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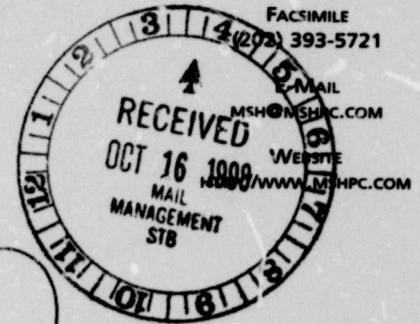
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October 16 1998



Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Finance Docket No. 32760 (Sub-No. 26),
Union Pacific Corporation, et al. -- Control
and Merger -- Southern Pacific Rail
Corporation, et al.

Dear Secretary Williams:

Enclosed for filing are a signed original and 25 copies of the public version of Reply Comments of Formosa Plastics Corporation, U.S.A. and a floppy disc convertible to WordPerfect 7.0, containing the text of such comments and the Reply Verified Statement of Richard A. Heinle. The filing also contains a copy of a pleading filed by a third party for which we have no floppy disc.

Under separate cover, we are furnishing the Board with an original and 25 copies of the Highly Confidential version of this pleading, under seal. We will serve a copy of the Highly Confidential version on those outside counsel or consultants for parties of record who furnish us with an appropriate Undertaking executed in accordance with the Board's Decision No. 2 served in this matter of May 19, 1998.

Sincerely,

Andrew P. Goldstein

Andrew P. Goldstein
Attorney for
Formosa Plastics Corporation, U.S.A.

Enclosures

APG/rmm

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ENTERED
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

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

-- CONTROL AND MERGER --

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

**REPLY COMMENTS OF
FORMOSA PLASTICS CORPORATION, U.S.A.**

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Dated: October 16, 1998

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I. INTRODUCTION

The "UP Opposition to Condition Applications" (hereafter "Opposition") filed September 18, 1998 by Union Pacific Railroad Company ("UP") contains little that is directly responsive to the July 8, 1998 Comments and Request for Remedial Conditions of Formosa Plastics Corporation, U.S.A. (hereafter "FPC Opening Comments"). FPC seeks service directly from The Burlington Northern and Santa Fe Railway Company ("BNSF"), which has "closed door" trackage rights over the UP line presently serving FPC. UP devotes less than half a page to FPC at the end of its Opposition (Vol. I at p. 235), ignoring significant elements of FPC's evidence

and legal arguments. FPC has made an unrebutted showing that the remedial condition it seeks not only is operationally feasible and can be imposed without disrupting UP operations, but actually will reduce demands on UP's main line and related infrastructure. The United States Department of Transportation notes that FPC's proposal "offers to provide additional capacity on a congested [UP] line" and "may have merit."^{1/}

UP's tactic rests in part on the false claim that UP service to FPC has improved dramatically. UP proffers the Verified Statement of Mr. Dennis J. Duffy in support of this claim. However, as detailed in the Reply Verified Statement of FPC Vice President Richard A. Heinle filed herewith as Reply Exhibit A, this claim is untenable.^{2/}

In many important respects, UP service to FPC is worse than ever, and "improvement" is a weak defense where service remains inadequate. Moreover, when service on parts of UP's system improves, it is at the expense of service on other parts of the system. It is not correct to conclude that UP has solved its problems. It is correct to conclude that UP service has worsened in those markets -- so important to FPC -- where the merger enhanced UP's market share and power.

^{1/} Comments of the U.S. Department of Transportation, September 18, 1998, at 12.

^{2/} FPC is filing two versions of FPC Witness Heinle's Reply Verified Statement, one public and one Highly Confidential under seal.

UP's legal analysis is also unavailing. Through misstatement and sleight of hand, UP argues for an excessively narrow inquiry in this proceeding. Even where UP's arguments are supportable, they fail to rebut (and in many respects, fail even to acknowledge) FPC's showing. Relief for FPC is justified whether measured by the standards advanced by FPC or even those advocated by UP.

**II. THE BOARD SHOULD REJECT THE LIMITS ON ITS REMEDIAL
AUTHORITY THAT UP SEEKS TO IMPOSE**

UP wastes no time in attempting to limit the scope of this proceeding. At page 5 of its Opposition, UP seizes on one phrase from the Board's May 19, 1998 Decision instituting this subdocket, and claims that the only issue presented here is "whether there is any relationship between the market power gained by UP/SP 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." Opposition statement, quoting from Decision No. 1 at page 5.

As will be seen, the answer to these questions is yes, but UP ignores other, broader formulations of the Board's inquiry, including the statement on the same page that 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 region."

Having begun with an excessively narrow statement of the issues to be addressed, UP moves swiftly to narrow those issues even further. UP's "market power" issue illustrates this process.

In the phrase from Decision No. 1 quoted by UP in footnote 2 on page 5 of the Opposition, the Board asked "whether there is any relationship between any market power gained by UP/SP through the merger" and the meltdown. On page 5, UP poses as its first two questions whether the merger gave UP enhanced market power and whether that increased market power caused the service problems. By page 6 of the Opposition, the issue has again been reformulated, into why UP would have used its increased market power to cause the meltdown.

In this way, UP positions itself to argue that no remedial action is proper because it did not deliberately cause the meltdown by exploiting increased market power to make more money.

Further sleight of hand follows in succeeding pages. Thus, where the Board assumed UP gained market power as a result of the merger, and asked whether there was "any relationship" between market power and the meltdown, UP argues that it did not gain any market power. See Opposition at 26-49, under the heading "The Merger Did Not Cause an Increase in Market Power in the Houston/Gulf Area."

Upon examination, UP's claim appears to rely heavily (but unsurprisingly) on an excessively narrow definition of market power. UP asserts, for instance, that FPC's explanation of how the merger narrowed its marketing options should be dismissed because "[i]t is of course well established that end-to-end consolidations do not eliminate competition." Opposition statement at 38, fn. 9. However, the UP/SP merger was not an end-to-end consolidation

insofar as FPC is concerned. Before the merger, [] percent of FPC's domestic shipments from Point Comfort moved via UP; after the merger, [] percent of those shipments moved via UP, an increase of [] percent. See the Opening Verified Statement of FPC Witness Heinle and the Reply Verified Statement of FPC Witness Heinle at 4.

It is also clear from the record that UP has exploited its increased market power over FPC. Before the meltdown occurred, UP effectively forced FPC to give UP [

] UP did so by the simple expedient [

] To survive in the marketplace, FPC had no choice but to contract with UP, and that contract [

] as well as rail rates that still exceed 180% of variable cost. See the Opening Verified Statement of FPC Witness Heinle and the Opening Verified Statement of FPC cost consultant Charles L. Carroll. UP's Opposition does not dispute any of this evidence.

The merger greatly enhanced the volume of FPC traffic moving via UP's longhaul and enhanced UP's market power over FPC. These conditions positioned UP to take advantage of its Gulf Coast monopoly over FPC.

When the meltdown struck, UP's responses to FPC's requests for help were too little and too late, even though FPC is one of the nation's largest shippers of plastics components. To help insure

adequate rail service, FPC had made extensive investments in rail related facilities, including a large private siding at its Formosa, TX facility, and a fleet of [] private cars. UP simply appropriated FPC's private siding, and it allowed cycle times on FPC's cars to double, cutting car utilization in half. And because of the [] FPC could not divert cars to other railroads once they reached gateways. Here again, these facts were established in FPC's opening evidence, and are unrebutted in UP's Opposition.

It is ridiculous for UP to suggest that it did not gain increased market power over FPC as a result of the merger, and use that market power in ways that exacerbated the service failures. Aside from claiming generally that it gained no market power from the merger, UP evades the fact of its acquisition of market power over SP customers, and discusses "1-1" shippers like FPC only with respect to whether the merger adversely affected source competition. See, e.g., UP Opposition at 28. As UP there states, 1-1 shippers that were captive to SP before the merger were captive to UP after it. But this produced a clear increase in market power for UP, if not viewed merely as a matter of source competition.

In any event, FPC was worse off. As FPC Witness Heinle explained in his Opening Statement (at 11), some of the worst transit time increases FPC experienced were over routes that performed efficiently as UP/SP joint routes, prior to the merger, and UP service to former SP points remains at crisis levels. See Heinle Reply V.S. at 2-3. These service failures are not the mere

result of debilitated SP infrastructure and beyond causation by UP; service to SP points was perfectly acceptable prior to the merger. Heinle Opening V.S. at 11; Reply V.S. at 2.

At page 60 of its Opposition, after having spent 33 pages arguing (unpersuasively) that it did not gain any increased market power in the merger, UP argues that it did not use its increased market power to cause the service problems.

The essence of UP's argument here is that it had no incentive to cause the meltdown, and it relies for this proposition on the testimony of an antitrust expert, Dr. Jerry Hausman. Contrary to the last sentence of paragraph 2 of Dr. Hausman's statement, his curriculum vitae is not attached to his verified statement, which means that FPC must rely on his statement (which does not mention experience with rail matters) in assessing his expertise. But that is not the main problem with Dr. Hausman's statement.

Dr. Hausman concludes that the service problems of the merged railroad are not due to the exercise of market power by UP because, while monopolies may reduce service quality to increase revenues, the meltdown was costly to UP. The Board is asked to conclude that UP did not intend the meltdown to occur, and therefore cannot fairly be subjected to new conditions.

Simply stated, this reasoning is specious. Surely, no rational shipper believes UP wanted the meltdown to occur. But it does not follow that UP is blameless. At least three points must be made here.

First, nothing in Dr. Hausman's V.S. (or in the rest of UP's Opposition) eliminates the possibility that the meltdown was an unintended result of the merger. Assume for the moment that UP believed that it could deliver the improved service it promised when it sought authorization to absorb SP. Assume further that UP took what it regarded as all appropriate steps to implement the merger but, despite its best efforts, the meltdown occurred. If UP simply "bit off more than it could chew," does this relieve UP of responsibility for the damage caused, or relieve the STB of the need to consider corrective action? Absolutely not. One of the major concerns raised by the recent consolidations in the rail industry is precisely that the resulting "mega-railroads" are too big and too protected against competition from other railroads.

Even with the best will in the world, rail monopolists are likely to be less attentive to service than railroads facing vigorous competition. Given the enormous market power it enjoyed as a result of the merger, UP had no reason to fear that a catastrophic service failure would lead to the mass defection of its customers to other carriers. In a case like this, effective remedial action by the Board is a surrogate for the discipline of the marketplace. Take that away (as UP seeks to do) and shippers face the worst of both worlds.

Second, assume UP tried to cut corners in its implementation of the merger, in order to pay for SP or maximize the return on its investment in SP. Assume, in other words, a gamble by UP that it could eliminate SP personnel, engage in hard-nosed bargaining with

rail labor, understaff key positions and scrimp on data processing systems. It could take these risks because so much of its traffic base was captive. The results were disastrous, but UP seeks to evade full responsibility.

Once again, nothing in Dr. Hausman's V.S. (or in the rest of UP's Opposition) eliminates this explanation. Dr. Hausman states (V.S. at 6):

For the decrease in service levels to be an exercise in market power, UP's costs would need to decrease.... However, UP's actions in response to the service problems have led to increased costs, not the decreased costs that would be expected if market power were being exercised.

This is a glaring non-sequitur. The fact that UP was hurt by the meltdown no more proves that UP did not cause the meltdown than burns on a reckless arsonist prove that he did not set the fire that burned him. As noted above, a key component of the problem here is that monopolists are more likely than competitors to make miscalculations, because they face fewer risks than competitors.

Finally, even if UP took no undue risks, and did everything possible to prevent a meltdown on the system as a whole (i.e., even if UP was a wholly innocent bystander when the service problems arose), nothing in Dr. Hausman's V.S. or in the rest of the UP Opposition establishes that market power and captivity were irrelevant to UP's allocation of service among its injured customers.

A pleading recently filed by UP in fact discloses that UP indeed does allocate its resources with the degree of its customers' captivity in mind. In its July 28, 1998 filing in Ex Parte No. 573, Service Order No. 1518, Rail Service for Construction Materials in Texas, UP stated that it "uses the following priorities:

- 1 -- Amtrak
- 2 -- Priority Intermodal
- 3/4 -- Other Intermodal and Automotive
- 5 -- Manifest"

UP letter to STB Secretary Williams, July 28, 1998 at 3.

FPC's shipments are moved as manifest traffic because they are in single car quantities shipped to diverse destinations, and are handled on manifest trains. Manifest trains receive inferior service to intermodal and automotive trains because intermodal and automotive traffic is not captive. As UP states: "Intermodal and automotive traffic can move by truck" or by other railroads. Ibid at 5. During times of constrained capacity, captive traffic, such as FPC ships, receives inferior service to that provided traffic which has competitive alternatives.

Where competition exists, service failures like the UP meltdown are (1) less likely to occur, and (2) more likely to be remedied quickly and effectively when they do occur. It is the premise of the great deregulatory initiatives of the last two decades in trucking, air transportation, natural gas, electricity and telecommunications that competition produces better service at

lower cost than monopolies, even where regulation is vigorous and effective. UP has been able to find an economics expert to argue against these basic economic principles only by the device of distorting the terms of the inquiry.

Contrary to UP's claims, the service meltdown cannot be fully divorced from the merger. While not every degree of the meltdown may be attributable to the merger, it is both irrational and contrary to the evidence -- at least to FPC's evidence -- to conclude that there is no relationship between the merger and the service disaster that followed. FPC's experience is that the merger brought about service problems to former SP destinations that simply did not exist prior to the merger, and that UP service to the former SP points is significantly worse now than before.

UP, being the originating carrier now as then on all FPC shipments, had access to data with which to refute those FPC claims, if they could be refuted. UP did not present any such data or offer any refutation of FPC's evidence. The Board should conclude that the post-merger failures experienced by FPC are merger related at least in part, and that FPC's evidence satisfies any necessary establishment of a nexus between the merger, the expanded market power which the merger gave UP over at least FPC's traffic, and the service failures experienced by FPC.

III. THE REMEDIAL CONDITIONS SOUGHT BY FPC
ARE AMPLY JUSTIFIED

UP's attempt to argue that regulatory relief is foreclosed because (1) it gained no market power as a result of the merger and

(2) it did not plan the meltdown must be rejected. The former contention is incredible and the latter is irrelevant. The real question presented is "the legitimacy and viability of longer term proposals for new conditions to the merger as they pertain to service and competition" in the Houston/Gulf area. Decision No. 1, served May 19, 1998, at 5.

UP argues that the Board's actions must be governed by business as usual. At page 5 of its Opposition, UP states that "under longstanding merger law," deciding whether to impose conditions "has three aspects: (a) whether the proposed condition is narrowly tailored to address whatever specific merger-caused harm has been identified ...; (b) whether the condition is operationally feasible; and (c) whether the condition will cause harms that outweigh any benefit of imposing it."

Assuming arguendo that the Board intends to apply only UP's version of "longstanding merger law" in this proceeding, the condition proposed by FPC meets the three tests cited by UP. However, FPC submits that the Board's response to the "unprecedented" and extraordinary conditions in the wake of the UP/SP merger should not be so limited. Other well-established bases for Board action, such as the principles underlying the Board's competitive access rules, provide further support for the relief requested by FPC, but are completely ignored in UP's Opposition.

A. "Longstanding Merger Law" Supports FPC's Proposed Conditions

The statute plainly gives the Board authority to impose conditions, including trackage rights, in merger proceedings. Indeed, when Congress reviewed the statute's merger provisions in enacting the ICCTA, the principal change it found necessary was to make this authority explicit, by adding the underscored final clause to the following sentence in 49 U.S.C. § 11324:

The Board may impose conditions governing the transaction, including the divestiture of parallel tracks and the granting of trackage rights and access to other facilities.

The Board has exercised this statutory authority sparingly. In its UP/SP Merger Decision,^{3/} for example, the Board said it would be guided by the position taken by the ICC in Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 462 (1982). The ICC stated its position in that decision as follows:

[W]e will not impose public interest conditions on a railroad consolidation unless we find that the consolidation may produce effects harmful to the public interest (such as an anticompetitive reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of the possible harm) outweighing their harm to the merger.

^{3/} STB Finance Docket No. 32760, Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al., Decision No. 44 (served Aug. 12, 1996) at p. 144.

366 I.C.C. at 565.

Notably, the Board in this proceeding has the rare advantage of hindsight in considering whether the UP/SP merger "may produce effects harmful to the public interest (such as an anticompetitive reduction of competition in an affected market)." The merger produced severe harm to the public interest -- if the public interest is to be equated with reliable rail service, as FPC thinks it is -- which has not yet been remedied. More and more shippers, including FPC, question whether UP will ever be able to provide the levels of service needed by shippers in the Houston/Gulf area.^{4/}

UP Witness Duffy contends that the service UP provides FPC "has improved significantly since the fall of 1997 and early 1998," V.S. at 5, though he also concedes (*id.*) that service quality has not been fully restored to FPC's or UP's satisfaction. However, FPC Witness Heinle's Reply Statement demonstrates that in key FPC markets in Arizona and California, including markets formerly open to SP, UP service does not match pre-merger service. For example, average transit times to Stockton and South Fontana, CA, and to Fowler, AZ are significantly worse than they used to be. Heinle Reply Statement at 2-3. Mr. Duffy's testimony on UP service to gateways is also unreliable. It is derived from UP-generated data that is internally inconsistent reflecting as many as four different transit times for the same movements in the same month.

^{4/} In its Quarterly Progress Report filed July 1, 1998 in Finance Docket No. 32760, at pp. 9-10, BNSF stated: "Although there have been some periods of sporadic improvement, it is clear that the service problems are continuing and are likely to persist."

Heinle Reply Statement at 5-10. Service to UP gateways may have improved somewhat, but Mr. Duffy's testimony cannot be taken as a reliable basis for concluding that service has been restored to pre-merger levels.

Reduced competition and anticompetitive conduct by UP have been amply demonstrated by FPC, and have not been denied by UP. In fact, the frequent attacks by UP on what it calls "open access" in its Opposition (e.g., Opposition at 126-127 and 235), show UP's proclivity to employ slogans to sustain a monopoly, notwithstanding its own unprecedented inability to meet its customers' most basic needs.

Open access is simply UP's derogatory (and misleading) term for competition. UP apparently hopes to invoke the image of free access to its entire system. However, as explained below, the access sought by FPC is narrowly tailored to remedy the specific problem faced by FPC and is no more than the kind of remedy that the Act contemplates for limited competitive access in terminal areas. UP is also put in the awkward position of fighting to preserve market power it gained when it acquired SP, while elsewhere denying that it gained any market power. UP cannot have it both ways.

There can be no doubt that the remedial condition sought by FPC -- access to BNSF at Formosa, TX -- would ameliorate the service problems faced by FPC. At a minimum, shipments that could move BNSF direct or BNSF to gateways would avoid UP bottlenecks and

congested interchange points, and UP crews and locomotives could assist in reducing backlogs elsewhere on the system.

The operational feasibility of FPC's proposal is undisputed by UP. Moreover, BNSF, which has "closed door" trackage rights over the UP main line that serves FPC, and is therefore familiar with train operations on that line, has confirmed not only that BNSF is willing to serve FPC, but that it can do so without impairing BNSF service to other customers. See Verified Statement of Ernest L. Hord, filed July 31, 1998 (copy attached as Reply Exhibit B).

Further, because FPC is willing to construct a turnout from the UP main line to enable all switching for FPC to be done on FPC's private siding, FPC's proposal will have the effect of alleviating congestion on the UP main line where all trains must now stop, blocking the main line, while FPC is switched. In the words of BNSF: "This handling ... would reduce demands on UP's line and address the need for capacity and infrastructure in the Gulf Coast." Hord V.S. at 2. UP takes issue with none of these benefits which FPC and BNSF envisage as a result of the FPC proposal for direct BNSF service.

The last issue is whether the benefit to be gained from imposition of FPC's remedial condition would outweigh its harm to the merger. In its Opening Comments, FPC explained that, in conjunction with access for BNSF, it would be willing to expand the capacity of its private siding significantly, permitting storage of up to [] cars.

Not only would this significant investment benefit FPC, but it would also benefit UP and UP's other customers, by relieving congestion and eliminating UP's current practice of blocking its own main line for up to two hours while loading or unloading FPC trains. See the Opening Verified Statement of FPC Witness Ronnie Bounds, and Witness Bounds' Exhibits.

This evidence (like many of FPC's points) is ignored in UP's Opposition. Instead, UP argues that granting FPC's condition would be harmful because "[t]he KCS/Tex Mex, Dow, Formosa [i.e., FPC] and CP&L access proposals would create new or additional rail competition for \$419 million per year in UP traffic."^{5/} Notably, UP admits that it "did not attempt to determine precisely what percentage of this traffic would be lost if the proposed conditions were granted." Opposition at 84.

This is unacceptable, for several reasons. In the first place, UP cannot demand the protection of "longstanding merger law," and simultaneously refuse to participate in the cost/benefit analysis called for by its own precedents.

Second, as noted above, the benefits to UP and its customers of FPC's proposal are considerable. Relieving congestion on UP's main line will simplify UP's operations and produce efficiencies that will have a positive impact on locomotive utilization, car utilization, crew costs, operating performance, and customer

^{5/} A far smaller figure for FPC's traffic is broken out in UP Witness Peterson's V.S. (Highly Confidential version), at page 30.

satisfaction. UP does not take one penny of these savings or benefits into account.

Third, the only reason FPC is before the Board seeking relief is that UP failed to provide the services it promised when it sought permission to acquire SP. UP should not be heard to demand the exclusive right to haul freight, fail to deliver on its commitments, and then claim that protection should be withheld from adversely affected shippers to protect UP's monopoly revenues.

The Board has ample authority, and a compelling basis on this record, for granting the remedial conditions FPC seeks.

B. If Necessary, the STB Can and Should Look Beyond Merger Law in Dealing with the UP Meltdown

In its Opposition, UP frequently appears to be arguing that the STB did not err in approving the UP/SP merger when it issued Decision No. 44 in Docket No. 32760, over two years ago. UP apparently hopes to shift the focus from the meltdown to the merits of the Board's original decision. To the extent that this is its goal, UP misconceives the nature of the Board's original decision and of this subdocket.

It is true that FPC sought (and was denied) competitive access in the original merger proceeding that was similar to the relief requested in this subdocket. FPC also believes that such access, if permitted then, would have mitigated the adverse impacts of the meltdown.

But the suggestion that remedial action in this subdocket cannot be ordered unless the Board concludes that its original merger decision was wrong is unsupported by law or policy. This is another spurious obstacle to relief that UP has attempted to construct. The Board already has rejected UP's argument that prior denial of a party's request for remedial conditions has res judicata effect. See Decision No. 1, at 5.

It was apparent to all that UP's proposed merger with SP represented a major consolidation in the rail industry, concentrating service for Western shippers in the hands of two major railroads, UP/SP and BNSF. Even though its decision can be criticized in retrospect, the STB deserves credit for retaining jurisdiction over the merger's implementation. It also deserves credit for reopening the proceeding, to address issues beyond the scope of the Emergency Service Order proceeding.^{6/}

As the Board recognized in its decision instituting this subdocket, "[t]he virtual shutdown of rail service in the Houston/Gulf Coast area that occurred after the UP/SP merger -- and which, after many months, has yet to be normalized -- is unprecedented." Decision No. 1, at p. 5. Whether or not the

^{6/} At various points throughout its Opposition statement, UP refers to the Board's decision of July 30, 1998 in Service Order No. 1518 (Sub-No. 1), declining to extend the Board's October 31, 1997 Service Order beyond August 2, 1998, as evidence that UP service has been restored to normal, or at least acceptable, levels. However, the July 30 Decision is precedent for nothing other than the conclusion that the "emergency," which is a statutory prerequisite for service order relief, has abated. It is precisely because the end of the emergency did not mean the end of service problems in the Houston/Gulf Coast area that this proceeding is taking place.

original merger decision was correct, the Board and the shipping public have been confronted with an extraordinary situation that continues unabated with respect to Gulf Coast traffic destined to western points and that warrants extraordinary corrective measures.

In its Opening Comments, FPC argued at length that the Board's competitive access procedures are relevant here. To be sure, those procedures have traditionally been seen as available only in terminal areas. But those procedures have also traditionally not been invoked in the context of a merger proceeding.^{1/}

In merger proceedings, the Board's conditioning powers are essentially unrestricted by the statute. In 49 U.S.C. § 11324(c), the only constraint placed on the Board's authorization to "impose conditions ... including ... trackage rights and access to other facilities" is as follows:

Any trackage rights and related conditions imposed to alleviate anti-competitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated.

In other words, Congress not only gave the Board wide discretion to condition its approval of merger applications, but directed the Board to insure that any trackage rights or other forms of access it may impose achieve their intended purpose.

^{1/} It also bears mentioning that the Board has expressed interest in improving its competitive access procedures to increase their effectiveness as remedies for poor service and/or anticompetitive conduct by railroads. See the Board's Decision served April 17, 1998, in Ex Parte No. 575, Review of Rail Access and Competition Issues, at pp. 6-7.

Railroads must not be allowed to use pricing or operational restrictions to defeat shipper protections.

As the UP stresses repeatedly, ICC and Board precedent, a.k.a. "longstanding merger law," has created restrictions on the Board's remedial powers that appear nowhere in the statute. However, as demonstrated above, FPC's proposal satisfies those restrictive standards. A fortiori, FPC's suggested remedy is appropriate in the context of this unprecedented proceeding, whose sole purpose is remedial.

Given the breadth of the STB's authority to take corrective action in response to the meltdown, it is difficult to argue against the proposition that the Board may also consider competitive access type remedies. The UP does not even try to contest FPC's arguments on this point. By analyzing the ICC's Midtec decision,^{8/} FPC showed that it meets the standards set forth there for competitive access relief. See FPC's Opening Comments at 11-23.

It is clear that FPC has experienced both inadequate service and anticompetitive conduct by UP since the merger. It is equally clear that FPC is captive to UP. See FPC's Opening Comments at 15-16, noting that FPC has no alternative to rail for most shipments, and the Opening Statement of FPC Witness Heinle at 3-5. But for that captivity, FPC would have been better able to protect itself when UP service in the Houston/Gulf area collapsed.

^{8/} Midtec Paper Corp. v. Chicago & North Western Transportation Co., 3 I.C.C. 2d 271 (1986), aff'd., Midtec Paper Corp. v. United States, 857 F.2d 1487 (D.C. Cir. 1987).

These facts would plainly make out a case for trackage rights relief under 49 U.S.C. § 11102(a) or reciprocal switching relief under 49 U.S.C. § 11102(c), if FPC were in a traditional terminal or switching area. BNSF passes by FPC's front door, but is precluded from serving FPC under UP's anticompetitive and restrictive trackage rights arrangement with BNSF.

The Board may not yet be ready to adopt a general policy of using its broad authority in merger cases to promote competition.^{9/} It nevertheless can and should be more flexible in dealing with an extraordinary and unprecedented situation like that presented here. This is not just a merger proceeding; we are dealing here with a merger that produced such calamitous results as to require an unprecedented emergency service order and reopening.

The type of relief FPC seeks is provided for in the statute (49 U.S.C. §§ 11324 and 11102), and in STB regulations, and is strongly supported by the policies underlying the Act. Except in the most general terms (e.g., maligning the statutory remedy of competitive access as "open access"), UP has neither rebutted, nor responded to, FPC's main arguments.

Judging from its Opposition, UP plainly continues to believe that it paid good money for SP and SP's captive customer base, and must therefore continue to be the sole railroad to which shippers

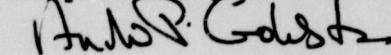
^{9/} But see the Board's treatment of East of the Hudson shippers in the recent Conrail Control proceeding, STB Docket No. 33388, CSX Corporation, et al. -- Control and Operating Leases/Agreements -- Conrail, Inc., et al., Decision No. 89, served July 23, 1998, at pp. 79-82. The Board there departed from its policy of granting relief only in "2-1" situations.

like FPC may have access, come hell or high water. It is precisely this attitude, and the accompanying abuses of the shipping public, that led Congress to regulate railroads in the first place, more than 100 years ago. There could be no worse signal to send to the few remaining major railroads than that the Board will not intervene vigorously even in the face of an unprecedented virtual shutdown of rail service. Protecting railroads from competition is not the central policy of the statute, even when their service is good.

IV. CONCLUSION

For the reason set forth herein and in FPC's Opening Comments, FPC urges the Board to require, as a condition of the UP/SP merger, that BNSF be allowed to provide service to FPC at Formosa, TX, under terms that will permit BNSF to be an effective competitor to UP. To the extent necessary to effectuate this relief, FPC should be relieved from its contractual minimum volume commitments to UP, consistent with the Board's grant of such relief in other merger proceedings.

Respectfully submitted,



Andrew P. Goldstein
John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
Suite 1105
1750 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 393-5710

Attorneys for
Formosa Plastics Corporation, U.S.A.

Dated: October 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all parties of record by first-class mail, postage prepaid, this 16th day of October, 1998.



Andrew P. Goldstein

PUBLIC VERSION -- REDACTED

REPLY VERIFIED STATEMENT

OF

RICHARD A. HEINLE

My name is Richard A. Heinle. I am employed as Vice President Vinyl/Chlor-Alkali Division, by Formosa Plastics Corporation, U.S.A. ("FPC"). I have previously submitted a verified statement in this proceeding.

I have had an opportunity to review the opposition statement filed by Union Pacific Railroad Company ("UP") on September 18, 1998, insofar as that statement pertains to FPC, especially the verified statement of UP Vice President Dennis J. Duffy ("Duffy V.S."). I and my staff have also had an opportunity to review excerpted work paper data pertaining to FPC shipments supplied to our counsel by UP in response to his request for the work papers supporting Mr. Duffy's testimony pertaining to transit times for FPC traffic. Of course, I am familiar with FPC's own transit time experiences and data.

The thesis of Mr. Duffy's testimony is that UP has made such major strides toward improved service since early 1998 as to negate any need for remedial action by the Board. While certain aspects of UP's service are better now than in February or March of 1998, there has been a lasting deterioration of UP service to important western markets, including especially the territory formerly served by Southern Pacific Transportation Company ("SP"). Moreover, there

are serious and pervasive internal inconsistencies in the work paper data furnished by UP that totally undercut the reliability of Mr. Duffy's claims of improved UP service to gateways.

Service to Western Points

California and Arizona account for nearly 25 percent of FPC's U.S. market sales from its Point Comfort, TX facility. UP service to that market shows no sign of lasting improvement.

With my opening verified statement I included graphs to portray the movement of loaded and empty cars by UP between Formosa, TX, and Stockton, CA, a former SP point now served by UP, which is a major FPC destination. FPC's shipments originate at Formosa, which is served only by UP. Prior to the UP/SP merger, Stockton was open to UP, SP, and BNSF, but BNSF routings were not used by FPC for reasons explained in the Highly Confidential version of my opening verified statement.

Our opening statement graph of Stockton shipments demonstrated that UP transit times, for both loaded and empty cars, were approximately twice as long through April 1998 as they had been in late 1996 and early 1997, before the post-merger UP "meltdown" began. These conditions did not improve in the summer of 1998. FPC car tracing data shows that average transit times from Formosa to Stockton in June and July 1998 were 30 or more days -- the worst performance ever by UP. Return shipments of empty cars from Stockton to Formosa showed some improvement in the summer of 1998 versus early 1998, but were still at levels higher than pre-meltdown performance.

FPC's transit time experience to and from Stockton is not atypical of our experience with transit times to other former SP destinations. South Fontana, CA, near Los Angeles, is a UP point formerly served by SP, where FPC does a sizeable volume of business. In 1996, transit time on loaded cars from Formosa to South Fontana averaged 14 days. In the first seven months of 1998, UP transit times for loaded cars to South Fontana averaged 21 days, with July 1998 being the worst month of all at 27 days.

Fowler, AZ is another former SP point now served by UP. It is not a point to which FPC makes shipments every month, but we did ship to Fowler from Point Comfort in the second half of 1996 and our outbound shipments averaged 11.4 days. In May, June, and July 1998, our outbound shipments to Fowler averaged 20 days each. These examples typify the worsening UP service that FPC has been receiving since UP attempted to amalgamate SP points into the UP system.

Mr. Duffy states, in his September 18 filing (Duffy V.S. at 5): "Service to Southern California has not yet returned to where UP and Formosa would like, but now that the congestion in that area has cleared in the last 10 days transit times should improve significantly." No hard data was offered by UP to substantiate this claim. I do not believe that Mr. Duffy's optimism is warranted, and I certainly disagree that the appropriate service standard is what UP would "like". Service should be at pre-merger levels that are commercially acceptable, and that is not where UP service is.

Service to one of FPC's most important market areas -- the California-Arizona market -- has gotten appreciably slower since UP acquired SP and took over SP's routings. When UP acquired SP, UP's market share of FPC domestic destination traffic served from Point Comfort went from [] percent to [] percent, an increase of more than [] percent, but UP service worsened dramatically, falling far below service provided by SP. Poor UP service to customers in these markets is imposing substantial costs on FPC, as described in my opening statement. These costs are manifest in many ways, including the all-important but intangible customer satisfaction level which has been dropping since UP's service problems began, and our operating costs, which have skyrocketed.

It is only because of UP's market power that the railroad has felt it could continue to provide inadequate service while refusing to accept full responsibility for the damage it has caused FPC. Without the reduction in competition resulting from the UP/SP merger, FPC would have been in a better position to deal with service problems. We must have a reliable, permanent alternative to UP service, especially as FPC gears up to expand shipments from the Point Comfort facility to the substantial extent described in my opening verified statement.

Gateway Service

Mr. Duffy devotes much of his FPC-specific testimony to a discussion of UP service on FPC gateway traffic. He alleges that service has improved by 39 to 51 percent since February/March 1998

to four gateways: Chicago, East St. Louis, Memphis, and New Orleans (Duffy V.S. at 2); and he discusses both loaded and empty moves between Formosa and those gateways (Duffy V.S. at 5-6).

We have examined the FPC-specific data furnished to us by UP in response to our request for Duffy work papers related to his FPC testimony. We were furnished, in fact, three sets of such data, all denominated as Highly Confidential, so that I cannot disclose their contents in the public version of this statement. One has "average transit" times from Formosa to Chicago, East St. Louis, Memphis, and New Orleans for the months of January-August 1998 (hereinafter "Work Paper 1"). The next set has "average transit" times from Formosa to the four Work Paper 1 gateways for just the month of August 1998 ("Work Paper 2"). The third set of work papers reflects transit times to the same four gateways plus two other gateways; and also to Houston, TX, Fontana, CA, and Stockton, CA separately for loaded cars and empty cars on a monthly basis from January 1997 through September 1998, inclusive ("Work Paper 3").

A comparison of the three sets of work papers shows differing transit time claims by UP to the same gateways during the same months; in some instances, there are four different transit times to the same gateway for the same month. Set forth below is a table which examines the Duffy work paper transit times in days from January to August, 1998, which are the only months that Work Paper 1 and Work Paper 3 have in common.

Daily Transit Times in UP Work Papers

Chicago

	<u>Work Paper 1</u>	<u>Work Paper 3*</u>	<u>Work Paper 2</u>
<u>1998</u>			
January	[
February			
March			
April			
May			
June			
July			
August]

* Loaded Cars In bold

East St. Louis

<u>1998</u>	<u>Work Paper 1</u>	<u>Work Paper 3*</u>	<u>Work Paper 2</u>
January	[
February			
March			
April			
May			
June			
July			
August			
]

* Loaded Cars In Bold

Memphis

	<u>Work Paper 1</u>	<u>Work Paper 3*</u>	<u>Work Paper 2</u>
<u>1998</u>			
January	[
February			
March			
April			
May			
June			
July			
August]
 * Loaded Cars In Bold			

New Orleans

<u>1998</u>	<u>Work Paper 1</u>	<u>Work Paper 3*</u>	<u>Work Paper 2</u>
January	[
February			
March			
April			
May			
June			
July			
August]

* **Loaded Cars In Bold**

It is difficult, if not impossible, to reconcile these disparate transit times. For instances, to the Chicago gateway, Work Paper 1 shows an average transit time (presumably loaded and empty combined) of [] days in January 1998, while Work Paper 3 shows a transit time of [] days for loads and [] days for empties, neither of which correlates to the [] days in Work Paper 1. If the Work Paper 3 numbers for loads and empties are averaged for January 1998, the result is a transit time of [] days, which also bears no relationship to the [] days in Work Paper 1.

The same confounding observations apply to the majority of the monthly entries supplied by UP in those months for which Work Paper 1 and Work Paper 3 have movement data in common. If the average of the Work Paper 3 loaded and empty transit times equaled the Work Paper 1 transit times, the discrepancies between the three sets of figures would not be so significant. But the Duffy work papers offer no way of reconciling the three sets of figures. And, for the month of August 1998, the work papers include a fourth transit time figure which likewise is irreconcilable with any of the other three figures supplied for that month.

FPC does not deny that there has been an improvement in UP service to several gateway points, but Mr. Duffy's testimony does not provide a reliable measure of that improvement. FPC's own records show, for example, that, while transit times to the Memphis gateway have dropped since February, as Mr. Duffy claims, they nevertheless remain 30 percent worse than in 1996. Transit times from Formosa to Council Bluffs, IA, another domestic gateway, averaged slightly over 17 days in June and July 1998, compared with 9 days in 1996. Outbound shipments to Houston averaged 5.0 days in 1996 and for the first six months of 1997. In May 1998 they averaged 7.0 days; in June they averaged 7.5 days; and in July they averaged 8.5 days, a trend toward worse, not improving, service.

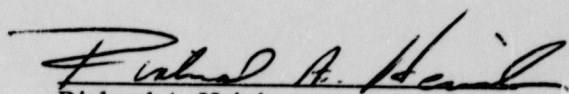
This is an indication that UP is not capable of operating its entire system efficiently so as to provide timely and un wasteful service throughout. When service over part of the system improves, service elsewhere on the system fails. UP's performance indicates

that it has not been able to fix its western service, particularly at points formerly served by SP. Those are the single most important markets for FPC on the UP system. Prior to the UP/SP merger, FPC had western customers that could be reached via either UP or SP routing, including our largest California market at Stockton, affording some measure of protection against service failures on one road or the other. Post-merger, that choice of routing is unavailable, since all of the former SP destinations now are in UP's hands.

The poor service UP has provided in its expanded markets directly follows the enhanced market power it gained in the merger, but a remedy readily is available. Though ignored by UP, FPC reiterates that it is willing and able to provide improved rail facilities for access by UP and BNSF at Formosa. BNSF is currently prevented from serving FPC only by the restrictions placed on BNSF's grant of trackage rights, in order to keep FPC (and other shippers) captive. Not only would access for BNSF be operationally simple, but it would benefit both FPC and UP by reducing congestion on UP's line between Corpus Christi and Houston.

VERIFICATION

I hereby certify, under penalty of perjury, that I have read the foregoing statements and that its contents are true, and that I am authorized to make and submit the same.

A handwritten signature in dark ink, appearing to read "Richard A. Heinle", written over a horizontal line.

Richard A. Heinle

Vice President

Vinyl/Chlor-Alkali

10/15/98

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES

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July 31, 1998

VIA HAND DELIVERY

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

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

Dear Secretary Williams:

The Burlington Northern and Santa Fe Railway Company hereby submits for filing in the above-captioned proceeding the original and twenty-five (25) copies of the Verified Statement of Ernest L. Hord as its comments on the Comments and Request for Remedial Conditions of Formosa Plastics Corporation, U.S.A., filed on July 8, 1998. Also enclosed is a 3.5-inch disk containing the text of this pleading 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 / KAK

Erika Z. Jones

Enclosures

**VERIFIED STATEMENT
OF
ERNEST L. HORD**

My name is Ernest L. Hord. I am Vice President, Operations of The Burlington Northern and Santa Fe Railway Company ("BNSF") on the UP/SP Lines. My business address is 24125 Aldine Westfield Road, Spring, TX 77373.

I joined BNSF in October 1996. Prior to that time, I was employed by Southern Pacific for 31 years and held various positions in the Operations Department, including General Manager and Assistant Vice President-Transportation, culminating in my last position as Assistant to Executive Vice President-Operations.

Since joining BNSF, I have taken on responsibility for the start-up and implementation of service on the track and territory to which BNSF gained access under the Board's Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996). In that capacity, I have become familiar with BNSF's, as well as UP's, operations in Texas and the Gulf Coast area.

The purpose of the Verified Statement is to describe from an operating standpoint how BNSF would serve the Formosa Plastics Corporation, U.S.A. ("FPC") at Formosa, Texas were the Board to grant FPC's request for remedial conditions filed on July 8, 1998, and comment upon the efficiency of those operations.

Pursuant to trackage rights granted by the Board in the UP/SP merger proceeding, BNSF currently operates over UP's line between Algoa and Corpus Christi, TX. That line passes through Formosa, TX, to which FPC has built a nine mile industrial track from its Point Comfort facility. FPC currently provides switching service with its own engines between the facility and Formosa.

If the Board were to grant FPC's request, BNSF would be able to pick-up and set out FPC traffic at Formosa, TX, without interference with UP operations on the line or adversely affecting BNSF's present operations. All necessary switching interchanges between FPC and BNSF would occur at FPC's marshaling yard near the Formosa interchange. With FPC's planned expansion of that marshaling yard as described in the Verified Statement of Ronnie Bounds ("V.S. Bounds"), attached to FPC's July 8 filing, the new FPC yard facilities would permit a switching interchange between FPC and BNSF that would not utilize or block the UP main line. BNSF has capacity on its existing train service on the Algoa line to provide service to FPC.

In addition, with the building of a second turnout as described in V.S. Bounds, trains approaching from the southwest could head directly onto the FPC siding. The head-end engine could, if necessary, be uncoupled and moved to what was the rear of the train, and could then pull the train back on to the main line via the existing turnout to the northeast. In that manner, BNSF trains would not need to stop on the UP main line at all if those trains were to provide service to switch FPC. This handling, made possible by FPC's planned yard expansion, would reduce demands on UP's line and address the need for capacity and infrastructure in the Gulf Coast.

UP trains, which approach FPC from both east and west, could operate in a similar manner.

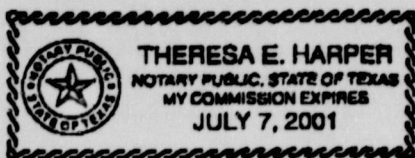
In sum, it would be operationally feasible and practical for BNSF to interchange traffic with FPC at Formosa, TX and BNSF would be able to do so in a manner that would not cause disruption to train operations on UP's main line or any adverse impact on present BNSF operations on the Algoa line.

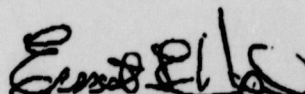
VERIFICATION

THE STATE OF TEXAS)

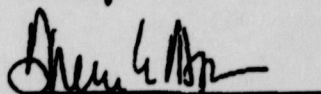
COUNTY OF TARRANT)

Ernest L. Hord, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.




Ernest L. Hord

Subscribed and sworn before me on this 30th day of July, 1998.


Notary Public

My Commission expires:

July 7, 2001

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July, 1998, a copy of the foregoing was served, by first-class mail, postage prepaid, or by a more expeditious manner of delivery, on all Parties of Record in the above-captioned proceeding.

Kathryn Kuske
Kathryn Kuske

STB FD 32760 • (Sub 26) 10-16-98 D • 191631

19/631
191632

LAW OFFICES
REA, CROSS & AUCHINCLOSS
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KEITH G. O'BRIEN
BRYCE REA, JR.
BRIAN L. TROLAND
ROBERT A. WIMBISH

ENTERED
Office of the Secretary
DONALD E. CROSS (1923-1986)

OCT 16 1998

Part of
Public Record

October 16, 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-Nos. 26 and 28),
Union Pacific Corp., et al. -- Control and Merger --
Southern Pacific Corp., et al.

[Houston/Gulf Coast Oversight]

Notice of Address Change

Dear Secretary Williams:

Submitted herewith in the above-captioned proceeding are an original and 25 copies of the verified statement of Lorenzo E. Cantu, President and Chief Operating Officer of the Brownsville & Rio Grande International Railroad ("BRGI"). A copy of Mr. Cantu's verified statement is to be included with The Burlington Northern and Santa Fe Railway Company's ("BNSF") Rebuttal to the Union Pacific Railroad's Reply, which we understand will be filed today with the Board. As a party of record in this proceeding, BRGI has elected to file the enclosed verified statement independent of the BNSF filing out of an abundance of caution.

Copies of the enclosed verified statement will be served upon all parties of record in the above-captioned proceeding.

I note that several parties in this proceeding are sending filings to me at our firm's previous address at 1920 "N" Street. I would request that the Board and all other parties of record review their service records and, if necessary, revise them to reflect our correct address, which is as follows:

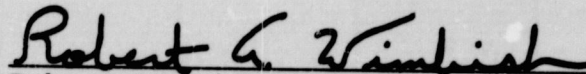
Hon. Vernon A. Williams
October 16, 1998
Page Two

Robert A. Wimbish
REA, CROSS & AUCHINCLOSS
1707 "L" Street, N.W.
Washington, D.C. 20036

Counsel for the Brownsville & Rio Grande
International Railroad

Thank you for your attention. Please do not hesitate
to contact me, if you have any questions concerning this
submission.

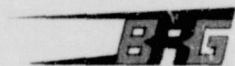
Sincerely,


Robert A. Wimbish

Counsel for Brownsville & Rio Grande
International Railroad

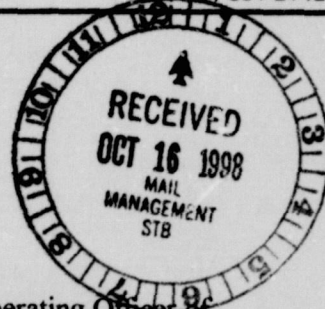
Enclosure

cc: All parties of record



**BROWNSVILLE AND RIO GRANDE
INTERNATIONAL RAILROAD**

P.O. Box 3818
Brownsville, Texas 78523-3818
Phone: (210) 831-7731
Fax: (210) 831-2142



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

My name is Lorenzo "Larry" E. Cantu. I am the President & Chief Operating Officer of the Brownsville & Rio Grande International Railroad ("BRG"). The BRG is located at the Port of Brownsville, Texas and serves as a terminal switching carrier for this area.

I am filing this Verified Statement in support of the Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line. I believe that this request will benefit our railroad and our shippers and will result in service improvement, needed operational flexibility and the ability to avoid adding unnecessary traffic to the Houston terminal area.

As the Board is already aware, I previously submitted a verified statement in this proceeding, in which I stated my support for BNSF's requests for conditions in the Harlingen-Brownsville area. (Clearly, the Brownsville area conditions would directly enhance BRG operations.) I have since had further discussions with representatives of BNSF, and they have persuaded me that I should state my support for other specific portions of BNSF's recent proposals to the STB in this proceeding — specifically, (1) BNSF's request for permanent bi-directional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line, and (2) BNSF's request that it be granted the right, wherever in the Houston/Gulf Coast area UP institutes directional operations impacting BNSF's operations over trackage rights lines, and BNSF has trackage rights over some, but not all of the directional routes UP establishes, to join in those directional flows via additional trackage rights over UP.

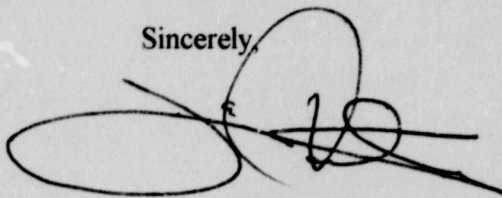
I offer my support to the two enumerated BNSF proposals (in addition to the Brownsville area relief for which I already have stated my support), because I recognize that the requested conditions could contribute greatly to improved BNSF service to and from the Brownsville area. Indeed, BNSF's proposed bi-directional rights on UP's Caldwell-Flatonia-Placedo line would keep BNSF trains out of the Houston area, thus avoiding potential congestion, and shortening BNSF's route to Brownsville by approximately 100 miles in each direction. Naturally, I support any operating proposal that enhances service to and from the Brownsville area.

For all these reasons, the Board should grant BNSF's request to maintain these bi-directional overhead trackage rights on a long-term basis. This would benefit our railroad and our shippers and will result in service improvements for both the UP and BNSF to provide greater operational flexibility and reduce congestion in the Houston terminal area.

Verified statement
Lorenzo "Larry" E. Cantu
Page Two

I certify under penalty of perjury that the foregoing is true and correct. Executed this 15th
day of October, 1998.

Sincerely,

A handwritten signature in black ink, appearing to be 'Lorenzo Cantu', written over a horizontal line.

Lorenzo "Larry" Cantu



Mayra H. Leal

STB FD • 32760 (Sub 26) 10-16-98 D 191623



GREATER HOUSTON PARTNERSHIP
Chamber of Commerce • Economic Development • World Trade

COPY

October 15, 1998

The Honorable Vernon Williams
Case Control Unit

Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001



RE:

26

STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.

HOUSTON/GULF COAST OVERSIGHT

191623
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Dear Secretary Williams:

Enclosed is the statement of the Greater Houston Partnership presenting its rebuttal comments relating to statements by the Union Pacific Railroad dated September 18, 1998 opposing all condition applications filed in this proceeding requesting additional conditions to the merger of the Union Pacific and Southern Pacific.

An original and 25 copies are enclosed, together with a 3.5 inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Roger H. Hord
713-844-3625

ENTERED
Office of the Secretary

OCT 16 1998

Part of
Public Record



GREATER HOUSTON PARTNERSHIP
Chamber of Commerce • Economic Development • World Trade

October 15, 1998

The Honorable Vernon Williams
Case Control Unit

Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001



RE:

STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.

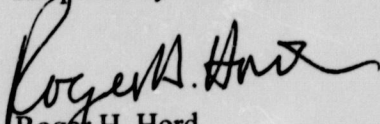
HOUSTON/GULF COAST OVERSIGHT

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Respectfully submitted,


Roger H. Hord
713-844-3625

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



**STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.**

HOUSTON/GULF COAST OVERSIGHT

**REBUTTAL COMMENTS OF
THE GREATER HOUSTON PARTNERSHIP
ON
COMMENTS OF UNION PACIFIC RAILROAD**

This statement presents the comments of the Greater Houston Partnership (GHP) regarding statements by the Union Pacific Railroad dated September 18, 1998 opposing all condition applications filed in this proceeding requesting additional conditions to the merger of the Union Pacific and Southern Pacific. Because the GHP recommendations were among those accepted for consideration by the Surface Transportation Board (STB), the GHP is filing these rebuttal comments.

The Greater Houston Partnership

The Greater Houston Partnership is Houston's principal business organization and is dedicated to building prosperity in the Houston region. The Partnership has 2,400 members from virtually every industry sector throughout the eight-county Houston region. The Partnership's Board of Directors is composed of 112 corporate CEO's of organizations in the Houston region.

Partnership members employ almost 600,000 people, which is one out of every three employees in the region.

GHP Maintains Position

The GHP maintains the view stated in our July 8, 1998 filing that we "must seek incremental changes in rail service to help secure a competitive Port and industrial sector." With this filing we reconfirm our principles and recommendations contained in that filing.

We believe rail service and rail competition for shippers served by one railroad in a community served by three or more carriers is superior to service and competition afforded a captive shipper in a community served by only two railroads where one of those railroads has an 80% market share. We note the apparent similarities in Houston's request for additional rail competition and issues in Conrail merger in the New York-New Jersey area. In this case, the STB applied lessons learned in the Houston-Gulf Coast merger of UP-SP by assuring shippers of competition from two rail carriers where before the merger, only one carrier existed. We believe the STB should revisit the Houston decision via this case to seek equitable means of injecting what is missing in the original merger formula, greater competition for shippers served by a single carrier. If the Union Pacific truly believes, as it states in UP-1 on page 155, that competition in this market would be so devastating that they would rather consider the "least drastic means" by divesting itself of the entire franchise, it reveals the extent of the dilemma we face in Houston in seeking additional competition and improved service.

The GHP restates the following recommendations:

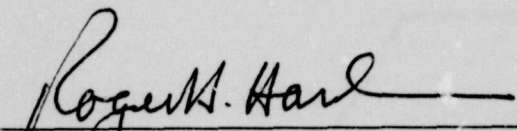
- 1) The STB should provide a mechanism for all railroads serving Houston to buy trackage rights and access rights at an equitable price to the following areas to provide greater competition for Houston area shippers:

- a) The trackage currently owned by the Port of Houston and operated by the Port Terminal Railroad Association (PRTA);
 - b) The trackage historically owned by the Houston Belt and Terminal RR prior to its dissolution; and
 - c) Additional trackage as determined by the governing body of the neutral switch and shippers as allowed by financial considerations.
- 2) Operation of a neutral dispatching, switching, and car movement system should be undertaken by a single third party. The operator should be the reconstituted PTRR as described below serving as the governing authority over the trackage accumulated as recommended above.
 - 3) The Union Pacific should be encouraged to reach an agreement with other long haul carriers to arrange the sale or lease of abandoned trackage and underutilized rights of way and switching yards which might allow shippers and the Port of Houston additional rail system competitiveness, capacity, flexibility and geographic access. The STB should mediate the negotiations of the parties involved.
 - 4) The STB should order the reconstituted PTRR to develop a regional master plan of added facilities and operations needed to provide system capacity in excess of demand for the foreseeable future.
 - 5) The Port of Houston, owner of the PTRR, and all long haul railroads serving Houston should be full and equal voting members of the PTRR Board.
 - 6) The STP should provide a mechanism for the railroad [which had] temporary rights to buy permanent rights at an equitable price from the owning railroad if an investigation indicates actual or expected improvement in performance and competitiveness in the Houston-Gulf Coast freight rail system.

These recommendations are contained in the GHP Board of Directors' resolution on *Competition in Houston Freight Rail Service*. The GHP Board's resolution emphasizes that Houston's rail system performance must be "in the top tier of United States cities," which means that service and rates must be truly competitive in order for Houston's port and its local industries to compete effectively in domestic and international markets. The GHP Board stated a preference that the private sector rectify noncompetitive situations through equitable compensation, but it realizes that federal statutes and regulations constitute a fundamental roadblock in some cases and should be modified.

CERTIFICATE OF SERVICE

I, Roger H. Hord, certify that, on this 15th day of October, 1998, caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26-32).



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STB FD 32760 (Sub 26) 10-16-98 D 191619

Office of the Secretary

OCT 16 1998

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



191619 ✓
191620
191621
FINANCE DOCKET NO 32760 (Sub-No. 26)
FINANCE DOCKET NO. 32760 (Sub-No. 29)
FINANCE DOCKET NO. 32760 (Sub-No. 30)

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

REBUTTAL COMMENTS OF THE PORT OF CORPUS CHRISTI AUTHORITY

Pursuant to Surface Transportation Board Decision No. 6 dated August 7, 1998 in the above-referenced proceeding, the Port of Corpus Christi Authority (the "Port") respectfully files these rebuttal comments in partial support of one of the additional remedial conditions contained in the consensus plan submitted July 8, 1998 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 (the "Consensus Parties"), and in full support of one of the additional remedial conditions submitted July 8, 1998 to the STB by The Burlington Northern and Santa Fe Railway Company ("BNSF"). Although the Port generally is very pleased with the benefits generated by the UP/SP merger as conditioned by the STB in its August 6, 1996 decision, certain trackage rights requested by the Consensus Parties and BNSF have the potential to provide even greater efficiencies, and should be granted, as discussed below, by the STB.

OVERALL THE PORT AND ITS SHIPPERS HAVE BENEFITTED FROM THE UP/SP
MERGER AS APPROVED BY THE STB

The Port continues strongly to support the UP merger with the SP and the initial conditions that the STB imposed on the approval of the merger. The STB action has enabled the Port and its shipper customers to (a) continue to have the dependable services of the UP, (b) replace the erratic service of the financially strapped SP with the very competitive service of a strong and viable Class I railroad, the BNSF, and (c) maintain the viability of services by a third smaller regional railroad, the Texas Mexican Railway Company.

Now two years after the STB decision, the Port continues to experience growing direct benefits from the UP/SP merger. For example, the combined UP/SP system plus entry of BNSF is providing the Port with access to new markets not previously available in the form of increased export grain business moving via both the UP and BNSF. Other new import/export business opportunities also are in various stages of development.

This is not to say that the Port was unaffected by the well-publicized service and congestion situation. However, current service is fluid with no significant delays or service interruptions and as long as the railroads continue to focus on providing levels of competitive service which are responsive to customers' requirements, and participate in forums with the shippers such as established in Review of Rail Access and Competition Issues, STB Ex Parte No. 575, the Port and its shipper customers will continue to obtain increased benefits from the merger.

TEX MEX SHOULD BE ALLOWED TO PURCHASE THE VICTORIA/ROSENBERG LINE
ON TERMS COMMERCIALY ACCEPTABLE TO BOTH UP AND TEX MEX

The Consensus Parties request that the STB

Require UP/SP to sell to Tex Mex its line between Milepost 0.0 at Rosenberg and Milepost 87.8 at Victoria, TX. Tex Mex would re-construct this line and, when completed, grant UP/SP and BNSF trackage rights between Rosenberg and Victoria to facilitate UP's directional traffic on the Brownsville

Subdivision. Grant Tex Mex related trackage rights over the two miles on the south end of this line between Milepost 87.8 and the point of connection at UP/SP's Port LaVaca branch at Victoria.

See, 63 F.R. 42482, 42484 (August 7, 1998).

In response, the UP, in its September 18, 1998 Opposition to Condition Applications at Vol 1, pages 213-214, states that

UP has agreed to sell the Wharton Branch [between Rosenberg and Victoria, Texas] to Tex Mex, and the parties have reached agreement in principle on an arbitration process to determine the sale price.

As amended by and conditioned on UP's requirement that the sale be on a commercially reasonable basis, and the other limitations contained in the UP September 18th statement, the Port supports the request of the Consensus Parties that Tex Mex be allowed to purchase, restore and operate the former SP Victoria/Rosenberg Line, with the UP and BNSF offered access to the Line on reasonable terms and conditions. Currently the parties are trying to operate 1990's railroads in the region with a 1950's infrastructure. The sale of the Victoria/Rosenberg Line to Tex Mex and subsequent reconstruction will go a long way toward restoring and modernizing the infrastructure and provide the additional capacity needed for future shippers through the Port. For example, there are rice suppliers and rice elevators located in the region which could benefit from the reconstruction of the Line.

The Port expects that the STB, in keeping with its policy to refrain from imposing conditions greater than necessary to ameliorate the results of the merger, will defer imposing any immediate resolution of the UP/Tex Mex disputes but instead will impose a condition approving of the sale of the Line to Tex Mex, and providing the parties with a sufficient amount of time to resolve commercially the remaining issues. The Port further would expect that the Tex Mex, should it receive the trackage rights requested, will be required by the STB to be responsive to shipper needs, including quoting reasonable rates, and will cooperate with the Port in developing business opportunities.

Except for this one condition, the Port takes no position on the other trackage rights and market access sought by the Consensus Parties on behalf of the Tex Mex.

BNSF'S REQUEST FOR PERMANENT RIGHTS ON THE
CALDWELL/FLATONIA/PLACEDO ROUTE SHOULD BE GRANTED

BNSF has requested a condition that would allow it permanent bidirectional overhead trackage rights on UP's Caldwell/Flatonia/Placedo route to avoid congested UP lines between Algoa and Corpus Christi, TX. See, 63 F.R. at 42484. The UP opposes this request, stating that UP will maintain BNSF's temporary trackage rights as long as UP employs directional running on the Line, but when the UP discontinues directional running, it wants to end BNSF's rights on this route as BNSF again will have the ability to utilize the Houston-Placedo route.

Despite the UP opposition, the Port supports the BNSF request as it is the only way to assure that once directional running ends, that BNSF will not have to transit through Houston to and from Corpus Christi, and risk enveloping Corpus Christi traffic in possible Houston congestion. The temporary rights provided to BNSF have shown that BNSF is a competitive alternative to the UP, and to deny BNSF the permanent right to this trackage is to risk the competitive discipline that BNSF brings to the Corpus Christi market, and to deprive shippers of the certainty of a competitive alternative which shippers need to plan their long-range transportation requirements. There are substantial public benefits to BNSF maintaining rights to this trackage, and BNSF should be afforded these rights on a permanent basis, subject only to agreement on reasonable commercial terms acceptable to the UP.

The Port takes no position on any of the other BNSF requests for conditions.

CONCLUSION

The Port of Corpus Christi appreciates the opportunity to file these comments. For the reasons stated above, the condition

requested by the Consensus Parties as to the Victoria/Rosenberg Line, as modified by the UP comments, and the BNSF request for permanent rights on the Caldwell/Flatonia/Placedo route, should be granted.

Respectfully submitted,

Paul D. Coleman

Paul D. Coleman
Hoppel, Mayer & Coleman
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-5460

Attorneys for:
The Port of Corpus Christi
Authority

October 16, 1998

CERTIFICATE OF SERVICE

I, Paul Coleman, hereby certify that a true copy of the Rebuttal Comments of the Port of Corpus Christi Authority was served on this 16th day of October, 1998, by hand delivery upon the Honorable Vernon Williams and by first class mail, postage paid upon all other parties of record.

Paul D. Coleman
Paul D. Coleman

STB FD 32760 (Sub 26) 10-14-98 D 191590

COVINGTON & BURLING

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ARVID E. ROACH II

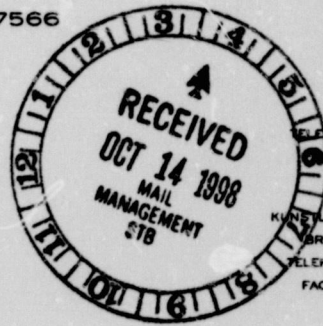
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October 14, 1998



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BY HAND

Hon. 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 15 1998
Part of
Public Record

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

Dear Secretary Williams:

Please note the following errata in UP/SP-356, in the last line on p. 2, change "210" to "270."

Also, we are enclosing a verification to the Handley statement in UP/SP-358. This verification was inadvertently omitted in our September 18 submission.

Sincerely,

Arvid E. Roach II

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

cc: All Parties of Record



VERIFICATION

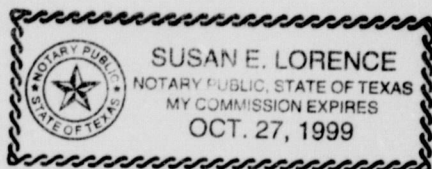
STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

I, Howard (Eddy) Handley, Jr., being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.

Howard E Handley Jr
Howard (Eddy) Handley, Jr.

Subscribed and sworn to before me this
8th day of October, 1998

Susan E. Lorence
Notary Public



STB

FD

32760

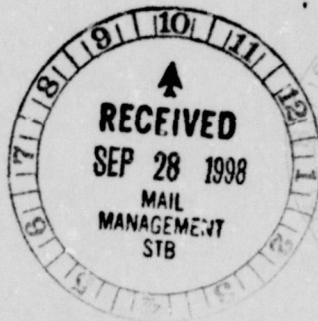
(Sub 26)

9-28-98

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191361

September 21, 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

D

Re: STB Finance Docket No. 32760 (Sub-No. 26) - 191361
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— 191362
Terminal Trackage Rights—Texas Mexican Railway Company

(Sub-No. 29) Burlington Northern and Santa Fe Railway Company— 191363
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

(Sub-No. 30) Texas Mexican Railway Company, et al.— 191364
Request For Adoption of Consensus Plan

Dear Secretary Williams:

Pursuant to Board decision dated, September 10, 1998 in this proceeding, Shell Oil Company and Shell Chemical Company hereby give notice that they have served all parties of record with copies of previously filed pleadings.

Respectfully submitted,

David L. Hall
D.L.

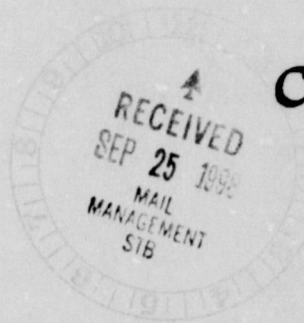
David L. Hall

ENTERED
Office of the Secretary

SEP 28 1998

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Public Record

July 7, 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.
Houston/Gulf Coast Oversight Proceeding

Dear Secretary Williams:

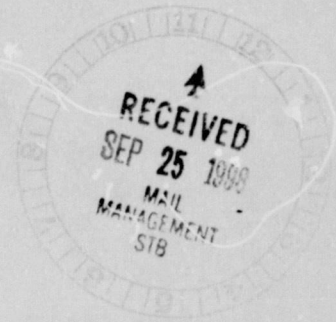
Enclosed for filing in the above-referenced docket are an original and twenty-five copies of the Request for New Remedial Conditions of Shell Oil Company and Shell Chemical Company. Also enclosed is a 3.5 inch diskette, containing the Request in a format which may be converted to Word Perfect 7.0.

Respectfully submitted,

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

David L. Hall

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.



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

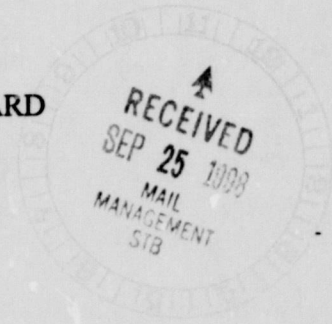
Union Pacific Corp., et al. – Control & Merger – Southern Pacific Corp., et al.
Houston/Gulf Coast Oversight Proceeding

REQUEST FOR NEW REMEDIAL CONDITIONS
OF
SHELL OIL COMPANY
AND
SHELL CHEMICAL COMPANY

Due Date: July 8, 1998

**Brian P. Felker
Manager of Products Traffic
Shell Chemical Company
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Houston, Texas 77252**

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.



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

SHELL OIL COMPANY
AND
SHELL CHEMICAL COMPANY

REQUEST FOR NEW REMEDIAL 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 May 19, 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 request for new remedial conditions. Both companies are corporations, the address of which is One Shell Plaza, Post Office Box 2463, Houston, Texas 77252.

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.

RECOMMENDATIONS FOR NEW REMEDIAL CONDITIONS

It is important to preface our recommendations by stating that Shell does not condone the taking of property nor support the forced sale of assets. Shell does advocate free, open, and unfettered competition. These recommendations offer the opportunity to reconcile these two important principles.

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 completed.
- 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.

CONCLUSIONS

We are fifteen months into what is arguably the most financially devastating railroad service emergency in U.S. history. We believe that this is due in large part to inadequate consideration of the impact of the recent spate of railroad consolidations on competition. It is obvious that significant changes are required to the conditions under which UP was granted the right to purchase and control SP et al.

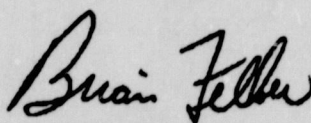
The Board is charged with ensuring a safe and efficient rail system (49 USC 10101(3)). The rail system in the west, and particularly in the Houston/Gulf Coast region has been neither safe nor efficient. This is due in large part to the reduction in competition as a western duopoly was granted through recent merger proceedings.

Absent external (competitive) pressure, railroads have developed an internal focus as they struggle to pay the premiums for the protection from competition which they have purchased through their mergers. Industries protected from competition become weak industries.

The STB mandate can best be fulfilled and the railroad industry strengthened through vigorous rail to rail competition. At the present time such competition does not exist. We believe that implementation of the foregoing recommendations, with the cooperation of all parties involved, would not only facilitate the restoration of railroad competition to the Houston/Gulf Coast region, but also strengthen the railroad industry.

Respectfully submitted,

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

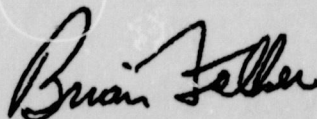
A handwritten signature in cursive script, reading "Brian Felker".

Brian P. Felker
One Shell Plaza
Houston, Texas 77252

Dated: July 7, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 1998, copies of the Request for New Remedial 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 the U.S. Secretary of Transportation, and all other parties of record.



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

August 10, 1998

**Commonwealth
Consulting
Associates**

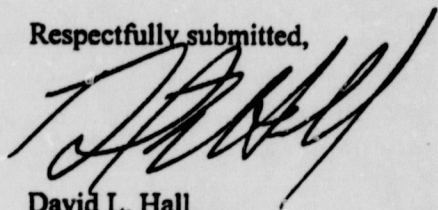
Honorable Vernon A. Williams
Office of The Secretary
Case Control Unit
Attn: STB Finance Docket No. 32760 (Sub-No.26)
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Surface Transportation Board Finance Docket No. 32760 (Sub-No. 26)

Dear Secretary Williams:

Please accept this letter as Notice of Intent to Participate in the proceeding referenced above and add my name to the service list as a party of record. Commonwealth Consulting Associates will file comments on behalf of Shell Chemical Company and Shell Oil Company.

Respectfully submitted,



David L. Hall
Commonwealth Consulting Associates
13103 F.M. 1960 West
Suite 204
Houston, TX 77065

Voice: (281) 970-6700
Fax: (281) 970-6800
E-Mail: commonwealth_consulting@compuserve.com

STB FD 32760 (Sub 26) 9-23-98 D 191324



DONELAN CLEARY
WOOD & MASER, P.C.

ENTERED
Office of the Secretary

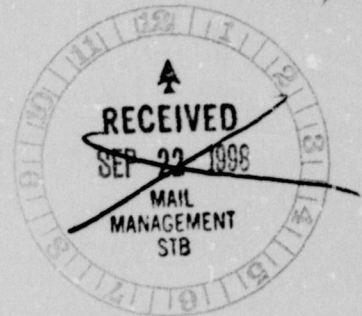
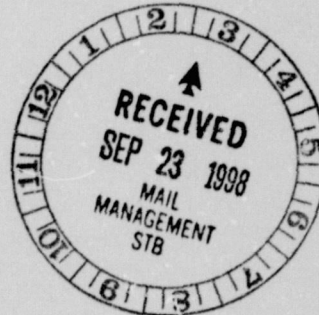
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Public Record

18 September 1998

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



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:

On July 8, 1998, the Dow Chemical Company ("Dow") filed a Highly-Confidential version and a Public version of its Request for Additional Conditions (DOW-1) in the above-referenced matter. As per the Surface Transportation Board's Order dated September 9, 1998, we have served a copy of the public version on all parties of record within 10 days after service of that Order and service list.

We will provide a copy of the Highly Confidential version upon request and proof that the requestor has signed the Undertaking in this proceeding; such requests should be put to the attention of Stacy S. Hubbard.

Sincerely,

Jeffrey O. Moreno
Counsel for the Dow Chemical Company

cc: Parties of Record

ATTORNEYS AND COUNSELORS AT LAW

1100 New York Avenue, Suite 750, N.W., Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900

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• 32760 (Sub 26) 9-23-98 • D 191323



DONELAN CLEARY
WOOD & MASER, P.C.

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18 September 1998



D

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

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:

On July 8, 1998, the National Industrial Transportation League ("League") filed its Comments and Request for Remedial Conditions submitted on behalf of the League in the above-referenced matter (NITL-4). As per the Surface Transportation Board's Order dated September 9, 1998, we have served a copy of the public version on all parties of record within 10 days after service of that Order and service list.

Sincerely,

Nick DiMichael / *ND*

Nicholas J. DiMichael
Counsel for the National Industrial
Transportation League

cc: Parties of Record

ATTORNEYS AND COUNSELORS AT LAW

1100 New York Avenue, Suite 750, N.W., Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900

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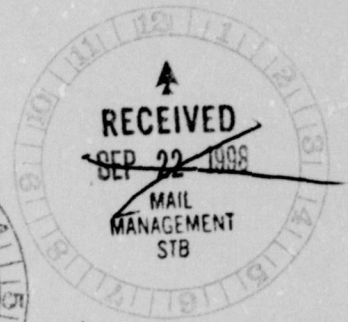
DONELAN CLEARY
WOOD & MASER, P.C.

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Office of the Secretary

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Public Record

18 September 1998



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

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:

On July 8, 1998, E. I. Dupont De Nemours and Company filed its Request For New Remedial Conditions (DUPX-1) in the above-referenced matter. As per the Surface Transportation Board's Order dated September 9, 1998, we have served a copy of the public version on all parties of record within 10 days after service of that Order and service list.

Sincerely,

Frederic L. Wood
Counsel for E. I. Dupont
De Nemours and Company

cc: Parties of Record

ATTORNEYS AND COUNSELORS AT LAW

1100 New York Avenue, Suite 750, N.W., Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900

STB FD • 32760 (Sub 26) 9-21-98 • D 191250

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES

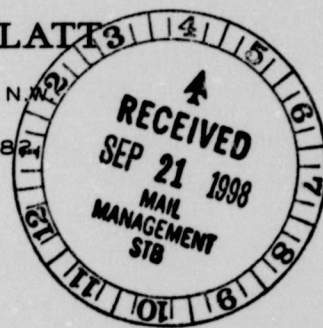
DIRECT DIAL (202) 778-0642
ejones@mayerbrown.com

ENTERED
Office of the Secretary

SEP 22 1998

Part of
Public Record

September 21, 1998



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

VIA HAND DELIVERY

Office of the Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

Enclosed please find the original verification for Ernest L. Hord whose verified statement was filed on September 18, 1998, as part of The Burlington Northern and Santa Fe Railway Company's Comments, Evidence and Arguments on Requests for New Remedial Conditions in Additional Oversight Proceeding (BNSF-9).

If you have any questions, please contact me at (202) 778-0642. Thank you.

Sincerely,

Erika Z. Jones

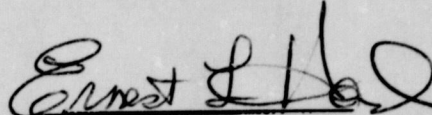
Enclosure

VERIFICATION

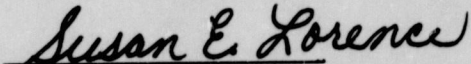
THE STATE OF TEXAS)

COUNTY OF TARRANT)

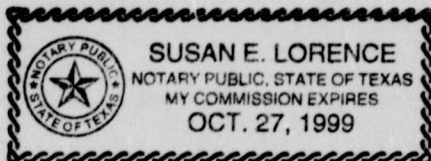
Ernest L. Hord, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.


Ernest L. Hord

Subscribed and sworn before me on this 17th day of Sept., 1998.


Notary Public

My Commission expires: 10/27/99



STB FD 32760 (Sub 26) 9-21-98 D 191284

191284



Angelina & Neches River Railroad Co.

DAVID M. PERKINS
President & General Manager

September 17, 1998

ENTERED
Office of the Secretary

SEP 22 1998

Part of
Public Record



D

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

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 for filing are an original and twenty-five (25) copies of the Statement of Angelina & Neches River Railroad Co. in the above reference docket proceeding. We have also enclosed a computer diskette containing our filing in Word Perfect 5.0 format which can be converted to Word Perfect 7.0. (Unfortunately, we do not have access to the 7.0 version; however, your version will read this file).

One copy of this filing has been sent to UP's representative and Administrative Law Judge Stephen Grossman. Copies have also been sent to all parties of record on the Service List issued September 9th.

Sincerely,

David M. Perkins
President & General Manager
Angelina & Neches River Railroad Co.
P. O. Box 1328
Lufkin, TX 75902-1328
Telephone: 409/634-4403

DMP/rk
enclosures

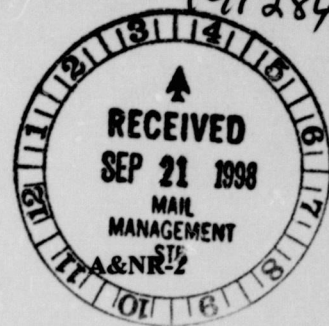
ENTERED
Office of the Secretary

SEP 22 1998

Part of
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

-- 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

STATEMENT OF
DAVID M. PERKINS
PRESIDENT & GENERAL MANAGER
ANGELINA & NECHES RIVER RAILROAD COMPANY

My name is David M. Perkins and my business address is Angelina & Neches River Railroad Company ("A&NR"), P. O. Box 1328, Lufkin, TX 75902. I am President and General Manager of the A&NR, a class III railroad, providing general freight service on approximately 12 miles of mainline track. The A&NR interchange traffic with the Union Pacific/Southern Pacific ("UP/SP") at Lufkin, Texas. UP/SP is our only trunk line connection. Therefore, A&NR and the industries located on our line are completely dependent on UP/SP as the only means of rail access for our customers.

IDENTITY AND INTEREST OF A&NR: A&NR serves a number of industries on its lines. Principal customers include: (1) Donohue Industries, a manufacturer of newsprint and telephone directory paper; (2) Lufkin Industries whose principle products are oil field equipment and castings; (3) Georgia Pacific Resins; (4) Texas Foundries whose principal product is castings; (5) Precision Lumber Company-- a lumber reload facility; (6) American Color Graphics

whose products include printed materials, and (7) Dunagan Warehouse which is both a dry and cold storage facility. The A&NR handles an average of five-thousand (5000) rail cars per year for these customers. Rail service to all of these facilities has been severely impacted as a result of the erratic service of the UP/SP in the Houston and Gulf Coast area.

In Finance Docket No. 32760, the A&NR supported the merger of Union Pacific and Southern Pacific. We believed that the combined UP and SP would create a much larger pool of equipment and motive power for East Texas. We also believed timeliness of service would improve due to the volume of traffic allowing trains to fill out faster and more frequently. In our filing, we encouraged the Board that "wherever feasible, the Commission should also impose conditions which allow the other, smaller Western railroads access to key routes and markets."¹ The A&NR believes sound transportation policy should foster and promote intramodal competition among all of the nation's rail systems.

Located 110 miles north of Houston, the A&NR Railroad and its customers have been seriously and adversely impacted by the service crisis in Houston and the Gulf Coast as if we were physically located in Houston. We have experienced:

- severe reductions in the frequency and reliability of local service from Houston and Shreveport;
- a complete breakdown in communication with UP/SP operating managers;
- increased transit times for movements via the UP/SP; and
- a 40% decline in rail traffic through the third quarter 1998 as compared to the same period in 1997

These operating problems are attributable in part to the UP's service "melt-down" in Houston; and in part to the operational changes of UP/SP made in the Southern Tier on February 1, 1998. "Directional running", using the parallel SP and UP lines to run one way traffic between Houston and Chicago, has added additional traffic and congestion over the mainline at the expense of local service to short line railroads and their customers. We submit that overhead trackage rights granted to the BNSF, as a competitive condition of the UP/SP merger, have contributed to the additional congestion and our service issues. When communications break down between the

¹ Verified Statement of David M. Perkins, Angelina & Neches River Railroad dated Oct. 12, 1995, page 5

short line and its trunk line connection as has occurred here, the trunk line is defacto using its market power by ignoring a customer segment it considers captive.

Unless the UP/SP can restore service to the consistent and sustained levels provided by SP pre-merger, we believe additional conditions would be warranted to address local service inadequacies in east Texas as well as Houston and the Gulf Coast. We applaud the Board for its actions to date and its willingness to open the record and explore additional remedial conditions.

A&NR RAILROAD AND OUR CUSTOMERS: As the Board is acutely aware, the implementation of the UP/SP merger in Houston and the Gulf Coast has not been a success story. Like many other businesses, the A&NR and its customers have suffered through local service deficiencies due to the UP/SP problems. The following discussion is useful for the Board's understanding of how short line railroads and their customers have been competitively affected since this merger was approved. Our intent is not to belabor the past. However, we believe the Board should consider how remedial conditions sought by Class I and II railroads in Houston and the Gulf Coast impact Class III rail carriers in East Texas. Short line railroads and their customers need not be subject to continued burdens associated with UP's acquisition of the SP .

Physically located in Lufkin, the A&NR is somewhat unique in that it *sometimes* receives UP/SP rail service both from the Houston (to the south) and/or from Shreveport, Louisiana (to the north). From July, 1997 through August, 1998, A&NR has not received consistent service from either direction. Directional traffic flows began working with some regularity around the end of April 1998 with local service from both directions improving to the point that A&NR received five (5) day a week service. This "improved service", however, was short-lived. In late May 1998, the UP/SP changed operations to service A&NR three times per week from both directions. Tri-weekly service is the absolute minimum A&NR's customers need to operate their businesses. Unfortunately, the tri-weekly service crews have been unable to provide reliable service -- therefore our customers continue to suffer from poor service.

This lack of consistent service, despite local service from two directions, has resulted in a loss of business to the A&NR. During the second week of June 1998, Georgia Pacific's resin plant notified the A&NR that it would discontinue shipping resin to Temple, Texas via rail for a minimum of 90 days unless UP/SP service improves dramatically. UP/SP's extraordinarily long

transit time jeopardized the finished resin product which has a shortened shelf life in warmer weather.

Similar outbound rail shipments of newsprint from Donohue Industries have declined by 28% due to diversion of production to other facilities or to truck because of poor rail service by UP. As the largest customer of the A&NR, the impact of this lost business is substantial. Donohue has eighteen customers who will no longer accept rail shipment because of the UP/SP service problems resulting in a loss of 440 rail shipments to the A&NR per year. The effect is a 23% reduction A&NR's total revenue from one shipper alone. Unlike shippers who may have redress through the Courts for consequential damages related to the UP/SP service, short line railroads have no redress. In response to such dramatic losses in business, short line railroads must take actions to reduce their fixed costs, including deferring maintenance (other than safety) and employee reductions.

While there are numerous stories of total service failures, none paints a better picture than a car of newsprint that left Lufkin on February 27, 1998 destined for El Paso, TX. Twenty-one (21) days later on March 19th the car was spotted at Ashley, TX, an El Paso suburb-- but not close to the actual consignee. The UP/SP computer records showed the car as being delivered on the same day. On March 29th, the car was returned to Lufkin as empty. The car arrived at the A&NR in Lufkin on May 2nd -- 34 days after being released! On May 7th the car was physically opened for another load, we discovered the car still loaded with the February order. These types of problems, repeated over and over, clearly demonstrate why shippers are abandoning rail transportation for highway carriage.

Securing adequate equipment is also a problem although the merger was supposed to create a much larger pool of equipment. Dunagan Warehouse has a need for refrigerated cars for some of its shipments. For example, on September 2, 1997, the A&NR placed an order with UP/SP for 12 refrigerated cars ("reefers") for Dunagan. On September 5th, the A&NR ordered an additional 8 reefer cars for a total of 20. UP/SP told A&NR that it was unable to supply the equipment due to tight car supply caused by pre-trip servicing. On a daily basis, A&NR contacted UP/SP for reefer cars. As UP/SP failed to supply the equipment, Dunagan made new arrangements with its customer and on October 6th changed the order to 12 reefers. UP/SP still could not supply the cars. On the same day in an attempt to help this frustrated customer,

A&NR attempted to secure the equipment from BNSF. Although BNSF had the required equipment, BNSF was unable to supply the equipment because its trackage rights from Shreveport to Houston is limited to overhead trackage rights. A&NR had no choice but to pursue the matter with UP/SP. On October 15, 1997 –some 44 days from the first order – three reefer cars arrived in Lufkin from Van Buren, Arkansas. These three cars represented the full extent to which UP/SP could fill this order. Ironically, the BNSF could have supplied equipment had it been authorized by the Board to serve short line railroads on those UP/SP lines where they were granted trackage rights.

When a trunk line railroad cannot meet its service obligations, not only does industry suffer, short line railroads suffer as well. The A&NR's fortunes rise and fall in direct relation to those of its shippers **and** with the its sole trunk line connection. The UP/SP recovery has neither been consistent nor timely and east Texas businesses, as shown in these examples, have suffered.

Unintentional Effect from the Board's Prior Decision: On November 20, 1996, ² the Surface Transportation Board announced its decision clarifying "*the new facilities condition*" imposed in the UP/SP Merger Decision No. 44. In that decision, the STB confirmed that BNSF would be permitted to serve **new** customer facilities and new transload facilities on all UP and SP lines where BNSF received trackage rights as a result of the merger. The Board noted that the purpose of the new facilities and transload conditions were intended to serve two purposes: (1) so that the post-merger competitive options provided by BNSF v. UP/SP competition would replicate the pre-merger competitive options provided by the UP vs. SP competition; and (2) so that BNSF could achieve sufficient traffic density on its trackage rights lines. Unfortunately, the Board's decision to grant BNSF access to new shippers locating on UP/SP mainline between Houston and Shreveport creates a serious, and we believe, an unintentional disadvantage for short line railroads with physical connections to the trunk carrier's main line operation. Shortline railroads have little prospect of developing a larger shipper base on their existing railroad lines when shippers have the option to locate "*new facilities*" on the UP/SP mainline and with access to both UP/SP and the BNSF.

The A&NR encourages the Board to seek comments from other short line railroads concerning their ability to attract new customers since *"the Board's new facilities condition"* was imposed. We submit that short line railroads may have been inadvertently disadvantaged by the implication of this condition and some adjustment may be warranted. However, this discussion may be more properly considered in the "general" oversight proceeding, Finance Docket No. 32760 (Sub. No. 21) that began on July 1, 1998 since this situation may be beyond the Houston and Gulf Coast region.

A&NR POSITION: The A&NR believes the merger has not produced the efficient and improved transportation applicants assured the Board, shippers, and its short line connections would result from the merger. The failure to timely achieve these benefits is cause now for the Board to examine its prior decisions in the initial merger proceeding and take action to ensure rail-to-rail competition and local service is available in Houston, the Gulf Coast, and all of east Texas.

UP/SP service continues to be less than consistent -- despite the best efforts of the UP/SP. East Texas industries located in Lufkin, TX are completely dependent upon the UP/SP as the only means of rail access. The A&NR has provided continuous rail service to Lufkin and the East Texas area for the past 98 years with only a single trunk line connection. Not even on SP's presumed brink of bankruptcy did A&NR and its customers suffer such significant and extensive losses in business as those following the UP/SP merger. Our customers have converted many of their rail shipments to truck to meet their marketplace demands. Customer dissatisfaction continues with little prospect for recovery. Temporary improvements in UP/SP service are no longer acceptable and more drastic action may be required. While the Board recently found that there is no longer a "service emergency"³ under the terms of 49 USC § 11123 in the Houston area, the UP/SP system continues to be fragile and service difficulties remain.

HOUSTON /GULF COAST REGION: The Board has retained jurisdiction and the authority to impose additional conditions (if the facts warrant) as discussed in the UP oversight proceeding

² See Decision No. 61, Finance Docket No. 32760 (Sub Nos. 1, 2, 19) dated November 19, 1996

³ STB Service Order No. 1518 (Sub. No. 1) served July 31, 1998

(Sub.-No. 21) The Board has retained five years of oversight "to ensure that merger related competitive problems do not develop".⁴ Although UP wants us to believe that SP would have failed if not for the merger with UP, the fact remains that SP provided consistent and timely local service to its short line connections and customers. UP/SP has not been able to match that service post merger.

Several parties have put forth suggestions to the Board as part of the second annual review of the merger Finance Docket No. 32760 (Sub.-No. 21) which we believe have merit here. We believe the Board should consider:

1. The position of the AF&PA⁵ who encouraged the Board in the Sub.-No. 21 proceeding "to maximize routing options by increasing opportunities for short line rail carriers to participate in UP/SP's rail traffic; to remove 'paper barriers' in sales agreements and pricing policies of Class I railroads which can severely restrict the ability of a short line to provide service and interchange traffic." The A&NR supports "open interchange" --the lifting of restrictions on service to local industries and short lines by carriers with existing trackage rights over the UP/SP. However, rather than singling out the UP/SP as would be the case in this proceeding, we believe the issue of "open interchange" should be addressed in a proceeding applicable to all railroads. During the recent service crisis we believe the BNSF may have been able to provide some service to our customers if their through trains would have been able to interchange traffic with the A&NR.
2. The position of the National Industrial Transportation League⁶ that the Board require the UPSP "to submit information on key terminals and routes" in a public --not private forum. We concur that more detailed and corridor-specific information is necessary for the Board to monitor and evaluate the service problems and competitive situation. The UPSP's July 1, 1998 Second Annual Report on Merger and Condition Implementation ("Second Annual Report") indicates that directional running from Missouri through Arkansas and Louisiana to Texas and vice versa is the most significant change they have made to their service.

⁴ Decision No. 77, January 2, 1998 at page 7

⁵ Comments of AF&PA [AFPA-2] by : David B. Hershey dated August 14, 1998 STB Finance Docket No. 32760 (Sub. No. 21)

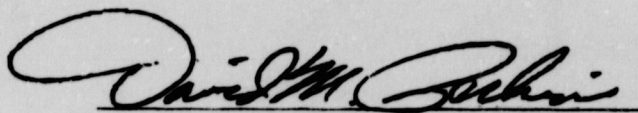
⁶ Comments of the National Industrial Transportation League, Finance Docket NO. 32760 (Sub. No. 21) by Nicholas J. DiMichael dated August 14, 1998

Directional running is "directly responsible for the great improvement that has occurred in UP service.....as a result of directional running, transit times have improved markedly for Houston area shippers." The A&NR is located on the mainline from Louisiana to Texas. The A&NR and its customers have seen only marginal improvement in UP's service. Quite frankly, we believe the Board should require corridor specific information on this key route. While the UP is interested in supplying only system wide information, we believe the Board should also have first hand information of local service which is not easily derived from looking only at the system wide data..

3. We encourage the Board to seek comments, with particular emphasis from short line rail carriers, in the "general" oversight proceeding, Finance Docket No. 32760 (Sub. No. 21) related to the *"new facilities condition"*. We believe short line railroads should receive the same treatment as shippers in that BNSF (or any other railroad given trackage rights) should have access to short line railroads who interchange with UPSP. The A&NR has invested considerable capital in real estate along its right of way and spends a considerable amount of time and expense to attract new shippers to the Lufkin area. Unfortunately, A&NR's economic development efforts have become severely disadvantaged due to the current "new facilities condition". Any industry potentially locating in the Lufkin area now has to choose between availability of service from UP and BNSF if locating on the UP/SP mainline or being limited solely to the UP/SP access if locating on the A&NR. Without similar treatment for short line railroads as provided industry, our railroads won't be able to expand our business and attract new customers.
4. We encourage the Board to require the parties suggesting "neutral switching" or "coordinated switching" in Houston to alleviate congestion and improve coordination of trains in the east Texas corridor to provide for specific daily local service to short lines who interchange traffic with UP/SP (or BNSF) over these lines. Short line railroads and their customers should not continue to suffer service deficiencies caused by the lack of coordinated train scheduling over the mainline. We submit that "local" service reports should be required by the Board as part of its continuing oversight.

SUMMARY: The A&NR and its customers have been severely impacted by the reduction in service in east Texas and by UP/SP exercising its market monopoly power at the expense of small shippers and railroads. For these reasons, we believe suggestions put forth in the general oversight proceeding have merit here. In addition, the A&NR urges the Board to maintain continued and vigilant oversight of the UP/SP proceeding for the entire five year period.

Respectfully submitted:

A handwritten signature in cursive script, reading "David M. Perkins", is written over a horizontal line.

David M. Perkins

Dated: September 17, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing statement has been served this 17th day of September, 1998, by first class mail, postage prepaid, upon all parties of record in the oversight proceeding.

A handwritten signature in cursive script, reading "David M. Perkins", written over a horizontal line.

David M. Perkins

STB FD 32760 (Sub 26) 9-18-98 D 191234

191234

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of the Secretary

SEP 21 1998

Part of
Public Record

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

UNION PACIFIC CORP. et al.
--Control and Merger--
SOUTHERN PACIFIC RAIL CORP. et al.
[Houston/Gulf Coast Oversight]

ARU-2



D

COMMENTS OF THE ALLIED RAIL UNIONS

The Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders Blacksmiths Forgers and Helpers; National Council of Firemen and Oilers/SEIU; and Sheet Metal Workers International Association, have intervened in these proceedings collectively as the "Allied Rail Unions" ("ARU") to protect the interests of their members and to address the problems that have developed with the Union Pacific--Southern Pacific common control and merger transaction ("Transaction") that gave rise to these proceedings. These unions take no position either for or against the various applications in this sub-docket and the embraced sub-proceedings, but they do have comments pertinent to the Board's continuing oversight of the Transaction and its consideration of remedies for Transaction

related problems. The ARU believe that it is important to address prior comments by Union Pacific ("UP") regarding the source of its problems, and to show the Board how UP's problems demonstrate the fallacies that have been the foundation for recent decisions of the ICC and the Board in merger and control cases.

1. In "Applicants Third Quarter 1997 Progress Report" (at 10), UP asserted that "Were it not for the time-consuming New York Dock negotiation process that delays actual merger implementation, the service crisis probably would never have arisen. And the benefits of the merger will ensure that it is not repeated. But all labor implementing agreements will not be in place for several additional months, and the full merger benefits are too far in the future". See Attachment A. UP thus placed the blame for its problems squarely, and entirely on labor and the New York Dock implementing arrangement process. This was a false and outrageous accusation.

The accusation in the October 1997 report was false because the implementing arrangement process is anything but time-consuming. It provides for expedited negotiations and arbitration of arrangements for the selection of forces and assignment of employees in connection with co-ordinations and consolidations that result from an approved transaction. The New York Dock conditions provide that once a carrier gives notice of its intentions, either party may invoke negotiations which are to

last for at least 30 days. If no agreement is reached, either party may invoke arbitration which is to be held within 30 days of the invocation of arbitration and a decision is to be rendered within 30 days of the hearing. Thus the conditions establish a 90 day period for negotiation/arbitration of an implementing arrangement. New York Dock-Control-Brooklyn Eastern District Terminal, 360 ICC 60, 85(1979). In practice, this process does take somewhat more time because of the schedules of the parties and of the arbitrators. The time for resolution has also expanded as a result of carriers placing issues in these arbitrations beyond selection of forces and assignment of employees that should not be resolved in such proceedings. Nonetheless the New York Dock implementing arrangement process is a highly expedited process for resolution of complex and often hotly contested problems. It is for that reason that the carriers have often argued for submission of disputes to New York Dock arbitration, including disputes that should not be in that forum, because it is so much faster than Railway Labor Act processes. UP's October 1997 characterization of the New York Dock process as "time consuming" is thus erroneous and at odds with the carriers' past characterizations of the process; indeed the statement in the October 1997 report would be laughable if it were not so serious.

The October 1997 statement was also false because the Board's approval of the Transaction was effective on September

11, 1996 and UP could have served New York Dock notices shortly after that date. Thus even if the implementing arrangement process took longer than 90 days, as it usually does, UP had no basis for blaming the unions for not having arrangements in place over a year after the effective date of the decision. Indeed, it seems that UP had not even moved to arbitration with some of the unions as of the time it was attempting to deflect blame for its problems to the unions. This is probably because internal evaluations of UP and negotiations with the unions revealed to UP that what it sought to do was not as simple, and free from unanticipated complications as UP represented to the Board. But the fact remains, UP did not proceed expeditiously and it has no basis for blaming the unions for any delays in concluding implementing arrangements.

The October 1997 accusation was outrageous because UP was having problems that flowed from its own misguided merger integration plans. It is clear that in its desire to cut costs as much as possible as quickly as possible, UP put itself in a difficult situation. Among other things it abolished the jobs of many employees and managers in order to save on labor costs and then had insufficient manpower and too few managers familiar with SP to implement the merger efficiently. Indeed, it is ironic that after eliminating jobs, UP had to turn around and begin hiring. See below. It is apparent that UP's problems were the result of

its own flawed integration plan and compulsive desire to reduce employment. It was outrageous for UP to then attempt to blame its troubles on the unions and the New York Dock process.

UP did ultimately make a weak effort to "take it back". On October 10, 1997, UP' counsel filed an "errata" letter in which it suggested that the wording of the third Quarter Report was a mistake and that it should have read as follows: "Were it not for the time-consuming process of merger implementation, the service crisis probably would never have arisen. And the benefits of the merger will ensure that it is not repeated. But completing merger implementation requires several years, and the full merger benefits are too far in the future". See Attachment B. However, even if a charge like the one made by UP could ever be effectively withdrawn once disseminated, this correction of the supposed error by an errata letter from counsel was hardly an effective retraction. The letter was not the equivalent of a filing, it was not an admission that the prior accusation was without basis and it was not the type of document that would receive the sort of attention that the Third Quarter Report received. Certainly it did not receive the sort of press coverage that other UP filings received. Additionally, the ARU submit that given the language of the original statement and the language of the "correction" it is clear that the errata letter was at best a weak effort to correct the record and at worst a cosmetic change

not meaningfully intended to correct the impression left by the earlier statement. ARU's concerns in that regard are fortified by the fact that several weeks after the errata letter was issued, UP's Vice President for the Western Region, Robert Starzel, echoed the original accusation in a meeting with shippers. The November 24, 1997 Journal of Commerce report on a shippers meeting addressed by Mr. Starzel reported that he had discussed the UP's problems in terms similar to those used in the 1997 Third Quarter Report, and the Journal of Commerce report of his talk attributed UP's problems to the absence of implementing arrangements.

The effects of UP's wrongful accusation and half-hearted retraction were felt not only in this proceeding but in the recent CSX/NS--Conrail proceeding where various shippers expressed concern about the implementing arrangement process, citing UP's problems as justifying their concerns.

The ARU therefore feel that it is important in this oversight proceeding to finally make sure that it is clear to the Board, and to other parties, that there was no basis for UP's attempt to deflect blame for its troubles on to the unions or the implementing arrangement process.

2. The necessity for these oversight proceedings, for consideration of the transactions in the embraced proceedings and for other remedial actions taken by the Board with respect to the

UP/SP Transaction demonstrates that recent ICC and Board decisions regarding control and merger transactions have been predicated on unfounded assumptions.

In the recent control and merger cases the ICC and Board blithely accepted bald assertions by the applicants that the transactions would be in the public interest. They claimed that centralization of functions, coordination of train movements, consolidation of shops and other facilities, and combination of maintenance of way and signal territories and work forces would lead to improved service and lower rates. Applicants have also argued that reductions of forces supposedly made possible through mergers would benefit the public through cost savings to the carriers which presumably would be passed on to shippers who would presumably pass their savings on to consumers.

Many rail unions, including the ARU, responded that even if these assumptions were true, they were not a basis for approval of the consolidations and work force reductions planned by the applicants. But the unions also argued that there were no bases for the assumptions made by the applicants and the Board. They contended that the planned actions might reduce labor costs, but they would not necessarily improve service; the applicants were merely using the Board to obtain changes in working conditions without the sort of effort and quid pro quo that would have been required had they attempted to make the changes through

legitimate bargaining. But the ICC and Board repeatedly accepted the applicants blithe assertions of efficiencies and improved service. The Board relied on those assumptions in approving the transactions that adversely affected rail workers and the applicants relied on the ICC/Board's decisions in effecting changes that caused job losses and abrogation of employee rights under negotiated agreements.

The problems with the UP/SP Transaction demonstrate that the approvals in recent merger cases were indeed predicated on blithe assertions and bald assumptions which are not necessarily correct. Simply put, it is obvious to all, and admitted by UP, that two years after the effective date of the Transaction, service has not been better than before, in fact it has been much worse. It is also clear that many of the specific actions that UP asserted would improve service have failed to improve service and have even exacerbated the service problems.

First and foremost of course is the reduction in employment. UP made much of the fact that it would operate as efficiently with fewer employees while reducing costs for shippers. However, the reduction in employees contributed greatly to the UP's service problems. In fact UP has had to hire large numbers of new, and sometimes inexperienced employees. See New York Times article of April 26, 1998, (Attachment D):

Seeing how the merger went so wrong takes no M.B.A., no fancy title, only the recent experience of trying to run a Union Pacific train. Engineers and conductors say they watched the railroad's managers squeeze the deal for every possible economy and efficiency. But when a brisk economy kept freight traffic rising, there were far too few supervisors, locomotives or crews.

* * * *

Union Pacific has responded to complaints over safety and service by agreeing to recruit thousands of new workers, though veterans say the inexperience of the new hires will present new risks.

Review of a Railroad Retirement Board report of job vacancies from this Spring shows a disproportionate number of job openings on UP in comparison to other railroads, and that the openings are in virtually every craft. Attachment E.

Thus it is clear that the reductions in employment made by UP were directly related to its service problems and ultimately had to be reversed. A key element of the supposed merger related economies and efficiencies asserted by the applicants and assumed by the Board was therefore simply without real basis.

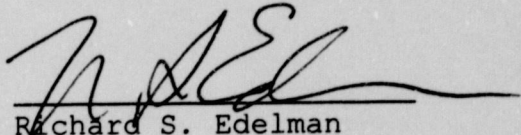
Another major assertion of the applicants, and assumption by the Board, with respect to merger-related so-called economies and efficiencies was that centralization of work would improve service and reduce costs. Moreover, those assertions were relied upon by the applicants, including UP, in arguing that centralization of work necessitated abrogation of collective

bargaining agreements because they contended that they needed single agreements at consolidated facilities. And after approval of the Transaction, UP moved forward with centralization and consolidation of shops, dispatching offices and maintenance of way and signal territories; and it argued that single agreements of its choosing were necessary in each instance. However, UP apparently has now concluded that centralization was increasing rather than reducing its service problems, so it has begun to return to a more decentralized operation. See Journal of Commerce Article of August 20, 1998, (Attachment F). Additionally UP has decided to layoff 600 production gang workers (see Journal of Commerce article of September 10, 1998, Attachment G), this after asserting in the Board's proceedings that it needed to move workers to those gangs and to substantially expand the territories covered by those gangs. Of course while UP apparently now recognizes that centralization and consolidation do not necessarily produce more efficient operations and improved service, the damage to employees and to their agreement rights has already been done.

The foregoing all shows that the Board should not accept mere assertions that mergers will yield efficient operations and improved service, that it should not just accept at face value claims that consolidations of work and workers and agreements result in improved service. It is the applicants in merger and

control transactions who bear the burden of showing that their plans are consistent with the public interest. In view of the UP experience, it is clear that the Board should not merely assume that there will be service improvements merely because the applicants say it will be so. The Board should consider the lessons of the UP Transaction when it considers future control and merger transactions and when it considers carrier invocations of the New York Dock implementing arrangement process when that is done purportedly to effect efficiencies that are alleged to promote the public interest.

Respectfully submitted,



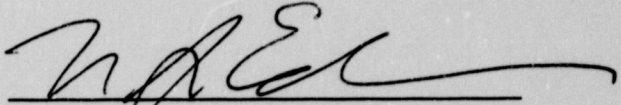
Richard S. Edelman
Of Counsel
O'Donnell, Schwartz & Anderson
1900 L Street, N.W.
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Dated: September 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing, Comments of the Allied Rail Unions by first-class mail, postage prepaid, to the offices of the parties on the official service list in this proceeding.

Dated at Washington, D.C. this 18th day of September, 1998.


Richard S. Edelman

ATTACHMENT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

-- CONTROL AND MERGER --

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

APPLICANTS' THIRD QUARTER 1997 PROGRESS REPORT

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Attorneys for Applicants

October 1, 1997

received trackage rights over I&M's line between Barr and Springfield, Illinois. A notice of exemption in regard to these trackage rights was filed on September 3 in Finance Docket No. 33454. These rights will make possible the merger-related abandonment of the UPRR line between Barr and Girard, Illinois, as authorized in Docket No. AB-33 (Sub-No. 96).

As a result of negotiations contemplated by the March 21, 1996 letter agreement between Applicants, on the one hand, and the Brownsville Navigation District and Brownsville & Rio Grande International Railroad ("BRGI"), on the other hand, see BRGI-3/BND-1, UP/SP and BRGI have agreed to BRGI's lease of UP's Port Lead in Brownsville, Texas, pursuant to which BRGI will switch traffic on the Port Lead and interchange with UP/SP at UP's Brownsville yard. A notice of exemption with respect to the lease was published in Finance Docket No. 33452 on September 23.

Applicants' compliance with environmental conditions is discussed in Exhibit B, which follows the format used in prior quarterly reports.

UP/SP's continued progress in arriving at labor implementing agreements is discussed in Part II.

II. SERVICE RECOVERY PLAN

Since UP/SP last reported to the Board, the railroad's service crisis has not abated. By some measures, service continued to decline in late August and early

September, and the first signs of improvement began to appear only in mid-September. The systemwide average velocity of cars on the railroad slowed significantly since July. Each decline in velocity causes locomotives and freight cars to be used less productively, effectively offsetting some of the measures to improve service described in the August 20 report. Major classification yards in Texas -- in Houston, Fort Worth and San Antonio -- remain so severely congested that many inbound trains cannot be processed and must be stored in sidings, causing mainline congestion that restricts movement of other trains. On September 1, UP/SP had 145 freight trains in sidings waiting for yard space, most of them in Texas but some in neighboring states. As of October 1, the number of trains in sidings stands at 96.

Actions to improve service in the Gulf Coast area have caused service deterioration in other areas. UP/SP terminals in Southern California -- especially West Colton Yard -- are congested and trains are being delayed between Los Angeles and the Arizona state line. After diverting locomotives to the Gulf Coast area, UP/SP's Central Corridor is experiencing locomotive shortages, especially at major yards in Chicago and North Platte.

UP/SP has not altered its judgments about the initial causes of these service problems, so we will not revisit that subject here. UP/SP reaffirms its conclusion

that the problems, which began in areas where the merger had not yet been implemented and its efficiencies could not be realized, were not merger-related. UP/SP continues to gain a deeper understanding of the fundamental frailty of SP prior to the merger, resulting from more than a decade of financial deprivation. Tracks, yards, locomotives, personnel, information systems and other resources were all starved. The July 1 and August 20 reports described the factors, such as a surge in chemicals and plastics traffic and the imposition by BNSF of operational restrictions on a pivotal section of SP's Sunset Route, that precipitated the service problems.

Were it not for the time-consuming New York Dock negotiation process that delays actual merger implementation, the service crisis probably would never have arisen. And the benefits of the merger will ensure that it is not repeated. But all labor implementing agreements will not be in place for several additional months, and the full merger benefits are too far into the future. UP/SP management concluded in mid-September that it must take further actions now to put the system more surely on the road toward recovery. In their August 20 filing, Applicants described a number of the steps a railroad takes to address operating problems, such as acquiring locomotives and hiring more employees. Those actions are underway and will continue, but they have not proved adequate to bring about a more immediate improvement in

ATTACHMENT B

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October 10, 1997

BY HAND

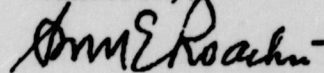
Honorable Vernon A. Williams
 Secretary
 Surface Transportation Board
 1925 K Street, N.W.
 Room 711
 Washington, D.C. 20423-0001

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

Dear Secretary Williams:

We previously wrote to point out two errata to UP/SF-323, filed October 1, 1997. Please note the following additional corrections, all on page 10. The sentence at lines 12-14 should read: "Were it not for the time-consuming process of merger implementation, the service crisis probably never would have arisen." The sentence at lines 16-18 should read: "But completing merger implementation requires several years, and the full merger benefits are too far into the future." And at line 20, a new paragraph should begin with the word "In."

Sincerely,



Arvid E. Roach II

cc: All Parties of Record

ATTACHMENT C

Top UP official on service debacle: 'This is not going to happen again'

BY BILL MONGELLUZZO
JOURNAL OF COMMERCE STAFF

LONG BEACH, Calif. — A top Union Pacific Railroad executive promised shippers and shipping executives that UP's equipment and crew shortages which crippled the Los Angeles-Long Beach port complex this fall will not resurface during next year's peak shipping season.

"This is not going to happen again. We won't have these problems next year," said Robert Starzel, UP's vice president of the western region.

UP executives entered the lion's den last week to explain to the California Public Utilities Commission why their service problems got so out of hand that the nation's largest port complex went into virtual gridlock just as holiday shipments

See UP, Page 10A

11/24

UP

from Asia began pouring in.

'This is not pleasant'

UP in recent weeks had to confess its sins before other public bodies in Washington and in Texas. The focus of previous hearings was the railroad's systemic problems resulting from its acquisition last year of Southern Pacific Transportation Co., and its service failures in the bulk cargo sector.

Thursday's hearing in Long Beach provided the first opportunity for intermodal shippers and carriers to take their whacks at UP.

"This is not a pleasant occasion. We have a massive mess on our hands, and we are sorry about the impact it has had on our customers," Mr. Starzel said.

In attempting to dissect a complex problem, shippers and carriers agreed that UP's most grievous error was that it did not gear up sufficiently for the peak shipping season.

All of the shipping industry forecasts indicated this year's holiday shipping season was going to be busier than last year, said Art Goodwin, manager of transportation projects at the Port of Los Angeles. "The railroads ignored us."

By mismanaging its intermodal fleet, UP caused containers to back up at Southern California railyards and con-

tainer terminals. Once truck chassis got to the railyards, they seemed to sit there forever.

Long Beach Container Terminal, which performs terminal work for Orient Overseas Container Line and its alliance partners, American President Lines and Mitsui O.S.K. Lines, employed 30% more labor to work in its yard than it normally would, said Dave Christianson, LBCT's intermodal manager.

Congestion suggestions

LBCT experienced an 18% increase in labor costs because of the congestion. This wiped out its profit margin.

"This month, it is red ink," Mr. Christianson said.

The ports estimate that at least 16 containerships have been rerouted or diverted from Southern California since October. Los Angeles has lost more than \$5 million in wharfage and other port charges, Mr. Goodwin said.

Shippers and carriers offered several suggestions for avoiding future intermodal logjams. United Parcel Service, which has diverted \$40 million to \$50 million of its intermodal service to Burlington Northern Santa Fe Railway, said UP managers should consult more with the former SP employees who have extensive experience in intermodal operations.

"The tendency of the UP people is to dictate," said Victor Miller, regional intermodal manager at UPS.

UP should sharpen its intermodal forecasting and consult more with the ports, shipping lines and importers who are more attuned to what peak shipping volumes will be each year, several speakers said.

Labor contract pains

It also should better manage its locomotives, railcars and crew so containers can be moved quickly out of Southern California rather than sitting for days or weeks in railyards and marine terminals, Mr. Christianson said.

UP executives listened closely.

"This is more than a wakeup call. It's an explosion in our ears," Mr. Starzel said.

UP believes its most pressing requirement is to negotiate labor contracts in California. Since the merger more than a year ago, the former SP and UP unions have continued to operate as if they were working for separate carriers.

A major cause of the UP meltdown in Texas last summer was that the union contracts for the former UP and SP workers had not been merged, Mr. Starzel said.

For that reason, UP union members could not work on the former SP system, and vice versa. Labor agreements have since been concluded in the Gulf and Midwest, but union negotiations in California will probably not be completed until early 1998.

"It's a devilishly difficult task," Mr. Starzel said.

However, UP is taking delivery of more than 300 locomotives and is unifying its computer systems, so the railroad will be ready for next year's peak shipping season, he said.

But rather than dwell on numbers, Mr. Starzel said UP must turn its attention to its customers.

"Statistics be damned. It's the service we have to go after," he said.

ATTACHMENT D

Money&Business

NE Section 3

Logjam

For the conductors and engineers of the Union Pacific, schedules have varied so wildly amid the railroad's recent disarray that no week is truly typical. Patrick Murphy, right, a conductor, said one week last winter was better than others: he never had to spend an entire shift sitting on a stalled train.

SUNDAY, DEC. 21 -
MONDAY, DEC. 22

6 P.M. Dispatcher calls.
9 P.M. Takes over a train in the Houston yards bound for Lafayette, La.

9 A.M. After 12 hours, Mr. Murphy must go off duty, under Federal rules. The train stops at Echo, Tex., less than halfway to its destination.

10 A.M. A company vehicle picks up the crew.
12:30 P.M. He is dropped off at a motel in Lafayette.

TUESDAY, DEC. 23

6 A.M. Dispatcher calls.
8 A.M. Driver picks him up for the trip to a train stuck between Beaumont, Tex., and Lafayette.

Ahead 10 A.M. Arrives at train.
6 P.M. Arrives Lafayette. After a wait, a vehicle picks him up for the drive back to Houston.

WEDNESDAY, DEC. 26

12:40 A.M. Arrives Houston.

9 A.M. Dispatcher calls.
After. Boards train in Houston bound for Livonia, La.

6 P.M. Train stops in Kinder, La. Driver picks him up for a ride back to Houston.

11:15 P.M. Arrives Houston.

THURSDAY, DEC. 25 -

FRIDAY, DEC. 26

5:45 P.M. Dispatcher calls.
8:45 P.M. Vehicle due to pick up Mr. Murphy at Houston railway for ride to Lafayette.

10:00 P.M. Driver arrives.
2:00 A.M. Arrives Lafayette. Spends night at motel.

9:30 A.M. Dispatcher calls.
11:30 A.M. Boards train in Lafayette for Houston.

11:30 P.M. Twelve-hour shift ends with train in Beaumont. Vehicle picks him up for trip back to Houston.

SATURDAY, DEC. 27 -

SUNDAY, DEC. 28

1:30 A.M. Arrives Houston.

9 A.M. Dispatcher calls.

Noon. Boards train in Houston.

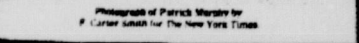
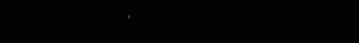
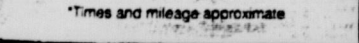
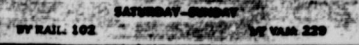
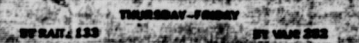
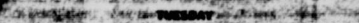
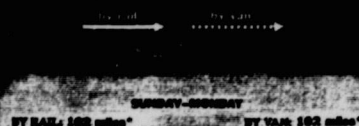
Midnight. Shift ends in Echo.

About 2 A.M. Vehicle picks him up for trip to Lafayette.

4:10 A.M. Arrives Lafayette. Spends night in motel.

9:30 P.M. Dispatcher calls.

11:30 P.M. Vehicle takes him to Beaumont, where he will take a stranded train toward Lafayette.



Weary Hands At the Throttle

Workers Feel Strain of Merger At Union Pacific

By ALLEN R. MYERSON

LIVONIA, La. **F**OR the Union Pacific Railroad workers crowded between shifts into a motel break room here, bodies crunched under their work boots, nights and weekends never arrive. And almost everyone has stories about their schedules.

Consider the conductor who departed Houston at 8:40 P.M. on a recent Thursday. So many other trains were trying to use the same route that his 12-hour shift, the federally allowed maximum, brought him only 60 miles, just a third of the way to Livonia, a town down a couple of parishes west of Baton Rouge.

With no choice but to wait, the conductor was stranded more than three hours until a van came to his rescue. It took nearly five hours more to reach the motel here.

Dispatched back to Houston late on Saturday morning, he arrived shortly before midnight. After a few waking hours with his wife, he was back on duty just before noon on Sunday. This time he made it closer to the Livonia rail yard, but not close enough. Stranded again, a van driver dumped him at the motel at 2:15 A.M. Monday.

Even in normal times, to work on the railroad is to enter a world apart. Its schedules, culture, and grumpy, clannishness, where a slip or stumble can end a career or a life, make conductors and engineers a hidden brotherhood. It is an existence that outsiders, especially families, often cannot understand.

But at the Union Pacific — the line established by Congress and Abraham Lincoln to open the continent — these are not normal times. A 1980 merger with Southern Pacific to form the nation's largest railroad caused what regulators call an unprecedented breakdown in rail traffic through the heart of America that has lasted more than 10 months.

In recent weeks, Union Pacific made enough progress in clearing out its Houston rail yards that schedules for many of this area's crews improved from impossible to merely exhausting. But then clogged traffic at the Laredo, Tex., gateway to Mexico backed up trains all the way to Kansas, forcing an embargo on many shipments and extra-long days for other crews.

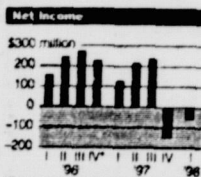
Now that trains are rolling more smoothly through Laredo — the embargo ended on Tuesday — Gridlock Central has moved again. Today it's in the railroad's busiest region, around North Platte, Neb., where coal trains bound for steel mills.

Continued on Page 10

Photograph of Patrick Murphy by
P. Carter Smith for The New York Times

Bumpy Ride

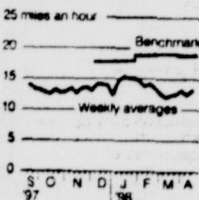
The collapse of service on the merged Union Pacific and Southern Pacific railroads is taking a huge toll on the company and the economy.



*Consolidated results of merged company

Congestion

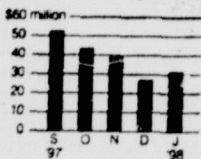
Train speeds consistently have fallen below the railroad's benchmarks.



Affected Industries

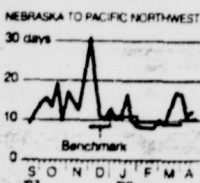
Chemicals

The cost of lost sales, higher freight charges and other expenses for 55 chemical manufacturers surveyed.



Agriculture

Grain shipments in key corridors are often taking much longer than the benchmark.



KANSAS TO GULF OF MEXICO



*Monthly average. Not available before December 1997.

Sources: Bloomberg Financial Markets, Union Pacific Chemical Manufacturers Association

The New York Times

Weary Hands at the Throttle: Un

Continued From Page 1
chemical plants and power stations are jamming the tracks. Maintenance improvements are under way, but a needed set of extra rails is not even scheduled to be completed until next year.

Economists say the losses for the nation total billions of dollars, and some customers, like Dow Chemical, have sued the railroad. Richard K. Davidson, Union Pacific's chairman and chief executive, had predicted prompt recoveries so often that he no longer dares to set any date.

But for Union Pacific workers, the costs are immediate and personal. Wives and children become strangers. During brief visits home, no plans can be firm. And Federal investigators, in findings that the railroad disputes, list mismanagement and worker fatigue among the prime causes of crashes that killed nine workers last year.

Seeing how the merger went so wrong takes no M.B.A., no fancy title, only the recent experience of trying to run a Union Pacific train. Engineers and conductors say they watched the railroad's managers try to squeeze the deal for every possible economy and efficiency. But when a brisk economy kept freight traffic rising, there were far too few supervisors, locomotives or crews.

"There are too few of everybody for what they're trying to do," said an engineer at the Oak Tree Inn, the motel here. "They're trying to put 10 pounds of taters into a five-pound sack."

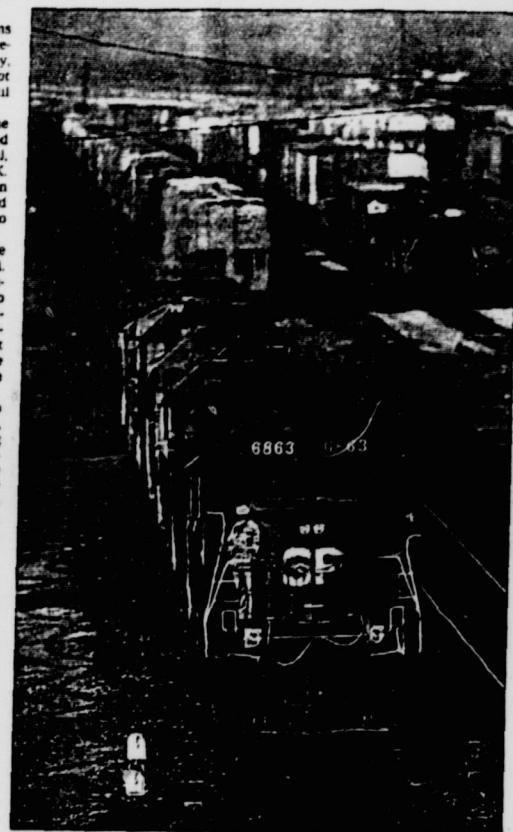
THE company acknowledges as much. "I am acutely embarrassed, and our company is embarrassed, at the time it has taken to recover from our congestion crisis," Mr. Davidson told the Surface Transportation Board, a regulatory agency, earlier this month. "Decades of prior experience told us that our projections were correct. But reality has been telling us something else."

Mr. Davidson took a two-thirds pay cut last year, to \$81,000, as profits dropped 41 percent.

Like other railroad executives, he resists most demands from rail customers, unions and members of Congress for renewed Government oversight. Since the railroads were deregulated almost two decades ago, critics say they have won unquestioning approval for mergers that have reduced competition and increased costs.

"The figures show that 90 percent of the shippers in the United States are now captive," said Charles R. Matthews, chairman of the Texas Railroad Commission. "That's why we're pushing the Surface Transportation Board for some policies that will encourage competition."

Union Pacific has responded to complaints over safety and service by agreeing to recruit thousands of new workers, though veterans say the inexperience of the new hires will present new risks. The railroad has also begun allowing workers to take a full 24 hours of rest after at least seven consecutive days of 12-hour-plus shifts. (Though Federal rules limit them to 12 hours operating a train, they are paid "limbo time" for any extra hours they are stuck away from home or from a motel.) Another breakthrough, a company test, in the St. Louis area, of whether letting workers nap on idle trains



The merger of Union Pacific and Southern Pacific has left trains stacked at the Englewood switching yard and delayed shipments in Houston.

might help them avoid nodding off when they are moving.

For Union Pacific, to bend at all is unusual. With systems modeled on the military, the company has seemingly endless rule books, infraction codes and penalties, governing everything from the appropriate choreography for jumping down from a train to how closely workers can approach a running or stopped engine before inserting their earplugs. "Insubordination," or refusing a direct order, is grounds for dismissal.

In Livonia, a glorified rail crossing with two traffic lights, workers must sign out from the motel so dispatchers can always reach them. Their listed destinations are seldom farther than the 24-hour diner that shares the parking lot — or its only competition, which operates from a kitchen at the gas station next door.

Yet Patrick Murphy, a conductor for a year and a half, swears by the need for rules. As the saying among his comrades goes, they are written in blood. He told of a fellow conductor who stepped off a moving train with the wrong foot first and paid for it with both legs.

"If you have an accident, it isn't a little accident," said Mr. Murphy, 28, a Houston resident who served seven years in the Navy before joining the

Union Pacific.

Those rules make the rails a demanding mistress. Mr. Murphy explains that when his pager buzzes, he has 10 minutes to check in or face discipline. Whether at a restaurant, the movies or wherever, he said, "you've got to throw your date to the side and make that phone call." Once he explains that he is due at work at, say, 1 A.M., his dates are often ready to throw him to the side.

For all these rigors, conductors and engineers get two rewards. First is membership in a fraternity of those who can guide mighty chains of steel a mile or two long. "Like my dad says, 'The railroad is not a job; it's a way of life,'" said Cory Gravova, a conductor and the son of a railroad engineer, as he finished a Sunday shift at the Livonia rail yard.

Second is pay that is about as good as blue-collar gets: usually \$55,000 to \$90,000 a year, including overtime, but \$70,000 to more than \$100,000 last year with all the extended shifts.

"Compared to jobs outside, the pay here is astronomical," said Terry Van Epps, an engineer, as he signed out — or tied up, as railroaders say — by computer at the Livonia rail yard office. With "limbo time," Mr. Van Epps's 12½-hour shift earned him \$338.90. And he rarely

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takes a day off.

For all the bread they put on the table, conductors and engineers are rarely there to break it, even in better times. "I lost my first wife because of the railroad," said an engineer with 27 years' service. He stepped behind the counter at the Livonia diner to pour his own coffee. "This is my home away from home," he explained. It was past 11 on a Sunday night, but with no days off this year, he often lost track.

"We see more of them than their wives," said a waitress, sliding in to one of the diner's booths for a break. The engineer poured her a cup, too. He told how he raised his daughter, 6 years old when her parents split, by hiring a niece who was just graduating from high school.

"I stayed divorced for 10 years," he continued. "I remarried, but it ain't working out either. She just doesn't understand."

Last year, workers in the Houston region, which stretches into much of Arkansas and Louisiana, reached their limits. They won their union's backing for a regional walkout, but a court ruled that safety and fatigue were not issues over which they could strike. In the railroad tradition of wearing company caps, they made up caps of their own with the red, white and blue Union Pacific crest — and this motto: "Hello Houston. We Have a Problem."

If railroad workers only recently began to feel like the endangered crew of Apollo 13, their ranks had long been notorious for featherbedding. Well into the 1980's, freight trains had five men on board. Besides the engineer, at the controls, and the conductor, a co-pilot who manages the train and the paperwork, there were brakemen and switchmen. Women were, and still are, rare.

Union Pacific led the way in using technology to direct and monitor trains, lessening the need for large crews and eliminating cabooses. By the early 1990's, labor pacts had reduced the crews on long-distance trains to just two. Nationally, railroad employment fell to 256,000 by 1996 from more than twice that in 1980, as freight increased by nearly half.

Still, wimps need not apply. From Mr. Davidson, a 6-foot-4 former brakeman, on down, railroad workers are sized like their trains. When a train breaks in two — it happens once or twice a day on the system — the conductor must be ready to lug an 80-pound joint, called a knuckle, perhaps a mile or more.

Besides muscle, the work takes attentiveness and skill. Though long hauls across the open West can turn monotonous, engineers and conductors on other routes are busy every minute. Unlike jets, trains have no auto-pilot.

On a recent run through the humid dark from Lake Charles, La., to Houston, Alfred Deloach, the engineer, kept his thick hands on the throttle, horn or brakes. Mr. Murphy, his conductor, shouted to be heard above the roar of two engines and 6,000 horsepower.

Over a crackling radio, dispatchers relayed the conditions ahead and granted permission to proceed. Computerized track-side monitors beamed in their own cautions in the monotone of synthesized speech. Mr. Deloach, who also lives in Houston, adjusted his speed through curves, grades, bridges and patches where maintenance, delayed because of the congestion, forced him to go as slowly as 10 miles an hour. At his top speed of almost 50 miles an hour, stopping a train with 2 locomotives and 96 cars, weighing a total of more than 6,200 tons, would have taken at least a mile.

Administration, which enforces safety codes, Union Pacific has agreed to shut its worst dormitories.

On an inspection tour of Fort Worth and Dallas operations last week in a Chevrolet Suburban rebuilt to ride on tracks, Mr. Davidson recalled that when he began in 1960, the life was even tougher. The railroad provided no lodging, so he stayed at a Y.M.C.A. in Kansas, where weeds poked up through the wooden slats of the shower stall, or a 50-cent-a-night hotel. Other workers simply dug pits, covered them with tarps and crawled in.

Mr. Davidson, now 56, won rapid promotions, finishing a stint as supervisor of the Fort Worth yard in 1971. Last week, he found many older but familiar faces still around, with some younger faces familiar for their resemblance to their fathers.

FOR all the dislocation suffered by his company, tradition remains a common bond. "We've got a piece of track in Omaha, Neb., built in 1902," Mr. Davidson said in the inspection car. "They still call it 'the new cutoff.'"

While acknowledging the need for more modern labor conditions and manageable schedules, Mr. Davidson says none of the employee deaths last year resulted from overwork. In one, he said, an engineer fell asleep despite having had two weeks of vacation, and in another an engineer, failed an alcohol test.

But among the crews here in Livonia, exhaustion shows. At dawn on recent Monday, conductors and engineers who had finished long overnight shifts paced the sidewalk beside the motel. They calculated and recalculated the odds of having a room open up sooner than vast clouds arrive to take them to another motel 45 minutes away.

The drivers of the vans and sport utilities — carryalls, the vehicles are called — are themselves so exhausted at times that their passengers choose the most alert among them to take the wheel. After his van driver repeatedly served across a yellow line a few weeks ago, an engineer, based in Houston said, passengers ordered him to pull over and nap.

Rested or not, engineers and conductors can find themselves on unfamiliar routes without the necessary training. One engineer, waiting outside the Oak Tree Inn for a room after 17 hours of work — counting 3 hours of waiting for a ride, then a 2 1/2-hour van trip — told how he was trained on the Beaumont-Houston route by three managers who had never been there.

One was from Texas, at least; the others were from Wisconsin and Utah. They insistently enforced the rules on proper footwear and the proper timing, loudness and sequence of horn signals. "He didn't know where we were," the engineer said of the manager from Utah. "But he knew how loud to blow the horn."

The engineer, wearing a striped Casey Jones cap, recounted how he complained about the untrained trainers on a new safety hot line to the executive offices.

"Did you bring it up with your supervisor?" he was asked.

"I don't know who my supervisor is anymore," he answered. "I don't even have a phone number."

"Did you bring it up in a safety meeting?" he was asked.

"I haven't had a safety meeting since 1994," he said.

The woman who took the call promised to investigate and call back. She never did, the engineer said. Mr. Davidson said he had heard of no such lapses regarding safety complaints, which he said were followed up with local managers.

His employees, however, are fighting back with humor that, as in the old Soviet Union and now Russia, contrasts with cheery pronouncements from above. They speak of guiding trains by the calendar, not the clock. And they joke that the Ringling Brothers circus wanted to buy the company — "not for the railroad; they wanted the clowns running it."

To fix what went wrong, many workers have the same answer as their customers. "I got a solution to this merger," said one engineer, waiting on the motel sidewalk for a room or a lift. "Just go back to the way it was."

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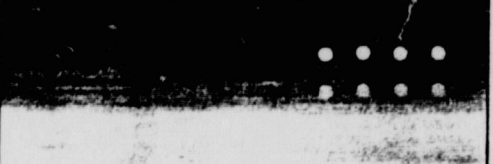
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We regret that we can only respond to those inquiries selected for an interview.

ATTACHMENT E

The following list provides information about job vacancies reported to the Railroad Retirement Board's (RRB) field offices. The list includes orders that the receiving field office does not expect to fill locally, and which according to RRB records remained open as of the end of the month.

Individuals who are interested in a particular vacancy should request additional information and assistance from their local RRB field office. An RRB representative will find out whether the job is still open and assist in referring the applicant to the hiring official. The field office representative may also have information about other job vacancies reported to the RRB.

OCCUPATION	ORDER NO.	RAILROAD	JOB LOCATION
Executives, Professionals, and Clerks			
Assistant Manager - Car Maintenance	231-7007	Springfield Terminal Ry Co	Waterville, ME
Asst Material Manager	372-7006	Montana Rail Link, Inc	Livingston, MT
Marketing Manager	372-7007	Montana Rail Link, Inc	Missoula, MT
Dispatcher	372-7002	Montana Rail Link, Inc	Missoula, MT
Revenue Acct Technician	372-7003	I & M Rail Link	Missoula, MT
Supervisor Revenue Acct	372-7005	I & M Rail Link	Missoula, MT
Accounting Staff Asst	372-7004	Montana Rail Link, Inc	Missoula, MT
Train Dispatcher Closing Date 07-10-98	121-7216	CSX Transportation	Chicago, IL
Surveyor	231-7012	Springfield Terminal Railway Co	N. Billerica, MA
Railroad Lever Operator Closing Date 07-10-98	121-7223	CSX Transportation Inc	Terre Haute, IN
Agent/Dispatcher Closing Date 07-17-98	241-7001	Ermons Railroad Group, Inc	York, PA
Train and Engine Service			
Conductors	121-7204	CSX Transportation Inc	New Orleans, LA
Conductors	121-7205	CSX Transportation Inc	Chicago, IL
Locomotive Engineer	182-8002	Minnesota Northern Railroad, Inc	Crookston, MN
Train Service Jobs Closing Date 07-06-98	378-7005	Union Pacific RR Co	Stockton, CA; Reno, NV; North Platte, NE

Train Service Jobs Closing Date 07-13-98	378-7006	Union Pacific RR Co	Yuma, AZ & St. Louis, MO
Train Service Jobs Closing Date 07-20-98	378-7007	Union Pacific RR Co	Tucson, AZ & Salem, OR
Train Service Jobs Closing Date 09-21-98	378-7008	Union Pacific RR Co	Dexter, MO
Firemen/Oilers Closing Date 07-02-98	184-7002	Union Pacific RR Co	Kansas City, MO
Train Service Closing Date 07-06-98	373-7002	Union Pacific RR Co	Grand Junction, CO
Train & Engine Jobs Closing Date 07-20-98	380-7004	Union Pacific RR Co	Salem, OR
Train Service Closing Date 07-10-98	382-7006	Union Pacific RR Co	St Paul, MN
Train Service Clcising Date 07-13-98	380-7005	Union Pacific RR Co	Hermiston, OR
Train Service Closing Date 07-27-98	373-7006	Union Pacific RR Co	Denver, CO
Train Service Closing Date 07-06-98	373-7008	Union Pacific RR Co	Grand Junction, CO
Hostlers Closing Date 07-27-98	386-7014	Union Pacific RR Co	Long Beach, CA
Train Service Closing Date 07-27-98	386-7005	Union Pacific RR Co	Yermo, CA
Train Service Closing Date 07-27-98	386-7006	Union Pacific RR Co	Los Angeles, CA
Train Service Closing Date 07-27-98	386-7007	Union Pacific RR Co	Bakersfield, CA

Skilled Trades, Journeymen and Helpers

Locomotive Electrician	231-7006	Housatonic Railroad Co Inc	Canaan, CT
Carmen	184-6008	Amtrak	Kansas City, MO
Machinists	231-7008	Springfield Terminal Railway	East Deerfield, MA
Carman	231-9710	Springfield Terminal Railway	East Deerfield, MA
Carmen	380-0002	Peninsula Terminal Co	Portland, OR
Locomotive Electrician Closing Date 07-15-98	111-6003	Alabama & Gulf Coast Railway	Fountain, AL

Locomotive Mechanic	378-7009	Nebraska Central Railroad Co	Norfolk, NE
Electricians Closing Date 07-02-98	378-7011	Union Pacific RR Co	North Platte, NE
Machinists Closing Date 07-02-98	378-7012	Union Pacific RR Co	North Platte, NE
Electrician Closing Date 07-02-98	184-7003	Union Pacific RR Co	Kansas City, MO
Carmen Closing Date 07-02-98	374-7007	Union Pacific RR Co	Des Moines, IA
Carpenters Closing Date 07-02-98	374-7008	Union Pacific RR Co	Cedar Rapids, IA
Equipment Mechanics Closing Date 07-03-98	380-7003	Union Pacific RR Co	Oakridge & Klamath Falls, OR
Machine Helpers Closing Date 07-02-98	378-7013	Union Pacific RR Co	South Morrill, NE
Work Equipment Repairer	231-7010	Springfield Terminal Railway Co	N Billerica, MA
Electrician Closing Date 07-13-98	380-7006	Union Pacific RR Co	Hinkle, OR
Asst Signal Person Closing Date 07-27-98	373-7007	Union Pacific RR Co	Grand Junction, CO
Carmen Closing Date 07-02-98	121-7220	CSX Transportation, Inc	Atlanta, GA
Carmen Closing Date 07-02-98	121-7221	CSX Transportation, Inc	Evansville, IN
Car Repairman Closing Date 07-27-98	386-7008	Union Pacific RR Co	Oxnard, CA
Asst Signal Workers Closing Date 07-27-98	386-7009	Union Pacific RR Co	Oxnard, CA
Carmen Closing Date 07-27-98	386-7010	Union Pacific RR Co.	West Colton, CA
Machinists Closing Date 07-27-98	386-7011	Union Pacific RR Co	West Colton, CA
Electricians Closing Date 07-27-98	386-7012	Union Pacific RR Co	West Colton, CA
Machinists Closing Date 07-27-98	386-7015	Union Pacific RR Co	Los Angeles, CA
Electricians Closing Date 07-27-98	386-7016	Union Pacific RR Co	Los Angeles, CA

Laborers - Maintenance of Way, Others

Tamper Operator	285-7002	Bloomer Shippers Connecting Railroad Co	Gibson City, IL
Tamper Operator	376-7004	Dakota Missouri Valley & Western RR Inc	Bismarck, ND
Track Laborers	376-7006	CP Rail Inc	ND & MD
Pier Technician Closing Date 07-01-98	121-7212	CSX Transportation	Baltimore, MD
Trackmen Closing Date 07-06-98	387-7004	Union Pacific RR Co	Sharon Springs, KS
Material Handlers Closing Date 07-27-98	373-7009	Union Pacific RR Co	Denver, CO
Supplyman/Laborer Closing Date 07-20-98	373-7010	Union Pacific RR Co	Rawlins, WY
Trackmen Closing Date 07-13-98	373-7011	Union Pacific RR Co	Delta, Denver, Limon, & Glenwood Springs, CO
Trackmen Closing Date 07-27-98	386-7003	Union Pacific RR Co	Palmdale, Colton, City of Industry & Anaheim, CA
Trackmen Closing Date 07-27-98	386-7004	Union Pacific RR Co	Guadalupe & Tehachapi, CA
Laborers Closing Date 07-27-98	386-7013	Union Pacific RR Co	West Colton, CA
Attendants, On-Board Services			
No Open Orders			
Miscellaneous, Including Foreman			
Track Foreman	125-8001	South Central Florida Express Inc	Belle Glade, FL
Bridgetender Closing Date 07-10-98	382-7007	Union Pacific RR Co	St Paul, MN

ATTACHMENT F

Beleaguered UP shifts managers

J/C
8/20

BY RIP WATSON

JOURNAL OF COMMERCE STAFF

GOTHENBURG, Neb. — Union Pacific Railroad will break up the management of its operations on Sept. 1 in an effort to bring day-to-day decision-making closer to the beleaguered railroad's customers, according to the company's top executive.

The decision is an apparent sign that the increasing centralization of authority after five acquisitions is not working for UP. The company's string of acquisitions began in 1982 with the Missouri Pacific and the Western Pacific railroads and ended in 1996 with the annexation of Southern Pacific Rail Corp.

The deals, which included the acquisition of Chicago & Northwestern

See UNION, Page 10A

Union

Transportation Co. in 1995, made UP the nation's largest railroad company with 36,000 miles of track in 23 states.

The move will shift dozens of managers from UP's fortress-like headquarters in Omaha to new regional offices in Houston and Roseville, Calif., a suburb of Sacramento.

Can do better

Union Pacific Corp. Chairman and Chief Executive Dick Davidson, during an inspection tour of the railroad's coal-hauling routes in Wyoming and its \$400 million reconstruction project across Nebraska and Iowa this week, acknowledged a direct connection between the decentralization decision and serious operating problems that began last summer in the Houston area and that eventually engulfed UP and the rest of the U.S. rail system.

UP's most stubborn area of congestion — Southern California — should be relieved by Labor Day, Chairman Dick Davidson predicted. Story, 11A

"When we started thinking about it, we realized that no matter how good the planning was, the execution wasn't happening," Mr. Davidson said. "We asked ourselves why. We know we can run a railroad a hell of a lot better than this."

The operations management changes won't have an immediate impact on customers because their day-to-day contact

with departments such as customer service and accounting will remain the same. Marketing activities will remain in Omaha.

"This is all aimed at customers and service improvements," Mr. Davidson said. "We are simplifying our processes and empowering people to do the work. The railroad is so big that you can't call all of the shots from the corner office on the 12th floor."

Shake up managers

UP plans to shake up its management by transferring people between departments. Mr. Davidson did not give any specific examples but one option would be to ship people from marketing positions to the transportation department that handles daily train operations.

The plan also calls for giving three new regional vice presidents more responsibility for all phases of operations, including engineering, mechanical and transportation functions. Mr. Davidson admitted that those departments were "silos" with too few connections between them.

Mr. Davidson said the regions will be split roughly into northern, southern and western sections. While the new regional vice presidents will be formally announced later this month, The Associated Press reported that the executives involved are:

- Mike Kelly, currently vice president of marketing, will take over in Omaha.
- Jeff Verhall, general manager of the western region, will be vice president of that region, out of Roseville, Calif.
- Steve Barkley, already stationed in Houston, will be vice

president there.

The regional vice presidents will put their teams together, and the new structure should be in place by Nov. 1, Mr. Davidson said. "Each of the regions will be as big as big railroads used to be," he said.

UP and Missouri Pacific Railroad both were about 10,000 miles in length when they were merged in 1982.

UP's changes mark a different direction from other recent rail mergers that also concentrated on centralization. The most visible example was the 1995 consolidation that created Burlington Northern & Santa Fe Railway.

"Centralization was good in the 1970s, but the railroad was more manageable in the old days," Mr. Davidson said. "We want to put responsibility back in the field so that the general office supports the field instead of vice versa."

"People in the field are thirsty to have authority returned to them," he said. "They are saying, 'Give us the responsibility and authority, and we will show you we can do it.'"

One potential target for additional change is the Harriman dispatching center in Omaha, which is responsible for nearly all operations on UP's through routes.

Mr. Davidson said no major decision about dispatching changes has been made. UP already has taken one step to decentralize by shifting dozens of managers from Omaha to a joint dispatching facility in Houston that also houses BNSF.

The railroad also has set up 10 local dispatching centers in major terminal areas, such as

Chicago and North Platte, Neb.

Mr. Davidson said one reason the changes are being made was the level of execution and employee enthusiasm in the Houston-area dispatch center.

Setting sights on quality

He said the restructuring also will kick off a renewed effort to focus on quality procedures that were compromised because each railroad involved in the recent mergers had a different view of what that process should be.

One step toward the quality goal was the recent company-wide ISO 9002 certification that reflects an outside evaluation of the company's commitment to quality procedures.

Before UP launched an effort a decade ago to improve the efficiency of its operations, the company believed that 31% of its revenue was diminished by failures to deliver some phase of service. That failure level was whittled down to 10% in the early 1990s but has jumped above 20% in recent years.

UP's yearlong service troubles have cost Union Pacific Corp. millions. The company last month reported a second-quarter net loss of \$419 million that reflected an after-tax loss of \$261 million from the planned sale of Overnite Transportation Co. and a \$158 million loss from continuing operations. The first-quarter 1998 loss was \$62 million on top of a \$152 million loss in the last quarter of 1997.

Union Pacific Corp. stock was selling for \$38 a share in midday trading Wednesday, down 25 cents.

ATTACHMENT G

9/10/98

In cost-cutting move, UP plans to lay off 600

BY RIP WATSON
JOURNAL OF COMMERCE STAFF

Union Pacific Railroad is laying off about 600 track workers and deferring normal maintenance projects on some routes in an apparent effort to conserve cash and boost fourth-quarter earnings.

The cost-cutting measure, which is likely to be followed by additional layoffs in the railroad's maintenance ranks is the latest setback for UP, which has suffered more than \$200 million in losses from continuing operations this year.

After three consecutive quarters of losses since widespread rail service problems began last year, parent company Union Pacific Corp. is expected to show a modest profit when the quarter ends Sept. 30.

By laying off the 600 members of the Brotherhood of Maintenance of Way Employees and not doing dozens of planned maintenance projects, the railroad apparently stands to save tens of millions of dollars that will enhance earnings and improve cash flow.

Rail gangs that install track and replace ties can use up more than \$700,000 a day in materials alone, according to knowledgeable industry insiders.

John Bromley, a UP spokesman, declined to give an estimate of the expected financial benefit from the layoffs and savings on any materials not included in the original budget that would have been required to complete the 1998 maintenance projects.

The layoffs follow a decision not to exceed the budget for maintenance work done by the railroad's engineering department, which controls track, railroad tie, bridge and other right-of-way improvement projects.

The engineering department's budget, an estimated \$500 million annually, was spent faster than planned because of higher costs for materials and lower-than-expected productivity.

Questions remained about the location of the layoffs. The railroad said the 600 represented a systemwide figure, but a BMW official said that number of workers just covered UP's Southern Region that includes tracks in Texas and surrounding states.

Layoffs in the maintenance forces will not be accompanied by job cuts in other departments and are not connected to the railroad's recent reorganization in the operations department, Mr. Bromley said.

Mr. Bromley said the maintenance cuts would not affect the railroad's capital construction projects, which are coming out of a separate budget. UP's total capital spending budget for 1998 exceeds \$2.3 billion. That amount includes route capacity expansion projects and other expenditures, such as purchasing new locomotives.

The initial notices are being given to about 6% of UP's total track maintenance work force of more than 10,000 people.

The move marks the company's first substantial layoffs this year.

UP is continuing to hire hundreds of new train crew employees to operate freight service that is better than the depths of its fall 1997 service meltdown but is still below normal levels on key efficiency indicators such as train speed, freight car switching and departure delays.

Maintenance layoffs are beginning two or three months sooner than the typical seasonal furloughs. Those occur at the end of calendar years when bad weather on many portions of UP's system makes track work difficult.

The affected workers are members of roving groups called "system gangs" that work on maintenance and capital projects in a geographic area that typically covers several hundred miles.

UP earlier this year moved to boost its cash position by cutting the corporation's dividend and selling \$1.5 billion in convertible securities to overseas investors.

STB FD 32760 (Sub 26) 9-18-98. D 191233

191233

BEFORE THE
SURFACE TRANSPORTATION BOARD

D

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

COMMENTS OF THE NATIONAL ASSOCIATION OF RAILROAD PASSENGERS



Ross B. Capon, Executive Director
National Association of Railroad Passengers
900 Second St., NE, Suite 308
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Public Record

September 18, 1998

The National Association of Railroad Passengers' primary concern in this proceeding is seeing that Union Pacific can begin to reasonably fulfill its contractual and statutory obligations to provide reliable handling of Amtrak trains. We also want to see the rail freight business run well and prosper, both as sound public policy and because a financially-weak freight railroad is unlikely to do a good job of running passenger trains.

In the Houston/Gulf Coast area it is important to note that Amtrak has experienced worsened reliability even though the number of Amtrak movements, and thus the demands Amtrak is making on the infrastructure, declined in 1993 and declined further in 1995.

- On November 4, 1993, the frequency of the *Texas Eagle* dropped from daily to tri-weekly. The train then ran from Chicago to Dallas where it split into sections going to San Antonio via Ft. Worth and Austin and, most relevant here, to Houston via Corsicana, College Station, Navasota and Cypress (Hearne Subdivision).
- On September 10, 1995, the *Eagle's* Dallas-Houston service was completely discontinued, leaving the tri-weekly *Sunset Limited* as the only Amtrak service in or near Houston, and indeed the only Amtrak service between New Orleans and San Antonio.

Service continues to leave much to be desired, as reflected in up-to-date information available at Amtrak's website. The most recent eastbound *Sunset Limited* departed Los Angeles on Tuesday, September 15. The train arrived San Antonio one hour 55 minutes late, but arrived Houston three hours 7 minutes late and arrived New Orleans 3 hours 35 minutes late. Therefore, the public's perception is that the train lost one hour 40 minutes from time of arrival at San Antonio to time of arrival at New Orleans. However, this understates the amount of delay because there is about one hour 14 minutes of recovery time in the schedule from Schriever, Louisiana, to New Orleans, (that is, the eastbound train is given two hours 34 minutes to travel that 56-mile segment, whereas the westbound train gets one hour 20 minutes). Therefore, it would be more accurate to say that the train lost two hours 54 minutes (i.e., almost three hours).

The trip which departed Los Angeles on Sunday, September 13, departed San Antonio 1:17 late and arrived New Orleans 2:20 late. The Friday, September 11, trip departed San Antonio 3:25 minutes late and arrived New Orleans five hours late. The Wednesday, September 9 trip departed San Antonio 3:25 late and arrived New Orleans 5:10 late. The Sunday, August 23 trip departed San Antonio 50 minutes late and arrived New Orleans 3:40 late.

Nor is this a particularly tight schedule. The table below compares Amtrak's current schedules on the 573-mile San Antonio-New Orleans run with previous schedules.

	Westward time (avg. speed)	Eastward time (avg. speed)
Current timetable (5/17/98)	14:40 (39.1mph)	14:40 (39.1 mph)
April 5, 1992 timetable	12:50 (44.6 mph)	13:15 (43.2 mph)
June 11, 1972 timetable	13:15 (43.2 mph)	13:00 (44.1 mph)
Initial Amtrak tt (5/1/71)	13:20 (43.0 mph) [Note 1]	12:25 (46.1 mph)
Final SP tt (Nov. 1970)	13:19 (43.0 mph) [Note 1]	12:20 (46.5 mph)

Note 1: The timetable shows only a departure time at San Antonio. Time and speed shown here assume a 15-minute San Antonio dwell-time, the same as shown in Amtrak's 1972 timetable.

It is good to report that the most recent westbound train, which departed New Orleans on Wednesday, September 16, arrived both Houston and San Antonio on time (although it was expected to arrive today in Los Angeles over three hours late). This shows that trains can run on time. Unfortunately, for this route, on-time operation is the exception, not the rule.

However, we gain but little reassurance from a single trip operating over one portion of Union Pacific on time. BNSF, in its July 8 "Application for Additional Remedial Conditions" (pages 7 and 3 of Introduction) said: "BNSF, other carriers and Houston area shippers are now experiencing alternating cycles of several days of sporadic improvement in UP service followed by a number of days when service returns to near crisis levels....Current traffic and congestion patterns are masking the potential risks at Houston, because summer rail traffic volumes are routinely lower than autumn and winter traffic volumes." Indeed, through the summer of 1998 and for well over a year, the *Sunset Limited* seldom made its already-slow schedule between San Antonio and New Orleans. The length of delays significantly worsened after the UP/SP merger.

Actions are needed to insure that on-time performance becomes the rule, not the exception, and that extraordinary delays are virtually eliminated.

Union Pacific's own "Report on Houston & Gulf Coast Infrastructure" (hereinafter, "Report") identifies a number of infrastructure projects that have the potential to improve reliability of operations on the *Sunset* and *Eagle* routes. Examples include:

- Extend tracks 4 and 5 of Corbyn yard on the Austin subdivision (\$1.8 million).
- Mainline capacity on Lafayette Subdivision (four projects totalling \$29.4 million)
- Relocate Neches River bridge operator (KCS dispatching position) to Spring (\$0.5 million) to eliminate problem that trains "must communicate with three or four controllers to pass through Beaumont."
- Relocate mainline in Lake Charles (\$13.4 million) because "mainline operations conflict with yard operations."
- Connect the Eagle Lake and Ramsey sidings (\$6.2 million) "creating a five-mile stretch of double track with crossovers in the center."
- Extend and upgrade Buda siding (\$3.5 million) between San Marcos and Austin "to permit trains to meet there while also allowing trains to work a shipper facility without interfering with mainline operations."

Amtrak operations may benefit from some investments which are not physically on Amtrak-used lines but whose results include reducing freight train congestion on Amtrak-used lines.

The Report also states (Part I., Section C): "Forced divestiture or expanded access for other railroads would...undermine UP's ability to fund these projects by altering the pattern of service that UP provides today. Should the Board order divestiture or require UP to open its traffic base to other carriers, UP would have to reevaluate this investment program."

It follows logically that, if the Board does not grant the rights requested by others, the Board should hold UP to its investment commitments. UP states, of course, that "the precise timing and specifics of some of the projects are likely to change." That is inevitable, given the magnitude of the overall program. Therefore, the Board should require UP's bi-weekly reports to continue and to include significant changes to—and the status of—UP's investment plans as outlined in the Report. This should give the Board and the interested public assurances that UP will not back out of significant investments whose execution may have been the basis for the Board's unwillingness to grant relief to shippers and other railroads. More precisely, it would give the Board timely warning about any changes in UP's investment plans that might justify further action by the Board.

Certain investments may be so basic that they should in fact be mandated. If circumstances change in surprising ways, UP would have the opportunity to persuade the Board that mandates should be withdrawn.

Meanwhile, certain requests made of the Board by other parties may be justified in any event. For example, Tex Mex seeks to acquire and reactivate a now-abandoned UP line (Rosenberg-Victoria), an action that would take some traffic off a short piece of the "Sunset" route. Premature line abandonments—that is, abandonments subsequently seen as bad business decisions—have been all too common in much of the U.S. Here, what is arguably a premature abandonment could be reversed, without UP itself making the investment. Indeed, UP would benefit both from the cash it would realize from selling the line, and from whatever track capacity it gains after the sold line is reactivated.

We also noted with interest BNSF's request that the Board "grant BNSF 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 UP directional flows, including, specifically, over the Fort Worth to Dallas, TX line (via Arlington)" (Introduction, page 18).

Directional operation on single track lines obviously creates problems for trains operating against the normal flow, whether these are freight trains of a carrier that lacks access to the line operating in the other direction or Amtrak trains needing to make intermediate

stops on the directional line. Directional operation also may force circuitous handling of local freight shipments whose ultimate destinations are opposite from the "normal" direction of traffic, and cause railroads to lose some freight business completely.

We urge the Board to review UP's directional operations both as to impacts on Amtrak operations and on the value of the trackage rights the Board gave to BNSF, and take such remedial actions as the Board deems appropriate.

Respectfully submitted,

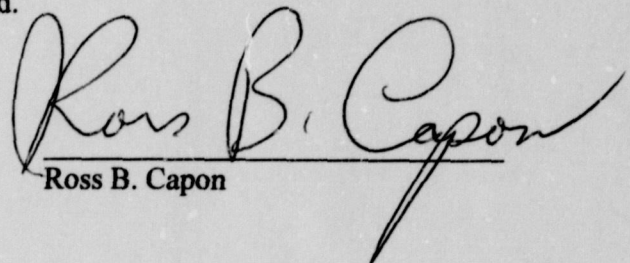
NATIONAL ASSOCIATION OF
RAILROAD PASSENGERS

Ross B. Capon, Executive Director
900 Second St., NE, Suite 308
Washington, DC 20002-3557

Date: September 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of this document were served this 18th day of September, 1998, by first class mail upon all parties of record.



Ross B. Capon

STB FD 32760 (Sub 26) 9-18-98 D 191207

191207



BEFORE THE
SURFACE TRANSPORTATION BOARD

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Office of the Secretary

SEP 18 1998

Part of
Public Record

D

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 CORPORATION, AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY
[HOUSTON/GULF COAST OVERSIGHT]

COMMENTS OF THE
U.S. DEPARTMENT OF AGRICULTURE

Michael V. Dunn
Assistant Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

Date: September 18, 1998

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 CORPORATION, AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY
[HOUSTON/GULF COAST OVERSIGHT]

COMMENTS OF THE
U.S. DEPARTMENT OF AGRICULTURE

AUTHORITY AND INTEREST

These comments are filed on behalf of the Secretary of Agriculture.

Under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946, the Secretary is charged with the responsibility to represent the interests of agricultural shippers and producers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (STB) proceedings involving rates, charges, tariffs, practices, and services. In addition, the U.S. Department of Agriculture (USDA) is a participant in the markets for agricultural products through the operations of the Commodity Credit Corporation and foreign commodity

donation programs.

Pursuant to the oversight authority it retained upon its approval of the UP/SP merger, the Board has requested comments on additional conditions to the merger for the Houston, Texas and Gulf Coast area. As an active participant in the UP/SP merger proceeding, USDA submitted comments to the Board on March 29, April 29, and June 3, 1996. In addition, we submitted comments on August 15, 1997 in STB Finance Docket No. 32760 (Sub-No. 21), the original oversight proceeding. In those comments we pointed out that rail service is critical to the economic well-being of this nation's rural and agricultural economies. Many agricultural products are produced in areas located great distances from export and domestic markets. Moreover, agricultural shippers generally have limited access to cost-efficient, alternative providers of transportation services because many are located beyond effective trucking distances from these markets and far from available waterway transportation. We highlighted the importance of competitive rail service for agricultural producers and shippers and the entire rural economy and expressed concern over the increased concentration in the U.S. rail industry and its adverse effects on U.S. agriculture.

While USDA opposed the UP/SP merger, we were heartened by the STB's determination to mitigate any potential competitive harm to agricultural shippers caused by the merger. In preparation for last year's oversight filings,

USDA held a series of "listening sessions" in major grain-producing states. At that time, agricultural shippers were generally frustrated by the service levels provided by UP/SP and by the apparent lack of vigorous competition provided by BNSF over the 4,000 miles of trackage rights it had received in order to replace service formerly provided by SP. In retrospect, it seems likely that these concerns were early indications of the service failures that would eventually force the Board to initiate STB Ex Parte 573.

RAILROAD SERVICE TO MEXICO

In our comments in the UP/SP oversight proceeding on August 15, 1997, we urged the Board "to begin a careful and public examination of the competitive situation in rail movements from the lower plains to the Gulf and Mexico." In light of Houston's role as the epicenter of the service failures, this proceeding seems to be responsive to that call. Houston is critical to the transportation of U.S. agricultural products. Not only is Houston a port of significant importance, but Houston lies astride a key corridor linking the United States and Mexico. Indeed, USDA's interest in this proceeding stems from our desire to facilitate the export of agricultural products in general, and exports to Mexico in particular.

Mexico is an important and growing market for U.S. agricultural products, including grains and oilseeds. The volumes of U.S. grain being exported

to Mexico have increased thanks to the trade liberalization which occurred as a result of the North American Free Trade Agreement (NAFTA) and the reduction in domestic producer subsidies for basic grains in Mexico which have accompanied trade liberalization. To allow U.S. grain producers to continue to share the benefits of NAFTA by exporting U.S. grain to Mexico, overland railroad services from the U.S. to Mexico must be competitive. As the competitiveness of railroad transportation to the border declines, our ability to export into Mexico also declines. Rail service is particularly important to the many small Mexican feed grain importers because these importers typically cannot handle or afford the ship-size lots of feed grain available by maritime transportation. USDA has a special interest in the availability of low-cost, competitive railroad service to Mexico because it helps underwrite the exports of U.S. grain to Mexico through the GSM-102 credit guarantee program.

USDA COMMENTS ON THE "CONSENSUS PLAN"

USDA believes that adequate competition in the cross-border rail traffic is important for U.S. agricultural exports. After studying the various proposals offered in this proceeding, including the "consensus plan," USDA believes that when evaluating proposals aimed at improving the operations of the Houston rail complex, the Board should be guided by individuals with appropriate railroad operating experience. USDA's specific comments will focus on those

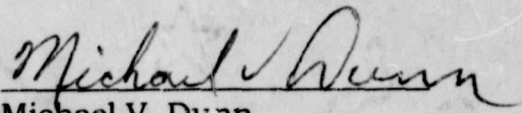
proposals that will expand rail capacity and facilitate agricultural trade with Mexico. We suggest the following provisions be adopted:


- (1) The Board should require the Union Pacific Railroad (UP) to sell its rights to the former Southern Pacific line between Rosenberg and Victoria, Texas to the Texas Mexican Railway Company (Tex Mex).
- (2) To ensure that the trackage rights granted Tex Mex in STB Decision No. 44 can be adequately exercised, the Board should establish a neutral dispatching authority over the Houston/Gulf Coast region. This is needed to ensure that dispatching decisions are made in a fair and equitable manner.
- (3) USDA is concerned that lack of infrastructure may have contributed to the service failures of 1997 and 1998. Therefore, we believe the Board should consider any proposal that promises to create additional infrastructure in the Gulf Coast region. In particular, we believe that the Board should examine the proposal put forth in the consensus plan that would require the UP to allow the Tex Mex and Kansas City Southern Railway (KCS) to construct a new mainline linking Houston and Beaumont.

CONCLUSION

USDA appreciates the opportunity to submit comments in this proceeding. The conditions endorsed by USDA should add capacity to the U.S. rail network and smooth the path through Houston. This would enable the KCS and Tex Mex to fulfill the promise of creating a NAFTA railroad, increasing competition in the border region and promoting U.S. agricultural exports.

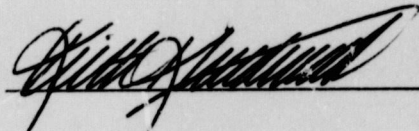
Sincerely,


Michael V. Dunn
Assistant Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 18, 1998, he caused a copy of the Department of Agriculture's comments to be served by first-class mail, postage prepaid, on all parties of record in STB Finance Docket No. 32760 (Sub No. 26).

A handwritten signature in dark ink, appearing to read "Keith A. Kindworth", is written over a horizontal line.

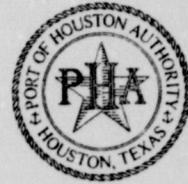
Keith A. Kindworth
Program Manager
Marketing and Transportation Analysis
Agricultural Marketing Service

STB FD 32760 (Sub 26) 9-18-98 D 191200

191200

PORT OF HOUSTON AUTHORITY

EXECUTIVE OFFICES: 111 EAST LOOP NORTH • HOUSTON, TEXAS 77029-4327
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September 17, 1998

Honorable Vernon Williams
Case Control Unit

Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



Re:

26
STB FINANCE DOCKET NO. 32760 (SUB-NOS. 26-32)
UNION PACIFIC CORPORATION, et. al.
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, et. al.

HOUSTON/CULF COAST OVERSIGHT

191200
191201
191202
191203
191204
191205
191206

Dear Secretary Williams:

Enclosed is the statement of the Port of Houston Authority presenting its comments relating to the requests for new conditions on the UP/SP merger that were accepted for consideration by the Board.

An original and 25 copies are enclosed, together with a 3.5-inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Richard J. Schiefelbein
817-236-6841

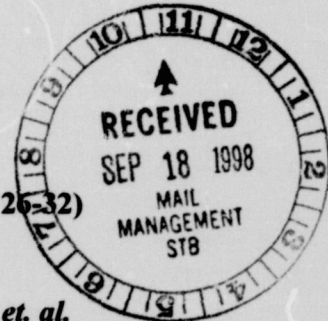
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Office of the Secretary

SEP 18 1998

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB FINANCE DOCKET NO. 32760 (SUB-NOS. 26-32)
UNION PACIFIC CORPORATION, *et. al.*
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, *et. al.***



HOUSTON/GULF COAST OVERSIGHT

**COMMENTS OF
THE PORT OF HOUSTON AUTHORITY
ON
REQUESTS FOR ADDITIONAL CONDITIONS
TO THE UNION PACIFIC/SOUTHERN PACIFIC MERGER**

The purpose of this statement is to present the comments of the Port of Houston Authority (Port Authority) regarding those requests for additional conditions to the merger of the Union Pacific and Southern Pacific railroads which were accepted by the Board in Decision No. 6 in this proceeding.

The Port of Houston Authority

The Port of Houston Authority is an autonomous governmental entity which owns the public facilities along the 50-mile Houston Ship Channel and is the Channel's official sponsor. The Port of Houston Authority owns 43 general cargo wharves, owns and operates the Barbours Cut Container Terminal, the Container Terminal at Galveston, and Houston Public Grain Elevator No. 2, which are available for public use. It also owns a bulk materials handling plant,

a bagging and loading facility, a refrigerated facility, two liquid cargo wharves, and other facilities which are leased to private operators. The Port of Houston complex also includes numerous privately-owned terminals. The Port Authority also operates the Malcolm Baldrige Foreign Trade Zone.

The Port Authority's facilities handle approximately 15 percent of the approximately 150 million tons of cargo moving through the Port of Houston. The Port of Houston ranks first in the United States in total foreign water-borne commerce handled and second in total tonnage. It is the seventh busiest port in the world. Last year, the Port of Houston handled over 6,400 ships, 50,000 barges and 935,000 TEU's (twenty-foot equivalent container units).

The Port of Houston is home to a \$15 billion petrochemical complex, the largest in the nation. The Port generates approximately 196,000 jobs and \$5.5 billion in economic activity annually.

Summary

The Port Authority supports certain of the requests for additional conditions made in the Consensus Plan and in the Burlington Northern Santa Fe (BNSF) filing. The following listing summarizes those requests and the portions of each which the Port Authority supports. Details of the Port Authority's reasons for supporting each request are presented in the following sections of this statement:

- That the Board should make permanent the provisions of Emergency Service Order No. 1518 that: (a) temporarily suspended the restriction the Tex Mex's trackage rights could be used only for shipments having a prior or subsequent movement on Tex Mex; and (b)

temporarily granted Tex Mex trackage rights over UP's "Algoa route" between Placedo, TX and Algoa, TX and over BNSF from Algoa to Alvin, TX and to T&NO Junction, TX.

- That the Port Terminal Railroad Association (PTRA), or its successor organization if PTRA is dissolved, should provide neutral switching over the trackage formerly operated by the Houston Belt & Terminal Railroad (HB&T).
- That the neutral switching area in and around Houston be expanded to include shippers located on UP's line between the junction with PTRA immediately north of Bridge 5A to Morgan's Point on the south side of the Houston Ship Channel, including Harrisburg, Manchester, Sinco, Pasadena, Deer Park, Strang, La Porte, and Morgan's Point, with PTRA, or its successor, designated as the neutral switching operator. The Port Authority specifically does not support or endorse any change to the rail service provided to shippers located on the Bayport Loop or on UP's line at or south of Strang Yard.
- That neutral dispatching be performed by PTRA, or its successor, on the trackage formerly operated by HB&T and on the UP line between Bridge 5A and Morgan's Point described above in addition to the lines currently operated by PTRA.
- That Tex Mex be acknowledged as a full voting member of PTRA and that the Port Authority's voting status on the PTRA Board be restored.
- That a yard adequate to satisfy Tex Mex's switching needs in Houston be made available to Tex Mex at a reasonable price or lease rate.
- That the KCS/Tex Mex proposal to construct an additional track between Houston and Beaumont, increasing rail capacity in that corridor and adding an additional carrier to the Houston market, be authorized by the Board.

- That the UP's Clinton Branch be controlled and operated by the PTRA, or its successor.

Emergency Service Order Provisions

Emergency Service Order No. 1518 temporarily suspended the restriction that the Tex Mex's trackage rights to Houston and Beaumont could be used only for shipments having a prior or subsequent movement on Tex Mex.

Suspending that restriction has provided an additional competitive choice to shippers located on the trackage operated by PTRA and on the trackage formerly operated by HB&T. In addition to UP and BNSF, shippers have been able to choose Tex Mex as their line-haul carrier for shipments to Beaumont and beyond. This has increased Houston-area shippers' routing choices and has made additional capacity available in the form of Kansas City Southern's lines for movements beyond Beaumont.

If the restriction on Tex Mex's trackage rights is reinstated, the additional capacity provided by KCS beyond Beaumont will not be available to shippers because neither UP nor BNSF will short-haul themselves by handing over traffic to KCS at Beaumont. Thus, both the competitive choices available to Houston-area shippers and the rail infrastructure available to handle Houston-area shipments will be reduced if the restriction on Tex Mex's trackage rights is reinstated.

The Port Authority supports making the temporary suspension of Tex Mex's trackage rights restriction permanent.

Emergency Service Order No. 1518 also granted Tex Mex temporary trackage rights over UP's "Algoa route" and over BNSF from Algoa into Houston. These rights have facilitated

directional running by UP, BNSF, and Tex Mex between Houston and Placedo, TX, improving the flow of trains into and out of the Houston terminal and contributing to the reduction in rail congestion in Houston. Operating northbound on the Algoa route and southbound on the Flatonia, TX to Placedo route has benefited shippers in Houston. The Port Authority supports making these overhead trackage rights permanent.

Neutral Switching on HB&T by PTRA

For at least 20 years, plans were developed to combine the operations of HB&T and PTRA. Both railroads performed a similar "belt railroad/neutral switching function" in geographic areas directly adjacent to one another.

For many recent years, Southern Pacific's objections kept the combination from being implemented. Southern Pacific was a member of PTRA, but was not an owner of HB&T. With the consummation of the UP/SP Merger, SP's concerns were no longer an issue because UP was both a member of PTRA and an owner of HB&T.

However, instead of finally seeing the combination become a reality, HB&T was dissolved by UP and BNSF, its owners. Today, UP and BNSF each switch a portion of the former HB&T on a reciprocal switching basis and must exchange cars routed over the other railroad. Cars must also be switched by each railroad to Tex Mex on those shipments routed over Tex Mex. This is precisely the function PTRA performs for UP, BNSF, and Tex Mex. Having UP and BNSF make interchange runs between their respective yards just a few miles from PTRA's North Yard, where PTRA assembles cuts of cars destined for each railroad seems to make little sense.

PTRA could perform the same function with no duplication in interchange deliveries to the railroads. It appears that this change alone would reduce the number of interchange movements competing to use the congested trackage along the East Belt and the West Belt lines.

The Port Authority supports having PTRA, or its successor organization should PTRA ever be dissolved, provide neutral switching services on the trackage formerly operated by HB&T.

Expansion of Neutral Switching Area

The Consensus Plan calls for an expansion of the neutral switching provided by PTRA over various lines in the Houston/Gulf Coast area. The BNSF filing calls for PTRA operation of the Clinton Branch. The Port Authority supports the expansion of PTRA's neutral switching over some, but not all of the lines requested by the Consensus Plan and supports PTRA operation of the Clinton Branch.

In particular, the Port Authority supports expansion of area in which PTRA, or its successor if PTRA is ever dissolved, would provide neutral switching to include: (1) shippers located on UP's line between the junction with PTRA immediately north of Bridge 5A to Morgan's Point on the south side of the Houston Ship Channel, including Harrisburg, Manchester, Sinco, Pasadena, Deer Park, Strang, La Porte, and Morgan's Point, and (2) UP's Clinton Branch. This expanded area of neutral switching is in addition to the trackage currently operated by PTRA and the trackage formerly operated by HB&T.

In November 1995, the Port Authority and UP and SP entered into an agreement in which the Port Authority agreed to support the then-proposed UP/SP Merger and UP and SP agreed, among other provisions, to permit the Port Authority to build its own track on SP rights-of-way

between Deer Park Junction and Barbours Cut and between Strang and the Port Authority's planned terminal at Bayport. Regarding the latter line, the Port Authority agreed:

that any attempt by PHA [Port Authority] to establish rail service to others springing from New Track 2 [Strang to Bayport] shall void all other rights granted herein including the right to operate over the right-of-way of Primary Applicants [UP and SP] and any operating rights which may be granted to PTRRA or PHA by subsequent agreements whose purpose is to implement this letter agreement.

As a result, the Port Authority does not support or endorse any change to the rail service provided to shippers located on the Bayport Loop or on UP's line at or south of Strang Yard.

The following paragraphs discuss expansion of PTRRA neutral switching operations on the line from Bridge 5A to Morgan's Point; the Clinton Branch is discussed in a separate section below.

The industrial complex located along the Houston Ship Channel is one of the primary economic engines for the Houston region. The Port of Houston and the economic activity associated with the Port generate over \$5.5 billion of economic activity annually and generate over 196,000 jobs.

Assuring that this economic engine runs as efficiently as possible is important to the Houston economy. The operational delays inherent in having two railroads operate over the same trackage can be reduced by having one of those railroads perform the work in the area. Reducing the delays in operations along the south side of the Houston Ship Channel will translate into better service for the area's rail shippers, making them more competitive in their

marketplaces and preserving or expanding the level of economic activity in the Houston area.

Neutral switching will also offer competitive transportation choices to those shippers which do not have a choice of line-haul carrier today.

Neutral Dispatching Performed by PTR

The Port Authority supports neutral dispatching of the trackage recommended for neutral switching.

Neutral dispatching is so important to the efficient operation of the Houston terminal area that the Port Authority supports neutral dispatching on this trackage whether or not neutral switching is implemented as recommended above.

In addition, the Port Authority strongly believes that the neutral dispatching function for this territory should be performed by PTR, not by a joint operation of the line-haul railroads.

In the Houston terminal area, there is extensive joint trackage over which both UP and PTR operate. All of this jointly-operated trackage is dispatched by the joint dispatching center in Spring, regardless of track ownership; the non-signalled segments (Deer Park Junction to Barbours Cut and the HL&P Lead) are under the control of the UP yardmaster at Strang Yard.

Although UP and BNSF are both members of PTR, the dispatching that is performed by the joint dispatcher often delays PTR movements. It was reported to the Port Authority that a PTR train was delayed for 16 hours in a move from Manchester to North Yard, a distance of about 5 miles, while other trains in the area were given dispatching preference; this route is over Port Authority-owned tracks except for a short segment at Bridge 5A.

The Port Authority believes that joint dispatching of the Houston terminal by PTR is the best way to assure non-preferential dispatching of trains. Despite the fact that PTR handled

247,000 loaded cars between the plants along the Ship Channel and the line-haul railroads in 1997, PTR A is not a participant in the joint dispatching center at Spring, TX, and does not even have an observer at the joint dispatching center.

By its charter, PTR A is a neutral entity; employees of PTR A are more likely to make non-preferential dispatching decisions than are employees of one of the line haul carriers, even if the line-haul employee is supervised by a joint employee of the line-haul railroads. Having the dispatcher report to a joint employee reasonably assures that the dispatcher will not give preference to one line-haul carrier over the other, but it does not assure that the switching carrier's movements will be dispatched without disadvantage relative to the line-haul railroads' trains.

The Port Authority believes that only by having the dispatching performed by PTR A, or its successor organization in the event PTR A is ever dissolved, will dispatching in the Houston area be performed on a non-preferential basis. It is not necessary for the joint dispatching center at Spring to be controlled by PTR A, but only the dispatching territory known as STO-2, which controls the area in which PTR A operates.

Tex Mex Membership in PTR A; Port Authority Voting Status Restored

PTR A is an unincorporated association formed by a 1924 agreement between the Port Authority and the railroads operating in Houston. In that agreement, the Port Authority made its railroad property available and the railroads agreed to operate that property in a neutral, non-preferential manner to serve industries located along the Houston Ship Channel. For the first 50 years of the agreement, the Port Commissioners, who are unpaid appointees, also served as PTR A Board members. During this period, the Port Authority made all capital improvements

and the Port Authority had the same number of votes as there were railroad members of PTR A, assuring a balance between the public and private interests served by PTR A.

In 1974, the Board was split into a Board of Investment and a Board of Operation, with the Port Authority maintaining a role on the Board of Investment, but not being involved in the day-to-day railroad operating decisions of the PTR A.

In 1984, the parties reached an agreement under which the railroads would make future capital improvements on PTR A and the basis of the railroads' payment for use of the Port Authority's property was changed from an interest rental basis to a flat monthly fee; the Board of Investment was abolished and the Port Authority was made a non-voting member of the surviving Board of Operation.

Because of its non-voting status, the Port Authority has not been able to provide the needed balance between the public and private interests served by the Port Authority's railroad assets. Restoring the Port Authority's vote on the PTR A Board would assure that the public interest would be effectively served by the operations conducted on the publicly-owned rail infrastructure adjacent to the Houston Ship Channel.

The 1924 PTR A agreement also clearly states that all railroads entering the City of Houston are members of PTR A. Tex Mex gained access to Houston under the terms of Decision No. 44 in this proceeding; Tex Mex should be a member of PTR A.

Tex Mex Yard in Houston

In Decision No. 44 in this proceeding, the Board granted the rights requested by Tex Mex in the Sub-No.14 Terminal Trackage Rights filing by Tex Mex. In the Sub-No.14 application, Tex Mex had requested access to HB&T's New South Yard. With the dissolution of HB&T, it is

no longer operationally feasible for Tex Mex to have access to New South Yard, as BNSF utilizes that yard to support its switching operations in Houston related to the trackage rights lines granted to it in Decision No. 44.

The Port Authority supports Tex Mex's request that a yard be made available to it in Houston, at a reasonable price or lease rate, to facilitate its operations in Houston and on its trackage rights to Beaumont and to Robstown, TX.

Additional Track between Houston and Beaumont

The Port Authority supports the proposal to construct an additional track between Houston and Beaumont, thereby increasing rail capacity in that corridor and adding an additional competitive railroad to the Houston market. The congestion which Houston has suffered in the last year has demonstrated that additional rail capacity in the Houston area would be beneficial to those industries which depend on the railroads to handle their outbound products and their inbound production materials.

In addition, the Port Authority continues to support greater competition in the Houston rail market. The industries which comprise the economic strength of Houston depend in large measure on the railroads to move their products to market. With greater competition in rail transportation, these industries are less likely to be at a competitive disadvantage in their more distant markets. The Port Authority believes that additional rail competition would be beneficial to the Houston industrial community and to the economy of the Houston area.

For these reasons, the Port Authority supports the proposed increase in rail infrastructure and the addition of another line-haul railroad to the Houston market.

PTRA Operation of the Clinton Branch

The Port Authority has two facilities located on the Clinton Branch and served by UP. The first is Houston Public Grain Elevator No. 2 (Elevator). The Elevator, which is owned and operated by the Port Authority, has a capacity of 6 million bushels and its throughput is expected to exceed 40 million bushels in 1998. The second facility is Woodhouse Terminal (Woodhouse). Located adjacent to the Elevator, Woodhouse is owned by the Port Authority and is leased to a firm which operates the terminal, handling cargoes through the Woodhouse warehouses and loading and unloading ships.

Together, the Elevator and Woodhouse occupy 91 acres on the north side of the Houston Ship Channel. The complex has 1,200 feet of wharf on the Ship Channel and a 1,200-foot x 250-foot boat slip equipped to handle roll-on/roll-off cargoes in addition to break bulk cargoes. The combined facility also has 14 tracks for receiving railroad cars, each approximately 2,600 feet long.

The Port Authority supports the Consensus Plan's and BNSF's requests that the Clinton Branch be controlled by PTRA or its successor organization if PTRA is dissolved. The Port Authority believes that PTRA operation would be beneficial because it would resolve operating deficiencies that the Port Authority has experienced on the Clinton Branch and would do so without changing the railroads' access to shippers on the branch because the shippers' locations are open to reciprocal switching today.

No Change in Competitive Access

Changing the operating responsibility for the Clinton Branch to PTRA will not change the current competitive access to shippers on the branch. The shippers located along the Clinton

Branch, with the exception of UP's own automobile unloading facility, already are open to reciprocal switch, and thus have access to railroads other than UP. Tariff ICC SP 9500-D, issued by Southern Pacific Transportation Company on September 11, 1996 lists in Item 5090 the industries on the Clinton Branch (listed under station name Galena Park - 35070) which are open to reciprocal switch. These include American Plant Food Company, Arrow Terminal Company, Delta Steel Incorporated, Exxon Energy Chemical, GATX Terminal, Holnam Incorporated, City of Houston, Houston Public Grain Elevator No. 2, Stevedoring Service of America (at that time the lessee and operator of Woodhouse Terminal), Texaco Lubricants Company, and United States Gypsum Company.

Service to the Elevator

PTRA provides rail service to most of the industries located along the Houston Ship Channel. The exceptions are those industries located on the Clinton Branch, Exxon in Baytown, and three industries located on the HL&P Lead in La Porte.

PTRA provides effective, non-preferential service switching service to shippers along both sides of the Ship Channel, all of whom have access to BNSF, UP, or The Texas Mexican Railway for line-haul service, by virtue of PTRAs neutral switching status.

PTRA makes its operating decisions for the benefit of the Houston terminal area overall, and does not base its decisions on the operating preferences of any one line-haul railroad. This is precisely the type of service which is needed at the Elevator, but has not been provided in the past. An example occurred during UP's recent congestion problems, when UP stored cars for other customers on the Port Authority's tracks at the Elevator, which prevented the Elevator

from receiving grain shipments consigned to it, despite the Port Authority's requests that UP remove the cars from its tracks.

Service to Woodhouse Terminal

Shipments destined to the Clinton Branch are handled in UP's Englewood Yard. In January 1997, the Port Authority was made aware of extensive delays in shipments destined to Woodhouse reaching Woodhouse once they had arrived in Houston on BNSF. Reviewing car movement records confirmed that cars were taking between 4 and 8 days to be moved from BNSF's Pearland Yard (near Houston's Hobby Airport) to Woodhouse, a distance of approximately 13 miles.

To resolve these delays, the Port Authority developed with the railroads an informal routing in which the cars for Woodhouse were delivered to PTR A, which switched them and placed them at a crossover switch connecting with the Clinton Branch. The UP switch crew then pulled the cars from the PTR A and delivered them to Woodhouse. In effect, this route substituted PTR A switching and transfer to the Clinton Branch for UP switching at Englewood and UP transfer to the Clinton Branch. The results were effective, with cars placed at the crossover the day after arrival in Houston and being delivered by UP either later that day or on the next day.

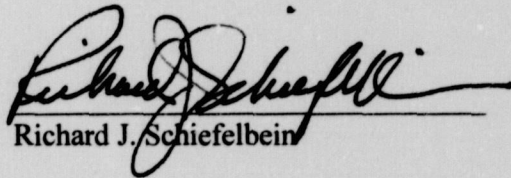
This example demonstrates the efficiency of using PTR A's North Yard, which is adjacent to the Clinton Branch, to handle traffic for the Clinton Branch rather than using UP's Englewood Yard, which is more distant.

The Port of Houston Authority supports the Consensus Plan's and BNSF's request that operation of the Clinton Branch be performed by PTR A. As described above, PTR A operation

of the Clinton Branch could improve service to shippers located on the branch without changing the existing competitive access for shippers located on the branch.

CERTIFICATE OF SERVICE

I, Richard J. Schiefelbein, certify that , on this 17th day of September , 1998, I caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26).



Richard J. Schiefelbein

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STB FD 32760 (Sub 26) 9-18-98 D 191193



GREATER HOUSTON PARTNERSHIP

Chamber of Commerce • Economic Development • World Trade

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Office of the Secretary

SEP 18 1998

Part of
Public Record

September 17, 1998

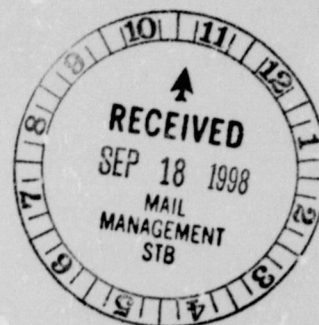
Honorable Vernon Williams
Case Control Unit

Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001

Re:

26
STB FINANCE DOCKET NO. 32760 (SUB-NOS. 25-32)
UNION PACIFIC CORPORATION, *et. al.*
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, *et. al.*

HOUSTON/GULF COAST OVERSIGHT



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Dear Secretary Williams:

Enclosed is the statement of the Port of Houston Authority presenting its comments relating to the requests for new conditions on the UP/SP merger that were accepted for consideration by the Board.

An original and 25 copies are enclosed, together with a 3.5-inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Roger H. Hord
713 844-3625

171193

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.**

HOUSTON/GULF COAST OVERSIGHT



**COMMENTS OF
THE GREATER HOUSTON PARTNERSHIP
ON
REQUESTS FOR ADDITIONAL CONDITIONS
TO THE MERGER**

**ENTERED
Office of the Secretary**

SEP 18 1998

**Part of
Public Record**

This statement presents the comments of the Greater Houston Partnership (GHP) regarding those requests for additional conditions to the merger of the Union Pacific and Southern Pacific railroads which were accepted by the Board in Decision No. 6 in this proceeding. Because the GHP recommendations were among those accepted for consideration by the Board, the GHP intends to file rebuttal evidence and argument on October 16 in addition to the comments presented here related to requests made by other parties.

The Greater Houston Partnership

The Greater Houston Partnership is Houston's principal business organization and is dedicated to building prosperity in the Houston region. The Partnership has 2,400 members from virtually every industry sector throughout the eight-county Houston region. The Partnership's Board of Directors is composed of 112 corporate CEO's of organizations in the Houston region.

Partnership members employ almost 600,000 people, which is one out of every three employees in the region.

The GHP considers the following requests made in the Consensus Plan proposal to be largely similar to our own requests filed in this proceeding:

- That the Board should make permanent the provisions of Emergency Service Order No. 1518 that: (a) temporarily suspended the restriction the Tex Mex's trackage rights could be used only for shipments having a prior or subsequent movement on Tex Mex; and (b) temporarily granted Tex Mex trackage rights over UP's "Algoa route" between Placedo, TX and Algoa, TX and over BNSF from Algoa to Alvin, TX and to T&NO Junction, TX. The GHP supports making these rights permanent if data indicate improvement or if improvement can be expected.
- That the Port Terminal Railroad Association (PTRA), or its successor organization if the PTRA is dissolved, should provide neutral switching over the trackage formerly operated by the Houston Belt & Terminal Railroad (HB&T). The GHP supports the PTRA, or its successor organization, as the provider of neutral switching over the former HB&T and in an additional area determined to be financially feasible.
- That Tex Mex be acknowledged as a full voting member of PTRA and that the Port Authority's voting status on the PTRA Board be restored. The GHP supports for full PTRA Board membership the Port of Houston and all long haul railroads serving Houston.
- That a yard adequate to satisfy Tex Mex's switching needs in Houston be made available to Tex Mex at a reasonable price or lease rate; and that the KCS proposal to construct an additional track between Houston and Beaumont, increasing rail capacity in that corridor and adding an additional carrier to the Houston market, be authorized by the Board. The GHP supports a process mediated by the STB involving the Union Pacific and other long haul railroads which

would facilitate an agreement to sell or lease abandoned trackage and underutilized rights of way and switching yards for the purpose of adding rail system competitiveness, capacity, flexibility and geographic access.

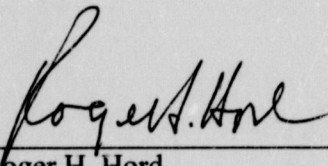
The conditions described above, which have been requested in the Consensus Plan, are similar to the GHP Board of Directors' resolution on *Competition in Houston Freight Rail Service*. The GHP Board's resolution emphasizes that Houston's rail system performance must be "in the top tier of United States cities," which means that service and rates must be truly competitive in order for Houston's port and its local industries to compete effectively in domestic and international markets. The GHP Board prefers that the private sector rectify noncompetitive situations through equitable compensation, but it realizes that federal statutes and regulations constitute a fundamental roadblock in some cases and should be modified.

Many Houston shippers have expressed concerns related to this year's service difficulties and the growing difficulty in obtaining competitive service and rates. Their concern is for the level of rail service needed for a competitive Gulf Coast economy and the degree of rail industry competition needed to achieve that goal. Railroad consolidation in Houston has resulted in six Class 1 railroads being reduced to two, with an 80 percent market share dominance by one railroad. These issues are adversely affecting local shippers and the Houston economy. Unless some corrective action is taken, over the long term the cost of operating in a large portion of the Houston area may well become competitively disadvantageous.

September 17, 1998

CERTIFICATE OF SERVICE

I, Roger H. Hord, certify that, on this 17th day of September, 1998, I caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26).

A handwritten signature in cursive script, appearing to read "Roger H. Hord", is written over a horizontal line.

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STB FD 32760 (Sub 26) 9-18-98 D 191190

191190

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



ENTERED
Office of the Secretary

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

SEP 18 1998

--Control and Merger--

Part of
Public Record

*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]

**COMMENTS OF NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY ON REQUESTS
FOR REMEDIAL CONDITIONS**

William C. Wooldridge, Vice President-Law
J. Gary Lane, General Counsel-Corporate
George A. Aspatore, General Solicitor-Regulation

NORFOLK SOUTHERN CORPORATION
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Tel: 757-629-2657

Dated: September 18, 1998

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]

**COMMENTS OF NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY ON REQUESTS
FOR REMEDIAL CONDITIONS**

Norfolk Southern Corporation and its wholly-owned subsidiary Norfolk Southern Railway Company (hereinafter jointly referred to as "NS") hereby submit these comments concerning the various requests for additional remedial conditions that have been filed in this proceeding.

Introduction

In this proceeding the Board has inquired whether it should impose additional conditions on the UP/SP merger pursuant to its oversight jurisdiction over that transaction, and has received the requests of numerous parties for additional conditions. NS does not take a formal position with respect to any of these particular requests. Nevertheless, NS is concerned about the broader implications of this proceeding and the effect that an STB decision on various requests could have on

other rail consolidations and the industry as a whole. The purpose of these comments, therefore, is to highlight the standards that, NS believes, should govern the Board's decision regarding individual requests for new remedial conditions on the Board's 1996 approval of the UP-SP merger, and to suggest that the Board undertake cautiously any decision to further condition an already-completed transaction.

NS has an interest in this proceeding and in the manner in which the various requests for conditions are resolved. First, as the Board is aware, NS has recently been involved in a major rail transaction involving the acquisition of control of Conrail by NS and CSX, a transaction which promises significant benefits to the rail industry and to the public at large. The Board's decision approving this transaction became effective on August 22, 1998. STB Finance Docket No. 33388, *CSX Corporation, et al. -- Control and Operating Leases/Agreements -- Conrail Inc., et al.*, Decision No. 89 ("Conrail") (served July 23, 1998). Like the UP/SP merger, the Conrail acquisition was approved subject to a 5-year limited oversight condition. A decision in this proceeding broadly expanding the Board's criteria for imposing conditions during the oversight of a previously approved and consummated consolidation could chill some aspects of NS's implementation of the Conrail transaction and erode the benefits of that transaction. Moreover, like other Class I railroads, NS is the product of many previous rail mergers, and anticipates that it could be involved in similar efficiency-enhancing transactions in the future.

In considering whether to impose additional conditions on the UP/SP merger in this proceeding, the Board must consider the consequences of this decision not only on

rail operations in the Houston/Gulf Coast area, but also on the entire rail industry and on future rail transactions. The policies that have previously been articulated and applied by the Board (and the ICC) have proven effective for this purpose and should be adhered to in this and other oversight proceedings.

More specifically, in determining whether to reopen a merger and to impose additional conditions after the transaction has already taken effect, the Board should ask five questions. These questions are as follows:

1. Is there an identifiable competitive public harm?
2. Is the competitive harm caused by the merger?
3. Will the requested condition solve the problem?
4. Will the requested condition avoid significantly reducing the merger's benefits?
5. Is the condition the least intrusive solution?

Unless each of these questions is answered in the affirmative, and the Board finds that the proposed condition would be in the overall public interest, additional conditions should not be imposed on an already-completed transaction. It is an extraordinary power of the Board's to reopen prior transactions and to impose additional conditions -- which after the transaction is consummated parties cannot realistically decline to accept -- and it is a power that should be exercised cautiously and sparingly. After the Board has found that a transaction would be in the public interest and that the conditions it originally imposes are sufficient to remedy any

adverse effects, parties seeking to reopen a transaction should bear a particularly heavy burden to prove that these findings were incorrect.

With these criteria and principles in mind for imposing additional conditions, NS turns to a more detailed explanation of their importance and application in particular contexts.

1. Is There an Identifiable Competitive Public Harm?

In determining whether to reopen a merger by imposing additional conditions, the Board must first inquire whether there is a loss of competition that is harmful to the public. Other types of problems unrelated to rail competition (such as general service failures, labor disputes and natural disasters) are not properly addressed through the imposition of additional conditions. Instead, Congress has judged that these types of problems should be addressed primarily by the private sector, and only in emergency situations by the Board through temporary emergency service orders.

The Board affirmed this principle with respect to the UP/SP merger in Decision No. 10 of the general oversight proceeding (out of which this proceeding developed), holding that "in the absence of a competitive problem, it would not be appropriate for us to reopen the merger and impose additional conditions." STB Finance Docket No. 32760 (Sub-No. 21), *Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp. et al. [Oversight]* ("UP/SP Oversight"), Decision No. 10 (served October 27, 1997) at 12. In that decision the Board rejected several requests for additional

conditions where the proponents had failed to establish that the UP/SP merger had caused an identifiable competitive harm. *Id* at 12-13.¹

The Board's practice in its exercise of oversight jurisdiction over rail mergers and consolidations has been to limit its consideration of new conditions to those that would address competitive harms. This is a sound policy that should be maintained. To expand the range of issues that are addressable through new remedial conditions beyond unintended anticompetitive effects would significantly enlarge the Board's powers, and frustrate the Congressional intention that regulators should not micro-manage the rail industry except under emergency conditions.

There are any number of factors apart from competitive failures that can adversely affect a railroad's operations. Among these are a lack of capital, a lack of infrastructure, overregulation, incorrect management decisions, unanticipated traffic increases, natural disasters and problems on other railroads. Moreover, these are all problems that could affect any railroad, regardless of whether it had been involved in a recent consolidation. There is no principled reason to place one railroad under a more strict regulatory regime than others to avoid such problems simply because that

¹ See also *UP/SP Oversight*, Decision No. 10 (served October 27, 1997), at 1 ("the oversight condition was intended to examine whether the conditions we have imposed have effectively addressed the *competitive* issues they were intended to remedy") (italics added); *id.* at 2 ("*reduction in competition* in the markets that UP serves" is "the focus of the oversight condition imposed by the Board in its approval of the merger") (italics added); STB Finance Docket No. 32760 (Sub-No. 26), *Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp. et al. ["Houston/Gulf Coast Oversight"]* ("UP/SP Houston Gulf Coast Oversight"), Decision No. 1 (served March 31, 1998), at 4; *UP/SP Houston/Gulf Coast Oversight*, Decision No. 6 (served August 4, 1998), at 4.

railroad was involved in a recent consolidation. Use of the Board's conditioning power in this way would be arbitrary and would unnecessarily punish railroads for engaging in beneficial transactions.

Congress has authorized the Board to address service-related problems that may arise in the rail industry by issuing emergency service orders, but only under narrow circumstances. 49 U.S.C. § 11123(a). To exercise such authority, the Board must specifically find: 1) that there is "a shortage of equipment, congestion of traffic, unauthorized cessation of operations, or other failure of traffic movement"; 2) that the problem has created an "emergency situation"; and 3) that the situation is of such magnitude as to have "substantial adverse effects on shippers, or on the rail service in a region of the United States," or that a rail carrier under the Board's jurisdiction "cannot transport the traffic offered to it in a manner that properly serves the public."

Id. Moreover, an emergency service order may only be issued for an initial period of 30 days, subject to a maximum extension of 270 days. *Id.* The provisions of § 11123 make clear Congress' intent that the Board should play only a limited role with respect to the resolution and avoidance of service problems among railroads (only in emergency situations and through temporary orders), and that the primary responsibility for avoiding and resolving service difficulties lies with private railroads.

The Board should not use its power to impose conditions on rail consolidations to circumvent the procedural and substantive limitations of § 11123. To expand the Board's use of post-merger conditions to accomplish indirectly what is not authorized

under § 11123 would frustrate the intent of Congress, and would be an inappropriate use of the Board's oversight power.²

Where a reduction in rail competition in a particular market has been identified, it is also necessary to determine whether the loss of competition would be harmful to the public interest. Although a decrease in the number of competitors can adversely affect the public interest, it does not necessarily cause public harm. See 49 C.F.R. § 1180.1(c)(2)(i) ("While the reduction in the number of competitors serving a market is not in itself harmful, a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest"). In many situations there is no public harm caused by a reduction in competitive options. For example, where a merger would reduce the number of rail competitors in a market from three to two, generally there would be no harm to the public interest because competition between two railroads is adequate to insure competitive price and service offerings. See *UP/SP Merger*, Decision No. 44 (served August 6, 1996), at 119-121 (rejecting arguments that 3-to-2 markets would be adversely affected by the UP/SP merger). The limited volume of traffic at the point in question may make dual carrier service inefficient and

² The risk that the express limitations of § 11123 would be frustrated through an expansive use of the Board's power to impose conditions on prior mergers is apparent in this proceeding. Several of the parties have requested the Board to impose conditions on the UP/SP merger that would make permanent certain provisions of the Board's prior emergency service order, which has recently expired. See STB Service Order No. 1518 (Sub-No. 1), *Joint Petition for a Further Service Order* (served July 31, 1998). However, unless such requests can be independently justified as necessary to remedy competitive harms caused by the merger, they should not be granted. Rather, the statute expressly provides that the Board's emergency service orders must be temporary only.

undesirable. Non-rail carriers may also provide sufficient competition to avoid public harm. "The Board recognizes that rail carriers face not only intramodal competition, but also intermodal competition from motor and water carriers." 49 C.F.R. § 1180.1(c)(2)(i). The proponent of a condition bears the burden not only to demonstrate a loss in the number of rail competitors, but that the competitive loss will enable a carrier to unduly raise rates or lower the quality of service to the public detriment.

2. Is the Competitive Harm Caused By the Merger?

Where a competitive harm has been identified, the Board must ask whether it was caused by the merger. If the competitive harm is one that predates the merger or would have arisen regardless of the transaction, it should not be addressed by imposing conditions -- especially after the merger is consummated.

It has been the continuing policy of the Board and its predecessor, the ICC, that conditions should be imposed only to address adverse effects of the transaction itself, not to solve transportation problems that preexisted the transaction or that are unrelated to it. The Board reiterated this principle when it approved the UP/SP merger, stating: "We will not impose conditions 'to ameliorate longstanding problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.'" *UP/SP Merger*, Decision No. 44 at 145, quoting *Burlington Northern, Inc. -- Control & Merger-- St. L.*, 360 I.C.C. 788, 952 (1980) ("*BN/Frisco Merger*"); see also *Union Pacific Corporation -- Control -- Missouri Pacific*, 366 I.C.C. 462, 563 (1982) ("*UP/MP Merger*"), *aff'd sub nom. Southern*

Pacific Transportation Co. v. Interstate Commerce Commission, 736 F.2d 708 (D.C. Cir. 1984) ("Neither in *BN-Frisco* nor in any subsequent rail merger proceeding have we taken the position that a condition should be imposed solely because it would provide public benefits outweighing its detriments regardless of whether it is needed to redress a problem arising from the merger.").³

There are sound reasons for this policy and why the Board should adhere to it. First, use of the Board's power to impose conditions on mergers as a means of restructuring the rail industry would be inconsistent with the statutory scheme whereby Congress has intentionally reserved restructuring decisions to the private sector. The historical background of Congress's decision to establish a system whereby rail consolidations and mergers are initiated by private railroads rather than by the government is well known, but bears repeating. In 1920, Congress amended the Interstate Commerce Act in an effort to promote the consolidation of railroads throughout the nation to achieve numerous public benefits. In so doing, Congress authorized and commanded the ICC to affirmatively develop a nationwide plan "for the consolidation of the railway properties of the continental United States into a limited number of systems." Transportation Act of 1920, Pub. L. No. 66-152, 41 Stat. 456, 481

³ Even in the Board's recent *Conrail* decision, which in some respects stretched the policy of addressing only merger-related effects, the Board recognized this fundamental limitation on the conditioning power, stating: "A condition must address an effect of the transaction, and will generally not be imposed to ameliorate longstanding problems which were not created by the merger." *Conrail*, Decision No. 89 at 78. Nowhere in the *Conrail* decision does the Board suggest that it is appropriate to impose conditions solely to remedy problems not created by the transaction, much less to do so after the transaction is completed.

(1920). This command-and-control system of rail restructuring was a failure. Not only was the ICC unable to develop a workable plan after many years, but numerous privately initiated transactions were prohibited or deterred. After 20 years Congress realized the inefficacy of this policy and again amended the Interstate Commerce Act. In 1940, Congress removed the Commission's authority to compel rail consolidations, and "the power to initiate mergers and consolidations was left completely in the hands of the carriers." *St. Joe Paper Co. v. Atlantic Coast Line R. Co.*, 347 U.S. 298, 319 (1954). Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 898, 905 (1940).

The ICC has recognized in prior merger decisions that to use its power to place conditions on mergers to resolve problems unrelated to the merger would contravene the underlying policy of the Interstate Commerce Act:

[W]e should not use our conditioning powers to make consolidation proceedings vehicles for rail system restructuring. To do so would not be consistent with the Congressional intent underlying the statutory scheme governing railroad consolidations. . . . Under this statutory scheme, our role in merger proceedings is to evaluate carrier-originated proposals to determine whether they are consistent with the public interest. To the extent governmental assistance is beneficial in formulating rail restructuring plans, DOT has statutory authority to provide such assistance.

UP/MP Merger, 366 I.C.C. at 564. Government-imposed conditions reaching beyond transaction-related harms would risk the same problems of the pre-1940 regime, and would be inconsistent with Congress's deliberate rejection of command-and-control restructuring of railroads.

Second, to take advantage of the fact that private railroads have negotiated a transaction requiring Board approval to compel the resolution of preexisting or

unrelated transportation problems would be unfair to the railroads involved, and would deter railroads from engaging in such actions in the future. "[T]he imposition of conditions on a transaction creates a disincentive for the parties to consummate the transaction. Therefore, imposition of conditions not related to possible adverse impacts of a consolidation might cause carriers to forego a consolidation that would, without conditions, yield net public benefits." *UP/MP Merger*, 366 I.C.C. at 564.⁴ If Congress had intended to authorize the Board to have a role in affirmatively restructuring the rail industry, it would not have done so in a manner that would discourage beneficial transactions, as a practice of imposing merger conditions for this purpose would do.

Finally, to expand the range of conditions that may be imposed in rail merger proceedings beyond those addressing problems related to the transaction itself would significantly add to the complexity of those proceedings, and open the door to all manner of requests. "This would increase the time required to decide these cases, contrary to Congressional intent that railroad consolidation proceedings be handled expeditiously." *UP/MP Merger*, 366 I.C.C. at 565. Such a policy (if applicable following consummation of a transaction) would also undermine the finality of rail consolidations,

⁴ See also *Chicago, Milwaukee, St. Paul and Pacific R.R. Co. -- Reorganization -- Acquisition by Grand Trunk Corp.*, 2 I.C.C.2d. 427, 455 (1985) ("[I]f the Commission were to follow a policy of granting trackage rights that do not address specific, merger-related competitive harms, but simply enhance competition in the short run, we would not only unduly burden the merger at hand but would also create an unreasonable chilling effect on potential future rail combinations to the detriment of shippers, carriers, and the general public").

allowing parties to file requests long after a transaction is consummated on the sole basis that a proposed condition might create additional public benefits.⁵

For all of these reasons, the Board must adhere to its policy of ensuring that any condition imposed on a transaction would address a competitive harm caused by the transaction itself.⁶

3. Will the Requested Condition Solve the Problem?

This fundamental criterion requires the least explanation. Even where it is found that a merger has produced harmful anticompetitive consequences, additional conditions may not be imposed unless the conditions would resolve the problem, or at least minimize the harmful effects of the transaction. To impose additional conditions under other circumstances would be an abuse of the Board's oversight power and undermine the stability of the rail industry. In determining whether a condition would

⁵ An analogy used by the Board in a recent rate case in which it refused to reopen previous stand-alone cost calculations (which were admittedly based on incorrect data) is appropriate: "Like the classical figure Penelope, we would be faced with constantly restarting our task anew, never able to bring to a conclusion a rate case." STB Decision No. 41185, *Arizona Public Service Co. v. The Atchison, Topeka and Santa Fe Railway Co.* (served April 17, 1998), at 5. So too with rail consolidations. Because of the need for finality, expansive requests for remedial conditions unrelated to a transaction's effects should not be considered during the oversight process.

⁶ Aside from these policy constraints, the Board should recognize the ultimate administrative law and due process limits on its legal right to impose, contrary to its longstanding practice and policies, conditions unrelated to a transaction, especially when what amounts to a license has already been approved under statute. See *Wilkett v. I.C.C.*, 710 F.2d 861 (D.C. Cir. 1983) (unexplained departure from previously applied standards in licensing proceeding is arbitrary and capricious); *Reuters Ltd. v. F.C.C.*, 781 F.3d 946 (D.C. Cir. 1985) (rescinding license contrary to agency policies even to achieve laudable aims is improper).

resolve the competitive problem created by the merger, the Board must assure that it is "operationally feasible, and [will] produce net public benefits." *Conrail*, Decision No. 89 at 78. Conditions that would simply transfer competitive advantages or revenue from one railroad to another would not further the public interest and must be rejected.

4. Will the Requested Condition Avoid Significantly Reducing the Merger's Benefits?

It is indisputable that "conditions generally tend to reduce the benefits of a consolidation." *Conrail*, Decision No. 89 at 78; *UP/SP Merger*, Decision No. 44 at 144. Moreover, the more onerous the condition, the more likely it is to significantly reduce the benefits of the transaction. The Board has established numerous criteria designed to prevent the erosion of transaction benefits by the imposition of conditions. For example: "the Board will not normally impose conditions on a consolidation to protect a carrier unless essential services are affected and the condition: (i) is shown to be related to the impact of the consolidation; (ii) is designed to enable shippers to receive adequate service; (iii) would not pose unreasonable operating or other problems for the consolidated carrier; and (iv) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits." 49 C.F.R. § 1180.1(d)(1).

In addition to the criteria that have been employed for this purpose, it is also necessary for the Board to ask separately with respect to each condition whether (based on all the circumstances) it would unduly erode the benefits of the transaction. When a transaction has already been implemented, and the Board is considering

whether to impose new conditions, this inquiry is even more important. To impose significant restructuring conditions, such as requiring a railroad to grant trackage rights to a competitor or to divest certain property, can be highly destabilizing to the consolidated railroad, to rail employees and to the railroad industry. Moreover, the potential for undermining the benefits of a transaction are greater where operations have already commenced under the post-merger system.

The Board must consider not only direct consequences that could potentially undermine the benefits of a merger (such as the costs of rerouting traffic, loss of merger efficiencies, harm to rail employees and a decreased ability in the consolidated railroad to invest in plant improvements), but also the indirect effects. One factor that is of particular relevance with respect to post-transaction conditions is investor confidence. If the Board were to embrace a policy of imposing conditions on railroad consolidations after operations had begun, except in the most unusual circumstances, investor confidence in the railroad industry could be seriously weakened.

The ICC recognized the risk of upsetting investor expectations by imposing conditions on a merger after the fact in *Norfolk & Western Ry. Co. and New York, Chicago & St. Louis R.R. Co. -- Merger*, 363 I.C.C. 270 (1980). In that case, the New York State Commissioner of Transportation filed a petition to reopen the merger between The Norfolk & Western Railway Company and The New York, Chicago and St. Louis Railroad Company (Nickel Plate), and to require Norfolk & Western to merge directly with the financially weak Delaware and Hudson. Norfolk & Western presented evidence that such a decision would create "uncertainty as to the finality of Commission

decisions" and "undermine investor confidence in the rail industry," resulting in a higher cost of capital. *Id.* at 275. The Commission accepted this argument and declined to further condition the Nickel Plate merger, stating: "We have weighed the evidence concerning the impact of our decision on the ability of railroads to compete in capital markets and find that forced mergers here could hamper the industry's ability to finance plant improvements." *Id.* at 282. These same concerns must also be weighed in other proceedings where post-merger conditions are at issue. Only conditions that would not significantly undermine the benefits of the merger or erode investor confidence should be imposed.

5. Is the Condition the Least Intrusive Solution?

It is well accepted that a condition "must be narrowly tailored" to remedy the adverse effects of a transaction. *UP/SP Merger*, Decision No. 44 at 145. As a corollary to this principle, the Board has stated: "We will not ordinarily impose a condition that would put its proponent in a better position than it occupied before the consolidation." *Id.* If, for example, prior to a merger the only competitive alternative to a direct single-line route is a joint line whereby traffic is interchanged between two competing carriers, and the merger eliminates one of the joint line competitors, a remedial condition should attempt only to restore the joint-line competition that previously existed and not to create a second single line. Moreover, where the competitive problem is caused by temporary circumstances (such as rail congestion

over competing lines), only a condition imposing temporary measures would be justified.

The purpose of this requirement is self-evident. Unless the Board carefully ensured that any conditions imposed are narrowly tailored to the harm at issue, other limitations on the Board's exercise of its conditioning power would have little significance. Moreover, because of the potential destabilizing consequences of reopening a prior transaction and imposing additional conditions, it is imperative that the Board strictly adhere to this policy during its oversight of rail mergers.

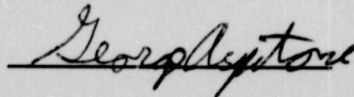
Conclusion

The Board's authority under 49 U.S.C. §11324(c) to impose conditions on privately-initiated rail transactions is significant, and should be exercised only when certain criteria are established. The criteria set forth in these comments have previously been established by the Board and ICC, are well-grounded in law and policy, and should be reaffirmed in this proceeding. Moreover, the Board should recognize that to impose conditions after a transaction is consummated is an extraordinary measure, one that has potentially far-reaching consequences. Some conditions that might be justified at the outset of a merger would not be appropriate to impose afterwards, because of concerns for the finality of Board decisions and for protecting the reasonable reliance interests of parties to a transaction.

In considering the various requests for additional remedial conditions in this proceeding, the Board should consider the criteria set forth in these comments. More

specifically, the Board should not impose any condition unless it specifically finds: (1) that there is a competitive public harm; (2) that the harm was caused by the UP/SP merger; (3) that the condition will solve the problem; (4) that the condition will not significantly reduce the merger's benefits; and (5) that the condition is the least intrusive solution possible.

Respectfully submitted,

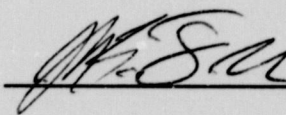
A handwritten signature in cursive script, appearing to read "George A. Aspatore", is written over a horizontal line.

William C. Wooldridge, Vice President-Law
J. Gary Lane, General Counsel-Corporate
George A. Aspatore, General Solicitor-Regulation

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Norfolk Southern Corporation and Norfolk Southern Railway Company on Requests for Remedial Conditions has been served this 18th day of September, 1998, by first class mail, postage prepaid, upon All Parties of Record.

_____

STB FD 32760 (Sub 26) 9-18-98 D 191188

CHARLES L. LITTLE
International President

BYRON A. BOYD, JR.
Assistant President

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General Secretary and Treasurer

191/88

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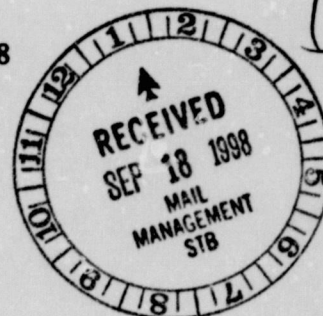
September 18, 1998

ENTERED
Office of the Secretary

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

SEP 18 1998

Part of
Public Record



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

Dear Mr. Williams:

Please find enclosed the original and 25 copies of the Verified Statement of James Brunkenhoefer to be treated as United Transportation Union's Comments for filing in the above-captioned matter. In accordance with prior Board orders, we have also enclosed a diskette in Word Perfect format.

Thank you for your cooperation.

Sincerely,

Daniel R. Elliott, III
Assistant General Counsel

cc: C. J. Miller, III, General Counsel

191188
ENTERED
Office of the Secretary

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Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

**VERIFIED STATEMENT OF
JAMES BRUNKENHOEFER
UNITED TRANSPORTATION UNION**

I am James Brunkenhoefer, the National Legislative Director for the United Transportation Union ("UTU").

The UTU recognizes that Union Pacific's ("UP") service crisis over the past year has been a significant problem for shippers throughout the country. But we are confident that this crisis had nothing to do with any absence of competition, or with any reduction in competition caused by the UP-SP merger. This was a failure of service, not competition.

The UTU lived through the service meltdown on SP in the late 1970's and early 1980's. Like that earlier collapse on the SP, this most recent service crisis was fundamentally the result of the inherent weaknesses of SP's operations. External stresses pushed the SP operations in Texas and elsewhere into a service crisis. This would have happened whether or not UP merged with SP. The merger is what has brought Texas back from the crisis, and is not the cause of the problem.

This is in accord with prior STB decisions which held that the primary reason for the service crisis was the overall inadequacy of the infrastructure in the region and that proposals to transfer line

ownership and to broadly permit other rail carriers access to the merged UP/SP network would likely exacerbate the crisis. In other words, the STB found that the problem was not a reduction in competition, related to any gained market power by UP/SP through the merger, but was a problem with the underlying framework of the entire rail system in this area.

The UTU is strongly opposed to the proposals to add new conditions on UP's operations around Houston and in the Gulf Coast area. The conditions are not a solution to the service issues we have seen in Texas and elsewhere. And they would badly hurt UP. Weakening UP with further losses of traffic and revenue is a bad idea and poor public policy. Rail service and competition in the West requires that UP be strong and fully able to compete against BNSF. These proposals would drain resources from UP and make it a weaker competitor. This is the wrong way to go. After suffering heavy losses over the past year, UP's ability to make necessary investments in its infrastructure throughout its system would clearly be threatened by conditions that further undermine its financial base and competitive position.

The UTU supported the UP-SP merger because we recognized that a strong UP is vital to effective rail service throughout the West. We continue to believe that allowing UP to implement the merger without further conditions is the right solution.

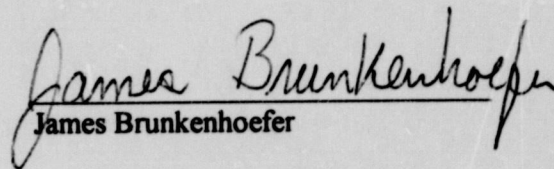
UP has been working hard to hire more employees, to address safety concerns, and to upgrade the quality of its infrastructure. It is making huge investments in people and capital. It should be allowed to move forward. Hobbling UP with more conditions would be a mistake and would hurt the UTU.

For these reasons, UTU opposes the proposed conditions and urges that the Board reject them.

I declare under penalty of perjury that the foregoing is true and correct and that I am

authorized to file this verified statement.

Dated September 18, 1998

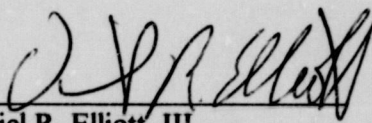

James Brunkenhoefer

. . . .

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Verified Statement of James Brunkenhoefer has been served this 18 day of September, 1998 via first class, postage pre-paid mail upon the following:

All parties of record.



Daniel R. Elliott, III

STB FD 32760 (Sub 26) 9-18-98 D 191187

191187



Douglas R. Maxwell*
General Counsel

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Office of the Secretary

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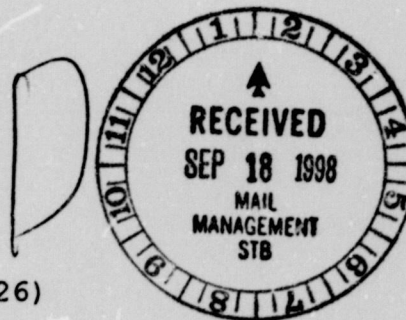
SEP 18 1998

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Writer's direct telephone line:

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September 17, 1998



The Honorable Vernon A. Williams
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, D. C. 20423-0001

Re: STB Finance Docket No. 32760 (Sub-No. 26)
UNION PACIFIC CORPORATION [HOUSTON/GULF OVERSIGHT]

Dear Mr. Williams:

Enclosed for filing in the above proceeding please find an original and twenty-five copies of the Comments of CSX Corporation on Requests for Remedial Conditions.

A 3.5 inch diskette is also enclosed.

Very truly yours,

Douglas R. Maxwell

PRH/sgh
Enclosure

cc: All Parties of Record
on the Service List served
September 10, 1998

ENTERED
Office of the Secretary

SEP 18 1998

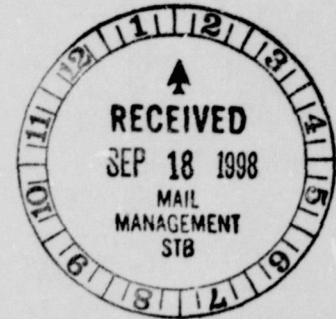
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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



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**UNION PACIFIC CORPORATION, ET AL.
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, ET AL.
[HOUSTON/GULF COAST OVERSIGHT]**

**COMMENTS OF CSX CORPORATION
ON REQUESTS FOR
REMEDIAL CONDITIONS**

INTRODUCTION

CSX Corporation and its wholly-owned subsidiary CSX Transportation, Inc. (hereinafter collectively referred to as "CSX") hereby submit these comments on the requests for remedial conditions filed by various parties to the above-referenced merger oversight proceedings on July 8, 1998. CSX seeks no conditions and asks for no concessions.

With the ending of the transportation crisis in the Houston/Gulf Coast area and the lifting by the Board of its emergency service order, CSX believes the issues in this proceeding have become much clearer. The purpose of these comments is to urge the Board, as it considers the various conditions requests before it, to adhere to its long-established, well-supported and still sound principles for determining whether to impose conditions on its approval of a consolidation

transaction that it has found otherwise to be in the public interest. Stated simply, those principles are: (1) A condition will be imposed only when there is convincing evidence that the merger will result in a loss of competition or a loss of essential rail services. (2) A condition must be directed at the amelioration of an identified loss of competition of the subject transaction and not at rectifying a preexisting problem or condition. (3) A condition must be narrowly tailored so that it ameliorates the adverse effect of the merger while causing the least amount of erosion of the merger's benefits to the public and to the merging railroads.

In addition, the Board should be especially cautious in considering whether to take the extraordinary step of imposing conditions on a transaction *after* it has been consummated. As has been recognized in prior rail proceedings, the potential for harm to investor confidence and to future beneficial transactions is extremely high when previously consummated transactions are reopened, especially where additional structural conditions are at issue.

I. The Scope of This Proceeding is Limited.

As the Board's orders have made clear, the purpose of this oversight proceeding is narrow in scope. It is to address whether competitive harms have resulted from the UP/SP merger, and if so, whether to remedy these harms by imposing additional conditions. The purpose is not to address non-competitive problems that may have arisen in connection with the Houston/Gulf Coast service crisis, or even the UP/SP merger generally. See STB Finance Docket No. 32760 (Sub-No. 26), Decision No. 1 (served March 31, 1998), at 4 ("The Board imposed a 5-year oversight condition to examine whether the conditions imposed on the merger effectively addressed the *competitive* concerns they were intended to remedy.") (italics added).

Nor is the purpose of this proceeding to remedy competitive problems that preexisted the merger or were caused by unrelated events. As the Board reiterated in its decision approving the UP/SP merger: "We will not impose conditions 'to ameliorate long-standing problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.'" STB Finance Docket No. 32760, *Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp.*, Decision No. 44 (served August 12, 1996), at 145, quoting *Burlington Northern, Inc.--Control & Merger--St. L.*, 360 I.C.C. 788, 952 (1980).

The Board's jurisdiction is limited by the express terms of the oversight condition imposed on the UP/SP merger (and which was accepted by the parties to that transaction). That condition states as follows:

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*.

Decision No. 44 (served August 12, 1996), at 146 (italics added).

Indeed, given the fact that UP and SP consummated their merger in reliance on the Board's explicit statements concerning the scope of its oversight jurisdiction, serious constitutional due process issues might well be raised if the Board now were to impose additional remedial conditions not designed specifically to address adverse competitive effects of the UP/SP

merger. Nevertheless, it appears that some parties would have the Board use this proceeding as a vehicle to address more generally the numerous rail service problems that have occurred in the Houston/Gulf Coast area. This is not an appropriate use of the Board's oversight power and is contrary to the Board's stated intentions concerning the scope of this proceeding. Moreover, since the requests for additional conditions in this proceeding were filed, the Board has explicitly found that a transportation emergency no longer exists in the Houston area, finding that "the Houston area is fluid" and that transit times for major routes are "near or better than pre-emergency levels." STB Service Order No. 1518 (Sub-No. 1), *Joint Petition for a Further Service Order* (served July 31, 1998). Given this finding, conditions designed to remedy a loss of essential services caused by the recent service crisis (rather than a competitive problem) could no longer be justified, even if the Board's oversight jurisdiction were more expansive.

II. The Board Should Exercise Caution So As Not to Undermine the Long Term Public Benefits of the UP/SP Merger.

Even if it can be demonstrated that a proposed condition would remedy a loss of competition that otherwise would result from the merger, the condition must be rejected unless it also is established that the condition would be in the public interest. *See* Decision No. 44 (served August 6, 1996), at 144-145. In considering whether to impose a condition the Board must weigh not only the immediate benefits and costs of the condition, but also its potential long-term effects -- including how a condition would impact the ability of railroads to earn adequate revenues, their incentive to engage in future beneficial transactions, and how the condition would affect investor confidence.

The Board has frequently recognized that "conditions generally tend to reduce the benefits of a consolidation," *id.* at 144, and for this reason it has generally been cautious in imposing conditions. Thus, the Board has held that a condition must be "narrowly tailored" to remedy the harm at issue, and that overbroad conditions will not be imposed. *Id.* at 145. Some of the conditions proposed in this proceeding (for example the request to establish neutral switching in the Houston area) do not appear to be narrowly tailored, but apparently would introduce direct rail-to-rail competition in many areas where it did not exist prior to the merger.

The Board has also held that conditions which would "broadly restructure the competitive balance among railroads" are disfavored, and will generally not be imposed because of their unpredictable effects. *Id.* at 144. The conditioning power should not be used to rewrite the transportation landscape in the Houston/Gulf Coast area or elsewhere, for to do so would do far more damage than good. Significant restructuring conditions can not only cause immediate service-related harms, but also threaten to undermine stability and investor confidence in the rail industry as a whole.

Although these cautionary principles are critical in any proceeding, they carry even more importance where the issue is whether to impose additional conditions on a transaction that has already been consummated. After a major rail merger has been implemented, traffic has been rerouted, management and labor forces have been restructured and combined, dispatching and other operational systems have been integrated, additional shipper contracts have been negotiated, debt has been incurred, and securities have been issued. Thus the risk that additional structural conditions imposed on a merger would upset the settled expectations of numerous parties is significantly higher. Additional conditions are also more likely to upset existing operations after a

merger is consummated. For these reasons, the threshold for imposing post-transaction structural conditions must be even higher than for imposing such conditions at the outset of a merger.

The ICC recognized the danger in imposing post-merger structural conditions in *Norfolk and Western Ry. Co. and New York, Chicago & St. Louis R.R. Co. -- Merger*, 363 I.C.C. 270 (1980), where it declined to impose an additional condition on the Nickel Plate/Wabash Merger after that transaction had been consummated. The Commission's decision rested in part on its desire to avoid damaging "the ability of railroads to compete in the capital markets" or the rail industries' "ability to finance plant improvements," recognizing the railroad's argument that to disturb settled expectations would undermine investor confidence. *Id.* at 282. Moreover, to require the divestiture of property or granting of trackage rights after a transaction has been implemented is an extraordinary intrusion on the property rights of affected parties, even if compensation is granted.

To impose additional conditions could also undermine the benefits of the merger by weakening the financial position of UP and its corresponding ability to fund needed capital improvements on the declining SP system. As the Board found, one of the primary benefits of the UP/SP merger was that it would enable the financially weak SP to become part of a large, healthy rail system that could sustain efficient operations and maintain viable plant investment, noting UP's intention to spend \$1.3 billion dollars over several years to upgrade SP facilities. Decision No. 44 (served August 6, 1996), at 114. To impose significant structural conditions that would shift traffic from UP to its competitors and depress its rates would reduce UP's ability to make needed investments. It could also frustrate UP's differential price structure, which the Board and the ICC have long recognized is vital to the ability of railroads to maintain adequate revenues and

recoup their substantial investment costs. To introduce rail competition over routes where UP or SP formerly were able to charge differential rates to recover their prior capital investments would cause a decrease in revenues by forcing UP to accept rates at or near variable costs. If it could not make up those losses by charging higher rates elsewhere in its system, UP's ability to maintain adequate levels of capital investment (both to maintain and upgrade existing facilities and to build new ones where needed) would clearly be compromised.

III. It Is Highly Implausible that a Causal Relationship Exists Between Any Increased Market Power Acquired by Union Pacific From the Merger and the Recent Service Crisis.

The Board has specifically invited the parties in this proceeding to address "whether there is any relationship between the market power gained by UP/SP 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 (served March 31, 1998) at 8. While inviting parties to address this subject, the Board itself expressed considerable doubt that there is such a relationship, stating that "no party as yet has seriously suggested that SP's inadequate infrastructure would not have produced severe service problems in the Houston/Gulf Coast area even if there had been no merger." *Id.* at 7. Nevertheless, because of the unprecedented and serious nature of the recent service emergency, the Board concluded that the issue should be open to consideration. *Id.*

No parties have presented credible evidence that the service crisis in the Houston/Gulf Coast area was caused by a decrease in rail competition resulting from the UP/SP merger, and it is

implausible that this would be so. Indeed, few commenting parties have even attempted to argue that merger-created competitive conditions were a cause of the service crisis.

At root, the recently ended service crisis in the Houston/Gulf Coast area is much more understandable as a failure of infrastructure, not a failure of competition. As James Brunkenhoefer, National Legislative Director for the United Transportation Union, observed metaphorically in a recent oral hearing before the Board, the problem of congested highways is not solved by adding more cars to already choked roads. Rather, what is needed is more infrastructure. By a parity of reasoning, what is needed in the Houston/Gulf Coast area is more rail infrastructure. However, CSX questions whether UP (or any other railroad) would have much appetite for making major capital expenditures to its rail system if the benefits of such expenditures would have to be shared with competitors under a Board-mandated fundamental restructuring.

Some parties contend that the service crisis has caused an increase in UP market power, and that for this reason the Board should impose additional conditions which would relieve the effects of the service emergency and restore competition. These parties argue that service failures have prevented UP's competitors from effectively exercising trackage rights granted by the merger, and therefore from providing competition intended by the Board. Implicit in this argument is the assumption that the service crisis would not have occurred but for the merger, which itself is questionable.¹ But even assuming that the service failures were caused by the

¹ Moreover, the Board's recent finding in STB Service Order No. 1518 (Sub-No. 1), *Joint Petition for a Further Service Order* (served July 31, 1998), that the transportation emergency has ended in the Houston/Gulf Coast area renders this line of argument moot. Because the service crisis is over, whatever its effect on preventing UP competitors from exercising competitive trackage rights is no longer at issue.

merger rather than a preexisting lack of infrastructure, it cannot credibly be argued that UP's market power has been increased as a consequence of the service emergency.

To establish that UP has gained market power it is not sufficient to show simply that service failures have hindered BNSF's or Tex-Mex's ability to use trackage rights in competition with UP; rather it must be shown that the crisis has hindered UP's competitors *more than it has hindered UP* with respect to the traffic in question. If, as might be expected, the evidence shows that UP has suffered service troubles as severe or worse than those facing its competitors, there would be no principled basis to justify imposition of additional conditions designed to rectify a competitive "problem" that had not been shown to exist.

Because there is no causal connection between the recent service failures in the Houston/Gulf Coast area and the supposed anticompetitive effects of the merger, additional conditions cannot be justified on this basis.

CONCLUSION

CSX respectfully requests the Board to consider these comments, and to adhere to the principles set forth herein in determining whether to grant the various requests for additional conditions that have been filed in this proceeding. Unless a proposed condition meets the strict standards previously established for conditioning a transaction, and the condition is found to be in the long-term public interest, it should not be imposed.

Respectfully Submitted,

CSX CORPORATION

Mark G. Aron

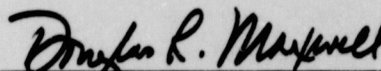
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September 17, 1998

CERTIFICATE OF SERVICE

I, Douglas R. Maxwell, certify that on September 17, 1998, I have caused to be served a true and correct copy of the foregoing "Comments of CSX Corporation on Requests for Remedial Conditions" to all parties of record on the Service List in Finance Docket No. 32760 (Sub-No. 26), by first class mail, postage prepaid.

Douglas R. Maxwell