow that the UP has instituted on the Algoa route. Failure to grant the BNSF permanent authority over these two routes would waste an opportunity to alleviate a potential source of increased rail congestion in the Houston Gulf Coast region.

The BNSF has also requested that neutral switching supervision be established on the former SP Baytown Branch and Cedar Bayou Branch Lines. The BNSF was granted trackage rights to serve and switch shippers on these two branch lines directly. However, the plants and shippers located on these two lines want only one carrier to switch their facilities. As a result the BNSF interchanges its traffic consigned to customers located on these branch lines to UP at Dayton, TX. UP then provides local switch service. UP switching service has been unacceptable.

UP has also initiated directional operations on the Baytown and Cedar Bayou Branch Lines, which effectively destroys the BNSF's ability to deliver traffic under the trackage rights granted them. So, in effect, the BNSF and their customers on these branch lines are at the mercy of the UP. The inferior level of service provided by the UP on behalf of the BNSF has a direct effect on Shell's ability to move traffic into and out of Mt. Belvieu, TX.

The BNSF has a similar situation on the former SP Sabine Branch and Chaison Branch Lines. Even though the BNSF does not currently handle traffic on these two branch lines, they have indicated that they will start actively soliciting business on the lines. Like the Baytown and Cedar Bayou Branches, most customers on the Sabine and Chaison lines only want one carrier to switch their plant. Shell has a customer at

Chaison, TX and is certainly interested in having the BNSF providing rail competition to Chaison. But to have to rely on the UP to deliver BNSF shipments is tantamount to not having railroad competition on this branch line.

Shell, therefore, supports the BNSF request that the Board appoint a neutral switching supervisor that would oversee the operation of these branch lines. This will ensure that customers who desire to avail themselves of the BNSF service are able to do so without being penalized by UP's inefficient handling of the BNSF traffic.

The BNSF has also requested that the PTRS be allowed to perform neutral switching over the Clinton Branch in Houston. The BNSF is unable to provide the Houston Elevator, which is located on the Clinton Branch, with a timely, reliable and competitive service because they must rely on UP to deliver their grain trains to the elevator for them. The result is delayed deliveries, cars backing up and ultimately every shipper in the Houston Terminal being damaged by the resulting congestion.

This request can be accommodated under the Consensus Plan request for neutral switching and dispatching in the Houston Terminal.

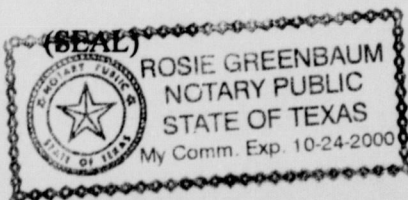
COUNTY OF HARRIS)) ss:
STATE OF TEXAS)

Signed:

David L. Hall

Notary Public

10/24/2000



BACKGROUND AND QUALIFICATIONS

OF

DAVID L. HALL

My name is David L. Hall. I am President of COMMONWEALTH CONSULTING ASSOCIATES (COMMONWEALTH), with offices at 13103 FM 1960 West, Suite 204, Houston, Texas, 77065. COMMONWEALTH provides management consulting services, including practice areas in logistics and information systems.

With COMMONWEALTH I have conducted and supervised numerous transportation cost and operational analyses for clients in various industries to aid in the determination of reasonable rate levels. We assist shippers in obtaining reasonable rail transportation rates by determining target rate levels based on movement specific cost analyses, identifying significant differences between those targets and the rates in effect, and providing negotiating tools and strategies which assist the client in achieving target rates.

I have performed benchmark analyses and process redesign studies for clients to assist them in employing best practices and streamlining operations. In these studies we work with distribution service providers to squeeze excess costs from the system to the benefit of both carrier and shipper.

I also developed the Commonwealth Rail Costing System© (CRCS©) a copyrighted rail rate and cost analysis software package which runs under Microsoft Windows and includes three cost development models, a Data Manager, and a Report

Generator. CRCS allows the user to evaluate current rates, generate target rates, project annual rail transportation savings and establish company-wide metrics.

Before establishing COMMONWEALTH CONSULTING ASSOCIATES, I was a Transportation Consultant with A. T. Kearney, Inc., Management Consultants, where I assisted in the implementation of the Kearney transportation costing system, as well as participated in transportation cost and operational analyses for various Kearney clients. Those studies included the movement of coal to public utilities, movements of phosphate rock in the Bone Valley of Florida, the movement of lime and soda ash from Missouri and Wyoming to a midwestern utility and the movement of building materials from Texas to midwestern and western plant locations. I also developed rail and inter-modal costs for Ohio River Basin export coal and nitrogenous fertilizers distributed from the Gulf of Mexico to farm belt states.

Prior to joining Kearney, I was employed by the Illinois Commerce Commission as a Transportation Financial Analyst. While employed by the Commission I served as case manager in investigations and proceedings pertaining to the regulation of railroads, motor carriers of passengers and motor carriers of freight. I analyzed cost and financial data submitted by proponents and protestants in Commission proceedings, and prepared cost studies to aid the Commission in the determination of transportation costs and proper rate levels. I also appeared as an expert cost and financial witness and participated in cross-examination of witnesses in various Commission hearings.

Prior to my association with the Illinois Commerce Commission, I was employed by M. L. Hall & Associates, Transportation Consultants, as a Cost Analyst. Some of my assignments while at M. L. Hall & Associates included; participation in an operational

analysis of a subsidized railroad for the State of Michigan; development of data for use in Rail Form A, Rail Terminal Form F and Highway Form B costing applications; use of unit costs derived from the above mention cost formulae in development of movement costs for various railroads and shippers; participation in the 1978 operations study of the Port of Houston switching terminal and assistance in the development of costs using data derived from the Houston study; assistance in development of a cost system for the Association of American Railroads which was first used in a 1977 railroad general rate increase to develop revenues, costs and revenue/cost ratios for over 37,000,000 carloads of traffic; assistance in development of a cost model for the Illinois Commerce Commission to develop costs for single-car, multiple-car and trainload/unit-trains of coal.

I also held the position of Statistical Assistant with the firm of G. W. Fauth & Associates, Transportation Consultants. My duties included gathering data from various government agencies, trade associations, railroads and shippers for use in developing transportation costs for various modes.

In addition to preparation of the above studies and supporting documents which were submitted to various regulatory agencies, I also submitted testimony and exhibits in Docket No. 38336S, Niagara Mohawk Power Corporation, v. Consolidated Rail Corporation and Pittsburg & Shawmut Railroad, Ex Parte No. 347 (Sub-No. 2), Rate Guidelines—Non-Coal Proceedings, Dockets No. 41242, Central Power & Light Company v. Southern Pacific Transportation, No. 41295, Pennsylvania Power & Light Company v. Consolidated Rail Corporation, and No. 41626, MidAmerican Energy Company v. Union Pacific Railroad Company and Chicago and North Western Railway Company, collectively termed the "Bottleneck Case", 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, Ex Parte No. 575, Review Of Rail Access And Competition Issues, Ex Parte No. 627, Market Dominance Determination—Product and Geographic Competition and Ex Parte No. 628, Expedited Relief for Service Inadequacies.

I graduated magna cum laude from the University of Richmond with a Bachelor of Science Degree in Business Administration and a double major in finance and economics. I earned a Master of Business Administration Degree from the University of Houston and have completed courses toward a Doctorate in Marketing Information Systems at the same institution.