

STB FD 32760 (Sub 26) 9-1-98 I 191216

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September 18, 1998

VIA HAND DELIVERY

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

ENTERED
Office of the Secretary

SEP 21 1998

Part of
Public Record

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

Dear Secretary Williams:

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

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

Sincerely,

Erika Z. Jones/als

Erika Z. Jones

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

-- CONTROL AND MERGER --

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

**BNSF COMMENTS, EVIDENCE AND ARGUMENTS
ON REQUESTS FOR NEW
REMEDIAL CONDITIONS IN ADDITIONAL OVERSIGHT PROCEEDING**

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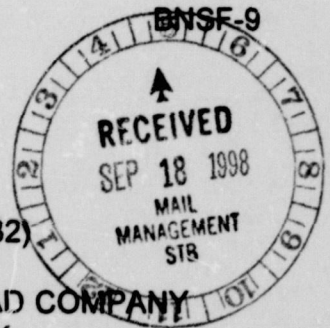
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I. Introduction And Summary

Pursuant to the Board's Decision No. 5 in this proceeding, The Burlington Northern and Santa Fe Railway Company ("BNSF") submits its comments, evidence and arguments in opposition and response to the requests for new remedial conditions filed on July 8, 1998, by the Consensus Parties,^{1/} the National Industrial Transportation League ("NIT League"), and the Capital Metropolitan Transportation Authority ("CMTA").^{2/}

^{1/} The "Consensus Parties" are the Chemical Manufacturers Association ("CMA"), the Railroad Commission of Texas, the Texas Mexican Railway Company ("Tex Mex"), the Society of the Plastics Industry, Inc., the Texas Chemical Council, and The Kansas City Southern Railway Company ("KCS").

^{2/} BNSF does not express any opinion on the other parties' July 8, 1998 filings at this time. BNSF notes that it previously submitted its comments on the Comments and Request for Remedial Conditions of Formosa Plastics Corporation, U.S.A. in the Verified Statement of Ernest L. Hord filed with the Board on July 31, 1998, and on the Request

In an attempt to make it appear as though their requests fall within well-established Board precedent on preservation of competition, the Consensus Parties repeatedly claim that their requests are needed to restore pre-merger competition in the Houston area. See, e.g., Consensus Parties' Requests at 11, 13. However, far from restoration of competition to pre-merger levels, many of the Consensus Parties' requests go much farther. Indeed, the Consensus Parties would have this Board increase the level of competition in the Houston area (which was a "3-to-2" point served by UP, SP and BNSF prior to the merger) over and above that which existed pre-merger and reward Tex Mex with new access at the expense of BNSF and UP.^{3/}

There is simply no basis for awarding such unprecedented access to Tex Mex in the context of this oversight proceeding. Because no Houston shippers lost access to competitive rail service as a result of the UP/SP merger as conditioned by Decision No. 44, the underlying objective which is alleged to be served by the Consensus Parties' requests -- to "restore competition to the vast majority of Houston shippers" -- is completely without foundation. See Consensus Parties' Requests at 13. Instead, to the extent that the Consensus Parties' requests inappropriately seek in this oversight

for Additional Conditions of the Dow Chemical Company (DOW-1) in the form of the Verified Statement of Ernest L. Hord, which was included in Dow's July 8 filing.

^{3/} In approving the UP/SP merger, the Board addressed a specific competitive issue with respect to another "3-to-2" point, the Lake Charles, LA area. Many customers in that area had access to KCS, UP and SP. In that case, the CMA Agreement and the Board gave BNSF access to industries formerly accessible to SP, along with KCS and UP. However, the reason for that agreement and merger condition -- that KCS lacked the geographic reach to provide rail users with effective competition following a UP/SP merger for many destinations and corridors -- simply cannot be made for BNSF or for Houston.

proceeding to increase competitive access to Houston shippers, those requests should be considered in other STB proceedings, such as the Ex Parte Nos. 575, 627 and 628 proceedings, addressing such competitive access matters with a broader scope than just the Houston area.

For these reasons, BNSF opposes the Consensus Parties' requests to the extent that their requests seek additional rail carrier access to new customers. In addition, BNSF opposes the Consensus Parties' requests to the extent that they propose operations or dispatching that could pose problems with other carriers' operations in the Houston/Gulf Coast areas. Accordingly, as set forth below, BNSF opposes all or portions of Items 1(a), 3, 4, and 8 of the Consensus Parties' requests and respectfully requests the Board to deny them. With respect to the remaining requests, BNSF either supports or does not oppose the requests.

Regarding the comments of NIT League that BNSF has not made significant infrastructure investments in the Houston/Gulf Coast area, BNSF will show that, contrary to views expressed by NIT League, BNSF has already made a significant capital contribution in the Houston/Gulf Coast area and plans to continue doing so. BNSF's expenditures have been focused on upgrading existing lines for increased traffic, both former SP lines and connecting routes of BNSF, as well as upgrading yards and adding strategic capacity. A list of key projects undertaken is provided in this submission.

Finally, with respect to CMTA's request to permit BNSF to interchange with the Longhorn Railway at McNeil, TX rather than at Elgin, TX, that request, if granted, would

permit Longhorn customers to more effectively access BNSF service and would resolve existing capacity and other issues at the present Elgin interchange.

II. BNSF's Responses to the Consensus Parties' Requests

In their July 8, 1998 filing, the Consensus Parties sought a total of eight new remedial conditions. BNSF's position with respect to each of the requested conditions is set forth below.

Item 1(a):

The Consensus Parties request that the temporary rights given to Tex Mex as a part of STB Service Order No. 1518 be made permanent, including lifting the restriction of a prior or subsequent Tex Mex movement between Corpus Christi and Laredo on Tex Mex's right to serve Houston customers.

BNSF's Position:

BNSF opposes this request for permanent new access because it is unnecessary to preserve pre-merger competition at Houston and is unworkable from a long-term operational standpoint.

First, because conditions must be "narrowly tailored to remedy [competitive] effects" (Decision No. 44 at 145), there is no basis under the Board's merger precedents addressing competition to grant Tex Mex the additional right to serve northbound Houston traffic. See also Decision No. 44 at 144-45 (the Board is "disinclined to impose conditions that would broadly restructure the competitive balance among railroads" and will not "ordinarily impose a condition that would put its proponent in a better position than it occupied" before the transaction). In fact, the Board has rejected Tex Mex's

efforts to obtain an unlimited right to serve Houston traffic on two prior occasions. See Decision No. 44 at 147-51 and Decision No. 62 (served Nov. 27, 1996) at 6 ("there is no reason to grant Tex Mex unrestricted access to Houston traffic").

By fully implementing the conditions imposed by Decision No. 44 and with the imposition of the structural realignments sought by BNSF in its July 8, 1998 filing, BNSF can provide shippers with long-term competition at Houston comparable to that provided pre-merger by UP, SP and BNSF. Indeed, the Consensus Parties' arguments in support of the lifting of the Tex Mex northbound restriction do not address or attempt to identify how the service BNSF has provided at Houston has failed to maintain the pre-merger levels of competition. Instead, they are directed to improving Tex Mex's competitive position in various product and geographic markets (e.g., plastic resins, automobile vehicles and parts, and packaged freight to the Northeast, Southeast and Midwest) in which Tex Mex was never intended by the Board to provide (or assist in providing) a competitive replacement for SP.

The basic flaw of the Consensus Parties' request is that they misapprehend the competitive role that Tex Mex was to play as envisioned by the Board in Decision No. 44. See, e.g., Consensus Parties' Request at 16 (the northbound restriction prevents Tex Mex from "fulfilling its intended competitive role"). The "purpose of the trackage rights given to Tex Mex was to address the possible loss of competition at the Laredo gateway" and the Board's grant of trackage rights to Tex Mex "was not directed at

mitigating any supposed competitive harm arising at Houston." Decision No. 62 at 6. ^{4/} Thus, the Board in this case has already determined that the proper "narrow tailoring" of its grant of Tex Mex trackage rights requires a focus on traffic to and from Mexico and that it is only with respect to such traffic that there exists a competitive problem requiring the imposition of trackage rights in favor of Tex Mex. Further, expanding Tex Mex's trackage rights to permit it to serve northbound traffic would "risk diluting the traffic base for all the competitors and jeopardizing the success" of the principal competitor to "the merged system" -- i.e., BNSF. See Santa Fe Southern Pacific Corp. -- Control -- Southern Pacific Transportation Co., 2 I.C.C.2d 709, 827 (1986).

Moreover, the facts demonstrate that, even with the structural deficiencies in its rights that BNSF has identified,^{5/} BNSF has been successful in maintaining pre-merger competition at Houston and in increasing its market share of traffic from Houston area shippers open to reciprocal switching.^{6/} For instance, over 200 individual customer

^{4/} In Decision No. 62, the Board rejected the argument which the Consensus Parties repeat (Consensus Parties' Request at 14-18) that the lifting of the restriction on northbound traffic is necessary to ensure that Tex Mex is competitive for Mexican traffic. Decision No. 62 at 8. The Consensus Parties have submitted no evidence which would justify a change in the Board's conclusion in this respect.

^{5/} As explained in its July 8, 1998 Application for Additional Remedial Conditions ("Application") (at p. 4), by use of the term "structural deficiencies", BNSF means that the trackage and other rights it received, while sound when originally conceived, have degraded substantially as a result of unanticipated service and related problems and other post-merger events and circumstances.

^{6/} In this regard, it should be noted that the Consensus Parties' argument that the northbound restriction on Tex Mex should be lifted because UP controls an 87% market share of the traffic to the Southeast and has similar market shares to other parts of the country is misleading. Before the merger, much of the traffic cited by the Consensus Parties as now being controlled by UP was exclusively served by only one carrier -- either UP or SP. Thus, the Board's competition preserving conditions were not intended

facilities are accessible to competitive rail service in Houston, between the former Houston Belt & Terminal Railway Company ("HB&T") and Port Terminal Railroad Association ("PTRA") industries open to reciprocal switching by BNSF and Tex Mex, as well as UP, as shown on the list attached to the Verified Statement of Peter J. Rickershauser ("V.S. Rickershauser"). Since the merger, BNSF has been able to offer competitive service packages to and secure business from many of these customers. For example, BNSF's market share based on all cars shipped and received by PTRA industries in the most recent reported month (July) stands at 63% of all cars shipped and received, up from 41% a year ago. V.S. Rickershauser at 6.

Further, for the past few years, BNSF has steadily increased the traffic it handles to and from the Houston area. In 1994, BNSF's predecessors (ATSF and BN) handled 259,192 loaded shipments, or 16,022,698 tons, into and out of the Houston area. V.S. Rickershauser at 3. By 1997, BNSF's loaded shipments had increased 13% to 293,672, and tonnages had increased 6%. Ibid. More significantly, for the first seven months of 1997 and 1998, BNSF's loaded units handled to and from Houston increased 19%, from 156,759 to 186,951 units; tonnages handled increased 36%, despite a major loss of competitive automotive traffic during the 12 month period to UP.²⁷ Id. at 3-4. Likewise,

to apply to those shippers at all, and it is unremarkable that competition to those sole-served shippers has not increased under the Board's conditions and that that portion of the Houston market remains solely served by UP. To the extent the Consensus Parties' requests seek to secure new rail carrier access to those sole-served shippers, those requests should, as BNSF has suggested, be considered in separate proceedings directed to competitive access issues.

²⁷ BNSF gained access to a small number of additional customers as a result of UP/SP merger conditions in 1996 and the February 12, 1998 BNSF-UP Agreement that

chemicals shipments via BNSF grew 13% during the 1998 period, compared to 1997, for both loaded units and tonnages. Id. at 4. These facts show that Houston area shippers open to reciprocal switching have an effective post-merger rail alternative to UP and that UP has competition in Houston.^{8/}

Second, as the Board has recognized, the infrastructure and facilities in and around the Houston area are presently inadequate to handle rail service demands. STB Service Order No. 1518 (served Feb. 17, 1998) at 5-7; STB Service Order No. 1518 (served Feb. 25, 1998) at 4-5; STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 12 (served March 31, 1998) at 5. As discussed in the attached Verified Statement of Ernest L. Hord ("V.S. Hord"), the permanent addition of a third carrier to service northbound traffic would only add further demand on the existing limited infrastructure and facilities in and around the Houston area and, as a result, would hinder BNSF's and UP's ability to provide timely and efficient service to shippers whose traffic traverses the Houston area. V.S. Hord at 2. Even the new infrastructure proposed by the Consensus Parties -- which is contingent on Tex Mex being granted new access -- is designed

also had the option of shipping via BNSF rather than UP during the service "meltdown", primarily on the former SP Baytown and Cedar Bayou branches. Adding these additional customers' units and tonnages into BNSF's Houston totals reported above, BNSF's first seven months of 1998 compared to the same period in 1997 showed a loaded unit increase of 21%, to 191,232 from 157,548, and a tonnage increase of 39%, from 9,004,967 tons to 12,484,995 tons. V.S. Rickershauser at 4.

^{8/} BNSF's growth in the Houston market has not been without difficulties. As detailed in a number of its Quarterly Progress Report filings to the Board, BNSF has repeatedly raised operational problems and concerns as to its ability to implement fully the competitive conditions imposed in the UP/SP merger as a result of actions, or inactions, on the part of UP. While some of these issues have been resolved, many remain, as detailed in BNSF's July 8, 1998 Application.

principally to support Tex Mex's operations as opposed to solving the customer service and operational problems in the Houston and Gulf Coast areas. Ibid. Further, this infrastructure would not be available to relieve the potential additional congestion the granting of the Consensus Parties' commercial conditions would cause UP, BNSF, or Houston area customers for several years.

Third, were the Board to lift the northbound restriction on Tex Mex's trackage rights, BNSF's operations in and around the Houston area would be negatively impacted. See V.S. Hord at 2. For example, the permanent addition of a third carrier would add further complexity to Houston terminal operations such as requiring Houston switching carriers to build additional "blocks" for Tex Mex northbound as well as southbound traffic. Ibid. Such operations in turn could potentially affect service for all customers and all rail carriers serving Houston.

Finally, contrary to the views of the Consensus Parties, the service and operational problems in the Houston and Gulf Coast areas have not been caused by a lack of competitive access. Rather, issues related to UP's merger implementation (including, among others, data exchange difficulties between UP and SP) and a lack of infrastructure and facilities in the Houston area all have contributed to the inability of the rail carriers to provide the service and rail operations customers expect and require in and around Houston.

In sum, the removal of the northbound restriction on Tex Mex would not solve the service and operational problems present in the Houston/Gulf Coast area. The request is nothing more than an opportunistic attempt by Tex Mex and KCS to gain access to

new business on a long-term basis under the guise of restoring pre-merger competition.^{9/} Further, to the extent any of the Consensus Parties' proposals would grant Tex Mex new access to customers, it could result in the dilution of BNSF's (and UP's) Houston area traffic base, thus increasing BNSF's (and UP's) average costs and making less capital available for needed infrastructure projects in the Houston area by those carriers. V.S. Rickershauser at 8.

^{9/} Consistent with the theme that their requests are necessary to "restore competition", the Consensus Parties baldly conclude that there is insufficient competitive infrastructure in the Houston area, i.e., infrastructure not controlled by UP. Consensus Parties' Requests at 11. For instance, the Consensus Parties assert that "UP controls 9 out of the 11 tracks into and out of Houston". Id. at 2, 65. However, even apart from being factually incorrect (i.e., BNSF controls or jointly controls at least four of the key lines into Houston) (V.S. Rickershauser at 5-6), the Consensus Parties' argument wholly ignores the role that the Spring Center has played in improving the ability of BNSF, UP and Tex Mex to provide competitive service on the existing Houston area infrastructure. (A detailed description of the Spring Center and how the Center has improved operations is provided herein at pages 14-15 and in Mr. Hord's Verified Statement at pages 3-5).

Further, the Consensus Parties' assertion that the "abolishing" of the HB&T has contributed to a reduction in competition and access at Houston is inaccurate. As the Board is aware, HB&T is a switching carrier wholly-owned by UP and BNSF. The restructuring plan adopted by UP and BNSF in late 1997 was designed to improve the efficiency of HB&T's operations. As the sole successors to the original 1948 Operating Agreement which was approved by the Interstate Commerce Commission, UP and BNSF have the full authority to control the operations of HB&T, including making changes in the manner in which dispatching and switching are to be handled on HB&T trackage. No shipper lost access to any carrier as a result of the restructuring, and the restructuring has led to improved service and enhanced competition, particularly since the advent of the Spring Center which jointly dispatches all of the former HB&T trackage.

Item 1 (b):

The Consensus Parties request a grant of permanent trackage rights to Tex Mex over UP's Algoa route between Placedo and Algoa and over BNSF's line between Algoa and T&NO Junction, TX.

BNSF's Position:

Because this request does not seek to grant Tex Mex new access but addresses operational considerations and would help to alleviate congestion, BNSF does not oppose the request to the extent that UP continues directional flows between Flatonia, Placedo and Algoa. Tex Mex would need to agree to share in the cost of any capacity improvements required by additional Tex Mex business operations over the line. However, the Consensus Parties unjustly seek the benefit of the trackage rights fee BNSF pays UP as a result of the privately-negotiated settlement agreement between BNSF and UP. Consensus Parties' Requests at 7. It is BNSF's position that the compensation should be the same as the STB ordered for other Tex Mex trackage rights lines.

Item 1(c):

During the time for which Service Order No. 1518 has been in effect and until such order expires, Tex Mex will submit to the STB and all parties of record a service performance report which will demonstrate the effectiveness or lack thereof, of the access granted to Tex Mex under the service order.

BNSF Response:

BNSF has no objection to this request, but notes that, with the expiration of the service order, the request is now moot. BNSF also notes that Tex Mex could voluntarily, if it desired, make available to the Board and parties of record a service performance report with respect to the access Tex Mex received under the service order.

Item 2:

The Consensus Parties request the Board to grant trackage rights and the use of appropriate yards to PTRR over the lines of HB&T to provide switching services to all railroads serving Houston on a non-discriminatory basis.

BNSF's Position:

BNSF supports this proposal to the extent that it applies to only those industries currently open to reciprocal switching at Houston. Were the STB to grant this request, it would need to ensure in its order that BNSF would not incur any labor protection obligation as a result of establishing PTRR as a neutral switcher. Further, BNSF must continue to have exclusive use of New and Old South Yards for train makeup in Houston if it is going to be able to provide efficient service to customers whose traffic must traverse the Houston area. See V.S. Hord at 3.

Basin and Congress Yards (former HB&T facilities) might be used by PTRR for industry support in performing its duties as a neutral switcher.

Item 3:

The Consensus Parties request that the Board grant PTRR trackage rights on the former SP Galveston Subdivision between Harrisburg Junction and Galveston and use

of former SP and UP Yards at Strang and Galveston to provide switching services to all railroads serving Houston on a non-discriminatory basis.

BNSF's Position:

BNSF opposes this proposal for the expansion of the Houston neutral switching area. This request would not improve operations in the Houston/Gulf Coast area or preserve pre-merger competition, but instead would result in significant additional rail carrier access to shippers. As stated above, notwithstanding the fact that granting of this request by the Board would provide BNSF with additional shipper access, BNSF believes that matters involving additional rail carrier access to shippers should be resolved in the various other proceedings addressing competitive access pending before the STB. In addition, a commitment of significant infrastructure investment would be required to make such access feasible and to avoid degrading service for all customers in the area.

This and other proposals of the Consensus Parties, whether they involve transfer of specific lines, Booth Yard, or creation of an enlarged neutral switching area, amount to requiring UP or BNSF to give up their infrastructure to a third carrier, Tex Mex, without Tex Mex (and KCS) bearing the same up-front investment the other carriers made before starting business.^{10/}

^{10/} It should be noted that throughout their Plan, to the extent that they propose capital investments, the Consensus Parties refer to both Tex Mex and KCS. See, e.g., Consensus Parties' Request at 13, 27. Even though KCS has a 49% ownership interest in Tex Mex, KCS itself does not have a presence in the Houston area, and it is somewhat odd that the Consensus Parties continually refer to KCS being directly involved in such investments. It also should be noted that the Consensus Parties' proposals for capital investments including the proposed double tracking of the former SP Houston to Beaumont line -- a line which BNSF is seeking to gain a 50% ownership interest in pursuant to its pending exemption petition (the "50/50 line") -- are contingent

Item 4:

The Consensus Parties request the Board to: (i) authorize PTRa to provide neutral dispatching of all lines within the neutral switching area, and (ii) grant all railroads serving Houston terminal trackage rights over all tracks within the neutral switching area to enable PTRa dispatchers to route trains over the most efficient route.

BNSF's Position:

With respect to Item 4(i), while BNSF is not opposed to the concept of neutral dispatching in principle, BNSF opposes this particular request because it would be at odds with the operations and mission of the recently-established joint dispatching center at Spring, TX to regulate traffic flows and avoid route and terminal congestion by better planning and coordination of BNSF, Tex Mex and UP trains in and around Houston. See V.S. Hord at 3-4.^{11/}

The Spring Center -- whose functions include not only the joint dispatching of certain lines but also the coordination of dispatching by BNSF and UP on other of their lines -- is the first dispatching center of its kind. The lines are dispatched in accordance with the dispatching protocol adopted pursuant to the CMA Agreement in the UP/SP

on Tex Mex (and KCS) being granted new access to Houston area shippers. Consensus Parties' Request at 24, 26, 61. In addition, as the Board is aware from the exemption petition, BNSF and UP have not agreed as to the scope of the right-of-way to be conveyed with the 50/50 line. It is thus not evident at this time whose ownership interests might be implicated by the Consensus Parties' double-tracking proposal.

^{11/} BNSF notes in this regard that the Consensus Parties mischaracterize the objectives to be served by their Plan. Consensus Parties' Request at 13. Their Plan would not, as they allege, "restore" neutral dispatching to the carriers serving Houston today because there never was neutral dispatching in Houston prior to the establishment of the Spring Center.

merger proceeding.^{12/} Joint dispatching at the Spring Center continues to work well as evidenced by UP's recent decision to relocate its dispatchers for its lines between Spring and Hearne and Houston and Shreveport to the Spring Center and the improvements in train movements through Houston and reductions in delays for customers BNSF believes are attributable to the Spring Center.

Were the Board to order neutral dispatching by PTRAs as proposed, it would require separating the operation and dispatching of the Houston terminal from the operation and dispatching of the lines feeding into, out of, and through the Houston terminal. The practical impact of this proposed separation of dispatching for all carriers operating in the Houston area would be significant. Most importantly, the benefits offered by the Spring Center's joint and coordinated dispatching would be substantially diminished with a separation of the dispatching functions as proposed by the Consensus Parties. V.S. Hord at 5.

Indeed, there are really no benefits to be gained by requiring PTRAs to provide neutral dispatching of all lines within the neutral switching area. As it currently stands, if the lines radiating from Houston are congested and backed up, the terminal cannot function, no matter what entity controls dispatching whether it is PTRAs or the Spring Center. In addition, Tex Mex will benefit by continuing the dispatching of all lines at the Spring Center since it already has a representative there, and BNSF is willing to have Tex Mex fully participate in the Spring Center. V.S. Hord at 5.

^{12/} That protocol provides that trains of the same class will be treated equally so that all carriers in Houston and along the Gulf Coast will be able to provide the same quality service to shippers.

With respect to Item 4(ii), BNSF supports the concept that carriers operating through the Houston terminal should be granted trackage rights to use the best available routes through Houston, and not just the lines that they currently have trackage rights over. As BNSF advised the Board in its own July 8, 1998 Application (V.S. Rickershauser at 28), absent prior trackage rights agreements, UP will not permit BNSF to use alternative routes through Houston when the former HB&T East and West Belt routes are congested. BNSF notes that neither its request nor the Consensus Parties' request would expand customer access.

Item 5:

The Consensus Parties request the Board to require UP and BNSF to acknowledge Tex Mex's full voting membership on the PTR A Board and to restore The Port of Houston Authority as a full voting member of the PTR A Board.

BNSF's Position:

BNSF supports this request. BNSF notes that it has already recognized Tex Mex as a full voting member on the PTR A Board and has previously expressed its support to restore The Port of Houston Authority as a full voting member of the PTR A Board.

Item 6:

The Consensus Parties request that the Board require UP to sell SP's out-of-service line between milepost 0.0 at Rosenberg, TX and milepost 87.8 at Victoria, TX on reasonable terms and conditions, and grant trackage rights to Tex Mex over two miles of UP line between milepost 87.8 and the point of connection with the UP's Port LaVaca Branch.

BNSF's Position:

BNSF does not object to this proposed transaction, subject to the ability of Tex Mex and UP to work out an acceptable transfer of these assets. However, BNSF does question the need for Tex Mex to retain trackage rights from Victoria to Flatonia if Tex Mex acquires the Victoria to Rosenberg line. Tex Mex could no longer use the Victoria to Flatonia line to reach Houston, and the existing interchange facilities at Flatonia are inadequate to allow any kind of interchange with BNSF other than a "step-off/step-on" interchange. Further, interchanging traffic with Tex Mex at Flatonia would unnecessarily complicate BNSF's South Texas operations, as BNSF needs to continue to provide direct service to the Corpus Christi area and, ultimately, to Harlingen, Brownsville, and a TFM connection at Matamoros pursuant to the BNSF Settlement Agreement. Finally, given UP's southbound directional operation over this line, Tex Mex's northbound operation to reach Flatonia would only congest the operations of UP and BNSF between Placedo and Flatonia.

Item 7:

The Consensus Parties request the Board to require UP to sell or lease an existing yard in Houston to the Tex Mex at a reasonable rate.

BNSF's Position:

BNSF supports the concept that Tex Mex needs its own yard in the Houston area to accomplish interchanges, setouts and pickups and general switching activity.^{13/} The lack of adequate yard space available to Tex Mex has caused and continues to cause problems in the Houston terminal. For example, BNSF has suffered interference with its operations as Tex Mex has blocked main lines in the terminal area and has added to the overall congestion the Houston terminal on PTR A and in North Yard. V.S. Hord at 6. Absent Tex Mex obtaining sufficient yard space in the Houston terminal area, such interference with BNSF's operations is likely to continue in the future. Ibid.

In the interest of assisting Tex Mex with its need, BNSF has considered whether it has capacity to offer the use of yard space to Tex Mex. Unfortunately, due to limited capacity, BNSF simply does not have space to provide to Tex Mex for switching and interchange at its Old South and New South Yards. Nor is Booth Yard a workable facility unless Tex Mex rehabilitates the yard as described in the Consensus Parties' July 8 filing. However, it appears that UP is currently using a portion of Booth Yard for local industry support, and the balance of the facility, not out of service, has been used for storage of private empty equipment. Identifying alternative locations for these activities, which would not damage service for others or intensify congestion elsewhere, would

^{13/} It should be noted that, in its decision approving the UP/SP merger, the Board found that it was UP's obligation to provide Tex Mex with sufficient yard space and ordered UP to provide Tex Mex with use of SP's Glidden Yard. Decision No. 44 at 33; see also Decision No. 47 at 6.

need to be addressed by UP and Tex Mex if Booth Yard were to be acquired by Tex Mex.

There is an alternative to Booth Yard that might be appropriate were Tex Mex to choose to establish a new facility to meet its Houston-area needs. There is property available that is located adjacent to BNSF's Mykawa Subdivision between Alvin and New South Yard. BNSF's suggestion of this alternative was in response to requests from Tex Mex as to what yard capacity BNSF could offer in the Houston area for Tex Mex's use. However, it should be noted that Tex Mex specifically rejected use of this alternative in the Consensus Parties' July 8 filing (Consensus Parties' Request at 77). BNSF reiterates its willingness to facilitate Tex Mex's use of this alternative and its willingness to grant Tex Mex the necessary trackage rights to enable it to reach Rosenberg to participate in the directional operations if Tex Mex is committed to make the capital improvements necessary to accommodate its train movements. V.S. Hord at 6-7. Whatever site is chosen for Tex Mex's yard activities, Tex Mex's operations should not cause interference with BNSF's own operations.

Item 8:

The Consensus Parties request the Board to require UP to allow KCS and Tex Mex to construct a new line on UP's right-of-way adjacent to UP's Lafayette Subdivision between Dawes and Langham Road, Beaumont, TX, which, upon completion, would be deeded to UP in exchange for a deed to UP's Beaumont Subdivision between Settegast Jct., Houston and Langham Road, Beaumont, TX.

BNSF's Position:

BNSF opposes the series of transactions contemplated by this request. In the first place, if KCS and Tex Mex desire to construct a new line on the former SP right-of-way between Dawes and Langham Road, Beaumont, they should undertake to acquire such property rights in private negotiations rather than using this proceeding to accomplish their commercial objectives which go far beyond what the Board envisioned in Decision No. 44.

Moreover, because this request contemplates that Tex Mex would dispatch the former MP route owned by UP between Houston and Beaumont as its own from Houston after completion of the doubletracking of the former SP route, it raises similar operational and coordination problems as Item 4 as well as detracting from the substantial benefits offered by the Spring Center. The Consensus Parties also overlook the fact that it would take years to accomplish the necessary construction to provide the intended relief for Tex Mex overhead service on this route. BNSF notes that this request would not necessarily lead to a near-term increase in capacity needed for all carriers.

The best way to achieve equal priority and dispatch for Tex Mex trains between Houston and Beaumont to equal class trains of BNSF and UP is for Tex Mex to be involved in the Spring Center, along with Tex Mex continuing its operations in the directional flows now being used between Houston and Beaumont over both the former SP and UP routes.

III. NIT League Submission

Although NIT League did not present specific requests for conditions, BNSF would like to respond to various observations NIT League makes about the purported "paucity" of BNSF's investment in the Houston/Gulf Coast area. Contrary to NIT League's assertions (NIT League at 10-11), BNSF has already made a significant capital contribution in the Houston/Gulf Coast area.

As Mr. Rickershauser's Verified Statement reflects, BNSF has spent millions of dollars since 1996 on rail infrastructure projects, including bringing former SP properties up to acceptable operating standards and adding capacity as necessary, both along SP routes and BNSF routes and facilities in the Houston/Gulf Coast area, and plans to continue facility upgrading and expansion on other projects in 1999. See V.S. Rickershauser at 10-11. These projects include the upgrading of the former HB&T Old South and New Yards, the construction of an interchange yard at Dayton on the former SP Baytown Branch, the rehabilitation and upgrading of several key through routes in and around Houston, the establishment of the Spring Center, and the multi-year rehabilitation of the former SP route between Iowa Junction and Avondale, LA. Ibid. BNSF has also committed to share in the capital upgrading and capacity expansion of the entire former SP Houston-Avondale, LA route once the joint ownership of that route is finalized. Id. at 11. Other recent capital projects in the Houston/Gulf Coast area are described in BNSF's July 1, 1998 Quarterly Progress Report (at pp. 44-47).

IV. Capital Metropolitan Transportation Authority Submission

BNSF has reviewed CMTA's July 8 filing and concurs with the representations made by CMTA. If the Board were to grant BNSF trackage rights from Round Rock to McNeil, TX to permit BNSF interchange with the Longhorn Railway at McNeil, instead of the present interchange at Elgin, there would be little impact to shifting BNSF's present Temple - Elgin, TX local service to a Temple - McNeil service, and it would permit bypassing the very limited Elgin interchange, which, because it is located in the center of town, raises both safety and congestion issues. V.S. Rickershauser at 12. This proposal would overcome the service handicaps CMTA and Longhorn have raised concerning the Elgin interchange and permit Longhorn customers more effective access to BNSF.

Conclusion

Based on the foregoing comments, evidence and arguments, BNSF respectfully requests that the Board deny the requests of the Consensus Parties to the extent that their requests either: (i) seek to obtain rail access to new customers; or (ii) propose operations or dispatching that could pose problems with other carriers' operations in the Houston/Gulf Coast areas. Specifically, as detailed above, Items 1(a), 3, 4(i), and 8 of the Consensus Parties' requests should be denied.

Respectfully submitted,

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September 18, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies 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) are being served, by first-class mail or hand-delivery, on all Parties of Record in Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32).

BRAND J. STEEL JR.

**VERIFIED STATEMENT
OF
PETER J. RICKERSHAUSER**

My name is Peter J. Rickershauser. I am Vice President, Marketing of BNSF for the UP/SP Lines and the Mexico Business Unit. My business address is 2650 Lou Menk Drive, Fort Worth, Texas 76131.

The purpose of this Verified Statement is to describe how the requests of the Consensus Parties made in their July 8, 1998 filing, if imposed by the Board as requested, would harm BNSF's ability to provide shippers with reliable, dependable and consistent service over the UP/SP lines to which BNSF gained access under Decision No. 44. In addition, this Verified Statement will provide information concerning BNSF's substantial capital investment in the Houston/Gulf area to demonstrate that the comments of the NIT League about BNSF's commitment in this regard are not well-founded. Finally, this Verified Statement will comment on CMTA's request that BNSF be permitted to interchange with the Longhorn Railway at McNeil, TX instead of the present interchange at Elgin, TX.

BACKGROUND AND QUALIFICATIONS

I joined BNSF in October 1996 as Vice President, Marketing, UP/SP Lines. In this capacity, I am responsible for coordinating the marketing and implementing of the new service opportunities that BNSF offers to shippers as a result of the merger of UP and SP. BNSF gained access to more than 4,200 miles of UP and SP track through a combination of trackage rights and line purchases as a condition of the September 1996 UP/SP merger. With the formation of a Mexico Business Unit at BNSF during the third

quarter of 1997, I was given the additional responsibility of overseeing the start-up and business development activities of this group.

Prior to joining BNSF, I was Vice President, Sales, with SP in Denver, Colorado, where I directed SP's field carload sales force in the United States and Canada. From 1991 to 1995, I was Managing Director, Regional Sales-Midwest, in Lisle, Illinois, for SP. My responsibilities in that position included planning and directing sales activities for SP's largest domestic carload sales region.

From 1982 to 1991, I held a number of sales and marketing management positions with Norfolk Southern Corporation, including Vice President, Sales and Marketing, for Triple Crown Services, Inc., a Norfolk Southern subsidiary; Director, Intermodal Marketing; and district sales manager positions. Previous to that, I held a series of positions in railroad operations and maintenance-of-way departments with Conrail predecessors Central Railroad Company of New Jersey and the New York & Long Branch Railroad Co. in the Northeast, followed by sales representative and district sales manager positions in Iowa with the Norfolk & Western Railway Co.

I earned a Bachelor of Arts degree from Franklin & Marshall College in 1971, and a Master of Arts degree in 1974 from Syracuse University.

COMMENTS ON REQUESTS OF THE CONSENSUS PARTIES

As described in detail in BNSF's accompanying filing, BNSF opposes several of the requests for additional conditions of the Consensus Parties. Our opposition to such requests is based upon two key sets of principles.

First, BNSF opposes the requests that seek to obtain additional rail carrier access to new customers because such access is unnecessary to preserve the pre-merger competition that existed between UP and SP, and such competitive access proposals should be considered in other STB proceedings addressing competitive access matters on a larger scale. Moreover, to the extent any of the Consensus Parties' proposals would grant Tex Mex new access to customers, it could result in the dilution of BNSF's Houston area traffic base, thus increasing BNSF's average costs and making less capital available for infrastructure projects funded by BNSF. Finally, BNSF's presence as a competitor in the Houston area has increased since the merger, particularly as a service alternative to UP.

A review of data for the past few years reveals that BNSF has steadily increased the traffic it handles to and from the Houston area. For example, in 1994, BNSF's predecessors Santa Fe ("ATSF") and Burlington Northern ("BN") handled 259,192 loaded shipments, or 16,022,698 tons, into and out of the Houston area. By 1997, BNSF's loaded shipments had increased 13% to 293,672, and tonnages had increased 6%.

A much more significant measure of BNSF's competitiveness in the Houston marketplace is seen when 1997 is compared with 1998. For the first seven months of these years, BNSF's loaded units handled to and from Houston increased 19%, from

156,759 to 186,951 units; tonnages handled increased 36%, despite a major loss of competitive automotive traffic during the 12 month period to UP. Chemicals shipments via BNSF grew 13% during the 1998 period, compared to 1997, for both loaded units and tonnages. Obviously, customers took advantage of BNSF's access to this market to reroute traffic to BNSF from UP. Statements that "the Houston market" is "captive" to UP do not stand up in light of such telling statistics.

BNSF gained access to a small number of additional customers as a result of UP/SF merger conditions in 1996 and the February 12, 1998 BNSF-UP Agreement who also had the option of shipping via BNSF rather than UP during the service "meltdown", primarily on the former SP Baytown and Cedar Bayou branches. Adding these additional customers' units and tonnages into BNSF's Houston totals reported above, BNSF's first seven months of 1998 compared to the same period in 1997 showed a loaded unit increase of 21%, to 191,232 from 157,548, and a tonnage increase of 39%, from 9,004,967 tons to 12,484,995 tons.

Second, many of the Consensus Parties' requests propose operations or dispatching that could pose problems with BNSF's and other carriers' operations in the Houston/Gulf Coast areas. See Verified Statement of Ernest L. Hord. These problems, in turn, could harm BNSF's ability to provide shippers with reliable, dependable and consistent service over the UP/SP lines to which it gained access under Decision No. 44.

I will now address certain of the Consensus Parties' requests.

Item 1(a) of the Consensus Parties' requests asks the Board to order that the temporary rights given to Tex Mex as a part of STB Service Order No. 1518 be made permanent, including lifting the restriction of a prior or subsequent Tex Mex movement between Corpus Christi and Laredo on Tex Mex's right to serve Houston customers.

There simply is no justification for this request for permanent new access because such access is unnecessary to preserve pre-merger competition. As BNSF has previously stated, by fully implementing the conditions imposed by Decision No. 44 and by the implementation of the structural realignments sought by BNSF in its July 8, 1998 filing, BNSF can provide shippers with a long-term alternative to UP. BNSF has consistently raised issues concerning providing shippers with permanent, long-term and meaningful competition to UP as the competitive replacement carrier to the SP at "2-to-1" points and along trackage rights lines in its Quarterly Progress Report filings, and has addressed them as necessary with both the UP and the Board. In addition, BNSF has raised additional issues and proposed other permanent solutions to ensure that long-term meaningful competition is provided to shippers and to resolve unforeseen congestion issues arising from implementation of the UP/SP merger in its July 8 filing to the Board in this proceeding.

Contrary to the views of the Consensus Parties, the Houston area is not captive to UP. First, the Consensus Parties assert that "UP controls 9 out of the 11 tracks into and out of Houston". Consensus Parties' Requests at 2, 65. However, BNSF controls or jointly controls at least four of the key lines into or out of Houston. BNSF owns its own lines radiating from Houston to Dallas via Teague, to Fort Worth and Sweetwater

via Temple, and to Galveston via Alvin; BNSF will be a 50% owner, with UP, of the former SP route from Houston to the New Orleans area. On other routes, through the establishment and functioning of the Spring Center, as more fully described in Mr. Hord's Verified Statement, BNSF participates (or will soon participate) in the coordinating process of train movements of UP and BNSF over three additional routes to and from Houston: to Beaumont (UP route) and, based on UP's July 28 submission, the former SP route to Shreveport and the UP route to Hearne.

Further, the Consensus Parties' argument wholly ignores the role that the Spring Center has played in improving the ability of BNSF, UP and Tex Mex to provide competitive service on the presently existing Houston area infrastructure. The fundamental issue to be addressed is not ownership of a specific route, but whether equal priority trains of all carriers using a route can consistently get through Houston on jointly-approved schedules.

Additionally, between the former HB&T and PTR A industries open to reciprocal switch by BNSF and Tex Mex, as well as UP, as shown on the attached list, over 200 individual customer facilities are accessible to competitive rail service in Houston. Since we began operating over the trackage rights we received in the UP/SP proceeding, BNSF has been able to craft competitive service packages and win customers from other rail carriers. BNSF's market share, based on all cars shipped and received by PTR A industries, for example, in the most recent reported month (July), stands at 63% of all cars shipped and received, up from 41% a year ago.

Tex Mex gained access to these 216 Houston customers for the first time -- a substantial expansion of its system and addition to its franchise -- as a result of the UP/SP merger decision, for business only moving in conjunction with Tex Mex's route between Corpus Christi and Laredo. This restriction on Tex Mex cannot obscure that Tex Mex emerged from the UP/SP merger as a real commercial winner, with not only BNSF replacing SP as Tex Mex's Robstown interchange partner (duplicating and, indeed, improving on its pre-merger connection because of BNSF's significantly greater system and operating resources), but, in addition, with Tex Mex gaining access to these Houston customers and a Beaumont connection with KCS and KCS' network of connecting carriers. Tex Mex went from two to three US Class I rail connections and more than doubled its customer base.

The permanent addition of a third carrier to serve such traffic would be contrary to the Board's concerns about service in the Houston area. It would hinder BNSF's (and UP's) ability to provide timely and efficient service to shippers whose traffic traverses the congested Houston area. As BNSF previously reported in its July 1, 1998 Quarterly Progress Report, customers seeking to use BNSF service from points BNSF gained access to as a result of the UP/SP merger, or other customers accessed by BNSF in the Houston area via reciprocal switch service from UP, continue to find that their traffic is being delivered late. These service problems -- which continue at varying levels today and could worsen this fall -- would be exacerbated by the addition of a permanent third carrier, by increasing train and switching movements in the terminal area, and adding complexity to yard operations for all carriers. Any negative service implications from

resulting possible congestion could be felt by all carriers and all shippers in the Houston area.

The Consensus Parties' request also could potentially dilute BNSF's and/or UP's Houston area traffic base, thus increasing the carriers' average costs and making less capital available for needed infrastructure projects in the Houston/Gulf Coast area.

Item 1 (b) of the Consensus Parties' requests seeks a grant of permanent trackage rights to Tex Mex over UP's Algoa route between Placedo and Algoa and over BNSF's line between Algoa and T&NO Junction, TX.

BNSF does not oppose this request because it addresses operational considerations and will help to alleviate congestion, by providing a logical and necessary link in Tex Mex's operations between Houston and Tex Mex's directional operation over UP south of Algoa to Placedo, but does not afford Tex Mex new access. However, this request should be granted only to the extent that UP continues directional flows between Flatonia, Placedo and Algoa. Tex Mex would need to agree to a standard contract requiring Tex Mex to share in capacity improvements required by additional Tex Mex business operating over BNSF between Algoa and T&NO Junction to ensure that the operations of other carriers, BNSF and UP, are not negatively impacted by permanent addition and potential traffic growth of Tex Mex. In addition, the compensation should be the same as the STB ordered for other Tex Mex trackage rights lines, which still provides Tex Mex with a substantial operating cost savings versus the longer route between Houston and Placedo via Flatonia.

Item 2 of the Consensus Parties' requests seeks a "restoration" of neutral switching in Houston "lost" when UP and BNSF dissolved the HB&T. BNSF is not opposed to exploration of having PTRAs switch former HB&T industries now switched by BNSF and UP, respectively, provided BNSF does not incur liability for any labor protection that may be required. However, with the expanded role BNSF has undertaken in Houston in serving customers as a result of the UP/SP merger, BNSF must maintain exclusive use of its New and Old South Yards.

Item 3 of the Consensus Parties' requests seeks to expand the Houston neutral switching area to include all customers currently located on the former SP Galveston Subdivision, with a grant to PTRAs of trackage rights on the former SP Galveston Subdivision between Harrisburg Junction and Galveston and use of former SP and UP Yards at Strang and Galveston to provide switching services to all railroads serving Houston on a non-discriminatory basis.

BNSF opposes this proposal for the expansion of the Houston neutral switching area. This request has nothing to do with improving operations in the Houston/Gulf Coast area or preservation of pre-merger competition, but instead involves significant additional access to shippers for Tex Mex. As discussed above, matters involving additional access to shippers should be resolved in the various other pending proceedings addressing competitive access before the STB. In addition, to make this request workable and not degrade service for all customers in the area would require a commitment of significant infrastructure investment, which could take years to accomplish.

COMMENTS ON NIT LEAGUE SUBMISSION

NIT League's statements about the "paucity" of BNSF investment in the Houston/Gulf Coast area are simply not reflective of the facts. BNSF already has made a significant capital contribution in the Houston/Gulf Coast area. As detailed below, BNSF has undertaken a number of specific infrastructure projects in the Houston/Gulf Coast area since 1996, and plans to continue its investments in maintenance, upgrading facilities and lines, and adding capacity in 1999. In addition, BNSF plans to join with UP on a number of additional infrastructure projects in this area.

Among key projects are the following:

- BNSF has upgraded the former HB&T Old South and New South Yards, and will shortly reconfigure a switching lead at New South Yard to ensure switching activities can continue without interruption to trains on adjacent through tracks, adding to capacity both in the yard and on the adjacent through routes.
- BNSF constructed an interchange yard, with plans for expansion, on the former SP Baytown Branch opposite the Dayton "Storage-In-Transit" ("SIT") yard to which it gained access as a result of the merger conditions.
- In order to make existing BNSF routes bypassing Houston into viable higher-density through lines, BNSF has completed one phase of track rehabilitation, involving rail, tie, and grade upgrading on its Silsbee and Conroe Subdivisions between Beaumont and Longview, and Silsbee and Somerville, TX. This effort has included new connections to the UP at Longview and upgraded yard trackage at Silsbee and Beaumont. Additional planned work includes siding extensions and new sidings on these subdivisions, and additional tracks at Silsbee Yard. These former BNSF lines and yards have been put to new uses as key through routes and facilities permitting BNSF to bypass Houston with traffic which need not go through Houston as well as preblocking and staging business which does move into or through Houston to minimize yard work and rehandling in Houston's facilities.

- BNSF relocated employees and technology, and underwrote construction and setup expenses, as its share in creating and staffing the Spring Center.
- BNSF has been embarked on a multi-year project to rehabilitate and bring up to industry standards the former SP route between Iowa Junction and Avondale, LA, for which BNSF paid \$100 million. This route, which will be part of the line ownership exchange between UP and BNSF, is critical to fluid operations between Houston and New Orleans, including mainlines, sidings, and other infrastructure including communications, crossings, and bridges, as well as Lafayette Yard and other support facilities. This program is planned to continue in 1999.
- Finally, when joint ownership of the former SP Houston-Avondale, LA route is finalized, BNSF and UP will share in maintenance, capital upgrading and capacity expansion of this rail corridor.

Long-term and ongoing spending on maintaining and adding to rail infrastructure in the Houston area is important, but the need to relieve congestion and to ensure rail operations are fluid have been and remain critical, immediate issues. As a result, BNSF has in the last year proactively and independently reengineered its service into, out of and through the Houston area to, wherever possible, reroute flows away from congested areas and keep traffic which does not need to go through Houston from going there. This theme is particularly evident in the expenditures made on the BNSF lines between Beaumont and Longview outlined above. It is also evident in BNSF's total change of operations to handle Baytown Branch traffic at Silsbee rather than Houston, inaugurated this past May in further effort to keep traffic out of Houston. Finally, it is apparent in a succession of BNSF plans, the most recent implemented in August, which have moved switching to other BNSF yards as far away as Tulsa, resulting in preblocked trains being taken into Houston only with traffic which has to go there, to minimize Houston-area

switching, reduce opportunities for congestion, and improve dock-to-dock service for our customers.

BNSF will continue careful and measured investment in the Houston area during the coming months and years. But investment is only one aspect of improving service consistency and speed, and reducing congestion. Managing flows to less congested routes, whether over BNSF or over available UP/SP lines, whether BNSF currently has trackage rights or not, as outlined in our July 8 filing with the Board, is both a near-term and long-term remedy to relieve congestion. Likewise, continuing refinement and involvement by Tex Mex in the Spring Center is also a near-term solution for improved train operations in much of the region for all carriers, with potential positive impacts for all customers.

COMMENTS ON CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S REQUEST

Were the Board to grant the request of the CMTA that the Board grant BNSF trackage rights from Round Rock to McNeil, TX, a distance of 4.4 miles, to permit BNSF interchange with the Longhorn Railway at McNeil, instead of the present interchange at Elgin, there would be little operational impact to shifting our present Temple - Elgin, TX local service to a Temple - McNeil service. Operationally, this would permit BNSF and Longhorn to shift operations away from the Elgin interchange, which is severely capacity constrained and hemmed in by its location in the center of Elgin, making any planned expansion to improve capacity difficult and limited. This proposal would overcome the

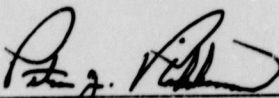
service handicaps CMTA and Longhorn have raised concerning continued use of the Elgin interchange and permit Longhorn customers more effective access to BNSF.

VERIFICATION

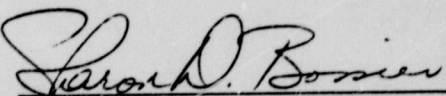
THE STATE OF TEXAS)

COUNTY OF TARRANT)

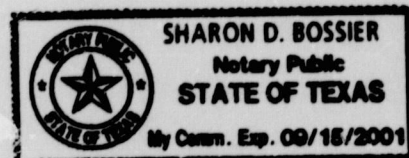
Peter J. Rickershauser, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.


Peter J. Rickershauser

Subscribed and sworn before me on this 15 th day of September 1998.


Notary Public

My Commission Expires: 9/15/2001



**List of Corporations, Firms, Individuals and Team Track locations on Former HBT and PTRA From
and To Which Reciprocal Rates Apply for BNSF Roadhaul**

<u>Customer Name</u>	<u>Description</u>
A.E.S Deepwater, Inc.	PTRA, in OPSL 6000-R, Note 1261-Houston
A&R Transport	PTRA, in OPSL 6000-R, Note 1261-Houston
Able Warehouse	Former HBT, now in UP (MP) 8170-C, Supplement 219
Acco Waste Paper	Former HBT, now in UP (MP) 8170-C, Supplement 219
Action Warehouse Services	Former HBT, now in BNSF 8005 (2291)
Air Products & Chemicals Inc. (Pasadena Plant)	PTRA, in OPSL 6000-R, Note 1261-Houston
Air Products & Chemicals Inc. (Battleground Rd-LaPorte Plant)	PTRA, in OPSL 6000-R, Note 1261-Houston
Alamo Forest Products	Former HBT, now in BNSF 3005 (2291)
Alamo Forest Products Vaughan	Former HBT, now in BNSF 8005 (2291)
Allchem Services	Former HBT, now in UP (MP) 8170-C, Supplement 219
Allied Industries	Former HBT, now in UP (MP) 8170-C, Supplement 219
Allied Plywood	Former HBT, now in UP (MP) 8170-C, Supplement 219
American Maize Products	Former HBT, now in BNSF 8005 (2291)
American Thermoplastics	Former HBT, now in UP (MP) 8170-C, Supplement 219
Angus Warehouse	Former HBT, now in UP (MP) 8170-C, Supplement 219
Aristech (Battleground Road)	PTRA, in OPSL 6000-R, Note 1261-Houston
Aristech (Pasadena Plant)	PTRA, in OPSL 6000-R, Note 1261-Houston
Asia Chemical	Former HBT, now in UP (MP) 8170-C, Supplement 219
Atlas Truck Line (Pipe Yard)	PTRA, in OPSL 6000-R, Note 1267-Channelview
B. F. Goodrich Company (Chemical Plant)	PTRA, in OPSL 6000-R, Note 1261-Houston
Baker Chemicals	Former HBT, now in BNSF 8005 (2291)
Baler Petrolite Corp.	Former HBT, now in BNSF 8005 (2291)
Barbour's Cut Auto Terminal	PTRA, in OPSL 6000-R, Note 1261-Houston
Barbour's Cut Marine Contractors Inc.	PTRA, in OPSL 6000-R, Note 1261-Houston
Barbour's Cut Ramp (COFC/TOFC Terminal)	PTRA, in OPSL 6000-R, Note 1261-Houston
Bell Barcelona Concrete Access	Former HBT, now in UP (MP) 8170-C, Supplement 219
Bien Tech	Former HBT, now in UP (MP) 8170-C, Supplement 219
Boral Bricks	Former HBT, now in UP (MP) 8170-C, Supplement 219
Brothers Wholesale Produce	Former HBT, now in BNSF 8005 (2291)
Bulkmatic Transport	Former HBT, now in BNSF 8005 (2291)

**List of Corporations, Firms, Individuals and Team Track locations on Former HBT and PTRA From
and To Which Reciprocal Rates Apply for BNSF Roadhaul**

Customer Name	Description
Burlington Northern and Santa Fe Ry. Co., The	Former HBT, now in BNSF 8005 (2291)
C L Systems	Former HBT, now in BNSF 8005 (2291)
Cactus Pipe & Supply Co., Inc. (Pipe Yard)	PTRA, in OPSL 6000-R, Note 1267-Channelview
Capitol Cement	Former HBT, now in UP (MP) 8170-C, Supplement 219
Carbonic Industries	Former HBT, now in UP (MP) 8170-C, Supplement 219
Cargill Inc. Molasses Dept.	PTRA, in OPSL 6000-R, Note 1267-Channelview
Cargill Inc.	PTRA, in OPSL 6000-R, Note 1267-Channelview
Cargill Corn Sweeteners	Former HBT, now in UP (MP) 8170-C, Supplement 219
Cargo Carriers Inc.	PTRA, in OPSL 6000-R, Note 1267-Channelview
Castle Metals	PTRA, in OPSL 6000-R, Note 1267-Channelview
Champions Pipe Supply	Former HBT, now in UP (MP) 8170-C, Supplement 219
Chemtex Ltd	Former HBT, now in UP 8005-D, Supplement 276
Commercial Metals Quitman	Former HBT, now in UP (MP) 8170-C, Supplement 219
Con Tra Mar Warehouse	Former HBT, now in UP (MP) 8170-C, Supplement 219
Consolidated Bonded Warehouse	Former HBT, now in UP (MP) 8170-C, Supplement 219
Container Freight Station	PTRA, in OPSL 6000-R, Note 1261-Houston
Continental Timber	Former HBT, now in UP (MP) 8170-C, Supplement 219
Contractors Supply Lumber	Former HBT, now in BNSF 8005 (2291)
Cosden Oil & Chemical Co., Fina Oil Co.	PTRA, in OPSL 6000-R, Note 1261-Houston
Crown Central Petroleum Corporation	PTRA, in OPSL 6000-R, Note 1261-Houston
Darling International	Former HBT, now in UP (MP) 8170-C, Supplement 219
Davenport Mammoet Heavy Transport	Former HBT, now in BNSF 8005 (2291)
Delta Paper Stock	Former HBT, now in UP (MP) 8170-C, Supplement 219
Diamond Shamrock Corporation (Deer Park Plant)	PTRA, in OPSL 6000-R, Note 1261-Houston
Diamond Shamrock Corporation (Marshalling Yard)	PTRA, in OPSL 6000-R, Note 1261-Houston
Dickson Weatherproof Nail Co	PTRA, in OPSL 6000-R, Note 1267-Channelview
Dixie Pipe Sales	Former HBT, now in UP (MP) 8170-C, Supplement 219
Dow Chemical U.S.A.	PTRA, in OPSL 6000-R, Note 1261-Houston
Drilling Fluids Warehouse	Former HBT, now in UP (MP) 8170-C, Supplement 219
Dundee Cement Co	PTRA, in OPSL 6000-R, Note 1267-Channelview

**List of Corporations, Firms, Individuals and Team Track locations on Former HBT and PTRA From
and To Which Reciprocal Rates Apply for BNSF Roadhaul**

<u>Customer Name</u>	<u>Description</u>
Earthgrains/Rainbo Baking	Former HBT, now in BNSF 8005 (2291)
Empak Inc.	PTRA, in OPSL 6000-R, Note 1261-Houston
Esco Distributors	Former HBT, now in BNSF 8005 (2291)
Ethyl Corporation	PTRA, in OPSL 6000-R, Note 1261-Houston
Ex-Im Freezer	PTRA, in OPSL 6000-R, Note 1261-Houston
Excel Logistics	Former HBT, now in UP (MP) 8170-C, Supplement 219
Fairway Terminals	PTRA, in OPSL 6000-R, Note 1261-Houston
Fina Oil & Chemical	PTRA, in OPSL 6000-R, Note 1261-Houston
First Quality Fruit Produce	Former HBT, now in BNSF 8005 (2291)
First International Transportation	Former HBT, now in UP (MP) 8170-C, Supplement 219
Fort James Corporation	Former HBT, now in BNSF 8005 (2291)
General American Transportation Corporation	PTRA, in OPSL 6000-R, Note 1261-Houston
General Stevedores	Former HBT, now in BNSF 8005 (2291)
General Electric Locomotive	Former HBT, now in UP (MP) 8170-C, Supplement 219
General Stevedores	Former HBT, now in UP (MP) 8170-C, Supplement 219
General Transfer Storage	Former HBT, now in UP (MP) 8170-C, Supplement 219
Georgia Gulf Chemicals Inc. (formerly Georgia-Pacific)	PTRA, in OPSL 6000-R, Note 1261-Houston
Georgia Pacific	Former HBT, now in UP (MP) 8170-C, Supplement 219
Gilbert Son Warehouse	Former HBT, now in UP (MP) 8170-C, Supplement 219
Goodrich, The B. F., Company (Chemical Plant)	PTRA, in OPSL 6000-R, Note 1261-Houston
Grace W R	Former HBT, now in UP (MP) 8170-C, Supplement 219
Grace, W. R. & Company	PTRA, in OPSL 6000-R, Note 1261-Houston
Greater Transloading Int.	Former HBT, now BNSF 8005 (2291)
Grief Brothers Corporation	PTRA, in OPSL 6000-R, Note 1261-Houston
Grocers Supply	Former HBT, now in UP (MP) 8170-C, Supplement 219
Gulf Coast Freight Service	Former HBT, now in UP (MP) 8170-C, Supplement 219
Gulf Coast Portland	Former HBT, now in UP (MP) 8170-C, Supplement 219
Gulf Reduction	Former HBT, now in UP (MP) 8170-C, Supplement 219
Gulf Motorship	PTRA, in OPSL 6000-R, Note 1261-Houston
Gulf Oil Chemicals Co	PTRA, in OPSL 6000-R, Note 1267-Channelview

**List of Corporations, Firms, Individuals and Team Track locations on Former HBT and PTRA From
and To Which Reciprocal Rates Apply for BNSF Roadhaul**

<u>Customer Name</u>	<u>Description</u>
Halterman Inc.	PTRA, in OPSL 6000-R, Note 1267-Channelview
Hanna MA	Former HBT, now in UP (MP) 8170-C, Supplement 219
Harrisburg Warehouse	Former HBT, now in UP (MP) 8170-C, Supplement 219
Hercules, Lextar Division	PTRA, in OPSL 6000-R, Note 1261-Houston
Herman Warehouse Southwest	Former HBT, now in UP (MP) 8170-C, Supplement 219
Hill & Hill Truck Lines Inc.	PTRA, in OPSL 6000-R, Note 1267-Channelview
Hou Tex Metal	Former HBT, now in UP (MP) 8170-C, Supplement 219
Houston Distributors	Former HBT, now in BNSF 8005 (2291)
Houston Traf	Former HBT, now UP 8005-D, Supplement 276
Houston Central Industry	Former HBT, now in UP (MP) 8170-C, Supplement 219
Houston Chronicle	Former HBT, now in UP (MP) 8170-C, Supplement 219
Houston Distribution	Former HBT, now in UP (MP) 8170-C, Supplement 219
Houston Fuel Oil Terminal	PTRA, in OPSL 6000-R, Note 1267-Channelview
Houston Sea Packers	Former HBT, now in BNSF 8005 (2291)
Houston Rail & Locomotive Inc.	PTRA, in OPSL 6000-R, Note 1267-Channelview
Houston Lighting & Power Company (Deepwater Power Plant)	PTRA, in OPSL 6000-R, Note 1261-Houston
Intercontinental Terminals Company	PTRA, in OPSL 6000-R, Note 1261-Houston
Intermodal Box Car Transfer	Former HBT, now in UP (MP) 8170-C, Supplement 219
Intermodal Boxcar Transfer (IBT)	Former HBT, now in BNSF 8005 (2291)
Interpak Terminals	Former HBT, now in UP (MP) 8170-C, Supplement 219
Interpak	Former HBT, now in BNSF 8005 (2291)
Intracostal Freight	Former HBT, now in UP (MP) 8170-C, Supplement 219
Jacinto Steel Corp.	PTRA, in OPSL 6000-R, Note 1267-Channelview
Jam Distribution	Former HBT, now in UP (MP) 8170-C, Supplement 219
K W Trucking	Former HBT, now in BNSF 8005 (2291)
K P Trucking	Former HBT, now in BNSF 8005 (2291)
Keen Transport	Former HBT, now in BNSF 8005 (2291)
Kerley Agri Chem of Texas	PTRA, in OPSL 6000-R, Note 1261-Houston
Keywell LLC	Former HBT, now in UP (MP) 8170-C, Supplement 219
KIK International Houston	Former HBT, now in UP (MP) 8170-C, Supplement 219

**List of Corporations, Firms, Individuals and Team Track locations on Former HBT and PTRA From
and To Which Reciprocal Rates Apply for BNSF Roadhaul**

Customer Name	Description
Frager	Former HBT, now in UP (MP) 8170-C, Supplement 219
Labbco	Former HBT, now in UP (MP) 8170-C, Supplement 219
Lastec Plastic	Former HBT, now in UP (MP) 8170-C, Supplement 219
Lextar & Hercules Inc. Co	PTRA, in OPSL 6000-R, Note 1261-Houston
Linde Division-Union Carbide Corporation (Pasadena-LaPorte-Stang Plants)	PTRA, now OPSL 6000-R, Note 1261-Houston
Liquid Carbonic Corporation	PTRA, in OPSL 6000-R, Note 1261-Houston
Litho Strip Co., Division Amsted Industries	PTRA, in OPSL 6000-R, Note 1267-Channelview
Lubrizol Corporation	PTRA, in OPSL 6000-R, Note 1261-Houston
Lyondell Petrochemical Co	PTRA, in OPSL 6000-R, Note 1261-Houston
Markie Steel	Former HBT, now in UP (MP) 8170-C, Supplement 219
Maxwell House	Former HBT, now in UP (MP) 8170-C, Supplement 219
Mayfield Grain Salvage	Former HBT, now in UP (MP) 8170-C, Supplement 219
MBT Fertilizers	Former HBT, now in UP (MP) 8170-C, Supplement 219
Mobile Chemical Company	PTRA, in OPSL 6000-R, Note 1261-Houston
Montgomery Tank Lines	Former HBT, now in UP (MP) 8170-C, Supplement 219
Morris Export Crating	Former HBT, now in UP (MP) 8170-C, Supplement 219
Nabisco Foods Group	Former HBT, now in UP (MP) 8170-C, Supplement 219
Nationwide Paper	Former HBT, now in UP (MP) 8170-C, Supplement 219
Occidental Chemical Corp. (Battleground Plant) (Deer Park Plant) (Marshalling Yard)	PTRA, in OPSL 6000-R, Note 1261-Houston
Occidental Chemical	Former HBT, now in BNSF 8005 (2291)
Occidental Chemical Corp.	PTRA, in OPSL 6000-R, Note 1261-Houston
Oiltanking of Texas Inc.	PTRA, in OPSL 6000-R, Note 1267-Channelview
OMSCO	Former HBT, now in UP (MP) 8170-C, Supplement 219
Pacific Motor Transport (PMT systems)	PTRA, in OPSL 6000-R, Note 1261-Houston
Paktank Corporation	PTRA, in OPSL 6000-R, Note 1261-Houston
Pasadena Sand & Gravel Co	PTRA, in OPSL 6000-R, Note 1261-Houston
Patterson Truck Lines (Pipe Yard)	PTRA, in OPSL 6000-R, Note 1267-Channelview
Pearsal Chemical Corp. - WITCO Chemical	PTRA, in OPSL 6000-R, Note 1261-Houston
Phillips Crane Rigging	Former HBT, now in UP (MP) 8170-C, Supplement 219

**List of Corporations, Firms, Individuals and Team Track locations on Former HBT and PTR A From
and To Which Reciprocal Rates Apply for BNSF Roadhaul**

Customer Name	Description
Phillips Chemical Company, Houston Chemical Complex (Adams Terminal)	PTRA, in OPSL 6000-R, Note 1261-Houston
Pioneer Concrete	Former HBT, now in BNSF 8005 (2291)
Port City Compress	Former HBT, now in UP (MP) 8170-C, Supplement 219
Port Side Terminal Services	PTRA, in OPSL 6000-R, Note 1261-Houston
Porta-Kamp Offshore Co	PTRA, in OPSL 6000-R, Note 1267-Channelview
Porter Warner Industries	Former HBT, now in UP (MP) 8170-C, Supplement 219
Primesource Building Products	Former HBT, now BNSF 8005 (2291)
Proctor & Gamble Dist	Former HBT, now in UP (MP) 8170-C, Supplement 219
Produce Plus	Former HBT, now in BNSF 8005 (2291)
Pyramid Processing	Former HBT, now in UP (MP) 8170-C, Supplement 219
Quality Electric Steel	Former HBT, now in UP (MP) 8170-C, Supplement 219
Rainbo Baking	Former HBT, now in BNSF 8005 (2291)
Rainbo Baking/Earthgrains	Former HBT, now in BNSF 8005 (2291)
Rex Warehouses	Former HBT, now in UP (MP) 8170-C, Supplement 219
Roan Industries	Former HBT, now in BNSF 8005 (2291)
Rohm & Haas Texas, Inc.	PTRA, in OPSL 6000-R, Note 1261-Houston
Rollins Environmental Services Inc.	PTRA, in OPSL 6000-R, Note 1261-Houston
Rugby Building Products	Former HBT, now in BNSF 8005 (2291)
Ryerson Sons, Joseph T.	Former HBT, now in UP (MP) 8170-C, Supplement 219
San Jacinto Water Treating Plant	PTRA, in OPSL 6000-R, Note 1261-Houston
Schoenmann Produce	Former HBT, now in BNSF 8005 (2291)
Sealand Service Inc. (Container Freight Station)	PTRA, in OPSL 6000-R, Note 1261-Houston
Seattle Tacoma Box	Former HBT, now in BNSF 8005 (2291)
Shell Oil Company	PTRA, in OPSL 6000-R, Note 1261-Houston
Shippers Stevedoring	PTRA, in OPSL 6000-R, Note 1261-Houston
Shippers Stevedoring Co	PTRA, in OPSL 6000-R, Note 1267-Channelview
Simpson Pasadena Paper Warehouse	PTRA, in OPSL 6000-R, Note 1261-Houston
Simpson Pasadena Papermill	PTRA, in OPSL 6000-R, Note 1261-Houston
Solvay Polymers Corporation	PTRA, in OPSL 6000-R, Note 1261-Houston
Solvay Interox	PTRA, in OPSL 6000-R, Note 1261-Houston

**List of Corporations, Firms, Individuals and Team Track locations on Former HBT and PTRA From
and To Which Reciprocal Rates Apply for BNSF Roadhaul**

<u>Customer Name</u>	<u>Description</u>
Solvay Interlox	Former HBT, now in UP (MP) 8170-C, Supplement 219
Southern Warehouse	Former HBT, now in BNSF 8005 (2291)
Southwest Pet Foods Co.	Former HBT, now BNSF 8005 (2291)
SSI	Former HBT, now in UP (MP) 8170-C, Supplement 219
Steel Interprises Inc.	PTRA, in OPSL 6000-S, Note 1267
Steel Plate	Former HBT, now in UP (MP) 8170-C, Supplement 219
Steel Interprises Inc.	PTRA, in OPSL 6000-R, Note 1267-Channelview
Storage Warehouse Services	Former HBT, now in UP (MP) 8170-C, Supplement 219
Strachan Shipping Company (Container Freight Station)	PTRA, in OPSL 6000-R, Note 1261-Houston
Sunbelt Industries	PTRA, in OPSL 6000-R, Note 1261-Houston
Sunbelt Asphalt	Former HBT, now in UP (MP) 8170-C, Supplement 219
Superior Packaging Dist	Former HBT, now in UP (MP) 8170-C, Supplement 219
Superior Lamination	Former HBT, now in BNSF 8005 (2291)
Sweetex	Former HBT, now in BNSF 8005 (2291)
Sysco Foods	Former HBT, now in UP (MP) 8170-C, Supplement 219
Sysco Food Service Austin	Former HBT, now in UP (MP) 8170-C, Supplement 219
Tenneco Chemicals Inc.	PTRA, in OPSL 6000-R, Note 1261-Houston
Texas Bakery	Former HBT, now in UP (MP) 8170-C, Supplement 219
Texas Alkyls Inc.	PTRA, in OPSL 6000-R, Note 1261-Houston
Texas Environmental Systems	PTRA, in OPSL 6000-R, Note 1261-Houston
Third Coast	Former HBT, now in BNSF 8005 (2291)
Thompson Cargo Specialists	Former HBT, now in UP (MP) 8170-C, Supplement 219
Trammell Crow Distribution Corp.	PTRA, in OPSL 6000-R, Note 1261-Houston
Transenergy Griding	Former HBT, not listed, Former HBT, in UP 8005-D, Supplement 276
Transport Management Consult	Former HBT, now in UP (MP) 8170-C, Supplement 219
Triple B Corporation	PTRA, in OPSL 6000-R, Note 1267-Channelview
Trussway	Former HBT, now in BNSF 8005 (2291)
Tubular Services (Pipe Yard)	PTRA, in OPSL 6000-R, Note 1267-Channelview
U S Filter Southwest Abrasives	Former HBT, now UP 8005-D, Supplement 276
Uncle Ben's	Former HBT, now in UP (MP) 8170-C, Supplement 219

**List of Corporations, Firms, Individuals and Team Track locations on Former HBT and PTR A From
and To Which Reciprocal Rates Apply for BNSF Roadhaul**

<u>Customer Name</u>	<u>Description</u>
Union Equity Co-operative Exchange (Export Elevator)	PTRA, in OPSL 6000-R, Note 1261-Houston
Union Carbide Corporation - Linde Division (Pasadena-LaPorte-Strang Plants)	PTRA, in OPSL 6000-R, Note 1261-Houston
United DC - 200 Lathrop Street	Former HBT, now in UP (MP) 8170-C, Supplement 219
United D. C., Inc.	PTRA, in OPSL 6000-R, Note 1261-Houston
United Salt	Former HBT, now in UP (MP) 8170-C, Supplement 219
W. R. Grace & Company	PTRA, in OPSL 6000-R, Note 1261-Houston
Wisco, Inc. (West India Shipping Co)	PTRA, in OPSL 6000-R, Note 1267-Channelview
Witco Chemical	PTRA, in OPSL 6000-R, Note 1261-Houston

General Updates:

- A. BNSF 8005, Item 2291, Pg. 119 is on 4th revision, effective August 11, 1998.
- B. OPSL 6000-R has been canceled and new OPSL 6000-S effective March 15, 1998 is now in effect. There have been 11 Supplements issued through Aug. 15, 1998 but none of the supplements affect Items 1261, 1266, 1267.
- C. MP 8170-C, Supplement 219. All of these customers have been moved over to the UPRR book UP 8005-D with the latest supplement of 276 effective July 28, 1998.

**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 ("SP") 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), including overseeing on behalf of BNSF the establishment and operation of the joint BNSF/UP dispatching center located in Spring, Texas.

The purpose of this Verified Statement is to provide comments on the specific requests of the Consensus Parties in their July 8, 1998 filing which, if imposed by the Board as requested, would impact the operations of other rail carriers operating in the Houston/Gulf Coast area. I will present my views under the Items as enumerated by the Consensus Parties.

Item 1(a):

Item 1(a) proposes to lift on a permanent basis the northbound restriction imposed in Decision No. 44 on Tex Mex, thereby allowing Tex Mex to receive and transport all traffic in Houston from customers that are served by the PTRR or the former HB&T. In

my view, the permanent addition of a third carrier to service northbound traffic -- without either the requirement that Tex Mex make appropriate capital improvements to expand capacity or the requirement that adequate yard space be provided to Tex Mex -- will only hinder BNSF's and UP's ability to provide timely and efficient service to shippers whose traffic traverses the Houston area.

Were Tex Mex allowed to serve northbound traffic on a permanent basis, it would negatively impact BNSF's operations in and around the Houston area. For example, requiring Houston switching carriers to build additional "blocks" for Tex Mex northbound as well as southbound traffic has added, and would add in the future if granted, further complexity to Houston area switching. This in turn could potentially affect service for all customers and all rail carriers serving Houston.

Finally, the service and operational problems in the Houston and Gulf Coast areas have been caused by UP's merger implementation problems, including data exchange problems between UP and SP, and by lack of infrastructure and facilities. This request of the Consensus Parties does not solve any of those service and operational problems, but rather is an attempt by Tex Mex and KCS to gain access to new business on a long-term basis. Even the new infrastructure proposed by the Consensus Parties is designed principally to support Tex Mex's new access as opposed to solving the service and operational problems in the Houston and Gulf Coast areas.

Item 2:

Item 2 requests the Board to grant trackage rights and the use of appropriate yards to PTRR over the lines HB&T to provide switching services to all railroads serving Houston on a non-discriminatory basis.

Although BNSF supports this request to the extent it applies to only those industries currently open to reciprocal switching, the Board must ensure that BNSF will continue to have exclusive use of New and Old South Yards for train makeup in Houston. With the expanded role BNSF has undertaken to service shippers as a result of the UP/SP merger, BNSF cannot provide efficient service unless it maintains exclusive use of these facilities.

Item 4:

Item 4 requests the Board to: (i) require PTRR to provide neutral dispatching of all lines within the neutral switching area, and (ii) grant all railroads serving Houston terminal trackage rights over all tracks serving Houston to enable the PTRR dispatchers to route trains over the most efficient route.

While BNSF is not opposed to the concept of neutral dispatching in principle, it opposes this particular request because it would be completely at odds with the operations and mission of the recently-established joint dispatching center at Spring, TX to regulate traffic flows and avoid route and terminal congestion by better planning and coordination the lines in and around Houston.^{1/} In February of this year, BNSF and UP

^{1/} The lines being dispatched or coordinated out of the Spring Center are: BNSF's line from Houston to Dallas via Teague, BNSF's line from Fort Worth and Sweetwater via Temple, BNSF's line to Galveston via Alvin, and UP's line from Houston to the New

agreed to establish a joint regional dispatching center at UP's command center in Spring for the purpose of providing both near and long-term relief to congestion and service problems in the Houston and Gulf Coast area. Specifically, BNSF and UP believed that, through joint and coordinated dispatching, the delays and congestion in the Houston terminal area could be minimized for all train operations, including through trains, trains serving customers along the Gulf Coast and trains moving to and from area freight yards. As a result, rail customers and the general public would benefit from better train flows through Houston and the Gulf Coast, as would all rail carriers operating in the Houston terminal -- BNSF, UP and Tex Mex.

The Spring Center -- whose functions include not only the joint dispatching of certain lines but also coordination of dispatching by BNSF and UP on other of their lines -- is the first dispatching center of its kind. The lines are dispatched in accordance with the dispatching protocol adopted pursuant to the CMA Agreement in the UP/SP merger proceeding.^{2/} Joint dispatching at the Spring Center continues to work well as evidenced by UP's recent decision to relocate its dispatchers for its lines between Spring and Hearne and Houston and Shreveport to the Spring Center.

Orleans area (the same line in which it is proposed that BNSF will become a 50% owner). The three additional routes to and from Houston in which BNSF participates (or will soon participate) in the coordination process of train movements of UP and BNSF are: to Beaumont (UP route) and, based on UP's July 28 submission, the former SP route to Shreveport and the UP route to Hearne.

^{2/} That protocol provides that trains of the same class will be treated equally so that all carriers in Houston and along the Gulf Coast will be able to provide the same quality service to shippers.

Were the Board to adopt Item 4(i), it would require separating the operation and dispatching of the Houston terminal from operation and dispatching of the lines feeding into, out of, and through the Houston terminal. Such an illogical separation of the dispatching functions would create significant problems and defeat the benefits offered by joint dispatching at the Spring Center.

Indeed, there are really no benefits to be gained by requiring PTRR to provide neutral dispatching of all lines within the neutral switching area. As it currently stands, if the lines radiating from Houston are congested and backed up, the terminal cannot function, no matter what entity controls dispatching whether it is PTRR or the Spring Center. In addition, Tex Mex should not be disadvantaged by continuing the dispatching of all lines at the Spring Center since it already has a representative there, and BNSF is willing to work with UP and Tex Mex to enable Tex Mex to be a full participant in the Spring Center's neutral dispatching functions for Tex Mex's trains.

With respect to Item 4(ii), BNSF supports the concept that carriers operating through the Houston terminal be permitted to utilize trackage providing the best available routes through Houston, as opposed to utilizing only the lines over which BNSF and Tex Mex currently have trackage rights.

Item 7:

The Consensus Parties request the Board to require UP to sell or lease an existing yard in Houston to the Tex Mex at a reasonable rate.

There is no question that Tex Mex needs its own yard in the Houston area to accomplish interchanges, setouts and pickups, and general switching activity. BNSF has

been negatively impacted by the fact that UP has not adequately provided Tex Mex sufficient yard space, resulting in interference with BNSF's operations and added congestion in the Houston terminal area. To handle its traffic, Tex Mex blocks one of the two main lines on the East Belt in the terminal area for setouts and pickups. This blocking of one of the two main lines, in turn, negatively impacts operations throughout the Houston terminal causing backups of other train and switcher movements and adding to the overall congestion the Houston terminal on PTRS and in North Yard. These problems are likely continue in the future absent Tex Mex obtaining sufficient yard space or making appropriate capital improvements to expand capacity in the Houston terminal area. Unfortunately, BNSF does not have space to give to Tex Mex at its Old South and New South Yards because of limited capacity.

It is my view that, Booth Yard, while not ideal, is a workable facility so long as it is required that Tex Mex rehabilitates the yard as described in the Consensus Parties' July 8 filing. As an alternative to Booth Yard, should Tex Mex choose to establish a new facility to meet its Houston-area needs, BNSF would facilitate Tex Mex's development of property adjacent to BNSF's Mykawa Subdivision between Alvin and New South Yard for construction of a new yard, including establishment of turnouts to and from the BNSF main line. Although Tex Mex specifically rejected this alternative on Page 77, Volume 1, of the Consensus Parties' July 8 filing, BNSF reiterates its view that it is willing to facilitate Tex Mex's development of the property adjacent to its Mykawa Subdivision and is willing to grant Tex Mex the necessary trackage rights to enable it to reach Rosenberg to participate in the directional operations if Tex Mex is committed to make the capital

improvements necessary to accommodate its train movements. Whatever site is chosen for Tex Mex's yard activities, I am concerned that Tex Mex's operations should not cause interference with BNSF's own operations.

Item 8:

The Consensus Parties request the Board to require UP to allow KCS and Tex Mex to construct a new line on UP's right-of-way adjacent to UP's Lafayette Subdivision between Dawes and Langham Road, Beaumont, Texas, subject to certain conditions.

BNSF opposes this request from an operational standpoint because it contemplates that Tex Mex would dispatch this line from Houston. For the same reasons as discussed in Item 4(i) above, this request has the potential to cause significant operational and coordination problems if Tex Mex were to dispatch the line separated from the joint dispatching operations at the Spring Center.

Finally, it would take years to accomplish the necessary construction to provide the intended relief for Tex Mex overhead service on this route. And, it would not necessarily lead to an increase in capacity needed for all carriers - Tex Mex, the low density carrier, would own one of the two available routes between Houston and Beaumont, with the higher density carriers, BNSF and UP, operating on the other route.

The real issue to be considered is how in the near-term Tex Mex trains between Houston and Beaumont can be moved over the line with equal priority and dispatch to like class trains of BNSF and UP. BNSF continues to believe the best way to insure this outcome is for Tex Mex's full involvement and participation in the Spring joint dispatching

center and for Tex Mex to continue participating in the directional flows now being used by BNSF and UP between Houston and Beaumont.

VERIFICATION

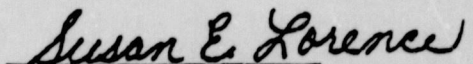
THE STATE OF TEXAS)

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) 9-18-98 I 191208



United States
Department of
Agriculture

Agricultural
Marketing
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Transportation
and
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P.O. Box 96456
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Mr. Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Case Control Unit: STB Finance Docket No. 32760 (Sub No. 26)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Mr. Williams:

Please accept this letter as the Department of Agriculture's (USDA) motion to late file a notice of intent to participate in 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].*

On behalf of USDA, please add the following name to the service list for this proceeding as a party of record: Eileen S. Stommes, Deputy Administrator, Transportation and Marketing, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 4006-South Building, Washington, D.C. 20090-6456.

Sincerely,

Eileen S. Stommes
Deputy Administrator
Transportation and Marketing



The Agricultural Marketing Service
is an agency of the
United States Department of Agriculture

STB FD 32760 (Sub 26) 8-17-98 I 190562

190562

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DAVID L. MEYER

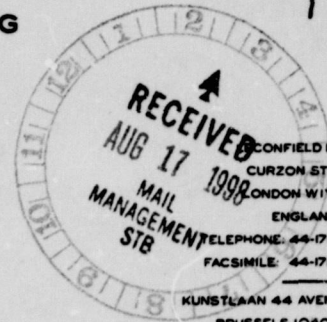
DIRECT DIAL NUMBER

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DIRECT FACSIMILE NUMBER

(202) 778-5582

dmeyer@cov.com



ENTERED
Office of the Secretary August 17, 1998

AUG 18 1998

REDACTED PUBLIC RECORD VERSION

**Part of
Public Record**

BY HAND

The Honorable Stephen Grossman
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, D.C. 20426

[Handwritten signature]

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

Dear Judge Grossman:

I am writing on behalf of Union Pacific Railroad Company ("UP") to raise with Your Honor a discovery dispute requiring resolution at a hearing this week.¹ This dispute involves the responses of Tex Mex and KCS to two separate requests contained in UP's First Set of Requests for the Production of Documents in the above-referenced docket, which were served on May 13, 1998.

The two requests at issue are:

"5: All documents reflecting communications between Tex Mex and KCS regarding Tex Mex's dealings with BNSF with respect to interline traffic."

"8: All documents relating to actual or proposed cooperation between Tex Mex and BNSF for traffic to or from Mexico."

¹ Although Your Honor's ruling of June 1 would call for a hearing on Thursday, August 20, counsel for UP has a scheduling conflict on that date. We would respectfully propose to work out with counsel for KCS/Tex Mex and Your Honor an alternative date and time this week, perhaps Wednesday afternoon or Friday morning.

Hon. Stephen Grossman
August 17, 1998
Page 2

KCS/Tex Mex's response to Request No. 5 indicated that "responsive documents, if any, will be placed in the Depository." As a result, UP has not previously had occasion to raise any dispute concerning KCS/Tex Mex's response to this request. Instead, as of the date of the last hearing before Your Honor on July 13, UP was awaiting receipt of documents responsive to this request.

In response to Request No. 8, on the other hand, KCS/Tex Mex objected and stated that they would only produce documents reflecting "'actual cooperation,' if any," and would not produce documents relating to "'proposed' cooperation on the ground that it is irrelevant in that it pertains to a hypothetical situation which may never occur." This objection was addressed before Your Honor on July 13. Your Honor rejected this objection and ordered KCS/Tex Mex to produce documents reflecting both actual and potential cooperation. See Tr., p. 47. With respect to the latter, Your Honor allowed KCS/Tex Mex to redact certain commercially sensitive portions of the documents reflecting specific "negotiating details," in the nature of divisions or rate terms of proposed or potential interline arrangements between Tex Mex and BNSF. See Tr., pp. 49-50.

In late July (on July 21 and July 31, respectively), KCS and Tex Mex produced to UP documents responsive to these requests. Almost every document produced by KCS and Tex Mex, however, was heavily redacted. In a few cases, the redactions were limited to specific dollar figures reflecting divisions or rates contained in draft agreements between Tex Mex and BNSF, as contemplated by Your Honor's July 13 ruling. In most cases, however, a substantial portion of the content of the documents was excised. For several reasons, KCS/Tex Mex's redactions are inappropriate, and KCS/Tex Mex should be ordered to produce unredacted versions of these documents.²

First, the majority of the documents were responsive to Request No. 5, in that they reflect communications between Tex Mex and KCS concerning Tex Mex's dealings with BNSF on interline traffic.³ KCS/Tex Mex were not entitled to make any redactions – except for privileged matter, which was not the basis of the redactions at issue here – with respect to documents produced in response to Request No. 5. KCS/Tex Mex's response to this request stated that all responsive documents would be produced, and this request was

² The redacted documents at issue, which are in Bates ranges KCS-3-HC-00025 to -27 and TM-6-HC-00029 to -79, are set forth, in numerical order, in the binder we are providing as a courtesy with Your Honor's copy of this letter.

³ KCS/Tex Mex's document index describes the documents at issue as responsive to Requests Nos. 5 and 8.

Hon. Stephen Grossman
 August 17, 1998
 Page 3

accordingly not the subject of Your Honor's ruling entitling KCS/Tex Mex to make certain limited redactions.⁴

The Board has recently made clear that parties are required to produce responsive documents in their "entirety" absent a timely objection that "certain material contained in a responsive document is not relevant to any matter properly at issue in this proceeding," coupled with a ruling of the ALJ or the Board upholding such objection. CSX Corp. & CSX Transportation, Inc., Norfolk Southern Corp. & Norfolk Southern Ry. - Control & Operating Leases/Agreements - Conrail Inc. & Consolidated Rail Corp. ("CSX/NS/Conrail"), Decision No. 34, served Sept. 18, 1997, p. 3.⁵ Here, there was no such objection. KCS/Tex Mex instead stated that all responsive documents would be produced in response to Request No. 5. Accordingly, under binding Board precedent no redactions on relevance or any other ground (other than privilege) can be sustained. See, Id., p. 2 (parties responding to discovery "have one opportunity to object to discovery requests; they cannot unilaterally hold an objection in reserve").

KCS/Tex Mex's redactions are all the more improper because it is plain that the redacted material is itself responsive to UP's discovery requests. The redactions at issue involve the substance of communications between Tex Mex and KCS about Tex Mex's dealings with BNSF on interline traffic, which was the precise subject of the discovery request. The Board has stated unequivocally that redaction of relevant material is always improper in light of the protections afforded "Highly Confidential" material by Board-entered protective orders such as the one in place in this proceeding. CSX/NS/Conrail, Decision No. 34, served Sept. 18, 1997, p. 3 (citing CSX/NS/Conrail, Decision No. 32, served Sept. 18, 1997, as "rejecting the argument that relevant material can be redacted from documents designated Highly Confidential under the terms of the protective order"); see also, e.g., ICC Docket No. 37809, McCarty Farms, Inc. v. Burlington Northern R.R., Decision served Aug. 15, 1994, p. 2 (rejecting redaction of revenue, rate and division information).

⁴ The redacted documents that on their face reflect correspondence between KCS and Tex Mex (or between KCS and Tex Mex's other part-owner, TMM) on the subject of Tex Mex's cooperation with BNSF are listed in Appendix A. In addition, KCS produced correspondence between Tex Mex and BNSF on the subject of Tex Mex's interline relationship with BNSF. These documents are also properly responsive to Request No. 5, because they could only have been received by KCS from Tex Mex, and thus intrinsically reflect communications between KCS and Tex Mex. Such documents are listed on Appendix B.

⁵ See also CSX/NS/Conrail, Decision No. 32, pp. 2-4.

Hon. Stephen Grossman
August 17, 1998
Page 4

Second, the vast majority of the redactions made by KCS/Tex Mex – both on those documents responsive only to Request No. 8 as well as on the documents responsive to Request No. 5 – went well beyond the minimal redactions necessary to excise specific divisions, rates terms and other matters of extraordinary commercial sensitivity, and thus departed from both the letter and spirit of Your Honor's July 13 ruling. The parameters of permissible redactions were set forth in the following colloquy during the July 13 hearing:

“JUDGE GROSSMAN: I am talking about the commercial negotiating details of such a potential agreement, but not the fact that there is such an agreement being negotiated. . . . So if there is an exchange of correspondence [referring to correspondence between BNSF and Tex Mex], for instance that says we must come into agreement on a new method of operation and interlining, that needs to be provided. If there is one that says we propose the following commercial relationship that X percent belongs to us and Y percent belongs to you, that kind of negotiation –

“MR. EDWARDS: Or potential future divisions or for future joint rates, et cetera.

“JUDGE GROSSMAN: You can redact the specific commercially sensitive portions of that type of documentation.”

Tr., pp. 49-50 (emphasis added). Although there are isolated examples of redactions that adhered to those parameters – such as those set forth at Exhibit 1 (Highly Confidential), which involve specific division or rate terms – almost all of the redactions excised material that is at the heart of the basic substance of the documents produced by KCS/Tex Mex or which is essential to an understanding of the context and meaning of the unredacted portions of the documents.

In Appendix C (Highly Confidential) we describe several of KCS/Tex Mex's redactions, which illustrate that KCS/Tex Mex have inappropriately redacted substantive material relevant to the issues in this proceeding.⁶ Appendix C, however, describes only a

⁶ The documents referred to in Appendix C are Exhibits 2-12 (Highly Confidential) to this letter. We have placed these descriptions in Appendix C, which is not being served on parties other than KCS/Tex, rather than in the body of this letter because all of the documents at issue have been designated by KCS/Tex Mex as “Highly Confidential.” We will supply a copy of Appendix C (together with the documents included as Exhibits 1-12) (footnote continued . . .)

Hon. Stephen Grossman
 August 17, 1998
 Page 5

few representative examples of inappropriate redactions. UP believes that all of the redactions made by KCS/Tex Mex – excepting only those set forth as Highly Confidential Exhibit 1 – are inappropriate. The pages on which the challenged redactions appear are listed in Appendix D. If Your Honor desires, UP will be prepared to review each of these documents with Your Honor at the August 20 hearing.

As Appendix C demonstrates, KCS/Tex Mex's redactions go well beyond those contemplated by Your Honor's prior order, and substantially "negate the usefulness of the produced documents." CSX/NS/Conrail, Decision No. 26, served Sept. 3, 1997, p. 3. As ALJ Leventhal recently held in the CSX/NS/Conrail proceeding, in the ordering the production of unredacted versions of disputed documents that he had previously ordered produced, the "effect of the redactions is an ephemeral compliance with the decisions but without substance." Id., p. 3.

All of the redacted material is either directly relevant or must be disclosed because it is essential to a complete understanding of the relevant portions of the documents produced by KCS/Tex Mex. The unredacted portions of the documents reveal significant involvement by KCS in Tex Mex's negotiations with BNSF. The parameters of the arrangements under discussion, and even the specific terms of those arrangements, are relevant, *inter alia*, to a determination whether KCS's role – and the asserted KCS-Tex Mex joint venture relationship – resulted in Tex Mex being reluctant to participate in arrangements with BNSF that would have brought it significant traffic opportunities. UP of course cannot warrant that each and every tidbit of redacted information is necessarily relevant, but the broad context of the redacted documents – which involve correspondence between Tex Mex and KCS about the BNSF negotiations and/or correspondence between Tex Mex and BNSF (most of which was shared with KCS) – strongly suggests that all the material is highly relevant.

But regardless of whether each and every bit of redacted material is directly and specifically relevant, these documents should be produced to UP in full in unredacted form. First, relevance is a very broad concept during the discovery stage. Parties must produce material that, even if not itself relevant, may lead to the discovery of relevant evidence, and the producing party has no right to be the unilateral arbiter of what is relevant. See, e.g., Sellon v. Smith, 112 F.R.D. 9, 13 (D. Del. 1986) (ordering production of unredacted documents because producing party "should not be the final arbiter of what is relevant or irrelevant in a particular document" and "parties' representatives are obviously in a far better position than this Court to adjudge the significance of the omitted passages"); .

(... continued)

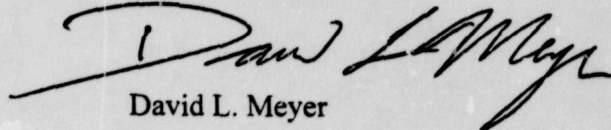
and in the accompanying binder, upon request to outside counsel for any party that has executed the Highly Confidential undertaking accompanying the protective order herein.

Hon. Stephen Grossman
August 17, 1998
Page 6

Smith v. MCI Telecommunications Corp., 137 F.R.D. 25, 27 (D. Kan. 1991) (ordering production of unredacted versions of documents on the ground, *inter alia*, that "relevance is broadly construed at the discovery stage"). Second, it is well established that redactions are improper where the redacted material is necessary to a complete understanding of the unredacted material, as is manifestly the case here. See, e.g., Sellon, 112 F.R.D at 12 (among grounds for requiring production of unredacted material was conclusion that "some of the editing is so extreme that it is impossible to get any meaning out of the snippets that were produced"); In re Medeva Securities Litigation, 1995 WL 943468 (C.D. Cal. 1995), p. 3 (redactions make documents "difficult or confusing to use").

As noted above, moreover, Board precedent does not leave room for KCS and Tex Mex to complain that disclosure of the redacted material will cause it commercial harm. See, e.g., CSX/NS/Conrail, Decision No. 34, served Sept. 18, 1997, p. 3. All of the documents at issue have already been designated as "Highly Confidential," meaning that access will be restricted to outside counsel and experts for UP. UP personnel – including lawyers – will not have access to these documents. Moreover, the redacted material does not pertain to any ongoing negotiations to which UP is a party.⁷

Respectfully submitted,



David L. Meyer

Attorney for Union Pacific
Railroad Company

Attachment:

cc: Hon. Vernon A. Williams
(by hand – separate confidential and public record versions)
William A. Mullins, Esq. (by hand)
Richard A. Allen, Esq. (by hand)
Erika Z. Jones, Esq. (by hand – public record version only)

⁷ In addition, to the extent BNSF's outside counsel is involved in the ongoing negotiations between Tex Mex and BNSF, Your Honor might require that they receive only the existing redacted versions of these documents.

APPENDIX A

Redacted Documents Responsive to Request No. 5

(Reflecting Communications Between KCS and Tex Mex Concerning Tex Mex's Interline Relationship with BNSF)

KCS-3-HC-00030
KCS-3-HC-00063 to -64
KCS-3-HC-00065 to -66
KCS-3-HC-00074 to -76
KCS-3-HC-00077
KCS-3-HC-00078
KCS-3-HC-00080
KCS-3-HC-00081 to -82
KCS-3-HC-00085 to -86
KCS-3-HC-00087 to -95
KCS-3-HC-00096 to -98
KCS-3-HC-00106 to -08
KCS-3-HC-00109 to -13
TM-6-HC-00038
TM-6-HC-00041 to -42
TM-6-HC-00043 to -44
TM-6-HC-00045
TM-6-HC-00072 to -79

APPENDIX B

Redacted Documents Responsive to Request No. 5

(Correspondence Between Tex Mex and BNSF Produced by KCS)

KCS-3-HC-00025 to 26
KCS-3-HC-00027 to -28
KCS-3-HC-00031
KCS-3-HC-00032 to -33
KCS-3-HC-00034 to -35
KCS-3-HC-00038
KCS-3-HC-00039
KCS-3-HC-00040
KCS-3-HC-00041 to -43
KCS-3-HC-00050 to -56
KCS-3-HC-00057 to -61
KCS-3-HC-00067 to -73
KCS-3-HC-00116
KCS-3-HC-00117 to -23

APPENDIX D

Pages Containing Improper Redactions

KCS-3-HC-00025	KCS-3-HC-00109
KCS-3-HC-00026	KCS-3-HC-00110
KCS-3-HC-00028	KCS-3-HC-00111
KCS-3-HC-00030	KCS-3-HC-00112
KCS-3-HC-00031	KCS-3-HC-00116
KCS-3-HC-00032	KCS-3-HC-00117
KCS-3-HC-00034	KCS-3-HC-00118
KCS-3-HC-00038	KCS-3-HC-00119
KCS-3-HC-00039	KCS-3-HC-00120
KCS-3-HC-00040	KCS-3-HC-00122
KCS-3-HC-00041	KCS-3-HC-00123
KCS-3-HC-00056	TM-6-HC-00038
KCS-3-HC-00059	TM-6-HC-00040
KCS-3-HC-00060	TM-6-HC-00041
KCS-3-HC-00061	TM-6-HC-00042
KCS-3-HC-00063	TM-6-HC-00043
KCS-3-HC-00064	TM-6-HC-00044
KCS-3-HC-00065	TM-6-HC-00045
KCS-3-HC-00068	TM-6-HC-00051
KCS-3-HC-00071	TM-6-HC-00052
KCS-3-HC-00072	TM-6-HC-00053
KCS-3-HC-00075	TM-6-HC-00054
KCS-3-HC-00076	TM-6-HC-00055
KCS-3-HC-00077	TM-6-HC-00057
KCS-3-HC-00078	TM-6-HC-00059
KCS-3-HC-00079	TM-6-HC-00060
KCS-3-HC-00080	TM-6-HC-00061
KCS-3-HC-00081	TM-6-HC-00062
KCS-3-HC-00082	TM-6-HC-00063
KCS-3-HC-00085	TM-6-HC-00065
KCS-3-HC-00086	TM-6-HC-00066
KCS-3-HC-00088	TM-6-HC-00067
KCS-3-HC-00089	TM-6-HC-00068
KCS-3-HC-00090	TM-6-HC-00070
KCS-3-HC-00091	TM-6-HC-00071
KCS-3-HC-00092	TM-6-HC-00072
KCS-3-HC-00093	TM-6-HC-00073
KCS-3-HC-00094	TM-6-HC-00074
KCS-3-HC-00095	TM-6-HC-00075
KCS-3-HC-00097	TM-6-HC-00076
KCS-3-HC-00098	TM-6-HC-00077
KCS-3-HC-00106	TM-6-HC-00078
KCS-3-HC-00107	

STB FD 32760 (Sub 26) 8-17-98 J 190558



SENATE
STATE OF LOUISIANA

PAULETTE RILEY IRONS

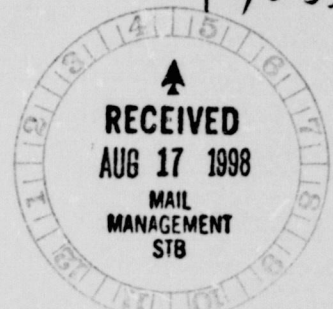
State Senator
District 4

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New Orleans, LA 70119
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ENTERED
Office of the Secretary

AUG 18 1998

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COMMITTEES:

Transportation, Highways & Public Works,
Vice-Chair
Health & Welfare
Finance
Joint Budget

August 5, 1998

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

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

Dear Mr. Williams,

I am informed that you will soon hold hearings regarding the previously approved Union Pacific- Southern Pacific merger over which you have jurisdiction. I know that a few Texas participants have filed requests for special operating privileges with your board. These Texas-related requests concern me because of the impact they could possibly have on Union Pacific in Louisiana if they are granted, which might possibly hinder further improvements underway.

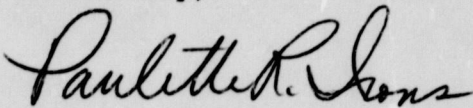
Union Pacific is a major employer in our state and serves our economy extensively throughout Louisiana. I know that service problems developed soon after actual transportation functions of the Union Pacific and Southern Pacific were merged in the Gulf Coast area. This condition persisted for many months and there was justified criticism; however, Union Pacific has certainly made major investments, hired many new employees, and purchased new locomotives --- all to correct this condition. I note that the congestion has nearly disappeared and service has returned to acceptable levels in most areas. Union Pacific's efforts to relieve the

Page two - Mr. Vernon Williams

worst congestion resulted in losses to the company in its effort to achieve normal rail operations. Meanwhile, competitors have made the most of this situation and their earnings have risen dramatically. These competitors, who now seek additional advantages, could create more disruption on Union Pacific lines and cause additional losses in Union Pacific operations. This would impact Union Pacific in all service areas, including Louisiana. Certainly, Union Pacific is entitled to a reasonable return on its investments in its own system, without unnecessary obstacles that could hamper their efforts. I am confident your board will agree. You have already terminated an earlier emergency order in the Houston area as Union Pacific's success in relieving congestion was recognized.

I do not believe that allowing successful competitors more access on Union Pacific is in the best interest of providing a strong railroad presence, but that it can only weaken Union Pacific's position here and elsewhere. Thank you for hearing my views on this matter.

Sincerely,

A handwritten signature in cursive script, reading "Paulette R. Irons". The signature is written in dark ink and is positioned above the typed name and address.

Paulette R. Irons
STATE SENATE
DISTRICT 4

PRI/amj

STB FD 32760 (Sub 26) 7-8-98 I 189393 1/2

189393
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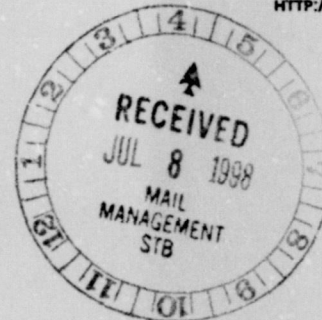
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July 8, 1998



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 Comments and Request for Remedial Conditions of Formosa Plastics Corporation, U.S.A. In addition to argument and verified statements, these comments contain certain charts, graphs, and maps. Text, charts, and spreadsheets are contained on floppy disks that are attached hereto, convertible to WordPerfect 7.0 or Lotus 1,2,3.

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 on May 19, 1998.

ENTERED
Office of the Secretary

JUL 09 1998

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Sincerely,

A handwritten signature in cursive script that reads "Andrew P. Goldstein".

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

Enclosures

APG/rmm

189393

ORIGINAL

PUBLIC VERSION -- REDACTED

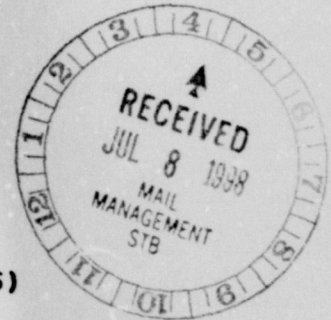
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

JUL 09 1998

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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**

**COMMENTS AND REQUEST FOR REMEDIAL CONDITIONS OF
FORMOSA PLASTICS CORPORATION, U.S.A.**

**Andrew P. Goldstein
John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
Suite 1105
1750 Pennsylvania Avenue, N.W.
Washington, DC 20036
(202) 393-5710**

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

Dated: June 8, 1998

PUBLIC VERSION - REDACTED

**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**

**COMMENTS AND REQUEST FOR REMEDIAL CONDITIONS OF
FORMOSA PLASTICS CORPORATION, U.S.A.**

I. INTRODUCTION

The rail service problems encountered by Formosa Plastics Corporation, U.S.A. ("FPC") since UP's merger with SP have been unprecedented, and have inflicted severe damage on FPC and its customers. FPC has received no benefit from the STB's actions in Ex Parte No. 573, Rail Service in the Western United States, or in Service Order No. 1518, Joint Petition for Service Order.

FPC therefore welcomes the Board's decision to reopen Finance Docket No. 32760 to consider additional remedial relief for shippers in the Houston Gulf Coast region. Pursuant to the Board's

March 31, 1998 Decision No. 12 in Finance Docket No. 32760 (Sub-No. 21) instituting this proceeding and its June 1, 1998 order extending the procedural schedule, FPC submits its comments and requests that the Board condition the merger in the captioned case on the right of Burlington Northern Santa Fe Railroad ("BNSF") to serve the FPC facility at Formosa, TX. In support of these Comments, FPC relies on the accompanying Verified Statements of Witnesses Heinle (Exhibit A), Carroll (Exhibit B), and Bounds (Exhibit C), which demonstrate that FPC has suffered both inadequate service and anticompetitive abuse at the hands of UP.

II. INTEREST OF FPC

FPC is a manufacturer of chemicals, plastics and plastic components. FPC's principal manufacturing operations take place at its facility at Point Comfort, Texas, on the Gulf Coast approximately halfway between Corpus Christi and Houston. See Appendix A to Mr. Heinle's statement. In its August 1996 Decision in Finance Docket No. 32760 authorizing the UP/SP Merger,^{1/} the Board ordered that BNSF be granted trackage rights over the UP line between Houston, Alcoa, 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, providing switching service with its own engines between the facility and Formosa. However,

^{1/} Finance Docket No. 32760, Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al., Decision No. 44, served August 12, 1996 (hereinafter UP/SP Merger Decision).

except for the right to serve trainload customers and certain "2 to 1" shippers, which do not include FPC, BNSF is permitted to provide no local, pickup, or delivery service. Although FPC has two carriers permanently at its doorstep, it can receive service only from UP. BNSF is willing to serve FPC, if authorized to do so.

FPC is one of the nation's largest plastics manufacturers. As explained in the attached Verified Statement of FPC Vice President Richard A. Heinle, the Point Comfort facility has a current capacity of about _____ rail carloads a year, and that volume is expected to rise to almost _____ carloads annually during the year 2000. Heinle V.S. at 1. FPC also has a smaller manufacturing facility at Baton Rouge, LA, but the Baton Rouge facility produces only one of the types of plastic components produced at Point Comfort, and has no expansion capability.

FPC's large Point Comfort facility is not only a high output facility, but it is also located far from many major customers. For these reasons, and because of customers' strong preference for rail deliveries, the success of FPC's operations depends on reliable rail service at reasonable cost. Most of the Point Comfort plant's output moves by rail, and UP is the sole originating carrier for all of those shipments. Heinle V.S. at 3-5.

In recognition of its dependence on rail service at Point Comfort, FPC has spent millions of dollars in an effort to make its rail transportation operations as efficient as possible. At a multi-million dollar cost, it constructed a marshalling yard with

space for a mile-long train, to permit the smooth flow of cars into and out of the plant. By 2000, the size of this yard will be expanded by 100 percent, at another multi-million dollar cost, in order to deal with the projected growth of plant output. See Exhibit C, the Verified Statement of Ronnie Bounds, Manager of FPC's Point Comfort rail yard, at page 1.

FPC has also acquired a fleet of _____ private hopper cars, and engines for use in plant operations. It has also constructed a nine mile industrial spur track to connect the Point Comfort facility with the UP line. See the maps attached to the Statements of Witnesses Bounds and Heinle.

The service problems FPC has experienced at Point Comfort were not supposed to happen. When UP sought Board approval for its merger with SP, it promised to provide more competition and better service in the West. And in its decision approving the merger, the Board relied on these projections.

The results have hardly lived up to the rosy predictions. Not only did service fail to improve, but it became so bad that facilities were shut down, employees were laid off and grain rotted on the ground. The trackage rights provided to BNSF did not produce the vigorous competition that the Board counted on to mitigate the anticompetitive effects of the merger.

As detailed by Witness Heinle, the adverse impacts of the merger on FPC were severe. Service delays produced increases in cycle times of up to 100 percent for the private equipment used by FPC for its shipments. Heinle V.S. at 6 and Appendices B-1 through

B-12. This has the same effect as cutting the size of FPC's rail car fleet in half, or wasting half of FPC's investment in its cars.

The problems were exacerbated by the erratic nature of the UP delays, which affected not just line haul service to FPC's customers, but also switching services at Point Comfort. Heinle V.S. at 7-8. Compounding the injury, the UP simply appropriated FPC's marshalling yard at Point Comfort for weeks on end, storing trains there without permission and preventing FPC from using its own yard. Heinle V.S. at 5.

These disruptions in rail service had disastrous effects upon a broad range of FPC operations. Often, there were no rail cars available to haul the plant's production to customers. Adverse impacts of the UP service problems on FPC's sales to its best domestic customers represent the most serious long-term injury to FPC. Many competitors of FPC were less affected by these problems than FPC because they depend less on UP service. When FPC's customers did not receive timely delivery of their orders, they would curtail their own production and run the risk of losing their own customers. Heinle V.S. at 8. In this era of just-in-time supply chain management, such delays entail severe long-term damage to the business of a supplier of raw materials like FPC.

FPC responded as well as it could, seeking other routings, or using uneconomic (and inefficient) truck service. Sometimes FPC would truck its products in "super sacks" that weighed up to 2,000 pounds and had to be unloaded with a crane. While these sacks protected the granular plastics from contamination, they were

strongly disfavored by FPC's customers, and FPC incurred substantial additional costs in reimbursing customers' claims for additional handling charges and delays. Most of the \$_____ in claims FPC has filed with UP to recover monetary compensation for these events has been ignored, and UP has indicated to FPC that UP does not intend to recognize many of FPC's claims. Heinle V.S. at 9-10.

As UP service deteriorated and the need for service by other railroads became more and more apparent, UP resisted reasonable offers of assistance, in the apparent belief that having paid good money for its captive customer base, it was entitled to retain the exclusive right to provide services that it lacked the resources to deliver.

These tactics persisted throughout the Ex Parte No. 573 and Service Order 1518 proceedings, in which the Board recognized that its remedial powers were constrained by the statute. The BNSF operates trains over the UP main line through Formosa, where FPC's industrial track intersects, and the BNSF is willing and able to serve FPC. However, because the BNSF has only "closed door" trackage rights, this source of relief has been foreclosed until now.

The underlying problems have not been resolved, and are likely to plague FPC and its customers for the foreseeable future.^{2/} UP's

^{2/} See, e.g., the BNSF Quarterly Progress Report filed July 1, 1998 in Finance Docket No. 32760, at pp. 9-10.

credibility has reached an all-time low, and the word "meltdown" has acquired a new meaning.

FPC is truly a captive shipper. It has been subjected to classic forms of monopoly mistreatment by UP. Because this proceeding has been instituted as a sub-docket of the merger proceeding, the Board is in a position to exercise the full panoply of its statutory authority, at least as to Texas Gulf Coast shippers. The question presented is how the Board should remedy the disastrous problems FPC has encountered in the aftermath of the UP/SP merger. The relief FPC seeks is straightforward. FPC needs, and should be granted, access to BNSF at Formosa, Texas, the interchange point between FPC's industrial spur track and the UP line. From an operational perspective, and from the perspective of law and policy, this relief is fully justified.

III. THE BOARD HAS BROAD AUTHORITY TO PROVIDE RELIEF

Despite its relatively narrow regional focus, this proceeding will involve a broad range of participants, including shippers of many different types of commodities, shipper associations, large and small railroads, and governmental interests. Different parties will seek, and doubtless receive, different treatment. It is important to recognize at the outset the broad authority the Board has at its disposal in addressing the parties' requests for new conditions.

It is also important to recognize at the outset the extraordinary circumstances in which these issues are being

considered. The UP/SP Merger has led to an unprecedented and disastrous breakdown in service. In instituting this proceeding, the Board recognized that its previous remedial measures in Finance Docket No. 32760, in Ex Parte No. 573 and in Service Order No. 1518 may not have gone far enough and invited proposed "structural industry changes based on perceived competitive inadequacies."^{3/}

In addition, the Board has recently undertaken a thorough review of its policies on rail competition. In its decision served April 17, 1998 in STB Ex Parte No. 575, Review of Rail Access and Competition Issues, the Board recognized that recent railroad consolidations and system rationalizations, of which the UP/SP Merger is one of the most important, have brought us to a "regulatory crossroads." The Board observed of these mergers:

[C]umulatively the result has been a significantly more consolidated [rail] industry in which competitive options for rail-dependent shippers have not been expanded. This increasing consolidation within the industry, combined with the difficulties that many shippers perceive in obtaining relief through the regulatory system, leave too many shippers feeling that they have no leverage and no avenue of relief.

Decision at 3.

Inter alia, the Board recognized in Ex Parte No. 575 that there are defects in existing procedures under which shippers may seek access to a second railroad to remedy service problems, anticompetitive conduct, or both. These problems normally have a

^{3/} Decision No. 12, Finance Docket No. 32760 (Sub-No. 21), slip op. at 6.

single root cause -- the absence of competitive alternatives for the shipper. Absent captivity, shippers are vulnerable neither to service problems nor to abuse of market power. Nevertheless, the STB appears inclined to adopt separate regulations to deal with competitive access and with access as a remedy for service problems.

The Board's rulemaking proceeding on improved competitive access remedies has not been instituted, but presumably will be soon. The informal discussions among shippers and railroads called for in the Ex Parte No. 575 decision have broken down. A rulemaking proceeding on service problems is under way in Ex Parte No. 628, Expedited Relief for Service Inadequacies, although the comments filed by the Association of American Railroads indicate that the railroad industry will resist significant changes in current policies.

It is too soon to assume that these initiatives will be unproductive, but the Board must recognize that this proceeding offers a third and unique opportunity for innovation in dealing with the problems identified in Ex Parte No. 575. Just as the STB's exercise of its merger jurisdiction has contributed to the problem, its exercise of that jurisdiction in this proceeding can contribute to the solution.

As was recently acknowledged in its May 12, 1998 Notice of Proposed Rulemaking in Ex Parte No. 628, "the Board lacks general authority to require an unwilling railroad to permit physical

access over its lines to the trains and crews of another railroad."

Notice at 3. However, the Board went on (id.) to explain:

[I]t may direct that result in certain situations: under 49 U.S.C. § 11324(c), as a condition to the incumbent's merger with another railroad; under 49 U.S.C. § 11102(a), to serve terminal facilities when it would be in the public interest; or, under 49 U.S.C. § 11123(a), to serve any facilities for a limited period of time (not more than 270 days) because of the carrier's inability or failure to provide its shippers with adequate relief.

The remainder of the Board's discussion of its options addressed access remedies under sections 11102 and 10705 -- terminal trackage rights, reciprocal switching and alternative through routes -- as well as the intramodal rail competition regulations at 49 C.F.R. Part 1144. However, it is surely noteworthy that the first source of relief cited was the Board's authority to impose appropriate conditions, including trackage rights, in the exercise of its jurisdiction over major rail mergers.

It is in this context that the STB's powers are most extensive. Other forms of relief are limited in time (no more than 270 days under Section 11123(a)) or in scope (at or near a terminal area under Section 11102(a)). The exercise of the Board's remedial authority under its merger jurisdiction is not so limited. Where appropriate, it can order permanent relief in terminal areas or

outside of them, in order to promote competition or to address service problems.^{4/}

As the STB itself recognizes, new approaches are needed. Here, FPC has undertaken to document, in detail, the existence of anticompetitive conditions that would plainly warrant relief in the form of terminal trackage rights if Point Comfort were within a terminal area. FPC has experienced both of the prerequisites to relief even under the unmodified access principles being reviewed in connection with Ex Parte No. 575: FPC has suffered inadequate service and competitive abuse.

It is difficult to discern any basis in policy for addressing these problems only in terminal areas, and the STB should not apply any such artificial restriction here. The Board can and should use its merger authority to promote more competition and better rail service for FPC and its customers, if not to rectify merger-related and competitive abuses that have occurred.

IV. INADEQUATE SERVICE AND ANTICOMPETITIVE CONDUCT BY UP ARE AMPLY DEMONSTRATED

The standards for relief established in 49 C.F.R. § 1144.5 and in Midtec Paper Corp. v. Chicago and North Western Transportation Co., 3 I.C.C. 2d 271 (1986) ("Midtec"), aff'd., Midtec Paper Corp. v. United States, 857 F.2d 1487 (D.C. Cir. 1987), are expected to

^{4/} The Board has stated, in footnote 6 to its May 12, 1998 Decision instituting Ex Parte No. 628, that the "relief contemplated" in that proceeding "is intended to respond to service problems, and not to provide permanent responses to perceived competitive issues."

be modified in the course of the Board's pending and projected rulemaking proceedings. FPC submits, however, that the principal tests there established are satisfied by the circumstances it currently endures.

A. UP's Service has Fallen Far Short of Minimal Standards of Adequacy

As discussed above and in Mr. Heinle's Verified Statement, UP rail service between Point Comfort and FPC's customers and gateways has been abysmal. Switching service at the plant has been slow and sporadic, and movements to FPC's customers have encountered unprecedented delays, often taking twice as long as they did before the merger.

In their impact on the efficient utilization of FPC's private equipment, these conditions have resulted in enormous additional costs for FPC. Far more important, however, has been the adverse impact of UP service on FPC's relationships with its customers. Reliable delivery of its products to customers is FPC's lifeblood.

When customer deliveries are late, there is often no adequate remedy. It is no longer realistic to expect the customers that purchase the output of FPC's Point Comfort facility to stockpile large volumes of plastic components, in order to be able to continue operation in the event of rail shipment delays. Such practices are expensive and inefficient. Heinle V.S. at 7.

As a result, emergency actions and cost absorptions have become a reality for FPC in hopes of retaining customers. As Mr. Heinle details, FPC recently received a \$_____ claim from one

large customer that incurred added costs as a result of UP service delays.

The UP meltdown is not a fluke, imposing short-term problems that will soon be forgotten. As Witness Heinle's Appendices B-1 through B-12 establish, virtually all of FPC's routings have experienced severe delays, continuing month after month. An unprecedented service breakdown like this causes irreparable injury to supply relationships between FPC and its customers.

It is no consolation to FPC that its customers may recognize that responsibility for supply interruptions rests not with FPC but with UP. FPC's customers have their own obligations to meet to their own customers, and care less about blame than about results. If FPC's products do not arrive when needed, FPC's position as a dependable supplier suffers, and it may go from preferred or principal source, to secondary source. FPC may also lose old and valued customers altogether, or it may fail to be selected as plastics supplier to potential new customers, who would prefer to deal with a company that is not fully captive to UP. For these reasons, even full compensation by UP of FPC's claims (which has not been forthcoming) would not make FPC whole.

In Midtec, the ICC discussed several types of alleged service problems in the context of the access rules at 49 C.F.R. § 1144.5. Addressed in Midtec were circuitous routing, which the ICC dismissed as a meaningful problem when it turned out to be Midtec's own preferred routing, and complaints regarding the boxcars CNW supplied, which appeared to have been acquired by the railroad

specifically in response to Midtec's urgings, and therefore not to constitute a service shortfall. 3 I.C.C. 2d at 183-184.

The contrast between the service problems alleged by the Midtec complainant and the problems with UP established by FPC could not be more stark. Here, the UP persists in failing to provide the basic service railroads exist to provide -- reliable long-distance deliveries of bulk commodities. These service failures stem directly from the UP/SP Merger; they did not exist on SP before the merger, as FPC knows from having routed _____ of its Point Comfort shipments to SP destinations via SP prior to the merger. *Heinle V.S.* at 11. On this record, the inadequate service prong of the Midtec test for relief has clearly been met by FPC.

**B. UP Has Engaged in Anticompetitive Conduct
Toward FPC and Has Abused its Monopoly Power**

UP should concede that its service has been inadequate. Accepting responsibility, however, is another matter entirely. UP has consistently claimed that the meltdown is the SP's fault, and that UP was little more than an innocent bystander. FPC's experience contradicts this contention, but before turning to that evidence, several preliminary points should be made.

Even if UP were blameless with respect to the UP meltdown (and hardly anyone believes this claim) its response to the breakdown of rail service in the west nevertheless demonstrates its overwhelming market power. When a provider of goods or services that faces competition encounters problems in meeting customer requirements, it does one of two things: it fixes the problem or it compensates

its customers for the damage they have experienced. This is what FPC did with respect to its customers, and FPC was blameless in the matter of the meltdown.

The UP, in contrast, has demonstrated the classic reaction of a monopolist. In the Ex Parte No. 573 and Service Order 1518 proceedings, it resisted anything beyond the most minimal relief, with the result that FPC's problems were not mitigated in the slightest.

And in contrast with FPC's prompt payment of its customers' claims for UP-related additional costs, UP has stonewalled FPC on its claims, even though UP was the proximate cause of the costs in question. As explained by Witness Heinle (V.S. at 9-10), FPC has incurred almost \$_____ in actual additional costs (without regard to less easily calculable damages such as loss of new business and reductions in customer confidence).

The UP's response has been to assert that it bears little, if any, responsibility for poor service. To date, it has processed only a single FPC claim for \$24,000, as to which it paid \$_____. There could hardly be a better illustration of the difference between monopolies and competitive businesses. Unlike FPC, UP has no fear that such customers will take their business elsewhere.

In Midtec, supra, the ICC held that a showing of market dominance is not a prerequisite to access relief. 3 I.C.C. 2d at 180. And product competition has been expressly excluded from consideration under 49 C.F.R. § 1144.5(b). Nevertheless, it is

clear from Mr. Heinle's Statement that UP's monopoly power over FPC's traffic is firmly established.

Intermodal competition is plainly not effective. FPC's domestic customers oppose truck delivery of the commodities in question and are generally not equipped or willing to accept such deliveries. Heinle V.S. at 3. FPC's use of super sacks as an emergency response to the meltdown caused more problems than it solved. (Id. at 3-4.) Moreover, there are not enough bulk trucks available to handle the Point Comfort plant's output, given other demands for those trucks, and many customers are too far from Point Comfort for economical or competitive truck deliveries. (Id.)

Water transportation is also not an option, because of the additional handling involved, and because few customers can accept barge deliveries. Mr. Heinle points out that plastics are generally not shipped by barge. V.S. at 5.

As for geographic competition, the fact that FPC's customers may be able to obtain the components they need from other manufacturers does FPC no good. And so long as the substitutes are hauled by the UP, why should it care about FPC's loss of business? Indeed, UP might have profited from the substitution, if it was able to charge higher rates for substitute movements (which would in all likelihood have been absorbed by FPC's rival).

The attached Verified Statement of FPC Consultant Charles L. Carroll of L. E. Peabody & Associates shows that the revenue to variable cost ratios of UP's tariff rates to major UP destinations and gateways range from 232 percent to 425 percent.

Margins this high would be difficult to defend even if UP always offered the most efficient routings for FPC's freight, but it does not. BNSF in some cases has shorter routes to points where UP now demands longhaul routing; in other instances, BNSF and UP have routes that are equidistant. The ICC has held that mileage and costs are indicia of efficiency.^{5/} Mr. Carroll's study shows that BNSF is approximately five percent more efficient than the UP on a system cost basis.

Of course, BNSF service has also been far less impaired than UP service, and many of FPC's customers have urged FPC to shift as much of its traffic as possible to BNSF. This has been impossible due to UP's anticompetitive conduct.

The Board is aware of some of this conduct. Specifically, the UP structured its trackage rights agreement with BNSF in such a way as to preclude service by the BNSF to FPC. The Board is also aware of UP's opposition to any expansion of those trackage rights in Ex Parte No. 573 or Service Order No. 1518.

However, the Board is unlikely to be aware of the way UP has used its monopoly power over rates to foreclose access by FPC to BNSF. As set forth in Mr. Heinle's statement (V.S. at 11-14), UP's market power is such that it has been able to force a Hobson's choice on captive shippers like FPC. UP's common carrier rates to major gateways and destinations are so high, at revenue to variable

^{5/} See Intramodal Rail Competition, 1 I.C.C. 2d 822, 827 (1985), aff'd, Baltimore Gas & Electric Co. v. United States, 817 F.2d 108 (D.C. Cir. 1987).

cost ratios of 232 percent to 125 percent, as to be prohibitive. Paying those rail rates would price FPC out of the marketplace.

Since the common carrier tariff rates are out of the question, FPC had no choice but to execute a contract with UP. The contract rates are lower, enabling FPC to compete with other plastics component producers, and thus stay in business. However, in exchange for rate reductions that are necessary for its survival, FPC was forced to agree to anticompetitive terms and conditions.

First, UP insulated its rates from effective regulatory scrutiny. Common carrier rates with r/vc ratios of up to 425 percent are clearly above rate levels that would result from effective transportation competition, but FPC is hampered in challenging these rates because it cannot ship at them and still sell product. The contract rates, though lower, are still above desirable levels. *Heinle V.S.* at 12. But these rates are immune from challenge under the STB's rate reasonableness jurisdiction because they are contract rates.^{6/}

The UP also demanded that FPC agree to route at least _____ of its contract traffic in such a way as to give UP _____ or else _____. *Heinle V.S.* at 13. This was problematic even prior to the meltdown, because UP longhaul was not the most efficient routing for _____ of FPC's shipments. Only _____ of FPC's shipments move to destinations that are exclusively served by UP. Absent the contractual _____

^{6/} A small percentage of FPC's traffic can move outside the contract. Only the UP rates on this limited volume could be challenged as unreasonably high.

requirement, FPC would be able to route some or all of the other _____ of its shipments in such a way as to maximize the longhaul of the most efficient railroad.

This foreclosure of access to alternative routings is bolstered by the UP's rate structure. By requiring the payment of rates to gateways that are far above levels that are proportional to the distance to the gateway, UP "front-loads" its revenue recovery. This makes it difficult for a competing railroad to charge attractive rates for the remaining leg of the haul.

Also indicative of the anticompetitive nature of UP's conduct is the obvious analogy between the _____ requirement and tying arrangements, which are condemned under the antitrust laws. An agreement to sell one product or service only on the condition that the buyer also purchase a different product or service (or at least not purchase certain products and services from other sellers), violates the antitrust statutes. Northern Pac. Ry. Co. v. United States, 356 U.S. 1, 6 (1958); Image Technical Service Inc. v. Eastman Kodak Co., 903 F.2d 612 (9th Cir. 1990), aff'd, 112 S.Ct. 2072 (1991). Here, UP has leveraged its pure monopoly over _____ of FPC's shipments to a much broader monopoly by tying a measure of rate relief for FPC's _____ fully captive traffic to a requirement that FPC give UP the _____ on another _____ of FPC's traffic that would otherwise be open to competition.

In instances which involve two separate services, where the sale of one service is conditioned on the sale of the other, where

the seller has appreciable economic power in the market for the tying service (here, service to UP's captive destinations) to enable it to compel a buyer to tie into the otherwise competitive services, and where there is a "not insubstantial" amount of commerce which is foreclosed by the tying arrangement, tying is a per se violation of the antitrust laws, making it unlawful without further inquiry. Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2 (1984). The requirement that there be two separate services means simply that there must be a second service that some customers might wish to purchase separately without also purchasing the tying service. Jefferson Parish, 466 U.S. at 39.

FPC has stated that it would purchase separately, from the most efficient and low cost provider, service to points which are not UP monopoly destinations, but for the _____ requirement in its contract with UP. The other elements of the per se violation are also clearly present. The conclusion is inescapable that UP has exercised its market power over FPC in a manner which is traditionally anticompetitive.

Since the service meltdown began, the _____ UP _____ requirement has increased the incidence of delays in UP deliveries of FPC shipments. As Mr. Heinle explains (V.S. at 7), FPC's west coast customers have been clamoring for BNSF routings to mitigate the UP service problems. UP's contract terms, and UP's intransigent refusal to allow FPC greater access to competitive service, have prevented FPC from taking advantage of this relief.

In its Midtec decision, the ICC stated:

The essential questions here are (1) whether the railroad has used its market power to extract unreasonable terms on through movements; or (2) whether because of its monopoly position it has shown a disregard for the shipper's needs by rendering inadequate service.

3 I.C.C. 2d at 181. Where either of these questions is answered in the affirmative, the railroad has engaged in conduct that is "contrary to the rail transportation policy or otherwise anticompetitive." (Id.)

Here, the answer to both questions must be an emphatic yes. UP has rendered inadequate service, and has responded to FPC's repeated complaints as an indifferent monopolist would: by failing to restore service to pre-meltdown quality levels, and by rejecting FPC's request for compensation of claims. UP has engaged in anticompetitive conduct, foreclosing access to efficient routings and leveraging its monopoly power through its rate structure and service restrictions.

If FPC were in or near a terminal area that was also served by BNSF, its right to terminal trackage rights for BNSF would be clear, even under the current, restrictive versions of the Board's present competitive access rules. Also evident would be FPC's right to relief through reciprocal switching. And it is important to note that in Midtec, the ICC left open the question whether reciprocal switching can be ordered outside a terminal facility.^{2/}

^{2/} 3 I.C.C. 2d at 178, fn. 17. See also the quotation in Midtec (id. at 179) from CSX Corp. -- Control -- Chessie and Seaboard Coast Line, 363 I.C.C. 518, 585 (1980), to the effect
(continued...)

Application of the principles of the former 49 U.S.C. § 11103 (current § 11102) plainly serves the Rail Transportation Policy, minimizing the need for regulation by letting competition work, promoting efficient rail transportation, promoting effective competition and encouraging honest and efficient management of railroads. It is true that, outside the context of a merger proceeding, Congress made no provision for permanent access unless the distance between the shipper and the second railroad is relatively short, i.e., at or near a terminal, or where reciprocal switching is feasible and in the public interest, or necessary for competitive service.

Accordingly, it has come to be thought that the Act's merger and emergency service provisions govern extended trackage rights, while the "Use of Terminal Facilities" provisions and 49 C.F.R. § 1144.5 can be invoked only for short-distance (under 50 miles) terminal trackage rights or reciprocal switching.

As discussed above, and further below, the Board has ample authority to order access as a remedy in merger cases, and it is not clear why a change from closed-door to open-door trackage rights should be unavailable to effectuate the principles of former Section 11103. If Formosa, TX were deemed a traditional terminal area, there can be little doubt that FPC would be entitled to access to BNSF service under former 49 U.S.C. § 11102. And changing the nature of trackage rights BNSF already has would

^{2/}(...continued)
that "terminal" is not defined in the Act, but should be interpreted liberally.

appear to be less intrusive than permitting BNSF to use UP tracks that it had not previously been able to use, particularly when that change can be accomplished in a manner that will ease congestion on UP's lines, as discussed below.

5. FPC's Request for BNSF Trackage Rights to Point Comfort as a Condition of the UP/SP Merger Should Be Granted

FPC is well aware that even in merger cases, conditions are not imposed by the Board merely on request. However, conditions, including trackage rights conditions, will be imposed where they are narrowly tailored to remedy merger-related harm and are operationally feasible, and where they "produce public benefits through reduction or elimination of the possible harm) outweighing any reduction of the public benefits produced by the merger."^{8/} FPC's request meets that test.

The issue of operational feasibility can be disposed of easily. FPC's Point Comfort facility is unusually, and perhaps uniquely, suited to implementation of the requested BNSF condition. BNSF already has closed-door trackage rights to Formosa, TX, where the interchange takes place between FPC and UP and would take place between FPC and BNSF.

As FPC Witness Bounds explains, FPC has constructed and is on the verge of expanding a state-of-the-art marshalling yard near the

^{8/} See generally Finance Docket No. 32549, Burlington Northern, Inc. et al, Decision No. 38, served August 23, 1995, aff'd, Western Resources v STB, 109 F.2d 782 (D.C. Cir. 1997). Accord, Union Pacific--Control--Missouri Pacific, 366 I.C.C. 462 (1982).

Formosa interchange which will be able to accommodate all necessary switching interchanges between FPC and any serving carrier or carriers. When completed, the new FPC yard facilities not only will be capable of furthering a switching interchange between FPC and BNSF that does not utilize or block the UP main line, but also will be capable of allowing switching by UP to take place exclusively off the UP main line. At present, UP switching of FPC blocks the main line for up to two hours. V.S. Bounds at 3.

What FPC is proposing has the potential to make a highly positive contribution to the alleviation of UP's vaunted infrastructure problems in the area. In the Board's February 25, 1998 Decision in Service Order No. 1518 and Ex Parte No. 573, Rail Service in the Western United States, the Board asserted (slip op. at 4) that "the rail system in Houston has limited capacity, antiquated facilities, and an inefficient configuration to cope with surges in demand. ... we are not optimistic that the Houston railroad service problems will be finally resolved for the long term until infrastructure is addressed in a meaningful way."

FPC's proposal will assist in addressing those infrastructure problems in two important, tangible respects. First, if FPC's marshalling yard is accessed with a new turnout from the UP main line, as FPC is willing to do under appropriate circumstances, any switching of FPC will be accelerated and the UP main line will be relieved of being blocked by a train while its engine is switching FPC. This will enable UP to make more efficient use not only of its line between Corpus Christi and Houston, but of engines and

crews, as well. This will also relieve some of the pressure on UP's yard facilities inasmuch as train configuration can be accomplished at FPC, if need be. Second, FPC's business will be able to grow without placing any additional strain on UP's already taxed service capabilities. BNSF will be able to handle more traffic, but UP's present volume should not be materially reduced. It can be anticipated that UP will continue to receive at least the same percentage of FPC's traffic as UP now receives to customer destinations that are captive to UP.

Finally, FPC has discussed this possibility with representatives of BNSF. BNSF regards the service as feasible, and is able and willing to provide it.

The proposed change in circumstances under which service would be provided to FPC will mean that FPC and its customers will no longer be helpless in the face of inadequate UP service. Moreover, where FPC has the choice of shipping via UP or BNSF, UP will be chosen where its service is more efficient. However, it will no longer be able to use its monopoly power to impose inefficient routings, supracompetitive rates, and anticompetitive rate structures on FPC.

Of course, UP will argue that the adverse impacts FPC has cited are not merger-related. UP has argued for months that its takeover of SP had nothing to do with the merger's aftermath. Like UP's projections of restored service, these protestations have become less credible as the months go by.

With particular respect to FPC, Witness Heinle points out that prior to the merger, FPC made extensive use of SP service, with _____ of Point Comfort shipments moving via SP. V.S. at 11. In addition, some of the FPC routings that have been hardest hit by the meltdown were routings over which FPC formerly enjoyed excellent joint line service via UP and SP. Id., and Appendix B-1.

FPC does not contend that UP foresaw its problems integrating SP lines into its system, and took no steps to prevent them. However, those problems were not inevitable. Other railroad mergers, including major mergers involving struggling lines, have produced nothing like the UP meltdown.

UP has also argued, and will doubtless argue again, that the answer to the problems is more money, and that the Board must not jeopardize UP's ability to look to its captive shippers for the funding needed to restore adequate service by improving the "infrastructure." But UP's monopoly power, and its desire for more through a reduction in major western railroads from three to two, played a significant role in the disastrous events of the last 10 months. As FPC witness Heinle puts it (V.S. at 10), "I find it difficult, if not impossible, to believe that the service failures and indifference exhibited by UP toward FPC would exist in a marketplace where UP faced effective competition."

At Point Comfort, the benefits of the UP/SP merger have been difficult to see, but the harm has been real and severe. The statute and case law fully support the relief FPC seeks through a

new merger condition. The BNSF's trackage rights at Formosa, TX should be changed from closed door to open door, and BNSF should be authorized to serve FPC's Point Comfort facility through an open switch at Formosa, TX.

VI. CONCLUSION

Under the statute, the regulations, case law, and the Rail Transportation Policy, FPC is entitled to the relief requested. UP is sure to oppose that relief, for its own selfish ends. But nothing in the Act suggests that monopoly railroads' revenue goals insulate anticompetitive conduct and inadequate service from regulatory scrutiny and remedial action.

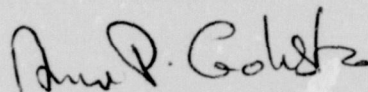
As a matter of law, FPC expects that UP will try to compartmentalize these comments to death, arguing that this section is inapplicable for one reason, and relief must be denied under that section for another. The Board must resist such hyper-analytical approaches. Congress did not intend to leave shippers like FPC remediless, and the Board can and should exercise its authority in such a way as to leave no gaps.

Access to Point Comfort for BNSF can be implemented easily and without disruption to existing UP or BNSF operations, thanks to FPC's extensive investment in rail facilities, including its spur track and marshalling yard. BNSF access is also the least intrusive remedy available to address the problems FPC has identified. Once UP has a competitor for FPC's business, its

restrictive practices and poor service will be corrected quickly, to the benefit of FPC, its customers, and both railroads.

For the foregoing reasons, FPC requests the Board to impose, as a condition of the UP/SP Merger, the right of BNSF to serve FPC at Formosa, TX, and relieve FPC of its contractual commitments to UP to the same extent as the Board granted or grants such relief to other shippers allowed to receive service from one or more railroads in addition to UP.

Respectfully submitted,



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Dated: July 8, 1998

G:\MCD\REDCOMMENTS

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 8th day of July, 1998.

Andrew P. Goldstein
Andrew P. Goldstein

PUBLIC VERSION -- REDACTED**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 prepared this statement with the assistance of my staff.

FPC is a manufacturer of chemicals and plastics components. It operates a manufacturing facility at Point Comfort, Texas, which is connected by a private industrial spur to the line of the Union Pacific Railroad Company ("UP" or "Union Pacific") at Formosa, TX. Formosa is approximately 140 rail miles southeast of Houston, TX, on the UP main line that extends between Houston, Algoa, and Corpus Christi. A map depicting the location of the FPC industrial spur and its point of connection with the UP main line is attached as Appendix A.

FPC's Point Comfort plant produces plastics components known as polypropelene ("PP"), polyethylene ("PE"), linear low density polyethylene ("LLDPE"), sodium hydroxide solution ("NAOH"), ethylene glycol ("EG") and polyvinyl chloride ("PVC"). The present output of this facility, if operating under normal conditions, is approximately ____ rail cars annually. By year 2000, annual shipments are scheduled to reach ____ cars.

FPC has a smaller facility at Baton Rouge, LA, but that facility does not manufacture PP, PE, or LLDPE or EG, and that NAOH

which it does produce is of different specification than the NAOH produced at Point Comfort. To the extent the FPC Baton Rouge facility produces PVC, it mainly serves markets in the east. Due to property and other physical constraints, there is no room to expand production of PVC at FPC's Baton Rouge facility, as there is at our Point Comfort plant. Accordingly, although FPC's Baton Rouge facility is served by UP and two other railroads (Illinois Central and Kansas City Southern), the Baton Rouge facility does not represent a true shipping alternative to FPC's Point Comfort facility. Most of the components manufactured at Point Comfort are not manufactured at Baton Rouge, and the one component which is manufactured at both plants, PVC, is not manufactured, and cannot be manufactured, at Baton Rouge in sufficient quantity to meet FPC's marketing needs and potential demand for that commodity.

FPC is heavily reliant on and, in my opinion, economically captive to UP at Point Comfort. That conclusion is supported by the following considerations.

A. No shipment can leave the Point Comfort facility by rail without moving via UP. Burlington Northern Santa Fe ("BNSF") was granted trackage rights, in Finance Docket No. 32760 (the "UP/SP Merger"), to operate over the UP line that passes through Formosa, but BNSF is not permitted to pick up or discharge local traffic. Similarly, in Service Order No. 1518, the Surface Transportation Board ("STB") authorized the Texas Mexican Railway ("Tex Mex"), an affiliate of The Kansas City Southern Railroad Company ("KCS"), to operate over the same UP line temporarily, but withheld from Tex

Mex the right to serve local industries such as FPC absent the approval of UP. Despite requests by Tex Mex for such approval, none was forthcoming and FPC receives no Tex Mex service. The Point Comfort and Northern Railroad ("PC&N"), a short line subsidiary or affiliate of Aluminum Company of America ("ALCOA"), extends from the UP main line near Lolita, TX, to Point Comfort and was, at one time, utilized by FPC before our company built its own industrial spur. However, PC&N connects only with UP, and it offers no rates except in conjunction with UP. FPC has not utilized the services of PC&N since FPC constructed its own industrial spur in 1994.

B. Of necessity, rail is the overwhelmingly predominant mode for the movement of FPC's Point Comfort production. With the exception of a limited export market, which normally accounts for approximately ___ percent of our PVC/PP/PE/LLDPE production, our customers require and demand bulk deliveries. Bulk transportation of our products, which are manufactured and shipped in granular, powder, and liquid form, greatly circumscribes the use of motor vehicles because our customers, like customers throughout the plastics manufacturing industry in general, are not equipped to take or prefer not to take bulk delivery by truck.

During the past year, when UP service became intolerably poor (as I discuss below in more detail), FPC did make some use of bulk trucks and what are known as "super sacks." These are plastic sacks which can be loaded with up to 2,000 pounds of granular product and carried in a highway trailer. However, super sacks are

vehemently disfavored by our customers. Super sacks require additional equipment to off-load them from trucks, require additional off-loading personnel and costs, entail higher packaging costs and inventory requirements, produce higher freight costs, and, in most cases, can be off-loaded in dry weather only. Where FPC did substitute super sack delivery for rail delivery in order to avert situations where customers were about to run out of product on account of poor UP service, FPC subsequently received and paid bills from our customers for the resulting extra costs. We could not continue to have our customers incur those additional costs and hope to remain competitive with other plastic component manufacturers who can deliver by rail.

Most of FPC's shipments travel considerable distances. Over _____ of our U.S. markets served from Point Comfort are in the states of California and Arizona. Another substantial part of our Point Comfort output goes to points that are reached via gateways at New Orleans, St. Louis, Chicago and other distant points. Motor vehicle transportation, in addition to all of its other disabilities described above, cannot compete economically with rail transportation over these long distances. Indeed, bulk trucks are simply not in the marketplace in sufficient quantity to replace rail effectively due to load limitations, storage limitations and loss considerations. One rail car is equal to four bulk trucks.

Water transportation is not a practical or economically viable alternative to rail transportation. Accordingly, although Point Comfort is on the Gulf of Mexico, it would be far too risky to load

bulk products into barges at Point Comfort, unload the product at another point, perhaps Houston, and reload the product into rail cars. I know of no manufacturer of plastics components that ships its product in that manner.

Being captive to UP has proven to be harmful and expensive to FPC. UP service to FPC has displayed the indifference expected of a monopolist assured that its captive customer has no effective alternatives to reach essential markets. UP rates to FPC likewise reflect UP's market dominance and are a foundation for UP's anticompetitive demands that Formosa favor UP with a far greater percentage of Formosa's traffic than is warranted by marketplace considerations.

Service. I will initially address the service problems which FPC has experienced since mid-1997. These have taken many forms.

For several weeks, UP simply parked its trains on FPC's private siding, without FPC's permission. Doing so blocked the FPC siding and interfered with the movement of cars by FPC's own locomotive. At times, production at our facility was brought to a virtual standstill by these practices. They were ultimately discontinued by UP toward the end of 1997.

An extremely damaging UP service failure has been the sustained deterioration of transit times for both loaded and empty cars. Attached as Appendix B-1 through 12 are a series of graphs which illustrate representative transit times between Formosa and various UP destinations or gateway interchanges between October 1996 and April 1998. Outbound days on these graphs represent the

movement of loaded cars; inbound days represent the movement of empty cars. All of FPC's shipments move in private cars. Therefore, UP service failures have a significant impact whether they occur to the movement of outbound loaded cars or to inbound empty cars.

Appendix B shows that, while there has been some, mainly sporadic, improvement in UP's service since the fall of 1997, UP's performance in the movement of loaded and empty cars in most corridors and instances remains significantly worse than it was in or prior to the fall of 1996. Formosa to El Paso, TX, a heavily utilized UP route, consistently takes 30 to 50 percent more time, round trip. Transit times on UP between Formosa and New Orleans, an important gateway to the east, are up by 70 to 100 percent. East St. Louis, IL, another UP gateway, has transit times up by 25-40 percent. The California destinations of Stockton (see Appendix B-1), South Fontana, City of Commerce and Compton (for which there are no graphs but with which I and my staff are personally familiar from a shipping standpoint) are important FPC destinations which are experiencing nearly double the 1996 performance level. The experience shown on these graphs is generally typical of the system-wide deterioration of UP transit times FPC has experienced since the UP/SP Merger. There is no telling when these conditions on UP will improve.

Poor rail service has a sharply negative effect on our customers' inventory control and costs, subjecting customers either to uncertainty and risk if they simply wait for UP to deliver, or

to assured additional expense if they keep a supply of plastic components on hand as a buffer against shipment delays. FPC customers on the west coast have requested FPC to route via BNSF, to the fullest possible extent, but FPC is not able to do so much of the time because UP's rate and contract structure holds most traffic to UP even where competitive options otherwise would be available, such as turning traffic over to BNSF at Houston (or at Formosa, as FPC here proposes), instead of Sweetwater, TX. While poor UP service continues, FPC is called upon to soften the hardships inflicted on our customers by postponing, from __ days after shipment to __ days, the date when we are entitled to receive payment for goods shipped. These postponements have been costly to FPC.

UP malfunctions not merely in the line-haul movement of loaded and empty cars, but also in the placement of empty cars for loading. FPC operates _____ private cars dedicated to its Point Comfort operations. UP marshalls inbound empties at its Angleton Yard, (located approximately 70 miles east of Formosa) and Bloomington Yard, (located approximately 15 miles west of Formosa). Daily car location reports received by FPC constantly inform us of empty FPC cars accumulating at both yards. UP yard personnel and supervisors advise FPC that UP lacks adequate power and crews to move the empties from Angleton and Bloomington Yards to Formosa. Consequently, we receive no switching service for days on end (often going from Thursday or Friday to Monday or Tuesday without a switch), and the service we get is sporadic, unpredictable, and

arbitrary in the sense that there appears to be no rhyme or reason to the number of cars placed by UP in any given trip or the number of days per week that we will receive service.

As a result of UP line-haul and switching failures, FPC has incurred substantial costs and finds that its ability to compete effectively is threatened.

First, our customers understandably are disturbed when products they have ordered do not arrive when anticipated. The plastics components supplied by FPC are used in a variety of applications that are integrated into production lines of one type or another. The unavailability of our products causes our customers to carry large inventory at a high cost, curtail production, or lose their own customers. FPC is but one of many, many companies producing plastics components, and competition in the marketplace is fierce. Since UP's service failures began, FPC has been called upon in many instances to find alternate methods of delivering product to customers, including the super sacks previously discussed.

We have incurred added costs, as described above, plus market price erosion that we must credit to customers due to long transit times which are unreasonably delayed from the shipping date. UP has failed to acknowledge this business cost or any other consequence of delayed shipments as its responsibility and FPC has had to absorb the cost in order to maintain our customers. In one instance alone, FPC has been asked to make concessions of more than

\$_____ to a customer that suffered added expense as a result of delayed UP service.

Second, a major cost increase which FPC has experienced as a result of deteriorated UP service has been the added expense of our private car fleet, which FPC operates, with the permission of UP, because UP, like other railroads, has concluded that it is best for industry to supply its own plastics cars. That private fleet is sized based on anticipated cycle times per car. If cycle times increase by, say, 50 percent, that means we are experiencing a 50 percent deterioration in car utilization. The economic consequences of that deterioration are that our monthly car leasing and operating costs -- our investment in cars -- are now worth 50 percent less (or 70 percent, if there has been a 70 percent deterioration in car utilization). Stated somewhat differently, a \$500 per month car lease payment now entails \$250 per month of pure waste if there is a 50 percent drop in car utilization. And, in order to compensate for the unavailability of cars, we have had to augment our fleet with additional cars. Since UP's service problems began, following its acquisition of SP, FPC has incurred approximately \$_____, in added private car costs and expenses.

FPC has compiled and calculated various monetary damages flowing from poor UP service. Beginning in November 1997, we filed claims with UP for those damages. To date, the total damages claimed by FPC are \$_____. UP, however, has ignored or refused to pay each of these claims, except for one \$24,000 claim on which UP paid about \$_____. Although UP has not formally responded to

most of our claims, it has indicated to FPC that it does not regard itself liable for consequences of delayed or poor service.

Particularly inasmuch as my duties with FPC entail primary responsibility for the sale and distribution of FPC's plastics components, making me thoroughly familiar with the workings of a competitive marketplace, I find it difficult, if not impossible, to believe that the service failures and indifference exhibited by UP toward FPC could or would exist in a marketplace where UP faced effective competition. Certainly, were FPC to treat its customers the way FPC has been treated by UP, we would be out of business. The duration of UP's service failures places them beyond the point where FPC any longer can maintain to our customers that a cure is around the corner. Our customers have stopped believing our repetitions of the UP promises of improved service, and we have no faith that UP can or will restore pre-merger service levels in the foreseeable future.

Without improved rail service, FPC will soon lose customer base. We have several competitors served by railroads other than UP, and those competitors are in a position to provide more reliable deliveries of product over routes only partially involving UP to customers that FPC can reach only via UP exclusively. Moreover, some of our competitors have the distinct and significant cost advantage of efficient rail service, which holds their private car and other transportation costs to a minimum, in comparison with our private car costs, which have been bloated by UP's inefficient operations. If FPC continues to receive unreliable, inefficient,

and costly rail service from UP, we cannot continue to compete effectively with those who can deliver the same products predictably and at efficient prices to the same customer base as FPC seeks to serve.

In my opinion, it is no coincidence that UP's service failures followed closely on the heels of its acquisition of Southern Pacific Transportation Company ("SP"). FPC was served by UP prior to the merger and experienced nothing in the way of service problems similar to what has occurred since the merger.

To those who maintain that UP's service difficulties reflect simply an inevitable strain on SP rail infrastructure that would have occurred despite any merger, I can only say that this company saw no evidence of any such strain prior to the merger, and we used SP routings for approximately 16 percent of our Point Comfort shipments. In fact, some of the greatest transit time increases we have experienced since the UP/SP Merger, such as those to Stockton, CA (see Appendix B-1) and to Lodi, Fontana, City of Commerce and Compton, CA, have occurred over what used to be highly efficient UP/SP routes which performed reliably and efficiently prior to the merger.

Other Anticompetitive Conduct. Union Pacific manifests the characteristics of a monopolist not merely through its indifferent service and refusal to respond to legitimate claims regarding poor service, but also through the economic terms which it exacts from FPC. To explain how UP exerts this influence, I should begin with a brief explanation of UP's common carrier, or "tariff," rates.

We have requested the economic consulting firm of L.E. Peabody & Associates to analyze certain UP rates and variable costs. The Verified Statement of Charles L. Carroll of L.E. Peabody is being submitted to the Board by FPC. As that statement indicates, UP's common carrier rates to major UP destinations and gateways are in the range of 232 percent to 425 percent of variable costs, extremely high mark-ups which are, in my judgment, indicative of UP's market power and dominance over FPC's traffic.

The high level of UP's common carrier tariff rates forced FPC to try to obtain lower rates through contracting with UP, in order to remain competitive with other plastics manufacturers. In 1994 and 1995, FPC in fact entered into a series of contracts with UP providing for rates lower than UP's common carrier charges. Even under contract, however, FPC's rates demonstrate UP market dominance, with many contract rates continuing to exceed ____ percent of variable costs. FPC's contracts with UP provide no point-to-point, or specific local, proportional, or combination rates to UP gateways. Instead, the contracts provide a ____ percent reduction from the tariff rate should there be no joint contract rate over such gateways. Even with this reduction, UP's rates to major gateways exceed ____ percent of its variable costs to those gateways, a conclusion substantiated by the data contained in Mr. Carroll's verified statement.

FPC was required to accept anticompetitive service terms in order to obtain contractual rate reductions. Contract MP-C-31940 was entered into between FPC, UP, and Missouri Pacific Railroad

Company ("MP") effective September 1, 1994 to expire on August 31, 2000. Contract 31940 contains a clause typical of other FPC contracts with UP:

There are certain limited exceptions to this _____
_____ requirement. Outside of those exceptions, if the _____
_____ is not met, FPC must _____

_____.

These requirements tie FPC to UP in those instances where UP is not the most efficient carrier. _____ of FPC's shipments from Point Comfort move to UP-served customers. But for UP's contractual demand that _____ of FPC's shipments be _____, FPC could route some or all of the remaining _____ of its shipments via other carriers whose routes or operations are more efficient or in any event not less efficient. BNSF and UP have equidistant routes from Houston to the New Orleans, Memphis, and St. Louis gateways. As Mr. Carroll's verified statement points out, on a unit cost basis, the BNSF system is more efficient, by five percent, than the UP system. Over equidistant routes, BNSF should actually be more cost-efficient than UP. Mr. Carroll also demonstrates that the BNSF route to Sweetwater, TX, an important interchange on FPC's

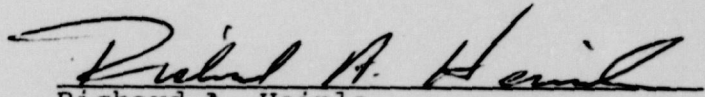
westbound California traffic, is 11 percent shorter than the UP route which FPC is required to use. Were it not for contractual requirements that UP be given traffic even where it is not the most efficient carrier, there would be ample instances where carriers other than UP would be FPC's logical choice to replace UP long-haul routings.

FPC has been planning a major expansion of its Point Comfort facilities. We expect to almost double our shipments from Point Comfort by the year 2000, provided that we are competitive in the marketplace. We are planning to make major track alterations on our private siding, doubling our track capacity approximately 4,000 feet from the UP main line turnout. As explained by FPC Witness Ronnie Bounds, it is perfectly feasible for BNSF, or any other carrier, to serve FPC directly. If that occurs, FPC should be able to obtain, through competition, improved rail service and relief from the inefficient and anticompetitive demands imposed by UP as a result of its present monopoly over FPC traffic.

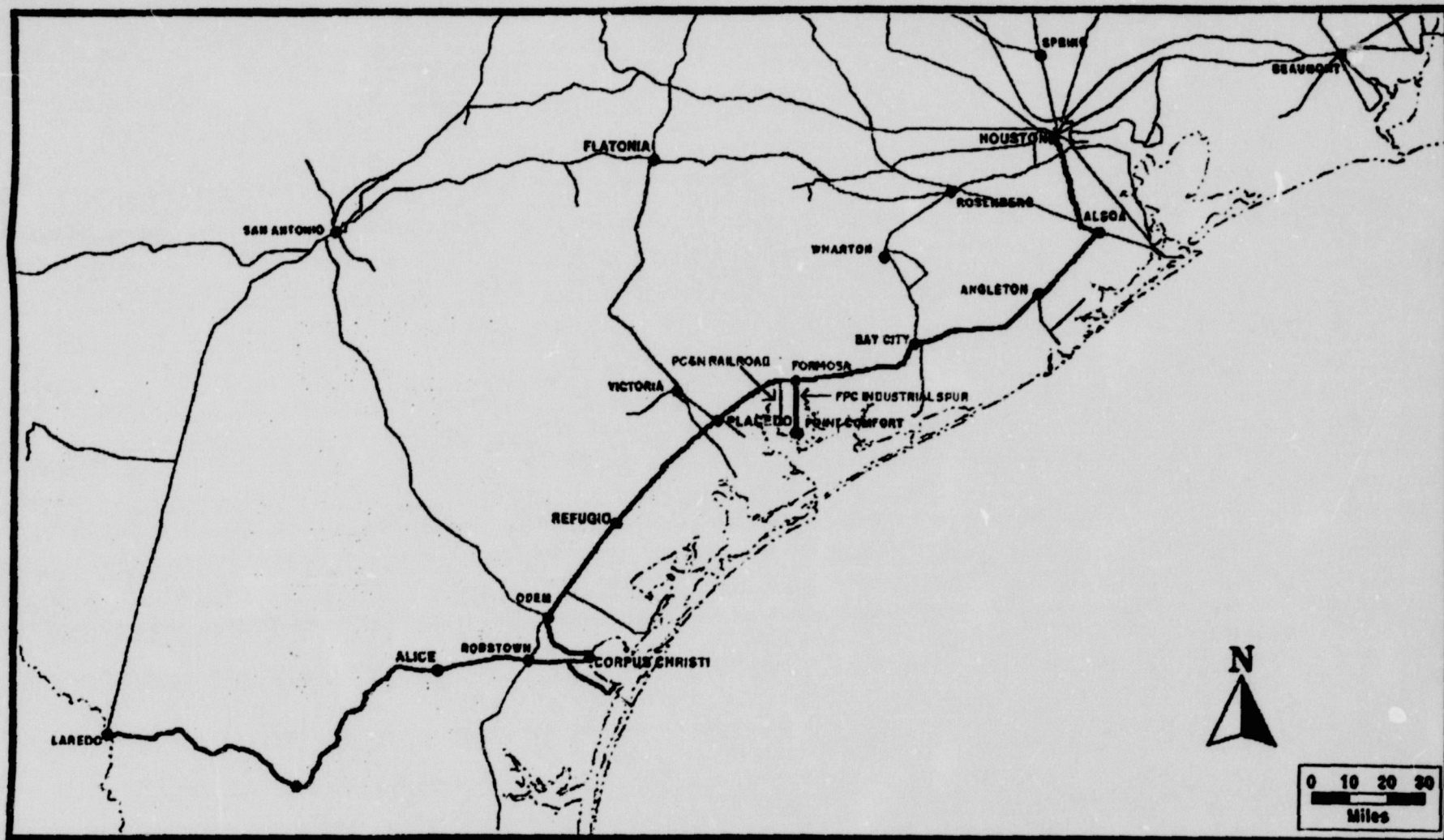
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VERIFICATION

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

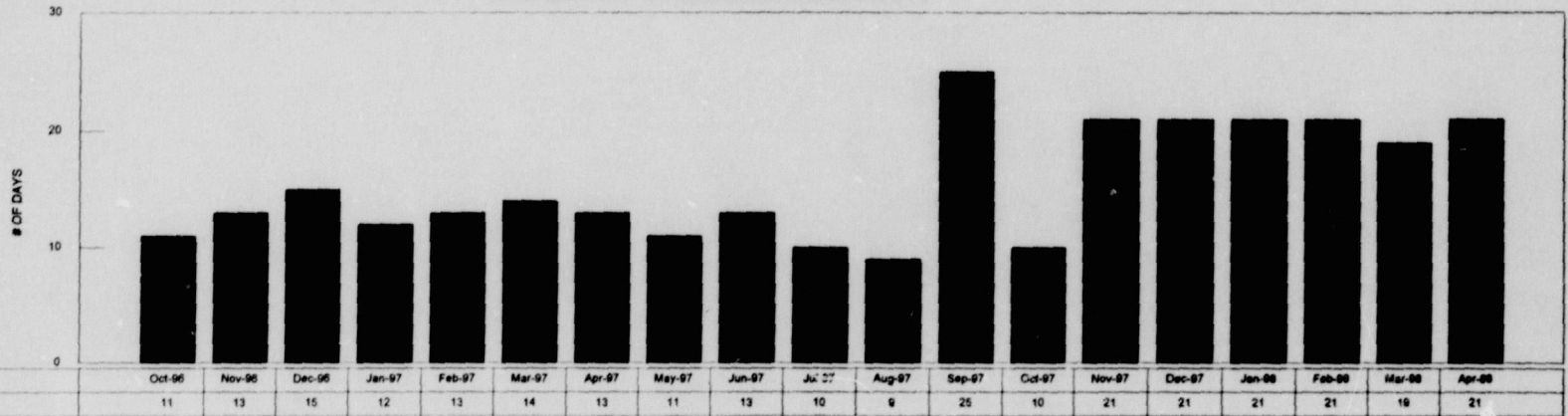

Richard A. Heinle

Dated: July 6, 1998



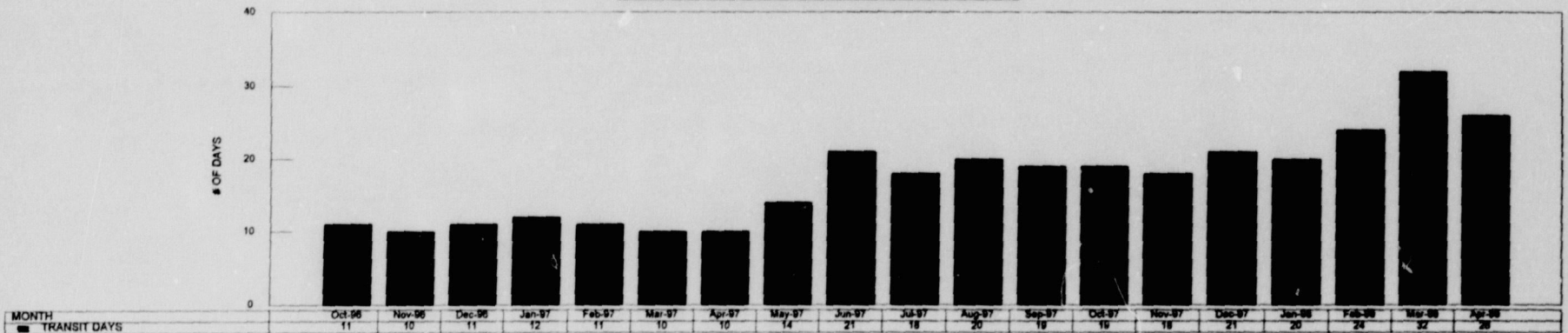
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ORIGIN: FORMOSA, TX

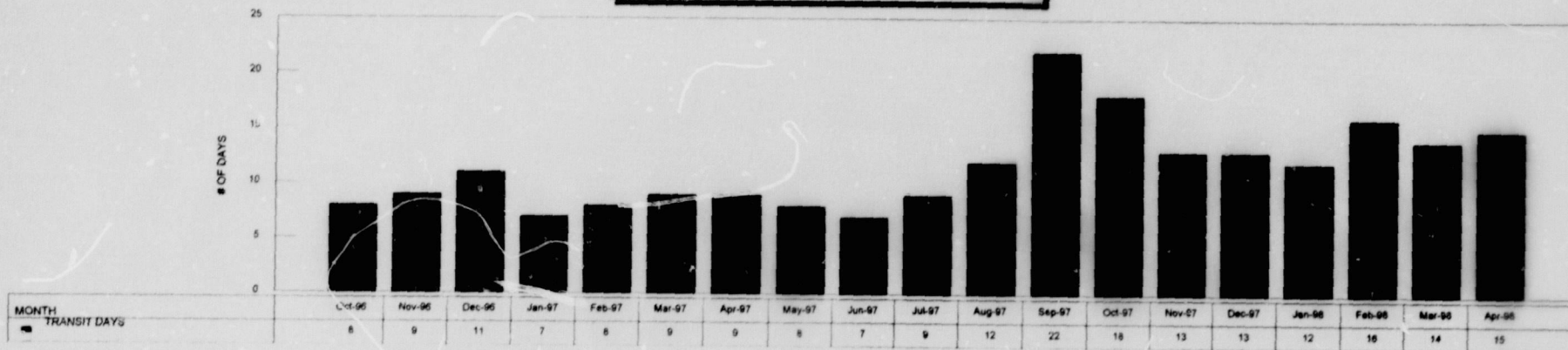


INTBOUND DAYS FROM STOCKTON, CA

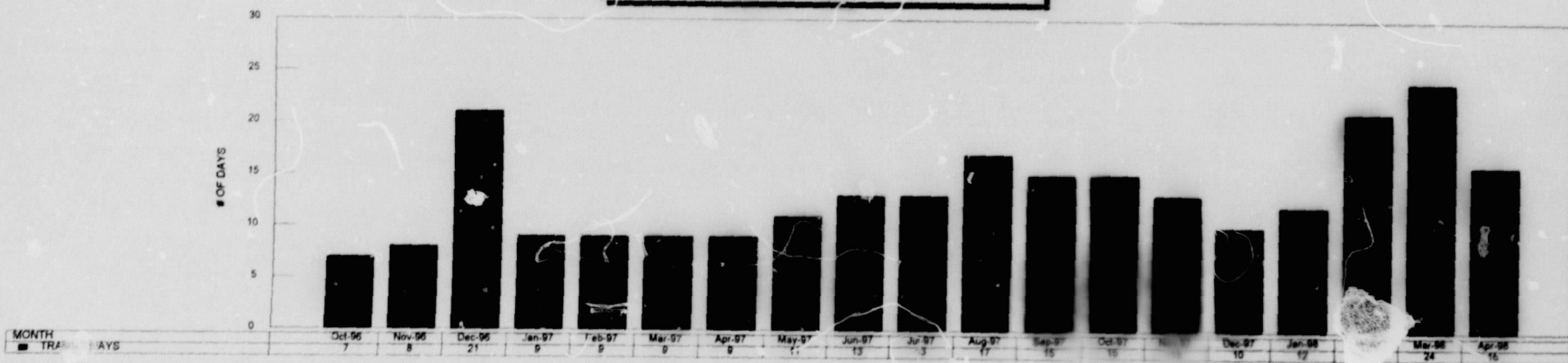
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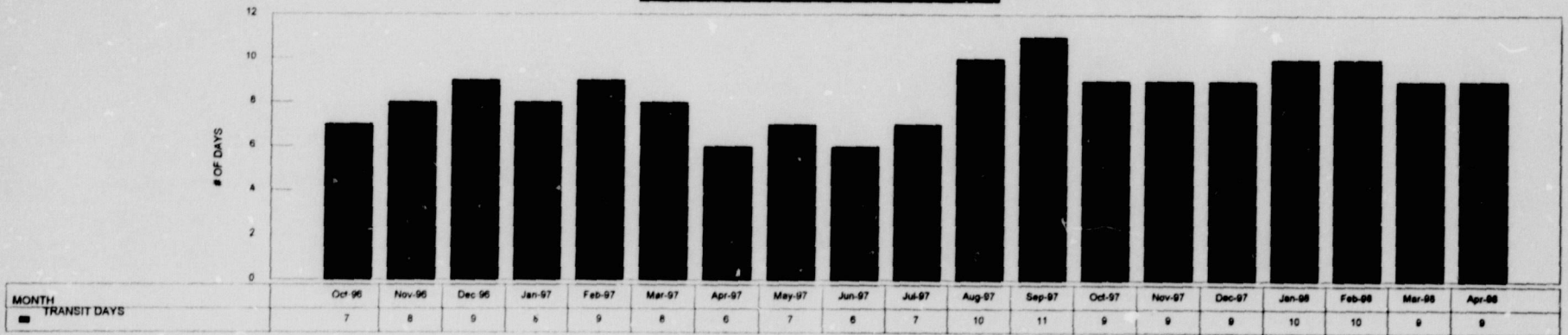
OUTBOUND DAYS TO COUNCIL BLUFF, IA ORIGIN: FORMOSA, TX



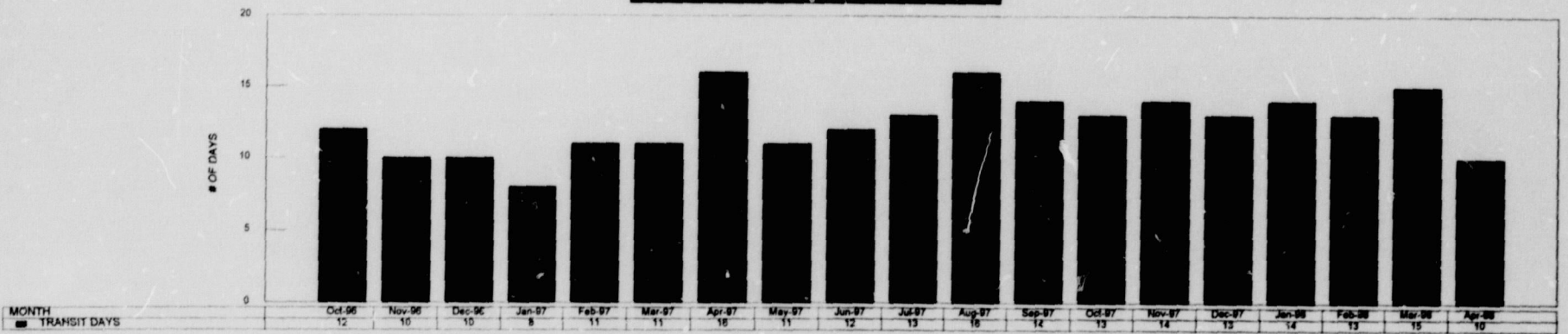
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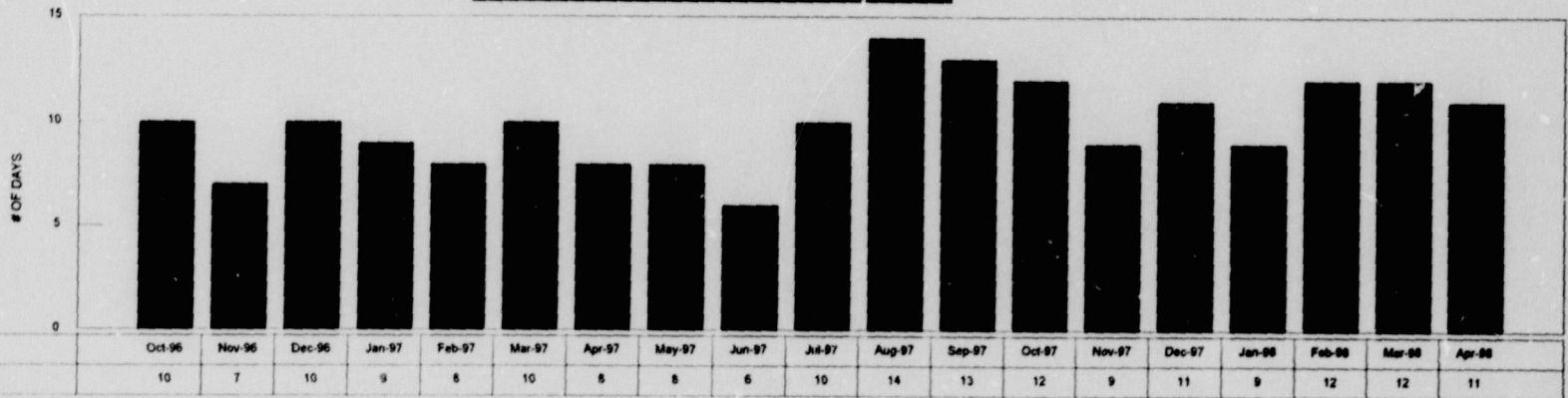
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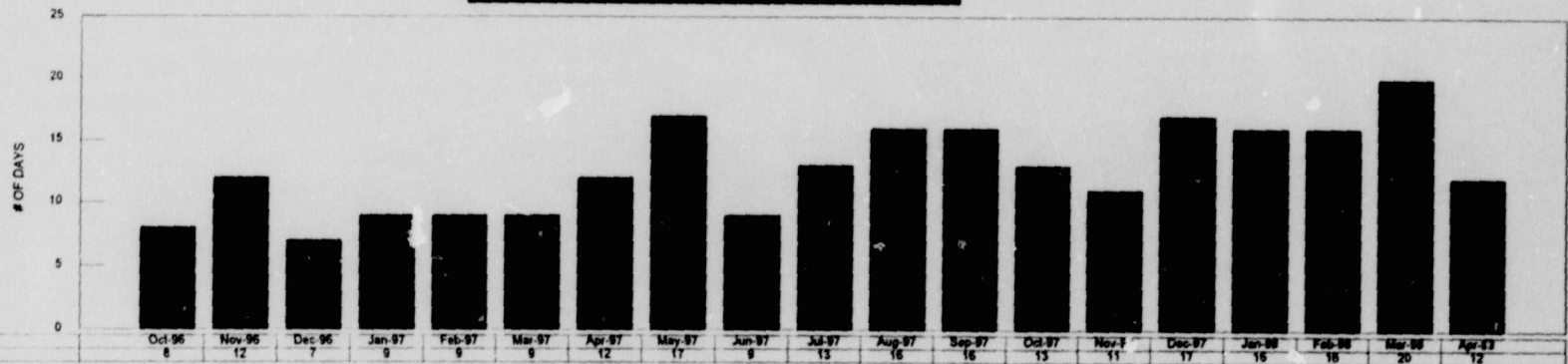
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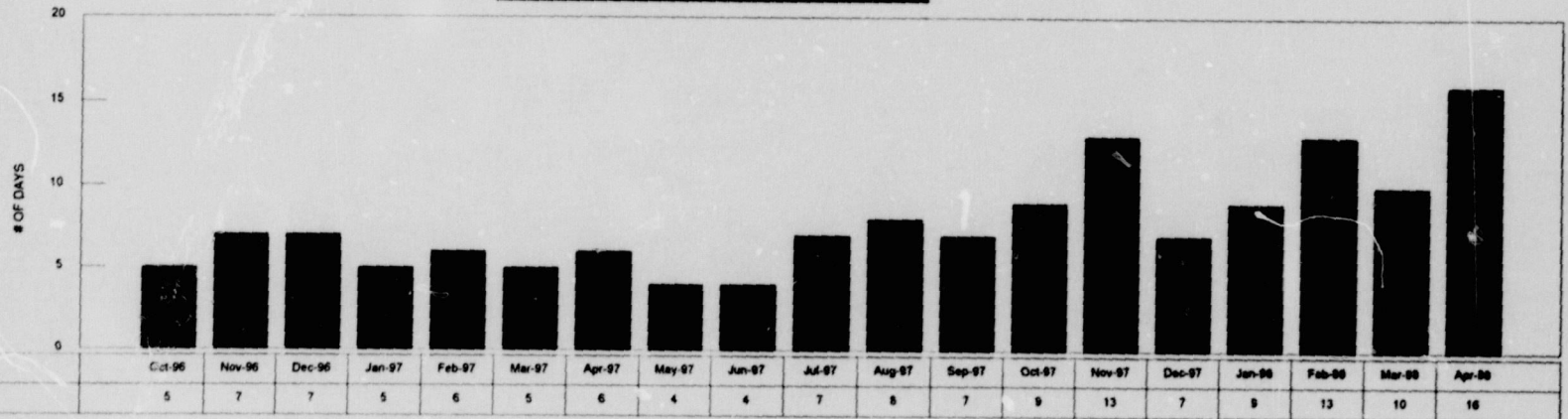
OUTBOUND DAYS TO KANSAS CITY, MO ORIGIN: FORMOSA, TX



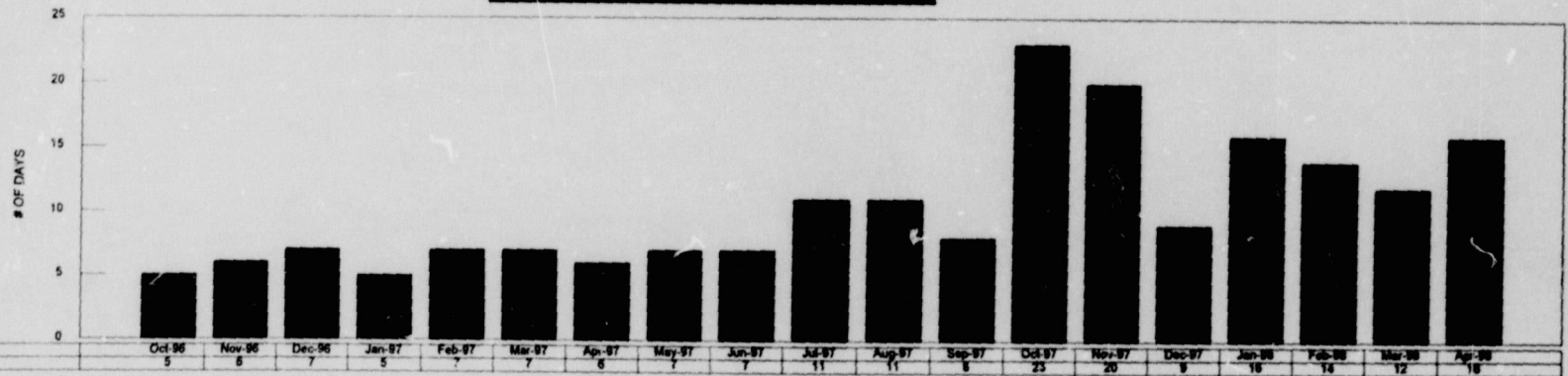
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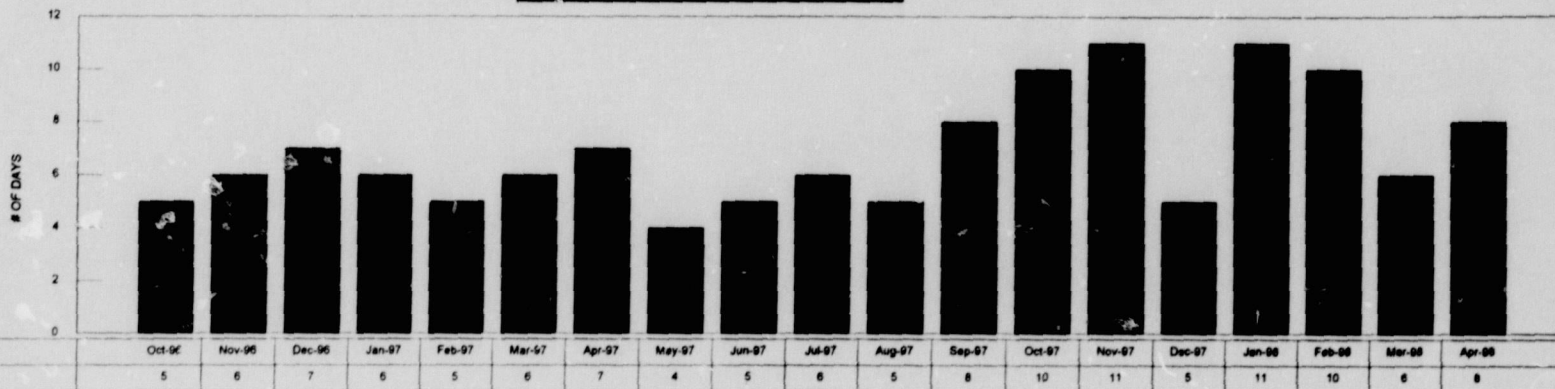
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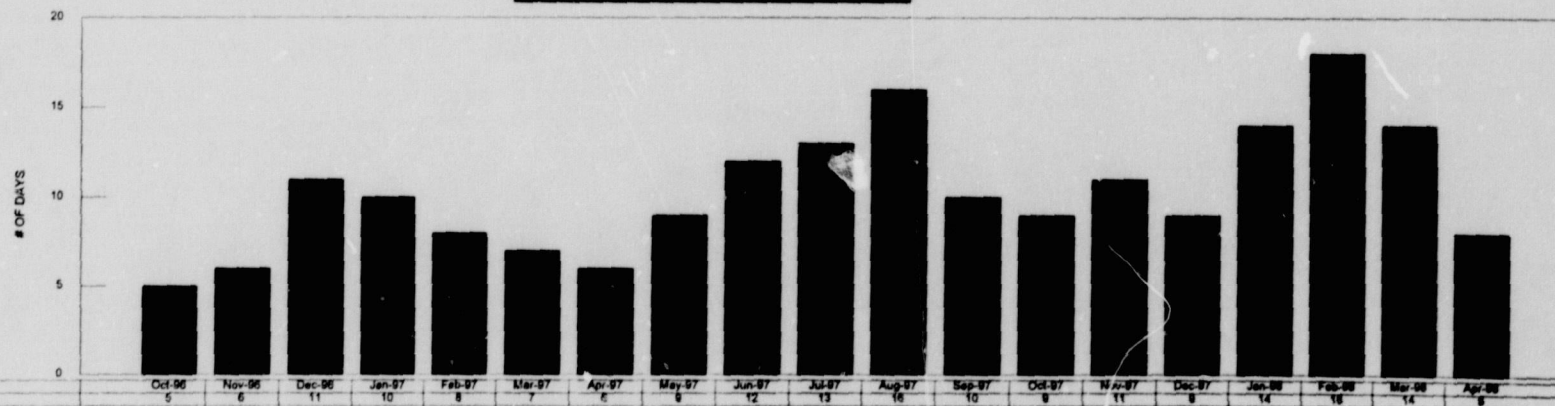
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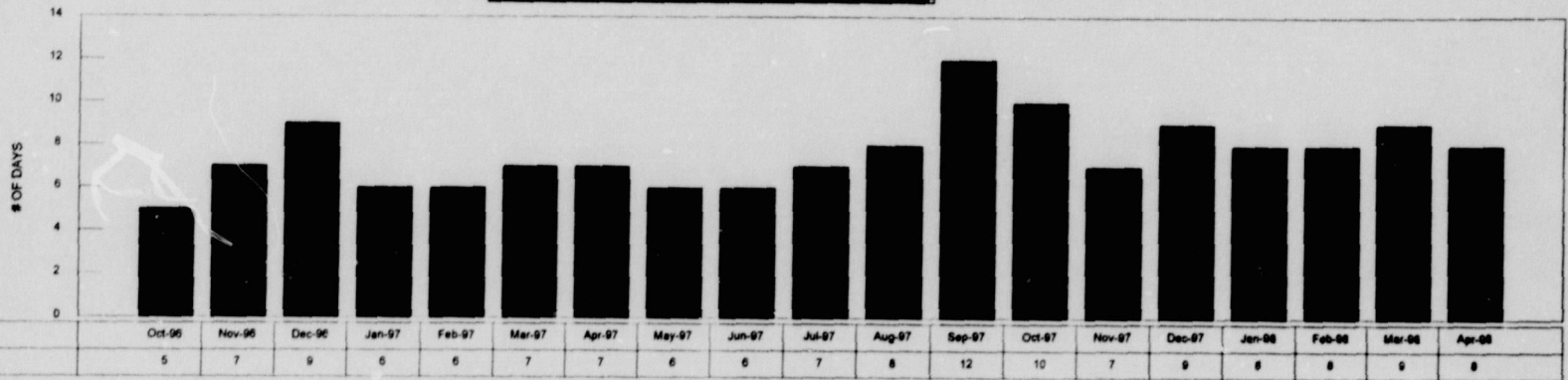
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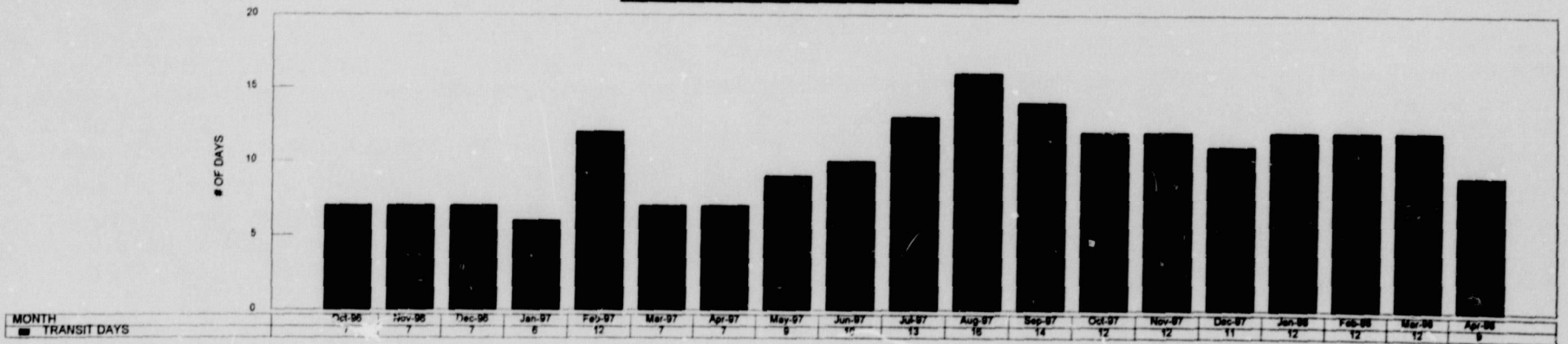
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OUTBOUND DAYS TO E. ST. LOUIS, IL ORIGIN: FORMOSA, TX



INBOUND DAYS FROM E. ST. LOUIS, IL ORIGIN: FORMOSA, TX



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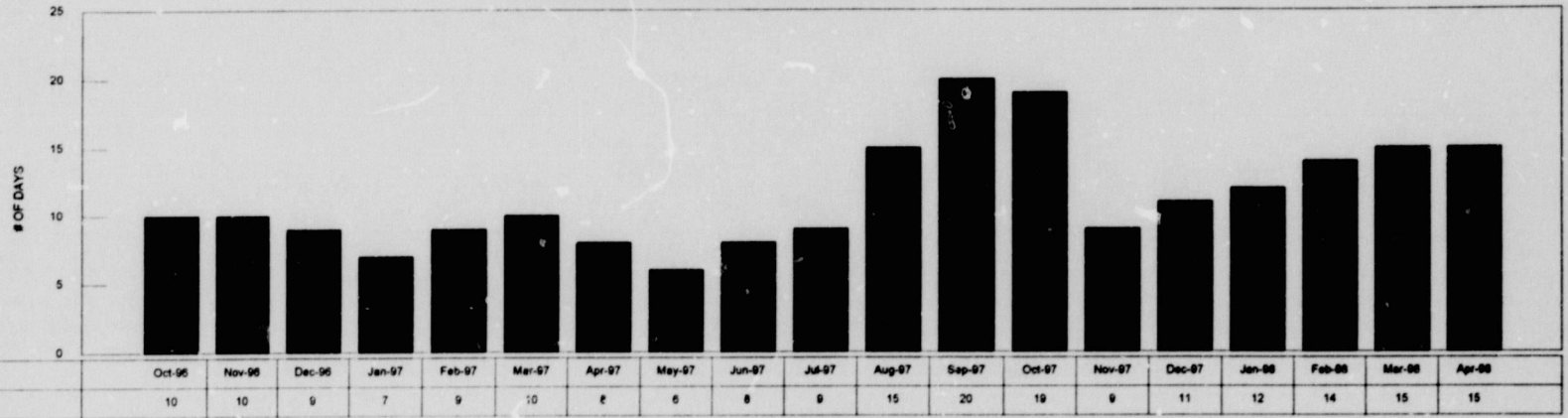
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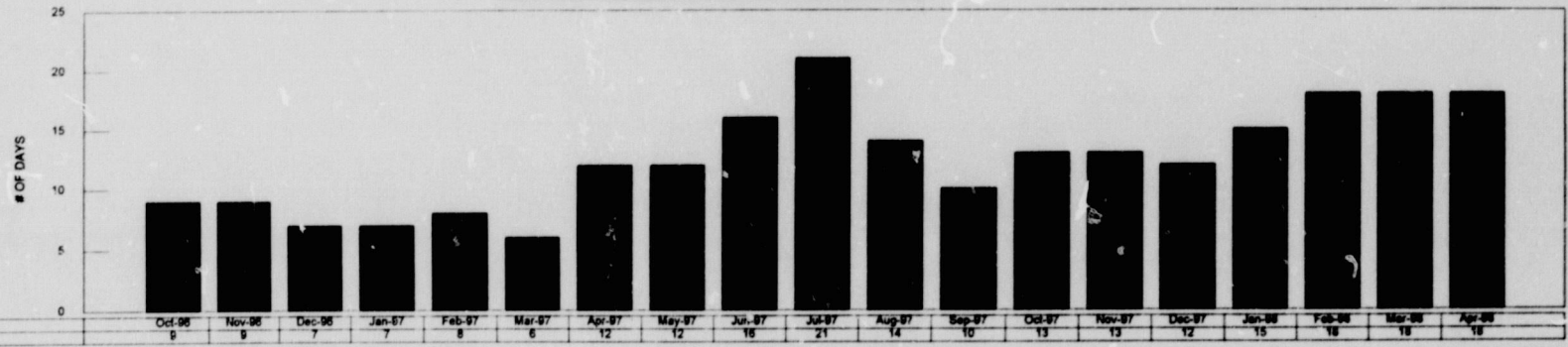
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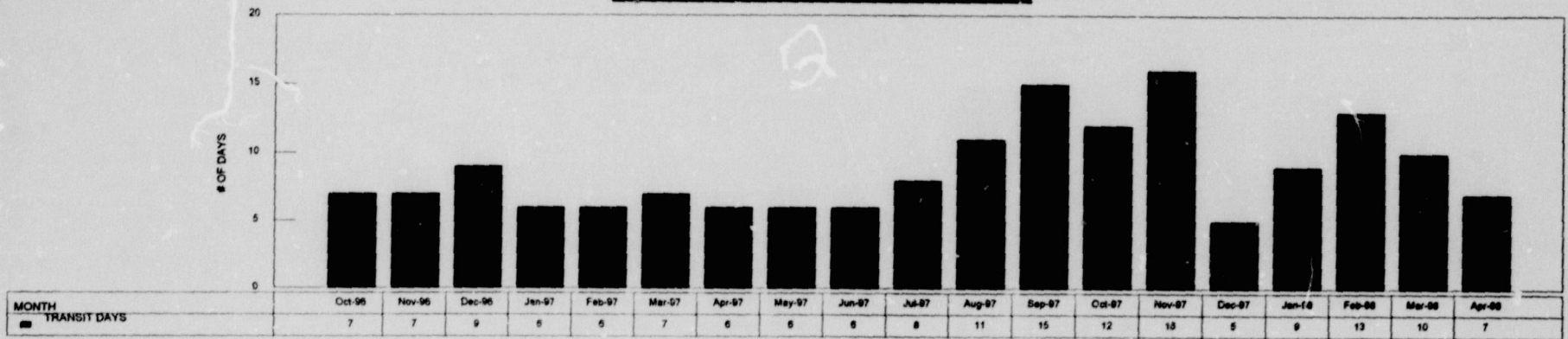
OUTBOUND DAYS TO EL PASO, TX ORIGIN: FORMOSA, TX



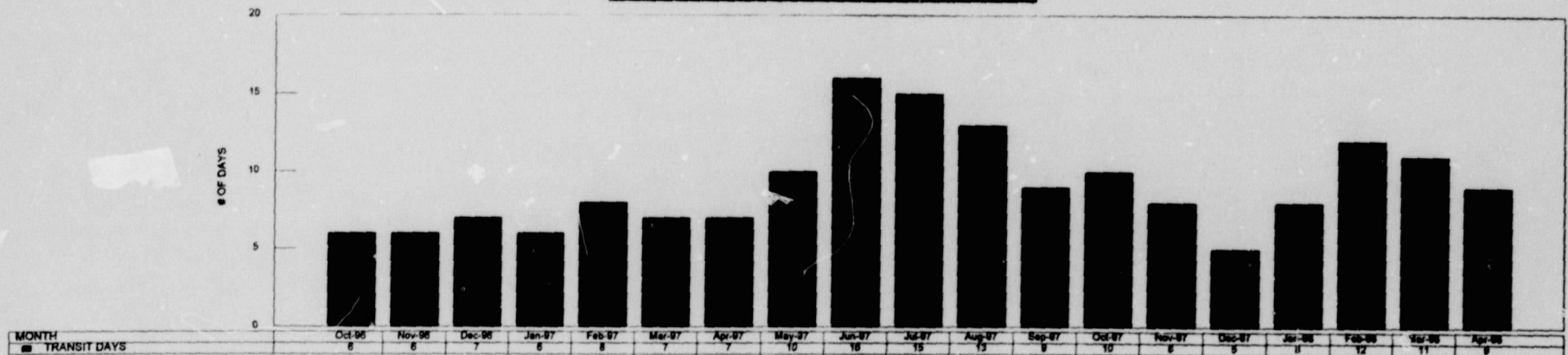
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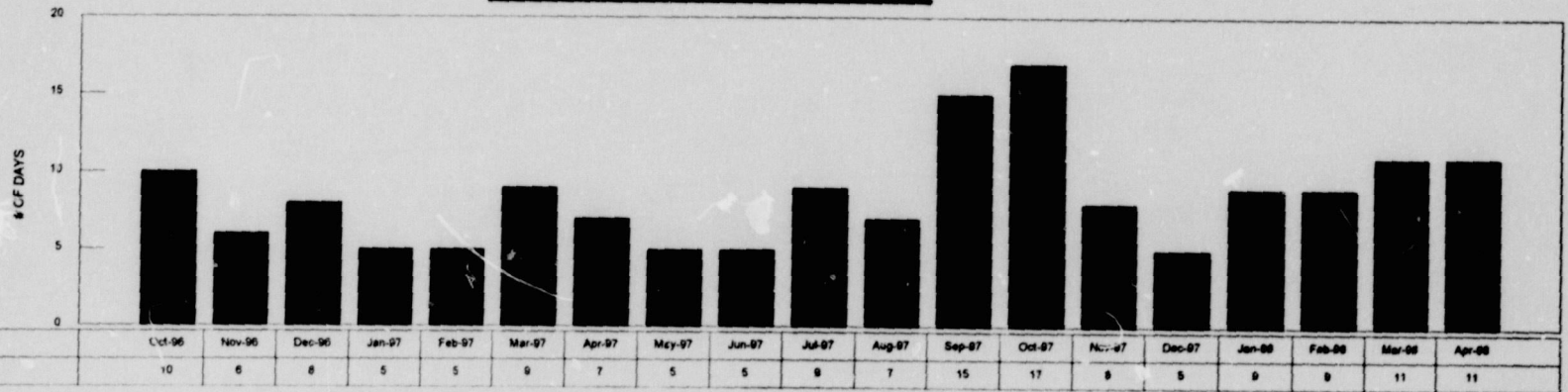
OUTBOUND DAYS SWEETWATER, TX ORIGIN: FORMOSA, TX



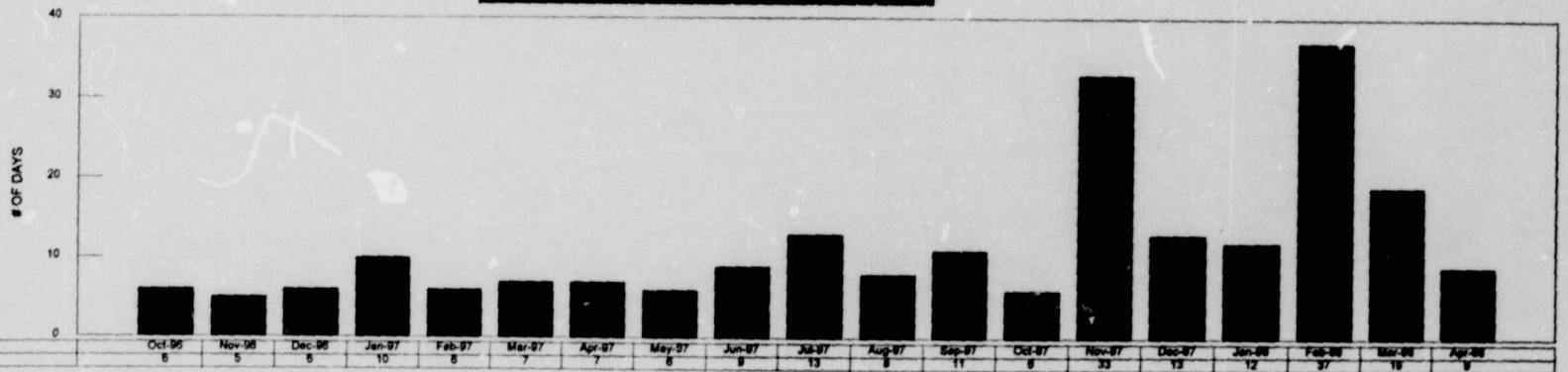
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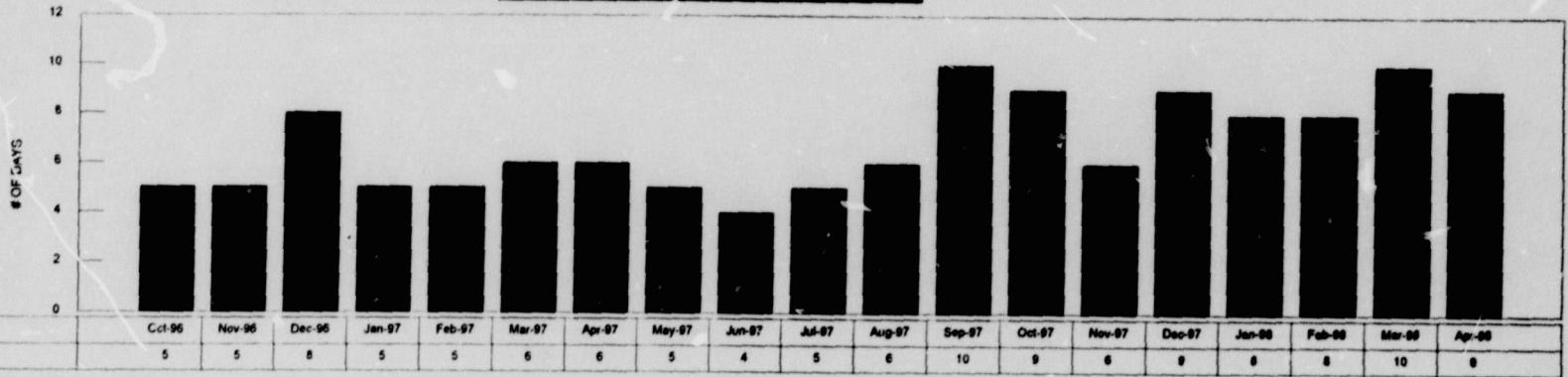
OUTBOUND DAYS TO FT. WORTH, TX ORIGIN: FORMOSA, TX



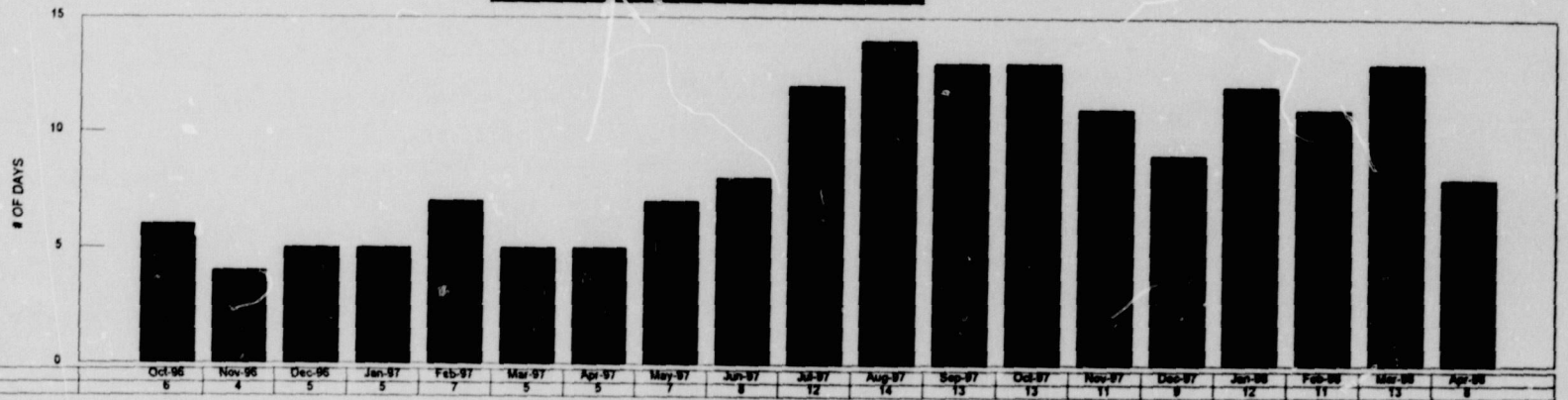
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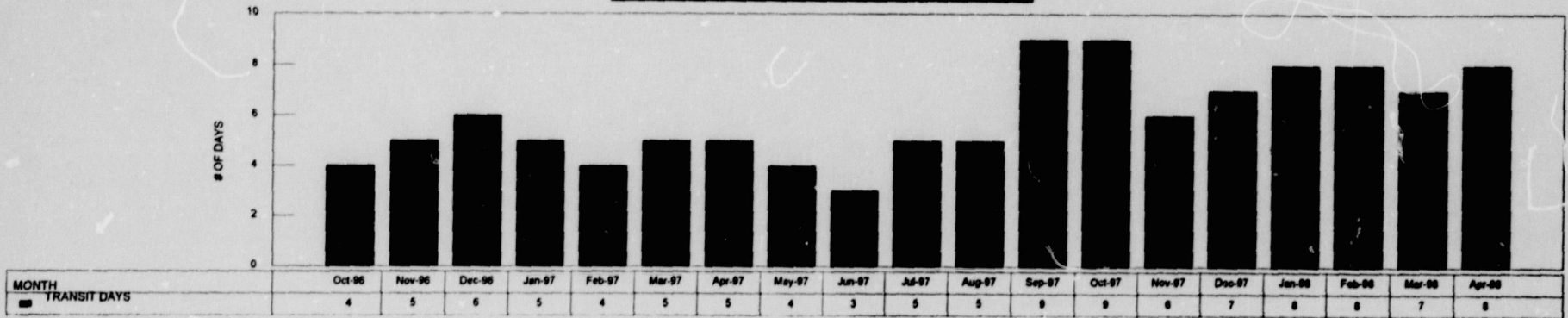
OUTBOUND DAYS TO MEMPHIS, TN
ORIGIN: FORMOSA, TX



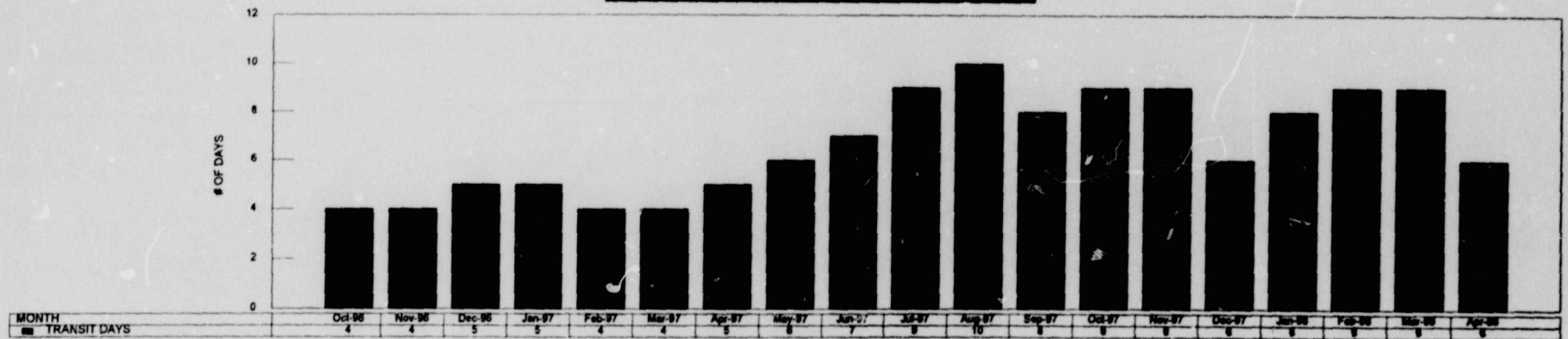
INBOUND DAYS FROM MEMPHIS, TN
ORIGIN: FORMOSA, TX



OUTBOUND DAYS TO NEW ORLEANS, LA ORIGIN: FORMOSA, TX



INBOUND DAYS FROM NEW ORLEANS, LA ORIGIN: FORMOSA, TX



VERIFIED STATEMENT

OF

CHARLES L. CARROLL

My name is Charles L. Carroll. I am a Vice President of the economic consulting firm of L.E. Peabody & Associates, Inc. My office address is 1501 Duke Street, Suite 200, Alexandria, Virginia 22314. My qualifications are attached as Appendix 1 to this statement.

I have been asked by Formosa Plastics Corporation, U.S.A. ("FPC") to make certain calculations. These include determining the revenue to variable cost ratio ("r/vc") for selected movements of FPC traffic at the current tariff rates. Additionally, I have been requested to determine the r/vc for movements to selected gateways applicable to FPC traffic. I have also been asked to compare the cost characteristics of the Union Pacific Railroad ("UP") and the Burlington Northern Santa Fe ("BNSF").

I. MOVEMENTS TO SELECTED DESTINATIONS

For purposes of my analysis of FPC traffic moving to selected UP destinations where there are FPC customers, I have relied on the Surface Transportation Board's ("STB") 1996 URCS cost calculations for the individual carriers involved with each of the FPC movements. These URCS costs for 1996 have been indexed, applying the STB's indexing methodology, to the third quarter of 1998 ("3Q98"). The cost analysis for each of these movements was prepared using the STB Phase III URCS cost methodology. Additionally, since these movements were all single car traffic, each was also costed applying the STB developed make whole adjustments. For purposes of this analysis, actual route of movement mileages were used. The car type applicable was used (covered hoppers), as well as the actual mileage allowance typically applicable to FPC traffic (0.546 cents per loaded mile). I have used mileages obtained from UP timetables. Relying on this data as well as rates provided for these movements by FPC (at the 190,000 lb level), I have calculated the cost for each of the movements as well as the revenue to variable cost ratio applicable to these movements. It should be noted that a detailed study of these movements was not performed. The results of a comprehensive analysis of this traffic would show even higher r/vc ratios since actual efficiencies in handling this traffic would be reflected. Table 1 shows the results of these calculations. The underlying calculations behind these cost analyses are shown in Attachments 1 through 5.

Table 1
FORMOSA PLASTICS CORPORATION
TARIFF RATE TO SELECTED UP DESTINATIONS

Formosa Texas To: <u>Destination</u> (1)	<u>Railroad</u> (2)	<u>Variable Cost</u> (3)	<u>Tariff Rate</u> (4)	<u>R/VC Ratio</u> (5)
1. Stockton CA.	UP	\$1.96	\$5.18	264.29%
2. Fontana CA.	UP	\$1.63	\$5.18	317.79%
3. Tacoma WA.	UP	\$2.63	\$6.09	231.56%
4. Houston TX.	UP	\$0.28	\$1.19	425.00%
5. City of Commerce CA.	UP	\$1.65	\$5.18	313.94%

II. MOVEMENTS TO GATEWAYS

I was also requested to determine the revenue to variable cost ratio of movements to individual UP gateways applicable to FPC traffic. Relying on the same methodology as used for Table 1, I have calculated the costs for each of these movements to gateways and developed the revenue to variable cost ratio for these movements relying on tariff rates provided by FPC. The tariff rates relied on are for movements of 190,000 pounds. Table 2 shows the results of this analysis. The underlying details for these calculations are shown in Attachments 6 through 11.

Table 2				
<u>FORMOSA PLASTICS CORPORATION - TARIFF RATES TO GATEWAYS</u>				
Formosa Texas To:				
<u>Destination</u>	<u>Railroad</u>	<u>Variable Cost</u>	<u>Tariff Rate</u>	<u>R/vC Ratio</u>
(1)	(2)	(3)	(4)	(5)
1. New Orleans LA.	UP	\$0.49	\$1.98	404.08%
2. Memphis TN.	UP	\$0.72	\$2.13	295.83%
3. St Louis MO.	UP	\$0.88	\$3.03	344.32%
4. Chicago IL.	UP	\$1.10	\$3.64	330.91%
5. Kansas City MO.	UP	\$0.81	\$2.74	338.27%
6. Sweetwater TX.	UP	\$0.59	\$1.97	333.90%

III. COMPARISON OF UP AND BNSF COST FOR A TYPICAL MOVEMENT

FPC Plastics requested that I compare the average cost of a similar movement on the BNSF and the Union Pacific. For purposes of this analysis, I relied on the STB's URCS phase III costing methodology and costed a hypothetical 1,000 mile movement on each of these carriers.

No adjustments were made to these costs to reflect other than system average costs with the exception of using an empty return of 2.0. With a greater level of information on these movements a more accurate cost analysis could be performed. The unit costs applied were for the year 1997 and included the one-time congestion and merger related costs which artificially overstate each of the railroads unit costs. The results of this analysis are shown in Attachments 12 and 13.

For a movement of 1,000 miles on BNSF, the average cost per CWT is \$.711. By comparison for an identical movement on the Union Pacific the average cost is \$.747. This analysis suggests that for a comparable move (1,000 miles in this example) the BNSF's cost of providing service is only 95% of the cost of a similar movement on the Union Pacific. Assuming a more detailed analysis of these moves it is expected that a greater differential in cost would be determined.

IV. COMPARISON OF UP AND BN ROUTE OF MOVEMENT

I have also been asked to compare the efficiency (on a mileage basis) of the movement on the Union Pacific from Formosa, TX to Sweetwater, TX with the movement to the same destination on the BNSF from Houston, TX. The movement from Formosa, TX through Houston, TX to Sweetwater, TX on Union Pacific is 611.3 miles. By comparison, the movement to Sweetwater on the BNSF from Houston is 408 miles plus the additional 142 miles from Formosa to Houston. The total movement involving the BNSF is 550 miles compared to 611.3 miles on the Union Pacific. The Union Pacific movement is approximately 11% longer than the same move utilizing the BNSF between Houston and Sweetwater.

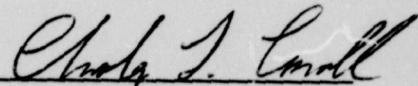
In a comparable analysis, I have evaluated the movement to Stockton, CA. For this analysis, I have evaluated the mileage related to the movement involving the Union Pacific as a local carrier to Stockton and the Union Pacific to Houston with the BNSF for the movement beyond to Stockton. The movement to Stockton, CA on the UP as the local carrier involves 2,188 miles. By comparison, the movement to Houston on the UP with the movement beyond to Stockton on the BNSF involves a total of 2095.9 miles or a difference of approximately 92 miles. The shorter distance on the combined UP/BNSF route as well as the fact that based on the STB's URCS costs, the BNSF movement is less costly indicates that the route involving the BNSF is more efficient from both a mileage and a cost point of view.

VERIFICATION

COMMONWEALTH OF VIRGINIA)

CITY OF ALEXANDRIA)

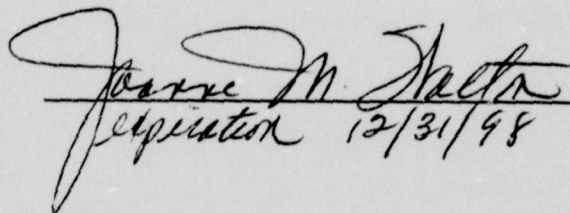
CHARLES L. CARROLL, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.



Charles L. Carroll

Sworn to and subscribed
before me this 7th day
of July, 1998.

Witness my hand and official seal.


Joanne M. Shalton 12/31/98

STATEMENT OF QUALIFICATIONS
FOR
CHARLES L. CARROLL

My name is Charles L. Carroll. I am a Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's office are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314.

I am a graduate of The American University from which I obtained a Masters Degree in Business Administration with emphasis in Marketing and Transportation. My studies included concentrated work in the areas of accounting, economics, and financial analysis. I am a licensed Interstate Commerce Commission Practitioner.

I have been involved in the field of transportation economics and analysis for over 20 years. This work has required the development, supervision, and coordination of studies related to transportation and the associated costs and economics underlying these problems. These studies required the design of systems necessary to collect and compile data in order to develop the statistical, economic, and financial foundation required to analyze the various problems. I have participated in the direction and organization of economic studies and prepared testimony and reports for various clients. These clients were shippers of: general freight commodities, chemicals, fertilizer, and coal. In addition, I have provided similar testimony and studies for trade associations, state governments, and other agencies related to transportation and the underlying economics and costs involved. During the preparation of these studies I became familiar with the operating and accounting procedures utilized in the normal course of business

by the railroad, motor carrier, and the water carrier industries. I also became familiar with the various formulas employed by the Interstate Commerce Commission and its successor The Surface Transportation Board in the development of variable cost for common carriers. This is particularly true in relation to the use of Rail Form A as it is applied to the development of the cost characteristics for rail transportation. In addition, I have been involved with the analysis of the Uniform Rail Costing System ("URCS") and have provided studies of this methodology as well as testimony involving the use of this methodology.

I have submitted testimony in most of the recent general proceedings before the Interstate Commerce Commission. Some of the proceedings in which I have submitted testimony include: Ex Parte No. 335, Cost Standards for Railroad Rates; Ex Parte No. 394, Cost Ratio for Recyclables; Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines -- Nationwide; Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures; Ex Parte No. 399, Cost Recovery Percentage; Docket No. 38849 (Sub-No. 1), Elimination of Preservation of Records Rules; Ex Parte No. 393 (Sub-No. 1), Standards for Railroad Revenue Adequacy; and, Ex Parte 347 (Sub-No. 2), Rate Guidelines -- Non-Coal Proceedings.

I have also submitted testimony for individual shippers in relation to disputes between shippers and carriers in proceedings related to rate reasonableness. Included among the proceedings in which I have participated are: Docket No. 37246, Increased Rates on Coal -- Midwestern Railroads, August 1979; Docket No. 37362, General Increase, R.M.M.T.B, January 1980; I&S M-30235F, General Increase, Middle Atlantic Conference, April 1980; Docket No. 37928S, Union Electric Company v. Burlington Northern Railroad Company; I&S 9256, Joint Line Route Cancellation on Soda Ash By Union Pacific Railroad Company; Docket No. 37636.

Tennessee Valley Authority v. Louisville and Nashville Railroad Company; Docket No. 38055S, Eli Lilly and Company v. Union Pacific Transportation Company, et al.; Docket No. 38279S, Detroit Edison Company v. Consolidated Rail Corporation, et al.; Docket No. 37038 Bituminous Coal -- Hiawatha, Utah to Moapa, Nevada; and, Docket No. 37409 Aggregate Volume Rate on Coal -- Acco, Utah to Moapa, Nevada. In the course of developing this testimony, I have spent substantial time inspecting railroad as well as motor carrier facilities in order to analyze the handling characteristics of various commodities. These studies were used to determine the traffic and operating characteristics for specific movements and were the underlying inputs to the testimony presented.

I have participated in negotiations with carriers in order to develop agreed upon (contract) rates for movements of various commodities. I have also participated in traffic studies and economic analyses related to proposed abandonments and submitted testimony in various proceedings associated with these abandonment applications. A partial listing of my testimony in abandonment proceedings includes: AB 3 (Sub-No. 57), Missouri Pacific Railroad Company -- Abandonment -- Osage County, Kansas; AB 43 (Sub-No. 143), Illinois Central Gulf Railroad -- Abandonment -- In Thomas and Colquitt Counties, Georgia; AB 12 (Sub-No. 106), Southern Pacific Transportation Company -- Abandonment -- In Houston, Harris County, Texas; and, AB 8 (Sub-No. 8), The Denver & Rio Grande Western Railroad Company -- Abandonment -- In Utah, Sanpete and Sevier Counties, Utah.

I have presented evidence before the Commission related to the economics of transportation and the development of the costs of handling various commodities including: chemicals, fertilizers, general commodities, and coal. The clients for whom I have submitted

testimony include, among others: The Fertilizer Institute, Chemical Manufacturers Association, The Edison Electric Institute, Florida Rock Industries, Arizona Public Service Company, Utah Public Service Commission, Tennessee Valley Authority, International Minerals & Chemical Corporation, Detroit Edison Company, Westinghouse Electric Corporation, U.S. Clay Producers Traffic Association, National Association of Recycling Industries, Atlantic City Electric Company, Eli Lilly and Company, Columbia Nitrogen Corporation, The Salt River Project, W.R. Grace & Company, Farmland Industries, Inc., Nevada Power Company, General Electric Corporation, National Steel Corporation, Wisconsin Public Service Corporation, Baltimore Gas & Electric Company, Public Service Electric & Gas Company of New Jersey, The National Small Shipments Traffic Conference, The Drug & Toilet Preparation Traffic Conference, and, Huron Valley Steel Company.

I have also submitted testimony in the Federal Courts on behalf of various clients. Testimony was submitted on behalf of the Internal Revenue Service in Docket No. 18745-82, Carland, Inc. v. Commissioner. I testified in MCI Telecommunications Corp. v. Jefferson Marine Towing, Inc., E.D.La. C.A. No. 88-4857. I have recently submitted testimony related to Motor Carrier cases in In Re: Transcon Lines, Leonard L. Gumport, Chapter 7 Trustee of the Bankruptcy Estate of Transcon Lines, v. Winfield Industries, dba Winfield Corp., a California corporation before the United States Court Central District of California, Case No. CV 91 1418 IH and before the United States Bankruptcy Court, Western District of Louisiana, Monroe Division in In Re: Steve D. Thompson Trucking, Inc., Debtor; Billy R. Vining, Trustee, Plaintiff, v. General Electric Company, Defendant, Case No. 89 BK-12115. I have also recently submitted testimony in Docket No. 40398, General Binding Corporation--Petition

For Declaratory Order--Certain Rates and Practices of Advance-United Expressways, Inc. before
the Interstate Commerce Commission.

I am a member of the Association of Transportation Law, Logistics and Policy,
Transportation Research Forum and the American Marketing Association.

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO STOCKTON, CA
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$360.53	\$147.96	\$314.40	\$822.89
2. Locomotive unit mile cost	360.60	86.66	81.74	529.00
3. Crew wages	480.50	0.00	0.00	480.50
4. Train mile - other	30.50	0.41	0.13	31.04
5. Station clerical	37.07	0.00	0.00	37.07
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	96.87	10.79	32.20	139.86
8. Switching - interchange	0.00	0.00	0.00	0.00
9. Switching - I&I	132.46	14.76	44.03	191.25
10. Private car rental	1,194.65	0.00	0.00	1,194.65
11. Loss & damage	<u>19.88</u>	<u>0.00</u>	<u>0.00</u>	<u>19.88</u>
12. Variable cost per carload	\$2,724.07	\$260.58	\$472.50	\$3,457.15
13. ICC Make-Whole Add-On	<u>290.63</u>	<u>0.00</u>	<u>0.00</u>	<u>290.63</u>
14. Total Variable Cost Including Make-Whole Add-On	\$3,014.70	\$260.58	\$472.50	\$3,747.78
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$2,994.80	\$258.86	\$469.38	\$3,723.04
17. Variable cost per ton - 4Q95	\$31.52	\$2.72	\$4.94	\$39.18
18. Variable cost per cwt	\$1.58	\$0.14	\$0.25	\$1.96

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO FONTANA, CA
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$293.47	\$120.44	\$255.92	\$669.83
2. Locomotive unit mile cost	293.87	70.63	66.61	431.11
3. Crew wages	392.29	0.00	0.00	392.29
4. Train mile - other	24.90	0.34	0.11	25.35
5. Station clerical	37.07	0.00	0.00	37.07
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	96.87	10.79	32.20	139.86
8. Switching - interchange	0.00	0.00	0.00	0.00
9. Switching - I&I	107.82	12.02	35.83	155.67
10. Private car rental	972.43	0.00	0.00	972.43
11. Loss & damage	<u>19.88</u>	<u>0.00</u>	<u>0.00</u>	<u>19.88</u>
12. Variable cost per carload	\$2,249.61	\$214.22	\$390.67	\$2,854.50
13. ICC Make-Whole Add-On	<u>254.38</u>	<u>0.00</u>	<u>0.00</u>	<u>254.38</u>
14. Total Variable Cost Including Make-Whole Add-On	\$2,503.99	\$214.22	\$390.67	\$3,108.88
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$2,487.46	\$212.81	\$388.09	\$3,088.36
17. Variable cost per ton - 4Q95	\$26.18	\$2.24	\$4.09	\$32.51
18. Variable cost per cwt	\$1.31	\$0.11	\$0.20	\$1.63

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO TACOMA, WA
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$495.64	\$203.41	\$432.22	\$1,131.27
2. Locomotive unit mile cost	495.04	118.98	112.22	726.24
3. Crew wages	658.20	0.00	0.00	658.20
4. Train mile - other	41.78	0.56	0.18	42.52
5. Station clerical	37.07	0.00	0.00	37.07
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	96.87	10.79	32.20	139.86
8. Switching - interchange	0.00	0.00	0.00	0.00
9. Switching - I&I	182.11	20.28	60.52	262.91
10. Private car rental	1,642.37	0.00	0.00	1,642.37
11. Loss & damage	<u>19.88</u>	<u>0.00</u>	<u>0.00</u>	<u>19.88</u>
12. Variable cost per carload	\$3,679.97	\$354.02	\$637.34	\$4,671.33
13. ICC Make-Whole Add-On	<u>363.66</u>	<u>0.00</u>	<u>0.00</u>	<u>363.66</u>
14. Total Variable Cost Including Make-Whole Add-On	\$4,043.63	\$354.02	\$637.34	\$5,034.99
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$4,016.94	\$351.68	\$633.13	\$5,001.76
17. Variable cost per ton - 4Q95	\$42.28	\$3.70	\$6.66	\$52.64
18. Variable cost per cwt	\$2.11	\$0.19	\$0.33	\$2.63

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO HOUSTON, TX
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$23.40	\$9.60	\$20.41	\$53.41
2. Locomotive unit mile cost	25.15	6.05	5.70	36.90
3. Crew wages	37.11	0.00	0.00	37.11
4. Train mile - other	2.35	0.03	0.01	2.39
5. Station clerical	37.07	0.00	0.00	37.07
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	96.87	10.79	32.20	139.86
8. Switching - interchange	0.00	0.00	0.00	0.00
9. Switching - I&I	8.60	0.96	2.86	12.42
10. Private car rental	77.53	0.00	0.00	77.53
11. Loss & damage	<u>19.88</u>	<u>0.00</u>	<u>0.00</u>	<u>19.88</u>
12. Variable cost per carload	\$338.97	\$27.43	\$61.18	\$427.58
13. ICC Make-Whole Add-On	<u>108.41</u>	<u>0.00</u>	<u>0.00</u>	<u>108.41</u>
14. Total Variable Cost Including Make-Whole Add-On	\$447.38	\$27.43	\$61.18	\$535.99
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$444.43	\$27.25	\$60.78	\$532.45
17. Variable cost per ton - 4Q95	\$4.68	\$0.29	\$0.64	\$5.61
18. Variable cost per cwt	\$0.23	\$0.01	\$0.03	\$0.28

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO CITY OF COMMERCE, CA
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$297.91	\$122.26	\$259.79	\$679.96
2. Locomotive unit mile cost	298.29	71.69	67.62	437.60
3. Crew wages	398.15	0.00	0.00	398.15
4. Train mile - other	25.27	0.34	0.11	25.72
5. Station clerical	37.07	0.00	0.00	37.07
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	96.87	10.79	32.20	139.86
8. Switching - interchange	0.00	0.00	0.00	0.00
9. Switching - I&I	109.46	12.19	36.38	158.03
10. Private car rental	987.17	0.00	0.00	987.17
11. Loss & damage	<u>19.88</u>	<u>0.00</u>	<u>0.00</u>	<u>19.88</u>
12. Variable cost per carload	\$2,281.08	\$217.27	\$396.10	\$2,894.45
13. ICC Make-Whole Add-On	<u>256.79</u>	<u>0.00</u>	<u>0.00</u>	<u>256.79</u>
14. Total Variable Cost Including Make-Whole Add-On	\$2,537.87	\$217.27	\$396.10	\$3,151.24
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$2,521.12	\$215.84	\$393.49	\$3,130.44
17. Variable cost per ton - 4Q95	<u>\$26.54</u>	\$2.27	\$4.14	\$32.95
18. Variable cost per cwt	\$1.33	\$0.11	\$0.21	\$1.65

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO NEW ORLEANS, LA
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$79.58	\$32.66	\$69.40	\$181.64
2. Locomotive unit mile cost	80.13	19.26	18.16	117.55
3. Crew wages	107.84	0.00	0.00	107.84
4. Train mile - other	6.85	0.09	0.03	6.97
5. Station clerical	18.54	0.00	0.00	18.54
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	48.43	5.39	16.09	69.91
8. Switching - interchange	26.64	2.97	8.85	38.46
9. Switching - I&I	29.24	3.26	9.72	42.22
10. Private car rental	263.72	0.00	0.00	263.72
11. Loss & damage	8.89	0.00	0.00	8.89
12. Variable cost per carload	\$680.87	\$63.63	\$122.25	\$866.75
13. ICC Make-Whole Add-On	<u>71.95</u>	<u>0.00</u>	<u>0.00</u>	<u>71.95</u>
14. Total Variable Cost Including Make-Whole Add-On	\$752.82	\$63.63	\$122.25	\$938.70
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$747.85	\$63.21	\$121.44	\$932.50
17. Variable cost per ton - 4Q95	\$7.87	\$0.67	\$1.28	\$9.82
18. Variable cost per cwt	\$0.39	\$0.03	\$0.06	\$0.49

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO MEMPHIS, TN
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$125.23	\$51.39	\$109.20	\$285.82
2. Locomotive unit mile cost	125.54	30.17	28.46	184.17
3. Crew wages	167.86	0.00	0.00	167.86
4. Train mile - other	10.66	0.14	0.05	10.85
5. Station clerical	18.54	0.00	0.00	18.54
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	48.43	5.39	16.09	69.91
8. Switching - interchange	26.64	2.97	8.85	38.46
9. Switching - I&I	46.01	5.12	15.29	66.42
10. Private car rental	414.96	0.00	0.00	414.96
11. Loss & damage	<u>13.55</u>	<u>0.00</u>	<u>0.00</u>	<u>13.55</u>
12. Variable cost per carload	\$1,008.43	\$95.18	\$177.94	\$1,281.55
13. ICC Make-Whole Add-On	<u>96.62</u>	<u>0.00</u>	<u>0.00</u>	<u>96.62</u>
14. Total Variable Cost Including Make-Whole Add-On	\$1,105.05	\$95.18	\$177.94	\$1,378.17
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$1,097.76	\$94.55	\$176.77	\$1,369.07
17. Variable cost per ton - 4Q95	\$11.56	\$1.00	\$1.86	\$14.42
18. Variable cost per cwt	\$0.58	\$0.05	\$0.09	\$0.72

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO ST. LOUIS, MO
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$157.85	\$64.78	\$137.66	\$360.29
2. Locomotive unit mile cost	158.00	37.97	35.81	231.78
3. Crew wages	210.77	0.00	0.00	210.77
4. Train mile - other	13.38	0.18	0.06	13.62
5. Station clerical	18.54	0.00	0.00	18.54
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	48.43	5.39	16.09	69.91
8. Switching - interchange	26.64	2.97	8.85	38.46
9. Switching - I&I	57.99	6.46	19.28	83.73
10. Private car rental	523.07	0.00	0.00	523.07
11. Loss & damage	<u>9.55</u>	<u>0.00</u>	<u>0.00</u>	<u>9.55</u>
12. Variable cost per carload	\$1,235.23	\$117.75	\$217.75	\$1,570.73
13. ICC Make-Whole Add-On	<u>114.25</u>	<u>0.00</u>	<u>0.00</u>	<u>114.25</u>
14. Total Variable Cost Including Make-Whole Add-On	\$1,349.48	\$117.75	\$217.75	\$1,684.98
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$1,340.57	\$116.97	\$216.31	\$1,673.86
17. Variable cost per ton - 4Q95	\$14.11	\$1.23	\$2.28	\$17.62
18. Variable cost per cwt	\$0.71	\$0.06	\$0.11	\$0.88

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO CHICAGO, IL
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$201.85	\$82.84	\$176.02	\$460.71
2. Locomotive unit mile cost	201.77	48.49	45.74	296.00
3. Crew wages	268.64	0.00	0.00	268.64
4. Train mile - other	17.05	0.24	0.07	17.36
5. Station clerical	18.54	0.00	0.00	18.54
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	48.43	5.39	16.09	69.91
8. Switching - interchange	26.64	2.97	8.85	38.46
9. Switching - I&I	74.16	8.26	24.65	107.07
10. Private car rental	668.85	0.00	0.00	668.85
11. Loss & damage	<u>14.23</u>	<u>0.00</u>	<u>0.00</u>	<u>14.23</u>
12. Variable cost per carload	\$1,551.17	\$148.19	\$271.42	\$1,970.78
13. ICC Make-Whole Add-On	<u>138.03</u>	<u>0.00</u>	<u>0.00</u>	<u>138.03</u>
14. Total Variable Cost Including Make-Whole Add-On	\$1,689.20	\$148.19	\$271.42	\$2,108.81
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$1,678.05	\$147.21	\$269.63	\$2,094.89
17. Variable cost per ton - 4Q95	\$17.66	\$1.55	\$2.84	\$22.05
18. Variable cost per cwt	\$0.88	\$0.08	\$0.14	\$1.10

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO KANSAS CITY, MO
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$129.02	\$52.95	\$112.51	\$294.48
2. Locomotive unit mile cost	130.24	31.30	29.53	191.07
3. Crew wages	176.02	0.00	0.00	176.02
4. Train mile - other	11.17	0.15	0.05	11.37
5. Station clerical	37.07	0.00	0.00	37.07
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	96.87	10.79	32.20	139.86
8. Switching - interchange	0.00	0.00	0.00	0.00
9. Switching - I&I	47.41	5.28	15.75	68.44
10. Private car rental	427.52	0.00	0.00	427.52
11. Loss & damage	<u>19.88</u>	<u>0.00</u>	<u>0.00</u>	<u>19.88</u>
12. Variable cost per carload	\$1,086.21	\$100.47	\$190.04	\$1,376.72
13. ICC Make-Whole Add-On	<u>165.50</u>	<u>0.00</u>	<u>0.00</u>	<u>165.5</u>
14. Total Variable Cost Including Make-Whole Add-On	\$1,251.71	\$100.47	\$190.04	\$1,542.22
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$1,243.45	\$99.81	\$188.79	\$1,532.04
17. Variable cost per ton - 4Q95	\$13.09	\$1.05	\$1.99	\$16.13
18. Variable cost per cwt	\$0.65	\$0.05	\$0.10	\$0.81

DEVELOPMENT OF VARIABLE COST PER TON
FOR FPC'S MOVEMENT FROM FORMOSA, TX TO SWEETWATER, TX
UP - BASE YEAR 1996 INDEXED TO 3Q98
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$100.68	\$41.32	\$87.80	\$229.80
2. Locomotive unit mile cost	101.11	24.30	22.92	148.33
3. Crew wages	135.57	0.00	0.00	135.57
4. Train mile - other	8.61	0.11	0.04	8.76
5. Station clerical	18.54	0.00	0.00	18.54
6. Claims for cars handled	11.01	0.00	0.00	11.01
7. Switching - origin	48.43	5.39	16.09	69.91
8. Switching - interchange	26.64	2.97	8.85	38.46
9. Switching - I&I	36.99	4.12	12.29	53.40
10. Private car rental	333.61	0.00	0.00	333.61
11. Loss & damage	<u>6.05</u>	<u>0.00</u>	<u>0.00</u>	<u>6.05</u>
12. Variable cost per carload	\$827.24	\$78.21	\$147.99	\$1,053.44
13. ICC Make-Whole Add-On	<u>83.35</u>	<u>0.00</u>	<u>0.00</u>	<u>83.35</u>
14. Total Variable Cost Including Make-Whole Add-On	\$910.59	\$78.21	\$147.99	\$1,136.79
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$904.58	\$77.69	\$147.01	\$1,129.29
17. Variable cost per ton - 4Q95	\$9.52	\$0.82	\$1.55	\$11.89
18. Variable cost per cwt	\$0.48	\$0.04	\$0.08	\$0.59

DEVELOPMENT OF VARIABLE COST PER TON
FOR A SAMPLE 1000 MILE MOVEMENT
UPSP - BASE YEAR 1997
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$184.86	\$76.25	\$132.25	\$393.36
2. Locomotive unit mile cost	175.86	36.75	39.69	252.30
3. Crew wages	241.49	0.00	0.00	241.49
4. Train mile - other	23.15	0.28	0.00	23.43
5. Station clerical	40.57	0.00	0.00	40.57
6. Claims for cars handled	6.11	0.00	0.00	6.11
7. Switching - origin	112.04	12.72	34.67	159.43
8. Switching - interchange	0.00	0.00	0.00	0.00
9. Switching - I&I	70.03	7.95	21.67	99.65
10. Private car rental	184.04	0.00	0.00	184.04
11. Loss & damage	<u>19.36</u>	<u>0.00</u>	<u>0.00</u>	<u>19.36</u>
12. Variable cost per carload	\$1,057.51	\$133.95	\$228.28	\$1,419.74
13. ICC Make-Whole Add-On	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0</u>
14. Total Variable Cost Including Make-Whole Add-On	\$1,057.51	\$133.95	\$228.28	\$1,419.74
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$1,050.53	\$133.07	\$226.77	\$1,410.37
17. Variable cost per ton - 4Q95	\$11.06	\$1.40	\$2.39	\$14.85
18. Variable cost per cwt	\$0.55	\$0.07	\$0.12	\$0.74

DEVELOPMENT OF VARIABLE COST PER TON
FOR A SAMPLE 1000 MILE MOVEMENT
BNSF - BASE YEAR 1997
(SINGLE CAR)

<u>Component</u> (1)	<u>Operating Expense</u> (2)	<u>Depreciation & Lease Rentals</u> (3)	<u>Return on Investment</u> (4)	<u>Total</u> (5)
1. Gross ton mile cost	\$210.80	\$72.93	\$181.65	\$465.38
2. Locomotive unit mile cost	188.71	36.99	28.32	254.02
3. Crew wages	239.69	0.00	0.00	239.69
4. Train mile - other	8.95	0.21	0.32	9.48
5. Station clerical	17.24	0.00	0.00	17.24
6. Claims for cars handled	0.94	0.00	0.00	0.94
7. Switching - origin	87.58	5.22	27.11	119.91
8. Switching - interchange	0.00	0.00	0.00	0.00
9. Switching - I&I	54.74	3.26	16.94	74.94
10. Private car rental	151.59	0.00	0.00	151.59
11. Loss & damage	<u>19.36</u>	<u>0.00</u>	<u>0.00</u>	<u>19.36</u>
12. Variable cost per carload	\$979.60	\$118.61	\$254.34	\$1,352.55
13. ICC Make-Whole Add-On	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0</u>
14. Total Variable Cost Including Make-Whole Add-On	\$979.60	\$118.61	\$254.34	\$1,352.55
15. URCS Linking Factor	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>	<u>0.9934</u>
16. Variable cost per carload-linked as of 4Q 1995	\$973.13	\$117.83	\$252.66	\$1,343.62
17. Variable cost per ton - 4Q95	\$10.24	\$1.24	\$2.66	\$14.14
18. Variable cost per cwt	\$0.51	\$0.06	\$0.13	\$0.71

VERIFIED STATEMENT

OF

RONNIE BOUNDS

My name is Ronnie Bounds. I am employed by Formosa Plastics Corporation, U.S.A. ("FPC") as Manager of its rail yard at Point Comfort, TX. I have worked in rail service for FPC for six years. I previously was employed by the Missouri Pacific Railroad for nearly 10 years in clerical and operating positions and as station agent in Bloomington, TX, and by an industrial switching carrier for over six years.

FPC operates a nine-mile industrial spur track which connects its Point Comfort plastics component manufacturing facility with the main line of the Union Pacific Railroad Company ("UP") at Formosa, TX. We operate our own engines, over 3,000 private cars, and have a marshalling yard with 11 parallel tracks, each approximately 5,300 feet in length, that presently can store up to 815 cars. The marshalling yard is located about 4,000 feet from the main line turnout. The company has progressed plans to nearly double the size of the marshalling yard by 1999, so that it will have over 20 tracks and be capable of storing more than 1,600 cars. When the expansion of the marshalling yard is completed, it will be entirely feasible to store our private cars and accommodate one or two trains of 100 cars or more in the marshalling yard while they are switching FPC, without leaving any cars on the UP main line, as UP does at present.

FPC is requesting that Burlington Northern Santa Fe ("BNSF"), which presently has closed door trackage rights over the UP line serving Formosa, be permitted to switch and directly serve FPC at Formosa. In my opinion, that service can be provided without blocking the UP main line, even to the same extent it is blocked by UP itself when switching FPC.

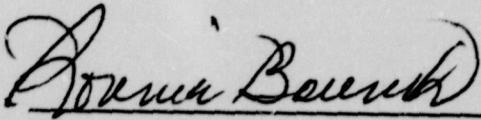
Attached as Appendix A is a partial map of the FPC siding showing its present turnout connection with the UP main line, the existing marshalling yard, and part of the proposed marshalling yard expansion. I have also caused to be placed on Appendix A an indication of where it is possible to build a second turnout to the FPC siding from the southwest. The land for that turnout is owned by FPC and FPC is prepared to construct the second turnout, if necessary. Appendix B is a map of the existing marshalling yard in its entirety plus the proposed marshalling yard in its entirety. With a second turnout, trains approaching from the southwest can head directly onto the FPC siding. The head-end engine can, if necessary, be uncoupled and moved to what was the rear of the train, and can then pull the train back on to the main line via the existing turnout to the northeast. In that manner, BNSF trains need not rest on the UP main line at all if those trains stop to switch FPC. UP trains, which approach FPC from both east and west, could operate in a similar manner.

This manner of proposed switching operations by BNSF would provide less of an obstacle on the UP main line than does present switching by UP. Normally, UP sets in empty cars from any train,

moving northbound or southbound (UP occasionally operates its own trains against the normal directional flow), leaving the train itself on the single track main line for 45 minutes to two hours. The locomotive consist is cut off from the train, moved to the FPC yard for pickup or delivery, and moved back to the main line to couple to the train. What we are proposing would eliminate any stoppage of BNSF trains on the UP main line, and could, under appropriate circumstances, eliminate or reduce the stoppage of the UP trains on its main line.

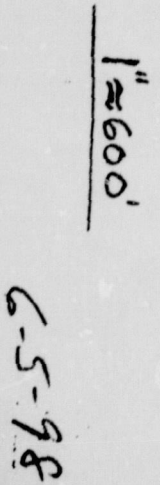
VERIFICATION

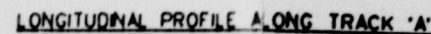
I hereby certify, under penalty of perjury, that I have read the foregoing statement and that its contents are true, and that I am authorized to make and submit the same.



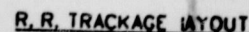
Ronnie Bounds

Dated: July 6, 1998

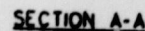




SCALE: HORIZ. F-600'-0"
VERT. F-10'-0"




SCALE: F = 400° = 0°

 $\Sigma M_L: F \cdot D = 0$

1. THE R.R. TRACKAGE SHALL BE INSTALLED ACCORDING TO THE REQUIREMENTS OF THE THEORETICAL SPECIFICATIONS FOR INDUSTRIAL TRACS.
2. ALL RAIL SHALL BE NEW OR RE-LAY AND BE A CLASS 1 RAIL.
3. ALL CROSS TIES SHALL BE 8"x7"x8'-6" NEW CREOSOTED INDUSTRIAL GRADE HARD WOOD TIES WITH END PLATES.
4. ALL FURNISHMENTS SHALL BE #0, UNLESS OTHERWISE NOTED, INCLUDING "HEAVY DUTY" SWITCH POINT GUMPS, CAST IRON GUARDED FROGS AND "MACO" MODEL 401 AUTOMATIC SAFETY ADJUSTABLE SWITH STANDS-TYPE 22P.
5. PROVIDE COMPOUNDING ANGLE BARS AND STEP CHAIRS AT THE RAIL JOINTS BETWEEN 90' AND 131' RAIL SECTIONS, AS REQUIRED.
6. THE USE OF RAILS OF STANDARD 30' OR 33'-0" LENGTHS WITH HOLES AT 50% OC ARE PROHIBITED WITHIN 40' OF JOINTS, EXCEPT AT THE FURNISHMENTS, WHERE WARE SHORTS ARE REQUIRED.
7. ALL BALLAST SHALL BE A OR B CLASS 3 GRADATION, WITH LESS 35% ALLOWABLE WEAR BY "LOS ANGELES" ABRASION TEST.
8. GEOTEXTILE FABRIC SHALL BE "MACO" PRODUCT NO. 4510 OR EQUIVALENT.
9. FASTENING: ANGLE BARS, TRACH BOLTS, THE PLATES, TRACH SPINES & RAIL ANCHORS, GAGE RODS SHALL BE OF GOOD QUALITY & APPROPRIATE FOR THE RAIL SECTION USED.
10. PRIOR TO COMMENCING OF TRACK INSTALLATION CONTRACTOR SHALL EXAMINE THE MAINT. LOG, TO MAKE SURE THE BED IS READY TO RECEIVE THE TRACK.
11. ELEVATION GAGE ELEVATIONS ARE APPROXIMATE AND SHALL BE VERIFIED BY A FIELD SURVEY.

APPLICABLE TO	SITE
	MECHANICAL
	UTILITY
	DESIGN
	INSTRUMENT
	ELECTRICAL
	SECTION

				FORMOSA PLASTICS CORPORATION U.S.A. ENGINEERING CENTER			
DATE BY		L.S.		SCALE		AS SHOWN	
DESIGNED BY		S.D.C.		3-5-98		MECHANICAL	
CHECKED BY				CIRCULATING APPROVED BY		UTILITY	
DESIGNED BY						DESIGN	
APPROVED BY						INSTRUMENT	
						ELECTRICAL	
DRAWING DESCRIPTION :				C/S NO : CPKCR030			
CONCEPTUAL DESIGN				DRAWING NO : CD-1			

STB

FD-32760 (SUB26)

7-8-98

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ID-189373

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OF

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189373

SLOVER & LOFTUS

ATTORNEYS AT LAW

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July 8, 1998

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BY HAND DELIVERY

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



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

Dear Mr. Secretary:

Enclosed for filing in the captioned proceeding please find an executed original and twenty-five (25) copies of the "Request of The Western Coal Traffic League For a New Remedial Condition."

Also enclosed is a computer diskette with this filing in Wordperfect 5.1 and 6.0 format, which are compatible with Wordperfect 7.0.

A copy of this document has been served upon counsel for Union Pacific.

Thank you for your attention to this matter.

Sincerely,

William L. Slover
An Attorney for Western Coal
Traffic League

ENTERED
Office of the Secretary

JUL 09 1998

Part of
Public Record

WLS:cef
Enclosure

189373

Original

BEFORE THE
SURFACE TRANSPORTATION BOARD



Union Pacific Corporation, Union)
Pacific Railroad Company and)
Missouri Pacific Railroad Company)
-- Control and Merger --)
Southern Pacific Rail Corporation,)
Southern Pacific Transportation)
Company, St. Louis Southwestern)
Railway Company, SPCSL Corp., and)
The Denver and Rio Grande Western)
Railway Company)

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

REQUEST OF
THE WESTERN COAL TRAFFIC LEAGUE
FOR A NEW REMEDIAL CONDITION

ENTERED
Office of the Secretary

JUL 09 1998

~~Confidential Material~~
~~Under Seal~~

Part of
Public Record

JUL 09 1998

~~Confidential Material~~
~~Under Seal~~

WESTERN COAL TRAFFIC LEAGUE
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

By: William L. Slover
Donald G. Avery
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Date Due: July 8, 1998

TABLE OF CONTENTS

PREFACE

STATEMENT OF MARK D. WERNER

STATEMENT OF THOMAS D. CROWLEY

STATEMENT OF WILLIAM E. AVERA

STATEMENT OF LAURITS R. CHRISTENSEN

SUMMARY OF WCTL'S POSITION

REQUEST FOR A NEW REMEDIAL CONDITION

CONCLUSION

CERTIFICATE OF SERVICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

Union Pacific Corporation, Union)	
Pacific Railroad Company and)	
Missouri Pacific Railroad Company)	
-- Control and Merger --)	
Southern Pacific Rail Corporation,)	Finance Docket No. 32760
Southern Pacific Transportation)	(Sub-No. 26)
Company, . . . Louis Southwestern)	
Railway Company, SPCSL Corp., and)	
The Denver and Rio Grande Western)	
Railway Company)	

REQUEST OF
THE WESTERN COAL TRAFFIC LEAGUE
FOR A NEW REMEDIAL CONDITION

PREFACE

The Western Coal Traffic League ("WCTL") by and through its undersigned counsel and pursuant to Decision No. 1 in this proceeding hereby submits its request for a new remedial condition. In support of its request for an additional condition, WCTL offers the verified statements of: (1) Mr. Mark D. Werner, Vice President of WCTL; (2) Mr. Thomas D. Crowley, an expert on rail costing and economic matters; (3) Dr. William E. Avera, an expert in financial analysis, cost allocation, and rate design; and (4) Dr. Laurits R. Christensen, an expert in rail cost adjustment methodology and economic analysis.

**VERIFIED STATEMENT
OF
MARK D. WERNER**

My name is Mark D. Werner. My business address is 145 Navarro Street, San Antonio, Texas 78205. I am Vice President, Western Coal Traffic League (WCTL). I am employed as Director of Fuels, Generation Control and Bulk Power Sales at City Public Service of San Antonio, Texas. I have been authorized by WCTL to appear in these reopened proceedings on its behalf.

WCTL is a voluntary association of organizations which ship and receive coal from origins west of the Mississippi River. WCTL members are currently receiving nearly 100 million tons of coal annually at numerous destinations throughout the west, southwest, and midwest. I have appended to my statement our current membership roster.

While WCTL members employ all modes of transportation to deliver their coal purchases, the overwhelming majority of their coal requirements is delivered by rail. As one of only two (2) major western railroads, Union Pacific (UP) transports a significant portion of our members' coal purchases. For this reason WCTL has a direct interest in the quality of UP's transportation services and its economic well-being. WCTL members, such as the Fayette Power Project (Lower Colorado River Authority and the City of Austin), Central and South West

Services, City of Colorado Springs, MidAmerican, and City Public Service are amongst UP's largest coal transportation customers.

Several WCTL members own and operate coal burning facilities located in the Houston/Gulf Coast region. They include:

<u>OWNER</u>	<u>FACILITY</u>	<u>LOCATION</u>
Houston Lighting & Power	Parrish	Smithers Lake, Texas
LCRA/Austin	Fayette	LaGrange, Texas
City Public Service	Deely/Spruce	Elmendorf, Texas
Central and South West	Coletto Creek	Victoria, Texas

Each of these facilities is served by UP and all of these facilities are heavily dependent upon adequate and efficient railroad transportation services. Because its members in the Houston/Gulf Coast Region and elsewhere rely upon the UP for all or major portions of their coal transportation requirements, WCTL was an active participant in the proceedings before the Board wherein UP initially sought approval of its Application to merge with SP.

WCTL stoutly opposed the merger of UP and SP on

multiple grounds. In court review proceedings, its opposition was accurately portrayed by Board counsel as "broad based". In its evidentiary presentation before the Board in the merger proceeding, WCTL presented several witnesses. Two (2) of WCTL's witnesses offered evidence that UP's coal transportation services would deteriorate if the Board approved the merger with SP. WCTL Witnesses Lyman, a former Santa Fe executive, and Witness Weishaar, a former CNW executive, presented a reasoned analysis of how and why a merger of UP and SP would create congestion, delays, and inferior coal transportation services for WCTL members. WCTL also presented evidence of the merger's adverse competitive impact on coal shippers generally and WCTL members in particular. In deciding to approve the UP/SP merger despite the opposition of WCTL and other major opponents including the Department of Justice, the Board concluded that the huge savings which the merged system would generate annually (Annual Efficiencies And Cost Savings, Decision No. 44, sheet 109) would offset any diminution of competition or other potential merger problems. The Board restated these savings at \$627.4 annually.

In approving the merger, the Board went so far as to conclude that Applicants' claimed operating savings and efficiencies would be "passed on to their shippers in terms of lower rates and improved service" (Decision No. 44, p. 104). The

Board's merger decision makes clear that its finding that a UP/SP merger was in the public interest was highly influenced by the evidence of the applicants which forecast the operating savings which the merger would generate which savings would, in whole or in part be passed on to UP's customers in the form of lower rates.

Regrettably, the applicants' claims of huge savings and efficiencies upon which the Board rejected WCTL's opposition and upon which it based its order approving the merger application have proven to be erroneous. Instead of major savings, UP is awash in red ink with no end in sight to its operating problems and travails. These problems are of direct concern to WCTL and its members because, among other reasons, UP must necessarily attempt, whenever and wherever it can, to recoup its losses from its customers. The opportunities to charge its customers for its mistakes are unfortunately plentiful and WCTL members, some of whom are captive shippers, constitute one of UP's largest customer groups. I also want to emphasize that while the focus of this case is on the Texas Gulf Coast region, UP's service problems are not confined to this area.

As WCTL's accounting and economic experts explain, UP has chosen to make the huge losses it has suffered, as a consequence of the mistakes and inefficiencies associated with

its merger with SP, part of its general operating cost structure. Instead of segregating its merger inefficiency charges and recording them as extraordinary charges, it has dispersed them throughout its operating cost accounts. As a result, UP's 1997 unit costs are considerably higher as a consequence of the influence of the expenses directly attributable to the SP merger inefficiencies.

Higher railroad unit costs impact the prices which shippers pay in several possible ways, including the RCAF, the jurisdictional threshold (180 percent of variable costs) and in contracts many of which employ the RCAF and/or cost-based price adjustment mechanisms. Additionally, because the Board now prescribes rates on the basis of variable costs, any UP rates so prescribed will be considerably higher as a result of the extraordinary costs of the merger inefficiencies. Several WCTL members are captive shippers. They either ship or have shipped pursuant to prescribed rates and/or are contemplating rate prescription actions before the Board.

WCTL was outspoken in its conviction that the Board would err if it approved the application of UP and SP to merge. It is now outraged at the prospect that its members may be called upon to underwrite portions of the extraordinary extra costs of a transaction which it opposed so vigorously and which has caused,

and continues to cause, its members untold millions of dollars in damages. The shortages of coal in Texas for our members are severe. Utility companies such as my own, as a consequence of coal shortages directly caused by UP's service failures, have curtailed production, shed loads, purchased alternative fuels, etc. Our damages are enormous. We are adamant in our opposition to any attempt by UP to pass its SP merger inefficiency charges on to its customers in the form of rates wrongfully inflated by overstated operating costs.

WCTL is sponsoring the testimonies of experts distinguished in transportation economics and accounting. They demonstrate that sound accounting and economic principles require the UP to account for its SP inefficiency costs in a manner which does not impact its unit costs. As a UP customer myself and as a spokesman for other major UP customers, I urge the Board not to add insult to injury by enabling the UP to pass on merger inefficiency costs to the shipping public and especially to our coal shipper members who so vigorously opposed the merger in the first place. It would be wrong if the Board enabled UP, through the expedient of accounting legerdemain, to shift the onus of its SP mistakes from its stockholders to its customers. To avoid this injustice, I urge the Board to further condition applicants' merger so as to require UP to segregate and separately state and

record all of its SP merger expenses as Extraordinary Items (Account No. 570). The UP/SP experience confirms the vital role of oversight. I thank the Board for its decision to re-open this case and to afford WCTL an opportunity to seek a further condition of utmost importance to its members.

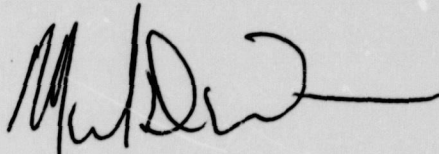
WESTERN COAL TRAFFIC LEAGUE
MEMBERSHIP ROSTER

Arizona Electric Power Cooperative, Inc.
Central and South West Services, Inc.
City Public Service Board of San Antonio
Cleco Corporation
Colorado Springs Utilities
Fayette Power Project, Austin, Texas
Houston Industries, Inc.
Kansas City Power & Light Company
MidAmerican Energy Company
Minnesota Power
Nebraska Public Power District
Omaha Public Power District
Western Resources, Inc.
Wisconsin Public Service Corporation

VERIFICATION

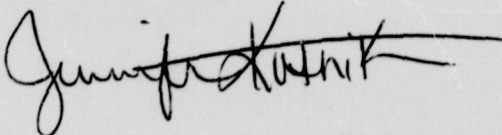
STATE OF MINNESOTA §
COUNTY OF ST. LOUIS § SS:
§

Mark D. Werner, being duly sworn, deposes and says that he has read the foregoing instrument, knows the contents thereof, and that the same are true as stated.



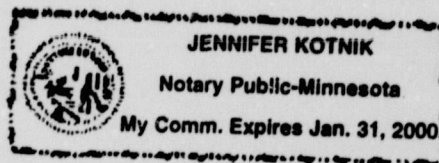
Mark D. Werner

Subscribed and sworn to
before me this 2nd
day of July 1998.



Notary Public in and for the State of Minnesota

My Commission Expires:



CROWLEY

**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 RIO GRANDE WESTERN RAILROAD
COMPANY (HOUSTON/GULF COAST OVERSIGHT)

Verified Statement
of
Thomas D. Crowley
President
L. E. Peabody & Associates, Inc.

On Behalf of
Western Coal Traffic League

Due Date: July 8, 1998

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. THE SP INEFFICIENCY	3
A. Quantification	3
B. Proper Method for Accounting for SP Inefficiency Charges	7
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5	UP's 1997 Variable Costs of Handling a Hypothetical Unit Coal Train Movement -- <u>Excluding</u> SP Inefficiency Charges

I. INTRODUCTION

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L.E. Peabody & Associates, Inc. The Firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314. My qualifications and experience are attached to this verified statement as Exhibit __ (TDC-1).

When the Union Pacific Railroad Company ("UP") filed its 1997 Annual Report Form R-1 ("R-1") with the Surface Transportation Board ("STB"), it reported charges associated with the inefficiencies created by its merger with SP (referred to herein as "SP Inefficiency Charges"). While separately reported, UP did not segregate these charges from its general operating expenses shown in Schedule 410 Railway Operating Expenses of its 1997 R-1. The STB, and its predecessor the Interstate Commerce Commission ("ICC"), require that railroads exclude such charges from normal operating expenses.

I have been requested by Western Coal Traffic League ("WCTL") to conduct certain analyses related to UP's 1997 SP Inefficiency Charges reported in its 1997 Annual Report Form R-1 as ordinary expenses. Specifically, WCTL requested that I perform the following analyses:

1. Identify and quantify the total SP Inefficiency Charges included by UP as ordinary expenses in its 1997 Annual Report Form R-1;
2. Explain how and why these SP Inefficiency Charges should be excluded from UP's expense accounts for financial reporting and regulatory costing purposes in accordance with STB accounting rules;
3. Demonstrate the impact of UP's 1997 SP Inefficiency Charges on its variable costs of providing service; and,

4. Explain how UP should have accounted for SP Inefficiency Charges under the Uniform System of Accounts.

My comments are organized under the following topical headings:

- II. The SP Inefficiency Charges
- III. Extraordinary Charges Have Been Consistently Excluded By The STB
- IV. Impact Of SP Inefficiency Charges On UP's Variable Cost Of Providing Service
- V. Proposed Remedy

II. THE SP INEFFICIENCY CHARGES

A. QUANTIFICATION

In UP's 1997 R-1, it quantifies two (2) categories of direct expenses which make up a portion of the 1997 SP Inefficiency Charges. Firstly, the UP included a two page note to its Schedule 210 -- Results Of Operations in its 1997 R-1^{1/}. The last paragraph of this UP note identifies a \$450 million "cost of the congestion-related problems in 1997". Specifically, the UP summarizes the cost associated with the congestion-related service problem as follows:

"The cost of the congestion-related problems in 1997 was approximately \$450 million, after tax, which reflected the combined effects of lost business, higher costs associated with system congestion, and costs associated with implementation of the Plan, alternate transportation and customer claims. The timing of the Company's return to profitability will be determined by how rapidly it is able to eliminate congestion in the Gulf Coast region and at the Laredo gateway, and return to normal operations throughout its system."

The UP's 1997 R-1 also includes a second compilation of SP Inefficiency Charges. Note 9 to UP's 1997 Schedule 200 balance sheet includes a second category of merger related charges^{2/}. Specifically, in the seventh paragraph of Note 9 the following additional merger related charge is identified:

"In addition, the UP expects to incur \$235 million in acquisition-related costs through 1999 for severing or relocating UPRR employees (those employed by the Respondent prior to the September 1996 purchase of SP by UPC), disposing of certain facilities owned by the UP prior to the SP acquisition, training and equipment upgrading. These costs will be charged to expense as incurred over the next two years. Net income for 1997 included \$60 million of acquisition-related operating costs, after tax."

^{1/} Exhibit __ (TDC-2), pages 15 of 24.

^{2/} Exhibit __ (TDC-2), pages 6 through 8 of 24.

The UP did not identify in which accounts it included these additional charges but did state its 1997 income was reduced by \$60 million after tax.

As my discussion reveals, UP's 1997 R-1 identifies a total of \$510 million in direct expenses which constitute a significant portion of UP's total 1997 SP Inefficiency Charge. In addition, UP created another pool of SP Inefficiency Charges in 1997 that amounted to \$958 million. UP's identification of this second pool of SP Inefficiency Charge appears in Note 9 to Schedule 200^{3/} Comparative Statement Of Financial Position ("balance sheet"). Specifically, the UP characterized these merger related charges as follows:

"The Company [UP] recognized a \$958 million liability in the SP purchase price allocation for costs associated with SP's portion of these activities. The components of the \$958 million liability are as follows:

(Millions of Dollars)

Labor protection related to legislated and contractual obligations to SP union employees	\$361
Severance costs	\$343
Contract cancellation fees	\$145
Relocation costs	<u>\$109</u>
Total	\$958"

These 1997 merger related charges are included in UP's Schedule 200 balance sheet as a liability. On the asset side of the ledger, the UP increased the price it paid for SP by \$958 million. This increase is over and beyond the purchase price of \$1.576 billion reported in Decision 44, Sheet 176 which represents the cash portion of the SP stock that UP purchased.

^{3/} Exhibit __ (TDC-2), page 7 of 24.

By adjusting the SP purchase price by \$958 million to account for the pre-tax SP merger charges, the UP increased two components of cost of service i.e., annual depreciation expense and return on net investment.

Table 1 below shows the annual impact of each of these increased costs associated with the SP merger charges that are included in UP's 1997 R-1.

<p align="center">Table 1 <u>Quantification of SP Merger Related Charges -- 1997</u></p>		
<u>Item</u> (1)	<u>Source</u> (2)	<u>Amount</u> (3)
<u>ANNUAL DEPRECIATION</u>		
1. Pre-Tax SP Merger Charges Recorded by UP as Assets -- Adjustment to SP Purchase Price	1997 UP R-1, Schedule 200 Page 10, Footnote 9	\$958,000,000
2. Pre-Tax Annual Charge Included in Schedule 410 based on Depreciation of Line 1	Line 1 x Avg. Depreciation Rate of 3.80% ^{1/}	\$36,404,000
<u>RETURN ON INVESTMENT</u>		
3. 1997 Pre-Tax Current Cost of Capital ^{2/}	Ex Parte No. 558 (Sub-No. 1)	17.0%
4. Return on Investment Included in UP's 1997 URCS Formula	(L1 x L3)	\$162,860,000
<p>^{1/} Source: Weighted average depreciation rate calculated from UP's 1997 R-1, Schedule 332.</p> <p>^{2/} 1997 AAR proposal filed with the STB on March 20, 1998.</p>		

On a pre-tax basis, UP has included \$36.4 million in annual depreciation expense in Schedule 410 Railway Operating Expenses. Also and because UP increased its investment by

the \$958 million SP Inefficiency Charge, a resulting increase in UP's return on investment in its 1997 URCS formula will equal \$162.9 million. Stated differently, UP's 1997 unit costs used for regulatory costing will be overstated because of this unusual charge.

To summarize in 1997 UP identified three separate groups of monies which were occasioned by inefficiencies stemming from its merger with SP. My Table 2 below portrays the SP Inefficiency Charges which UP reported as ordinary expenses and which it included in the investment base in 1997.

<p align="center">Table 2 UP's SP Inefficiency Charges Related to Merger and Service Problems -- 1997</p>	
<p>Item (1)</p>	<p>Amount (Millions) (2)</p>
<u>EXPENSES</u>	
1. After tax service-related problems	\$450
2. After tax non-SP merger related charges	\$60
3. Total after tax merger charges (L1 + L2)	\$510
4. UP's 1997 Effective Tax Rate	34.46% ^{1/}
5. Pre-tax merger charges $L3 \div (1 - L4)$	\$778
6. Pre-tax SP merger charges	<u>\$36</u>
7. Total pre-tax special charges	\$814
<u>RETURN ON INVESTMENT</u>	
8. Return on Adjustment to SP purchase price	\$163
<p>^{1/} UP 1997 total provision for taxes \div UP 1997 total pre-tax railway income.</p>	

In 1997, UP listed \$814 million in SP Inefficiency charges in its operating expenses. It also included \$163 million in return on investment which investment was comprised of SP Inefficiency Charges. These values flow into UP's 1997 URCS formula and overstate UP's unit costs used to calculate variable cost of service.

**B. PROPER METHOD FOR ACCOUNTING
FOR SP INEFFICIENCY CHARGES**

A review of UP's 1997 R-1 discloses that UP took the aggregate of its SP Inefficiency Charges and dispersed them throughout its usual and customary operating expenses (R-1, Schedule 410). I believe this treatment by UP is erroneous. The STB accounting rules define how the annual monies generated by a railroad should be reported in each R-1 schedule. Title 49 of the Code of Federal Regulations ("CFR")^{4/} outlines the procedures that railroads must follow in preparing their R-1's. The STB accounting rules require that monies that are unusual in nature (i.e., the event possesses a high degree of abnormality) and infrequent occurrence (i.e., the event is of a type not reasonably expected to recur in the foreseeable future) be classified as extraordinary items.

Each of the three groups of SP Inefficiency Charges which were quantified in the previous section of my testimony are extraordinary items based on the railroad accounting principles that govern a railroad's annual reporting in its R-1 to the STB.

First, the magnitude of these monies (see Table 2 above) demonstrate that the UP's expenditures are material. Next, an understanding of the component parts that make-up each

^{4/} CFR 49, Part 1201, paragraph 1-2.

of the three categories of SP Inefficiency Charges demonstrate that these expenditures are unusual and infrequent.

I will begin my demonstration that the SP Inefficiency Charges are extraordinary with the congested-related portion of SP Inefficiency Charges or \$450 million. The UP has identified monies resulting from congestion on its system because of the consolidation of SP operations into the UP after the merger. These service/congestion problems (and resulting monies) include poor equipment utilization, unavailability of operating personnel, restricted track access, customer claims, etc. All of these problems are non-recurring, infrequent and unusual when compared to the pre-merger operating portion of the UP. The UP ties its "return to profitability" to solving these unusual service/congestion problems:

"The timing of the Company's return to profitability will be determined by how rapidly it is able to eliminate congestion in the Gulf Coast region and at the Laredo gateway, and return to normal operations throughout its system"^{5/}

Clearly, UP is discussing non-recurring, infrequent and unusual charges.

The next portion of SP Inefficiency Charges is the \$60 million (after tax) of UP merger costs. These monies are non-recurring, unusual and infrequent expenditures. These charges are made up of expenditures primarily associated with severing or relocating UP employees and disposing of certain facilities. These one time charges are the type of expenditures that have been routinely written off^{6/} by the railroads in their annual reportings to the STB. In the next

^{5/} Exhibit (TDC-2), page 16 of 24.
^{6/} A write off accounts for a loss of value of an asset or a losing operation which is used to reduce the income of the railroad. For example, abandoned track and labor buyouts are "written off" through a reduction to net income.

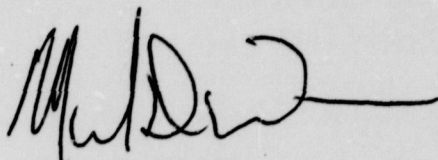
CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

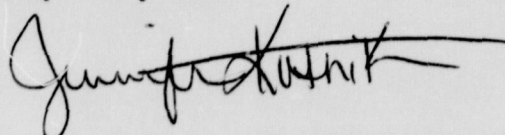
VERIFICATION

STATE OF MINNESOTA §
 § SS:
COUNTY OF ST. LOUIS §

Mark D. Werner, being duly sworn, deposes and says that he has read the foregoing instrument, knows the contents thereof, and that the same are true as stated.

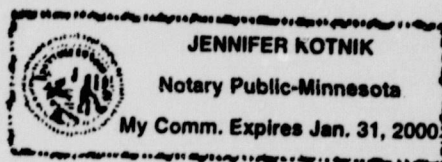

Mark D. Werner

Subscribed and sworn to
before me this 2nd
day of July 1998.



Notary Public in and for the State of Minnesota

My Commission Expires:



CROWLEY

**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 RIO GRANDE WESTERN RAILROAD
COMPANY (HOUSTON/GULF COAST OVERSIGHT)**

**Verified Statement
of
Thomas D. Crowley
President
L. E. Peabody & Associates, Inc.**

**On Behalf of
Western Coal Traffic League**

Due Date: July 8, 1998

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. THE SP INEFFICIENCY	3
A. Quantification	3
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^{4/} CFR 49, Part 1201, paragraph 1-2.

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^{6/} A write off accounts for a loss of value of an asset or a losing operation which is used to reduce the income of the railroad. For example, abandoned track and labor buyouts are "written off" through a reduction to net income.

chapter of my testimony, I explain and demonstrate how the Class I railroads have handled these type of charges since 1985 (see Exhibit __ (TDC-3) for details by railroad by year).

The last portion of the SP Inefficiency Charges deals with a \$958 million liability that UP included on its balance sheet. To balance out this liability, in 1997 UP increased the purchase price it paid for the SP by adding \$958 million to road and equipment investment. The \$958 million is made up of one-time labor, severance and relocation costs plus a one time fee for contract cancellations. Each of these expenditures are unusual, infrequent and non-recurring.

For the reasons I have just explained, UP should not have mingled its SP Inefficiency Charges with its routine expenses in Schedule 410 Railway Operating Expenses, as it did. By misaccounting for these substantial costs and expenses, the computations and calculations which are based on UP's R-1 will be flawed.

**III. EXTRAORDINARY CHARGES HAVE BEEN
CONSISTENTLY EXCLUDED BY THE STB**

For regulatory costing purposes, the STB has consistently excluded extraordinary charges prior to developing individual railroad's unit costs based on the URCS formula. I have researched both the STB's and its predecessor the Interstate Commerce Commission's ("ICC") handling of extraordinary charges when it developed Rail Form A variable unit costs, and variable unit costs developed in the Rail Form A successor cost formula i.e., the Uniform Railroad Costing System ("URCS"). Exhibit__ (TDC-3) identifies all extraordinary charges recorded by Class I railroads in their Annual Report Form R-1's to the STB/ICC. The Annual Report Form R-1 provides the majority of the input data used to generate Rail Form A (or URCS) annual unit costs. All of the extraordinary charges identified on Exhibit__ (TDC-3) have been excluded by the STB/ICC from the identified railroad's Rail Form A and URCS unit costs for the specified calendar year.

I have reviewed a number of STB/ICC decisions involving the development of a railroad's variable cost of service utilizing Rail Form A or URCS unit costs. Without exception, the Rail Form A or URCS unit costs used by the STB/ICC excluded extraordinary charges. The STB/ICC did not address the issue of extraordinary charges in its written decision in these reviewed cases because the use of extraordinary charges was not a disputed issue between the parties i.e., they were excluded by both parties before developing the involved railroad(s) variable cost of service.

IV. IMPACT OF SP INEFFICIENCY CHARGES ON UP'S VARIABLE COST OF PROVIDING SERVICE

If the SP Inefficiency Charges UP included as ordinary expenses in its 1997-R-1 are not reversed, as required by STB accounting rules, the UP's general purpose costing formula unit cost results will artificially increase. In turn, the UP's variable cost of providing service will artificially increase which will have an adverse impact on the STB's cost of service calculations to the detriment of a captive shipper seeking regulatory relief from unreasonable rail rates.

The STB uses cost of service determinations for at least two specific regulatory purposes. First, the STB will determine whether or not it has jurisdiction over a particular movement based on a revenue to variable cost ratio. If the ratio of a rate (which is the subject of a dispute) to variable costs equals or exceeds 1.8, the STB has jurisdiction over the movement. If the ratio of rate to variable cost is artificially reduced because extraordinary charges are included in the calculation of variable costs, a railroad could impose a higher rate on a captive shipper and remain immune from STB scrutiny.

Second, during the maximum rate determination phase of a complaint case based on Constrained Market Pricing, the STB will set rates at the higher of stand-alone costs or the jurisdictional threshold level, i.e., the jurisdictional threshold level is a floor for rate setting purposes. If a railroad's variable costs have been artificially increased because of the inclusion of extraordinary charges, the STB may prescribe a rate for a captive shipper's movement that is higher than the rate the STB would have prescribed if extraordinary charges had not been included in the individual railroad's variable cost of providing service calculation.

**A. COSTING OF A
HYPOTHETICAL
MOVEMENT ON UP**

In order to demonstrate the impact of including UP's 1997 SP Inefficiency Charges on its cost of providing service, I have developed UP's 1997 URCS formula two different ways. First, I developed UP's 1997 URCS formula unit costs following the procedures UP followed in developing its 1997 R-1 i.e., UP included SP Inefficiency Charges in Schedule 410 Railway Operating Expenses. Second, I developed UP's 1997 URCS formula unit costs after I excluded UP's 1997 SP Inefficiency Charges^{2/}.

Next, I costed a hypothetical unit coal train movement handled by the UP utilizing both sets of 1997 UP unit costs i.e., one set including SP Inefficiency Charges and one set excluding SP Inefficiency Charges. The traffic and operating characteristics that I used in both cost of service analyses include:

1. 110 cars per train;
2. 105 tons per car;
3. 27 tons tare per car;
4. 3 locomotives per train;
5. 1,650 miles in the loaded direction; and,
6. 100% empty return.

^{2/} As noted in Section II above, UP did not provide enough information in its 1997 R-1 in order for me to determine which Schedule 410 account(s) it included the SP Inefficiency Charges monies. For purposes of my demonstration, I have assumed all of UP's 1997 SP Inefficiency Charges monies were part of general and administrative expenses. This assumption produces a conservative impact of the change in UP's 1997 variable costs resulting from SP Inefficiency Charges.

The impact that UP's 1997 SP Inefficiency Charges have on the variable costs associated with the hypothetical unit coal train movement are summarized in Table 3, Line 1 below. Also shown in Table 3 below is the impact UP's SP Inefficiency Charges have on the jurisdictional threshold associated with the hypothetical unit coal train movement (Line 2).

Table 3	
Impact of SP Inefficiency Charges on UP's	
<u>Variable Costs and Jurisdictional Threshold --1997</u>	
(Hypothetical Unit Coal Train Movement)	
<u>Item</u>	<u>Amount</u>
(1)	(2)
1. <u>UP's Variable Cost Per Ton</u>	
a. With the 1997 SP Inefficiency Charges	\$11.40
b. Without the 1997 SP Inefficiency Charges	\$10.13
c. Impact per Ton (L1a - L1b)	\$1.27
d. % Increase (L1a ÷ L1b)	13 %
2. <u>UP's Jurisdictional Threshold Per Ton</u>	
a. With the 1997 SP Inefficiency Charges	\$20.52
b. Without the 1997 SP Inefficiency Charges	\$18.23
c. Impact per Ton (L2a - L2b)	\$2.29
d. % Increase (L2a ÷ L2b)	13 %
Source: Exhibit ____ (TDC-4) and Exhibit ____ (TDC-5).	

Table 5 above shows that if the SP Inefficiency Charges are included in ordinary expenses, UP's 1997 variable cost of service and resulting jurisdictional threshold will be artificially inflated by 13%. Stated differently, the UP could increase the rate it charges to handle the Table 5 hypothetical movement by \$2.29 per ton.

V. PROPOSED REMEDY


Simply stated, the SP Inefficiency Charges as reported by UP should not impact a cost of service calculation for an individual movement. To include these SP Inefficiency Charges would require captive shippers, and others dependent on the STB's regulatory costing procedures, to subsidize UP's inefficiencies. In order to avoid this adverse and improper outcome, the STB should require UP to reverse its accounting entries and to exclude SP Inefficiency Charges for purposes of cost of service calculations. The procedures that I suggest STB adopt in order to maintain the status quo are outlined below.

For regulatory costing purposes, the STB has specific accounting rules to follow when infrequent or extraordinary items occur. The accounting rules require that extraordinary expense items be recorded in either Account 555 Unusual or Infrequent Items or Account 570 Extraordinary Items in Schedule 210 Results of Operating. Stated differently, these extraordinary expense items should not be commingled in Schedule 410 Operating Expenses, as the UP has done in 1997. By requiring UP to reverse its accounting entries and record the monies I identified above as 1997 SP Inefficiency Charges, the UP unit costs as developed in its general purpose costing formula will not be artificially inflated.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

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


Thomas D. Crowley

Sworn to and subscribed
before me this 17th day
of August, 1998.

Witness my hand and official seal.

Carol J. Kelley
My Commission Expires July 31, 2001

STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering Association.

The firm of L. E. Peabody & Associates, Inc. specializes in solving economic, marketing and transportation problems. As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating and accounting procedures utilized by railroads in the normal course of business.

STATEMENT OF QUALIFICATIONS

Additionally, I have inspected both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from the Powder River Basin to various utility destinations in the midwestern and western portion of the United States. These field trips were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal, both inbound raw materials and outbound paper products to and from paper mills, crushed stone, soda ash, aluminum, fresh fruits and vegetables, TOFC/COFC traffic and numerous other commodities handled by rail.

I have presented evidence before the Interstate Commerce Commission ("ICC") in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs. I have submitted evidence applying the ICC's and Surface Transportation Board's ("STB")^{1/} stand-alone cost procedures in "Coal Trading,"^{2/} "DP&L,"^{3/} "Westmoreland"^{4/}, and WTU^{5/} along with other proceedings before the ICC.^{6/}

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the ICC for the development of variable costs for common carriers,

^{1/} The STB is the successor organization to the ICC.

^{2/} ICC Docket No. 38301S, Coal Trading Corporation v. Baltimore & Ohio Railroad, et al., ("Coal Trading").

^{3/} ICC Docket No. 38025S, The Dayton Power and Light Company v. Louisville and Nashville Railroad Company ("DP&L").

^{4/} ICC Docket No. 38301S (Sub-No. 1), Westmoreland Coal Sales Company v. Denver and Rio Grande Western Railroad Company, et al., ("Westmoreland").

^{5/} STB Docket No. 41191, West Texas Utilities Company v. Burlington Northern Railroad Company ("WTU").

^{6/} ICC Docket No. 40224, Iowa Public Power and Light Company v. Burlington Northern Railroad Company; ICC Docket No. 37029, Iowa Public Service Company v. Burlington Northern, Inc.; ICC Docket No. 39386, The Kansas Power and Light Company v. Burlington Northern Railroad Company and Union Pacific Railroad Company; ICC Docket No. 38783, Omaha Public Power District v. Burlington Northern Railroad Company; Docket No. 36180, San Antonio, Texas, Acting By and Through Its City Public Service Board v. Burlington Northern Railroad Company, et al.; ICC Docket No. 41185, Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company ("APS"); STB Docket No. 41989, Potomac Electric Power Company v. CSX Transportation, Inc.

STATEMENT OF QUALIFICATIONS

including Burlington Northern Railroad Company,^{7/} with particular emphasis on the basis and use of Rail Form A. I have utilized Rail Form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.^{8/}

I have also analyzed in detail, the Uniform Railroad Costing System ("URCS") and presented the results of my findings to the ICC in Ex Parte No. 431, Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations. I have been involved in the URCS process, either directly or indirectly, since the first interim report of the contractors was released. Throughout this process, I have consistently asked for and reviewed the support and workpapers underlying the different developmental stages of the formula. I received and presented comments in February 1982 on the ICC's Preliminary 1979 Rail Cost Study. In December 1982, the ICC released the

^{7/} The following two (2) cases are examples of litigation before the ICC where I developed and presented Burlington Northern Railroad Company's variable costs of handling unit coal trains. These two cases involve the most detailed examination of the variable cost of moving coal in unit train service of any proceeding thus far brought before the ICC. The first example involved the variable cost of service evidence I presented on behalf of the City of San Antonio, Texas in ICC Docket No. 36180, San Antonio, Texas, Acting By and Through its City Public Service Board v. Burlington Northern Railroad Company, et al., 1 I.C.C. 2d 561 (1986) ("San Antonio"). In that case, the ICC extensively analyzed the variable costs for a unit train movement of coal on the Burlington Northern Railroad Company from the Powder River Basin, Wyoming to San Antonio, Texas. Also I presented the variable cost of service evidence in ICC Docket No. 38783, Omaha Public Power District v. Burlington Northern Railroad Company 3 I.C.C. 2d 123 (1986) ("OPPD"), in which the ICC developed the variable costs for the unit train movement of coal from the Powder River Basin, Wyoming to Arbor, Nebraska on the Burlington Northern Railroad Company. In San Antonio, the ICC found that the variable cost of service as of the first quarter of 1984 was \$12.62 per ton, just 46 cents higher than my cost calculation of \$12.16 per ton and substantially lower than Burlington Northern Railroad Company's calculation of \$17.54 per ton. In OPPD, the ICC determined variable cost for the first quarter of 1985 was \$5.31 per ton, just 11 cents higher than my calculation of \$5.20 per ton, and substantially lower than Burlington Northern Railroad Company's calculations of \$6.53 per ton.

^{8/} Rail cost finding has been the cornerstone of this firm. Dr. Ford K. Edwards the senior partner of the firm Edwards & Peabody*, was the major architect in the development of Rail Form A. Mr. Peabody carried on this tradition of innovative cost finding until his retirement in 1983. Mr. Peabody's work included participation in the Tennessee Valley Authority's ("TVA") computerization of Rail Form A. Mr. Peabody was a member of a committee of transportation consultants which was organized to assess the TVA procedure in order to make available more complete and simplified input data for the Rail Form A computer program.

* Subsequent to the retirement of Dr. Edwards in 1965, the firm name was changed to L. E. Peabody & Associates, Inc.

STATEMENT OF QUALIFICATIONS

Uniform Rail Costing System, 1980 Railroad Cost Study which I reviewed along with the workpapers supporting that study and the entire developmental stage of URCS which was the basis for my Ex Parte No. 431 comments.

I have frequently presented both oral and written testimony before the Interstate Commerce Commission, Surface Transportation Board, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations, including interest. Recently, I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented testimony in a number of court and arbitration proceedings concerning the level of rates and rate adjustment procedures in specific contracts.

I have participated in every major ICC and STB rulemaking proceeding since the mid-seventies, including each phase of Ex Parte No. 290 (Sub-No. 2), (Sub-No. 4), (Sub-No. 5) and (Sub-No. 7). On a number of occasions my predecessor, L. E. Peabody, Jr., and I have submitted evidence to the Commission concerning the determination of the Rail Cost Adjustment Factor ("RCAF") and the need for a productivity adjustment to properly reflect the change in railroad costs.^{9/}

^{9/} L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, July 17, 1980; L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No.-2), Railroad Cost Recovery Procedures, August 20, 1980; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2),

STATEMENT OF QUALIFICATIONS

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges. In particular, I have advised utilities on the theory and application of different types of rate adjustment mechanisms for inclusion in coal transportation contracts.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out,

Railroad Cost Recovery Procedures, January 9, 1981; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, July 9, 1982; L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures -- Productivity Adjustment, October 25, 1982; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, February 11, 1985; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, March 28, 1985; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2) Railroad Cost Recovery Procedures, March 12, 1986; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2) Railroad Cost Recovery Procedures, March 12, 1987; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, December 16, 1988; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, January 17, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment-Implementation, May 26, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4) and Ex Parte No. 290 (Sub-No. 7), Railroad Cost Recovery Procedures -- Productivity Adjustment, June 1, 1989; Thomas D. Crowley's Verified Statement, Ex parte No. 290 (Sub-No. 5) (89-3), Quarterly Rail Cost Adjustment Factor, June 13, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment -Implementation, June 26, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures - Productivity Adjustment, August 14, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures - Productivity Adjustment, August 29, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 5) Quarterly Rail Cost Adjustment Factor, September 18, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment Implementation, April 5, 1991; Thomas D. Crowley's Verified Statement, Ex Parte 290 (Sub-No. 2) Railroad Cost Recovery Procedures, November 9, 1992; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, November 30, 1992; and, Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7) Productivity Adjustment - Implementation, January 7, 1994.

STATEMENT OF QUALIFICATIONS

brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

I have been, or am currently, involved in the negotiation of transportation or coal supply contracts for over forty-five (45) utilities which burn coal or lignite produced in the west. These utilities purchase coal or lignite produced in Colorado, Illinois, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Texas, Utah and Wyoming. Generating stations operated by these utilities are located in the following twenty-one (21) states: Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, Texas, Wisconsin, and Wyoming.

As a result of assisting coal users in the eastern and western portions of the United States, I have become familiar with operations and practices of the rail carriers that move coal over the major coal routes in the United States as well as their cost and pricing practices.

I have developed different economic analyses for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, the Fertilizer Institute, The Society for the Plastics Industry and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various economic problems.

STATEMENT OF QUALIFICATIONS

In the three most recent rail mergers presented to the ICC/STB involving BN/ATSF,^{10/} UP/SP^{11/} and CSX/NS/Conrail^{12/}, I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rates. For example, I participated in ICC Docket No. 35585, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al. which was a complaint filed by the northern and midwestern rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and midwestern rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, Notice of Intent to File Division Complaint by the Long Island Rail Road Company.

^{10/} ICC, Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, served August 23, 1995 ("BN/ATSF").

^{11/} STB, Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Co.p., and The Denver and Rio Grande Western Railroad Company, served August 12, 1996 ("UP/SP").

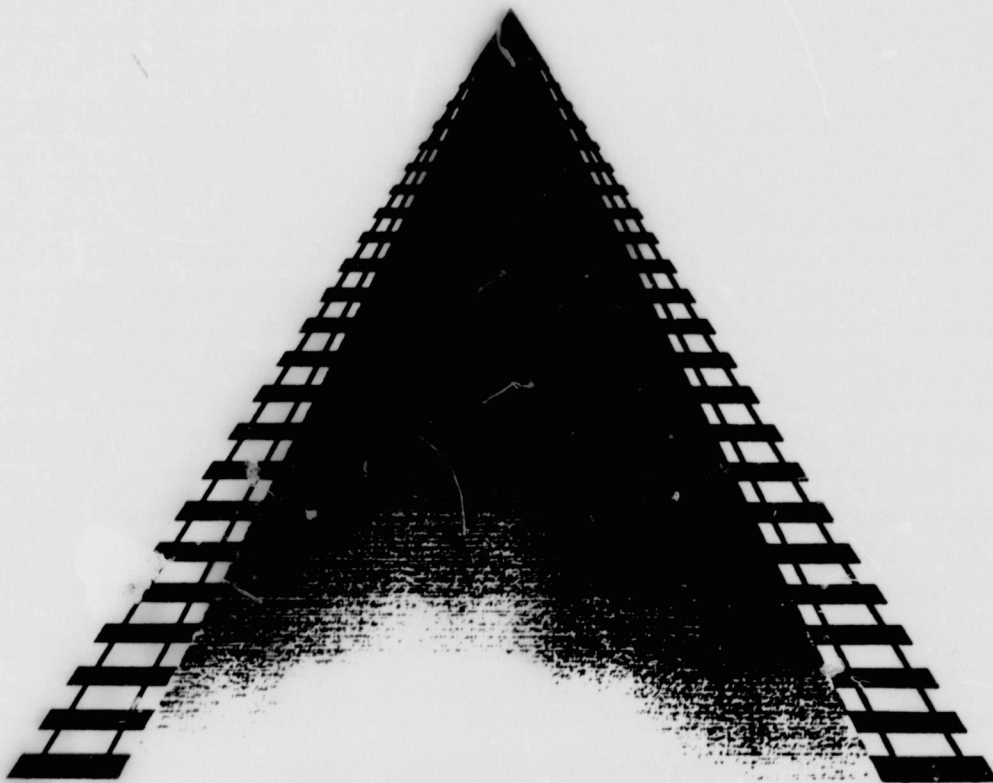
^{12/} STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation ("CSX/NS/Conrail").

1997

**Annual Report to the
Surface Transportation Board**

FOR THE YEAR ENDED DECEMBER 31, 1997

R-1



**UNION PACIFIC
RAILROAD**

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - ASSETS
(Dollars in Thousands)

Line No.	Cross Check	Account	Title (a)	Balance at close of year (b)	Balance at begin- ning of year (c)	Line No.
CURRENT ASSETS						
1		701	Cash	\$37,350	\$74,410	1
2		702	Temporary Cash Investments	3,406	353	2
3		703	Special Deposits	6,388	7,360	3
4		704	Accounts Receivable (A) - Loan and Notes	0	2,027	4
5		705	- Interline and Other Balances	52,944	58,882	5
6		706	- Customers	81,891	167,482	6
7		707	- Other	119,402	80,223	7
8		709,708	- Accrued Accounts Receivables	276,007	232,810	8
9		708.5	- Receivables from Affiliated Companies	3,985	0	9
10		709.5	- Less: Allowance for Uncollectible Accounts	0	(4,000)	10
11		710,711,714	Working Funds Prepayments Deferred Income Tax Credits	112,232	116,269	11
12		712	Materials and Supplies	289,994	292,927	12
13		713	Other Current Assets	70,919	32,531	13
14			TOTAL CURRENT ASSETS	\$1,054,518	\$1,061,274	14
OTHER ASSETS						
15		715, 716, 717	Special Funds	\$6,770	\$9,121	15
16		721, 721.5	Investments and Advances Affiliated Companies (Schedules 310 and 310A)	838,985	760,040	16
17		722, 723	Other Investments and Advances	145,538	149,906	17
18		724	Allowances for Net Unrealized Loss on Noncurrent Marketable Equity Securities - Cr.	0	0	18
19		737, 738	Property Used in Other than Carver Operation (Less Depreciation) (\$5,217)	264,726	341,012	19
20		739, 741	Other Assets	55,361	38,130	20
21		743	Other Deferred Debits	87,510	137,564	21
22		744	Accumulated Deferred income Tax Debits	0	0	22
23			TOTAL OTHER ASSETS	\$1,398,690	\$1,435,773	23
ROAD AND EQUIPMENT						
24		731, 732	Road (Schedule 330) L-30 cols. h & b	\$22,535,787	\$21,859,572	24
25		731, 732	Equipment (Schedule 330) L-39 Cols. h & b	7,050,029	6,535,044	25
26		731, 732	Unallocated Items	823,307	606,335	26
27		733, 735	Accumulated Depreciation and Amortization (Schedules 335, 342, 351)	(5,253,533)	(4,870,487)	27
28			Net Road and Equipment	\$25,155,590	\$24,130,464	28
29			TOTAL ASSETS	\$27,608,998	\$26,627,511	29

(A) See Note 11 on page 11.

Exhibit (TDC-2)
Page 2 of 24

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - LIABILITY AND SHAREHOLDER'S EQUITY

(Dollars in Thousands)

Line No.	Cross Check	Account	Title (a)	Balance at close of year (b)	Balance at beginning of year (c)	Line No.
CURRENT LIABILITIES						
30	751	Loans and Notes Payable		\$0	\$0	30
31	752	Accounts Payable; Interline and Other Balances		59,824	83,566	31
32	753	Audited Accounts and Wages		295,290	200,271	32
33	754	Other Accounts Payable		52,999	42,582	33
34	755, 756	Interest and Dividends Payable		104,356	97,131	34
35	757	Payables to Affiliated Companies		8	0	35
36	759	Accrued Accounts Payable		1,760,889	1,904,390	36
37	760, 761, 761.5, 762	Taxes Accrued		154,624	43,649	37
38	763	Other Current Liabilities		23,724	58,015	38
39	764	Equipment Obligations and Other Long-Term Debt due Within One Year		231,702	126,090	39
40		TOTAL CURRENT LIABILITIES		\$2,683,416	\$2,555,554	40
NON-CURRENT LIABILITIES						
41	765, 767	Funded Debt Unmatured		\$473,232	\$479,165	41
42	766	Equipment Obligations		741,382	971,019	42
43	766.5	Capitalized Lease Obligations		1,197,103	1,089,684	43
44	768	Debt in Default		0	0	44
45	769	Accounts Payable; Affiliated Companies		4,437,258	3,904,146	45
46	770.1, 770.2	Unamortized Debt Premium		(51,148)	(13,433)	46
47	781	Interest in Default		0	0	47
48	783	Deferred Revenues-Transfers from Government Authorities		0	0	48
49	786	Accumulated Deferred Income Tax Credits		6,738,317	6,338,370	49
50	771, 772, 774, 775, 782, 784	Other Long-Term Liabilities and Deferred Credits		2,468,336	2,580,211	50
51		TOTAL NON-CURRENT LIABILITIES		\$16,004,480	\$15,349,162	51
SHAREHOLDER'S EQUITY						
52	791, 792	Total Capital Stock:(Schedule 230) (L-10 Col. g, L-17 Col. e)		\$29,463	\$38,549	52
53		Common Stock		49	49	53
54		Preferred Stock		29,414	38,500	54
55		Discount on Capital Stock		0	0	55
56	794, 795	Additional Capital (Schedule 230) (L-17 Col. h)		4,781,904	4,745,350	56
57	797	Retained Earnings: Appropriated		1,583	1,583	57
58	798	Unappropriated (Schedule 220) (L-17 Col. b)		4,108,152	3,937,173	58
59	798.1	Net Unrealized Loss on Non current Marketable Equity Securities		0	0	59
60	798.5	Less Treasury Stock		0	0	60
61		Net Stockholder's Equity		\$8,921,102	\$8,722,655	61
62		TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY		\$27,608,998	\$26,627,511	62

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES

Dollars in Thousands

The notes listed below are provided to disclose supplementary information on matters which have an important effect on the financial condition of the carrier. The carrier shall give the particulars called for herein and where there is nothing to report, insert the word "none"; and in addition thereto shall enter in separate notes with suitable particulars other matters involving material amounts of the character commonly disclosed in financial statements under generally accepted accounting and reporting principles, except as shown in other schedules. This includes statements explaining (1) service interruption insurance policies and indicating the amount of indemnity to which respondent will be entitled for work stoppage losses and the maximum amount of additional premium respondent may be obligated to pay in the event such losses are sustained by other railroads; (2) particulars concerning obligations for stock purchase options granted to officers and employees; and (3) what entries have been made for net income or retained income restricted under provisions of mortgages and other arrangements.

1. Amount (estimated, if necessary) of net income or retained income which has to be provided for capital expenditures, and for sinking and other funds pursuant to provisions of reorganization plans, mortgages, deeds of trust, or other contracts Schedule 460. \$1,583.
2. Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1 of the year following that for which the report is made - \$1,509,120.
3. (a) Explain the procedure in accounting for pension funds and recording in the accounts the current and past service pension costs, indicating whether or not consistent with the prior year _____
See Explanatory Note 13 on page 12.
- (b) State amount, if any, representing the excess of the actuarially computed value of vested benefits over the total of the pension fund. Not Available. \$ _____.
- (c) Is any part of pension plan funded? Specify. Yes ☒ No ☐
 - (i) If funding is by insurance, give name of insuring company Not Applicable.
If funding is by trust agreement, list trustee(s). The Northern Trust Company
Date of trust agreement or latest amendment. January 1, 1995
If respondent is affiliated in any way with the trustee(s), explain affiliation: Not Applicable.
 - (d) List affiliated companies which are included in the pension plan funding agreement and describe basis for allocating charges under the agreement. See Note 13, page 12.
 - (e) (i) Is any part of the pension plan fund invested in stock or other securities of the respondent or any of its affiliates?
Specify. Yes ☐ No ☒
If yes, give number of the shares for each class of stock or other security: _____
 - (ii) Are voting rights attached to any securities held by the pension plan? Specify. Yes ☐ No ☐ If yes, who determines how stock is voted? _____
4. State whether a segregated political fund has been established as provided by the Federal Election Campaign Act of 1971 (18 U.S.C. 610). Yes ☐ No ☒ See additional Note 17 on page 15.
5. (a) The amount of employers contribution to employee stock ownership plans for the current year was \$ NONE.
(b) The amount of investment tax credit used to reduce current income tax expense resulting from contributions to qualified employee stock ownership plans for the current year was \$ NONE.
6. In reference to Docket No. 37465 specify the total amount of business entertainment expenditures charged to the non-operating expense account. \$ NONE.

Continued on following page

Exhibit (TDC-2)
Page 4 of 24

200. COMPARATIVE STATEMENT OF FINANCIAL POSITION - EXPLANATORY NOTES

7. Give particulars with respect to contingent assets and liabilities at the close of the year, in accordance with Instructions 5-6 in the Uniform System of Accounts for Railroad Companies, that are not reflected in the amounts of the respondent.

Disclose the nature and amount of contingency that is material.

Examples of contingent liabilities are items which may become obligations as a result of pending or threatened litigation, assessments or possible assessments of additional taxes and agreements or obligations to repurchase securities or property. Additional pages may be added if more space is needed. (Explain and/or reference to the following pages.)

SEE NOTE 14 ON PAGE 14.

(a) Changes in Valuation Accounts

8. Marketable Equity Securities

UP has no marketable equity securities.

		Cost	Market	Dr.(Cr) to Income	Dr.(Cr) to Stockholders' Equity
(Current Year)	Current Portfolio				N/A
as of / /	Noncurrent Portfolio			N/A	\$
(Previous Year)	Current Portfolio			N/A	N/A
as of / /	Noncurrent Portfolio			N/A	N/A

(b) At / / , gross unrealized gains and losses pertaining to marketable securities were as follows:

	<u>Gains</u>	<u>Losses</u>
Current	\$	\$
Noncurrent		

(c) A net unrealized gain (loss) of \$_____ on the sale of marketable equity securities was included in net income for _____ (year).
The cost of securities sold was based on the _____ (method) cost of all the shares of each security held at time of sale.

Significant net realized and net unrealized gains and losses arising after date of the financial statements but prior to the filing, applicable to marketable equity securities owned at balance sheet date shall be disclosed below:

NOTE: / / (date) Balance sheet date of reported year unless specified as previous year.

Exhibit (TDC-2)
Page 5 of 24

200. COMPARATIVE STATEMENTS OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

9. Acquisitions, Legal Mergers and Significant Investments

UPC Acquisitions: In April 1995, Union Pacific Corporation (UPC or the Corporation) acquired the remaining 71.6% of Chicago and North Western Transportation Company's (CNW) outstanding common stock not previously owned by UPC for \$1.2 billion. Prior to the acquisition, CNW was the nation's eighth largest Class I railroad. In September 1996, UPC completed the acquisition of Southern Pacific Transportation Corporation (Southern Pacific or SP) after receipt of a favorable decision from the Surface Transportation Board of the U.S. Department of Transportation (STB) regarding the Corporation's acquisition of SP. The aggregate purchase price was \$4.1 billion (\$2.5 billion in UPC common stock and \$1.6 billion in cash funded with borrowings by UPC both of which were subsequently pushed down to the Respondent). Prior to the acquisition, SP was the nation's sixth largest Class I railroad. CNW's rail operations have been completely integrated with the Respondent's rail operations, while the integration of SP's rail operations are continuing with full operational integration expected by the end of 1999.

Legal Mergers: Since August 1, 1995, the Respondent and its predecessors have been merged with and into several entities (the Legal Mergers) in order to consolidate all of UPC's principal rail operations into one legal entity. The Legal Mergers have been accounted for in a manner similar to a pooling-of-interest combination of entities under common control since all entities involved in the Legal Mergers were direct or indirect wholly-owned subsidiaries of UPC at the date of the Legal Mergers, with the surviving entity continuing as such following the Legal Mergers.

The consolidated financial statements of the Company are presented on a 'pooled basis' back to the effective date on which the STB approval for common control was granted to the Corporation. As a result, the consolidated financial statements include the results of SP and its rail operating subsidiaries—the Denver and Rio Grande Western Railroad Company (DRGW), SPCSL Corp. (SPCSL), St. Louis and Southwestern Railway Company (SSW) and Southern Pacific Transportation Company (SPT)—as of October 1, 1996; CNW's rail operating subsidiaries—Western Railroad Properties, Inc. (WRPI) and Chicago and North Western Railway Company (CNWR)—as of May 1, 1995; and Missouri Pacific Corporation's rail operating subsidiary—the Missouri Pacific Railroad Company (MPRR)—as of January 1, 1983, the effective dates on which the STB approval for common control was granted to the Corporation for these acquisitions. A detailed description of the Legal Mergers follows:

On August 1, 1995, WRPI, a wholly-owned, indirect subsidiary of the Corporation following the acquisition of CNW, which operated the sole joint main line (shared with BNSF) out of the Powder River Basin in Wyoming and leased a connector line from UP Leasing Corporation, a wholly-owned subsidiary of the Corporation (UP Leasing), was merged with and into the Respondent's predecessor, Union Pacific Railroad Company, a Utah corporation (UPRR), with UPRR continuing as the surviving entity.

On October 1, 1995, UP Leasing, which financed the Powder River Basin connector line for WRPI in exchange for monthly rental payments, was merged into UPRR, with UPRR continuing as the surviving entity. In addition, CNWR, a wholly-owned, indirect subsidiary of the Corporation, which was the principal rail subsidiary of CNW, was merged with and into UPRR, with UPRR continuing as the surviving entity (the CNWR Merger). CNWR and UPRR operated as a unified rail system before and after the CNWR Merger.

On January 1, 1997, MPRR was merged with and into UPRR (the MPRR Merger), with UPRR continuing as the surviving entity. Prior to the MPRR Merger, MPRR was a Class I railroad, which operated as a unified rail system with UPRR and such operations continued following the MPRR Merger.

On June 30, 1997, DRGW and SPCSL were merged with and into UPRR (the DRGW and SPCSL Mergers), with UPRR continuing as the surviving entity. Immediately prior to the DRGW and SPCSL Mergers, DRGW and SPCSL were wholly-owned, direct subsidiaries of SPT, and UPRR and SPT at that time and immediately thereafter were wholly-owned, indirect subsidiaries of UPC.

On September 30, 1997, SSW was merged with and into SSW Merger Corp. with SSW Merger Corp. continuing as the surviving entity, and immediately thereafter, SSW Merger Corp. was merged with and into UPRR (collectively, the SSW Merger), with UPRR continuing as the surviving entity. Immediately prior to the SSW Merger, SSW was a direct subsidiary of SPT, and UPRR and SPT were at that time and immediately thereafter wholly-owned, indirect subsidiaries of the Corporation.

On February 1, 1998, UPRR was merged with and into SPT, a Delaware corporation and the principal SP rail affiliate (the SPT Merger), with SPT continuing as the surviving corporation and changing its name to "Union Pacific Railroad Company" immediately following the SPT Merger and thereby creating the current Respondent. Immediately prior to the SPT Merger, SPT and UPRR were wholly-owned, indirect subsidiaries of UPC. UPRR and SPT operated as a unified system before and after the SPT Merger.

Exhibit (TDC-2)

Page 6 of 24

290. COMPARATIVE STATEMENTS OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

The acquisition of Southern Pacific was accounted for by UPC using the purchase method. As a result, all purchase accounting entries have been pushed down to the accounts of the Company as of the effective date of the SP acquisition made by the Corporation, as follows:

(Millions of Dollars)	
Purchase price to be allocated.....	\$4,097
Pre-tax merger costs:	
Current	532
Long-term	426
Equity acquired	<u>(1,083)</u>
Unallocated purchase price	<u>\$3,972</u>

Purchase price allocation:	
Property and equipment	
Land	\$3,509
Roadway, equipment and other	2,522
Debt and preference share revaluation	(200)
Deferred income taxes (including the effect of merger costs)	<u>(1,859)</u>
Total	<u>\$3,972</u>

In connection with the acquisition and continuing integration of the UPRR's and the former Southern Pacific's rail operations, the Company is in the process of eliminating 5,200 duplicate positions, which are primarily non-train crews. In addition, the Company is relocating 4,700 positions, merging or disposing of redundant facilities, disposing of certain rail lines and is also canceling uneconomical and duplicative SP contracts. The Company recognized a \$958 million liability in the SP purchase price allocation for costs associated with SP's portion of these activities. The components of the \$958 million liability are as follows:

(Millions of Dollars)	
Labor protection related to legislated and contractual obligations to SP union employees	\$361
Severance costs	343
Contract cancellation fees	145
Relocation costs	<u>109</u>
Total	<u>\$958</u>

Through December 31, 1997, approximately \$280 million in merger-related costs were paid by the Company and charged against these reserves, principally comprised of \$153 million and \$65 million, respectively, for severance and relocation payments made to approximately 3,500 Southern Pacific employees. The Company expects that the remaining merger payments will be made over the course of the next five years as the rail operations of the Company and the former SP are integrated and labor negotiations are completed and labor agreements are implemented.

In addition, the UP expects to incur \$235 million in acquisition-related costs through 1999 for severing or relocating UPRR employees (those employed by the Respondent prior to the September 1996 purchase of SP by UPC), disposing of certain facilities owned by the UP prior to the SP acquisition, training and equipment upgrading. These costs will be charged to expense as incurred over the next two years. Net income for 1997 included \$60 million of acquisition-related operating costs, after tax.

The pro forma results presented below have been prepared to reflect the Southern Pacific acquisition as if the date of common control was January 1, 1995. The pro forma results presented below do not reflect synergies expected to result from the integration of UPRR's and Southern Pacific's rail operations, and accordingly, do not account for any potential increase in revenue or operating income, estimated cost savings, or one-time costs associated with the elimination of UPRR's duplicate facilities and relocation or severance payments to UPRR employees. The effects of the foregoing could be substantial. This unaudited pro forma information is not necessarily indicative of the results of operations that might have occurred had common control of the Southern Pacific actually occurred on the date indicated, or of future results of operations of the resulting entity. Pro forma results for the year ended December 31, 1995 also reflect the pro forma effect of UPC's acquisition of CNW as if common control had occurred at the beginning of that period.

(Millions of Dollars)

	(Unaudited)	
	Pro Forma	
	1996	1995
Net Income	\$871	\$780

Exhibit (TDC-2)
Page 7 of 24

200. COMPARATIVE STATEMENTS OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

In June 1996, prior to the Legal Mergers, the Company sold 4,916,863 shares of its Common Stock to a subsidiary of the Corporation for \$600 million in cash. At the same time, the Company declared a cash dividend to its shareholders of \$600 million. Also, in June 1996, the Company declared a dividend of its 25% ownership in SP to the Corporation, which then was recorded as a contribution of capital of \$641 million back to the Company. These transactions were necessary to facilitate the SP acquisition.

Significant Investments: In June 1997, the UP and a consortium of partners were granted a 50-year concession for the Pacific-No 10 and Chihuahua Pacific rail lines in Mexico and a 25% stake in the Mexico City Terminal Company at an aggregate price of \$525 million. The UP holds a 13% ownership share in the consortium and has accounted for its interest by the equity method. The consortium assumed operational control of both lines in February 1998.

10. Related Party Transactions

Amounts due to and from affiliates, including advances to and borrowings from the Corporation, bear interest at an annually determined rate which considers the Corporation's cost of debt. Net intercompany interest expense charged on such amounts was \$279 million and \$192 million in 1997 and in 1996, respectively.

11. Financial Instruments

Risk Management - The Company uses derivative financial instruments (in limited instances and for other than trading purposes) to manage risk as it relates to fuel prices and interest rates. Where the Company has fixed interest rates or fuel prices through the use of swaps, futures or forward contracts, the Company has mitigated the downside risk of adverse price and rate movements; however, it has also limited future gains from favorable movements.

The Company addresses market risk related to these instruments by selecting instruments whose value fluctuations highly correlate with the underlying item being hedged. Credit risk related to derivative financial instruments, which is minimal, is managed by requiring high credit standards for counterparties and periodic settlements. The Company did not have any credit risk associated with its counterparties at December 31, 1997. The Company has not been required to provide, nor has it received, any collateral relating to its hedging activity.

The fair market values of the Company's derivative financial instrument positions at December 31, 1997 and 1996 described below were determined based on current fair market values as quoted by recognized dealers, or developed based on the present value of expected future cash flows discounted at the applicable zero coupon U.S. treasury rate and swap spread.

Fuel - Over the past three years, fuel costs have represented more than 10 percent of the Company's total operating expenses. As a result of the significance of fuel costs and the historical volatility of fuel prices, the Company periodically use swaps, futures and forward contracts to mitigate the impact of fuel price volatility. The intent of this program is to protect the Company's operating margins and overall profitability from adverse fuel price changes. However, the use of these contracts also limits the benefit of favorable fuel price changes.

At year-end 1997, the Company had hedged 42% of its forecasted 1998 fuel consumption at \$0.515 per gallon, while at December 31, 1996, the Company had not hedged any of its anticipated 1997 fuel consumption. At year-end 1997, the UP had outstanding swap agreements covering its anticipated 1998 fuel purchases of \$298 million, with gross and net liability positions of \$13 million. Fuel hedging had no significant effect on the UP's 1997 fuel costs and lowered 1996 fuel costs by \$34 million.

Interest Rates - Within the Corporation's overall debt strategy, the Company controls its overall risk of fluctuations in interest rates by managing the proportion of fixed and floating rate debt instruments within its debt portfolio over a given period. Derivatives are used as one of the tools to obtain the targeted mix. At December 31, 1997, the total notional principal amount of debt affected by these instruments was \$110 million, with an unrecognized mark-to-market loss of \$8 million. At December 31, 1996, the total notional principal amount of debt affected by these instruments was \$117 million, with an unrecognized mark-to-market loss of \$9 million. The Company's interest expense and weighted-average borrowing rate were not materially impacted by interest rate hedging activity in 1997 or 1996.

Fair Value of Financial Instruments - The fair value of the Company's long- and short-term debt has been estimated using quoted market prices or current borrowing rates. At December 31, 1997, the fair value of total debt exceeded the carrying value by approximately 4 percent. The carrying value of all other financial instruments approximates fair value.

Sale of Receivables - The Company has sold, on a revolving basis, an undivided percentage ownership interest in a designated pool of accounts receivable. At December 31, 1997 and 1996, accounts receivable are presented net of the \$650 million of receivables sold.

Exhibit (TDC-2)

Page 8 of 24

200. COMPARATIVE STATEMENTS OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

12. Capital Stock

The Board of Directors of the Company has restricted the availability of retained earnings for payment of dividends by \$131 million. This represents (a) the amount by which the estimated fair value of the Company's investment in its non-transportation subsidiaries, as determined by the Board of Directors of the Company, exceeded the net book value of such investment which was transferred to the Corporation by

means of a dividend in June 1971 (\$110 million) and (b) the amount by which the fair market value exceeded the book value of certain investment securities which were transferred to the Corporation by means of a dividend in November 1972 (\$21 million).

As a result of the MPRR Merger, the Company's capital structure consists of Class A Stock and Common Stock. The Class A Stock is entitled to a cash dividend whenever a dividend is declared on the Common Stock, in an amount which equals 8 percent of the sum of the dividends on both the Class A Stock and the Common Stock. However, dividends may be declared and paid on the Class A Stock only when there is unappropriated available income in respect of prior calendar years which is sufficient to make a sinking fund payment equal to 25 percent of such dividend for the benefit of the Debentures or the Certificates. To the extent that dividends are paid on the Common Stock but not the Class A Stock because the amount of unappropriated available income is insufficient to make such a sinking fund payment, a special cash dividend on the Class A Stock shall be paid when sufficient unappropriated available income exists to make the sinking fund payment. Such insufficiency does not affect the Company's right to declare dividends on the Common Stock. Dividends on the Class A Stock for 1997 will be based on UPRR's available income only, and in 1998 and thereafter will be based on available income for the Company. UPRR's available income for 1997 will be sufficient to provide for a \$12.4 million special cash dividend on the Class A Stock to be paid in 1998. After such payment, dividends in arrears on the Class A Stock (which includes arrears on MPRR Class A Stock accruing prior to the MPRR Merger) will total \$67 million.

13. Retirement Plans

The Company provides defined benefit pension plan benefits to eligible non-union employees through qualified and non-qualified (supplemental) pension plans, and to eligible union employees through a defined contribution multi-employer pension plan. In addition, retirement medical benefits and life insurance are provided for eligible non-union employees through an unfunded benefit plan and for eligible union employees through multi-employer plans.

Pension Benefits - Qualified and non-qualified defined pension benefits for eligible non-union employees are based on years of service and the highest compensation during the latest years of employment. The qualified plan is funded based on the Projected Unit Credit actuarial funding method and is funded at not less than the minimum funding standards set forth in the Employee Retirement Income Security Act of 1974, as amended. In addition, the Company's employees are covered by the Railroad Retirement System (the System). Taxes paid by the Company to the System are expensed as incurred and amounted to approximately \$392 million in 1997, \$275 million in 1996 and \$200 million in 1995. The Company has settled a portion of the non-qualified unfunded supplemental plan's accumulated benefit obligation by purchasing annuities.

Total pension cost for the Corporation's qualified and supplemental pension plans, which excludes the Overnite Transportation Company's plan in which no employee of the UP participates, are detailed below. The Company's employees participate in these plans along with other employees of the Corporation.

(Millions of Dollars)

	<u>1997</u>	<u>1996</u>	<u>1995</u>
Service cost - benefits earned during the period	\$ 18	\$ 14	\$ 14
Interest on projected benefit obligation	94	56	58
Return on assets:			
Actual gain	(205)	(101)	(121)
Deferred gain	115	49	73
Net amortization costs	2	8	10
Charge to operations	<u>\$ 24</u>	<u>\$ 26</u>	<u>\$ 34</u>

The projected benefit obligation (PBO) was determined using a discount rate of 7.0% and 7.5% in 1997 and 1996, respectively. The estimated rate of salary increase approximated 5.0% and 5.5% in 1997 and 1996, respectively. The expected long-term rate of return on plan assets was 8.0% in both years. The change in assumptions will not significantly affect 1998 pension cost. As of year-end 1997 and 1996, approximately 32% and 37%, respectively, of the funded plans' assets were held in fixed-income and short-term securities, with the remainder in equity securities.

Exhibit (TDC-2)

Page 9 of 24

20J. COMPARATIVE STATEMENTS OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

The funded status of the Corporation's plans in which the Company's employees participate are as follows:

(Millions of Dollars)	Assets Exceed Accumulated Benefits		Accumulated Benefits Exceed Assets(a)	
	1997	1996	1997	1996
Plan assets at fair value	\$ 969	\$ 855	\$421	\$395
Actuarial present value of benefit obligations:				
Vested benefits	717	610	500	431
Non-vested benefits	76	41	6	11
Accumulated benefit obligation	793	651	506	442
Additional benefits based on estimated future salaries	72	80	15	53
Projected benefit obligation	865	731	521	495
Plan assets (over)/under PBO	(104)	(124)	100	100
Unamortized net transition asset/(obligation)	11	13	(5)	(11)
Unrecognized prior service cost	(80)	(36)	3	(26)
Unrecognized net gain/(loss)	369	285	3	3
Minimum liability	-	-	31	42
Pension liability	\$ 196	\$ 138	\$132	\$108

(a) Includes non-qualified supplemental plan benefits.

Other Postretirement Benefits - The Company also provides medical and life insurance for qualifying non-union employees through participation in the Corporation's plans. Components of the postretirement health care and life insurance benefit expense for the Corporation is detailed below as follows:

(Millions of Dollars)	1997	1996	1995
Service cost - benefits earned during the period	\$ 8	\$ 4	\$ 4
Interest costs on accumulated benefit obligation	30	15	18
Net amortization costs	(10)	(4)	(7)
Charge to operations	\$28	\$15	\$15

The liability for the Corporation's postretirement benefit plans in which the Company's employees participate is as follows:

(Millions of Dollars)	1997	1996
Accumulated postretirement benefit obligation:		
Retirees	\$270	\$272
Fully eligible active employees	26	19
Other active employees	81	76
Total accumulated postretirement benefit obligation	377	367
Unrecognized prior service gain	22	22
Unrecognized net gain	45	54
Postretirement benefits liability	\$444	\$443

The accumulated postretirement benefit obligation was determined using a discount rate of 7.0% and 7.5% in 1997 and 1996, respectively. This change in assumption will not significantly affect 1998 postretirement benefit costs. The health care cost trend rate is assumed to decrease gradually from 9.0% for 1998 to 4.5% for 2005 and all future years. If the assumed health care cost trend rates are increased by one percentage point, the aggregate of the service and interest cost components of annual postretirement benefit expense would increase by \$3 million, and the accumulated postretirement benefit obligation would rise by \$34 million.

Agreement Retiree Benefit Plans - Certain of the UP's union retirees participate in multi-employer pension, medical and life insurance programs. The costs of these plans have been expensed as payments have been made.

200. COMPARATIVE STATEMENTS OF FINANCIAL POSITION - EXPLANATORY NOTES - Continued

NOTES TO FINANCIAL STATEMENTS

Affiliates Covered by the Plan - Salaried employees of the following Affiliated Companies are covered by the Corporations funded pension plan for salaried employees: Note: Charges are allocated on basis of actuarial valuation for each company participating in the Plan.

Union Pacific Corporation
Southern Pacific Railroad Corporation
American Refrigerator Transit Co.
Union Pacific Carrier Services, Inc.
Southern Pacific Real Estate Enterprises

Personnel Scheduling Technologies, Inc.
Standard Realty & Development Company
Union Pacific Freight Services Company
Southern Pacific Asset Management

Delta Finance Company, Ltd
Pacific Fruit Express Company
Union Pacific Distribution Services, Inc.
Southern Pacific Land Corporation

14. Contingent Liabilities

There are various claims and lawsuits pending against the Company and certain customers have submitted claims or stated their intention to submit claims to the UP for damages related to shipments delayed in transit as a result of congestion problems and certain customers have filed lawsuits seeking to recover damages for such delays. The nature of the damages sought by claimants includes, but is not limited to, contractual liquidated damages, freight loss or damages, alternative transportation charges, additional production costs, lost business and lost profits. In addition, some customers have asserted that they have the right to cancel contracts as a result of alleged material breaches of such contracts by the UP. As the congestion problems continue, the Company expects additional claims by shippers. The Company will continue to evaluate the adequacy of its reserves for claims and expects to add to such reserves as appropriate.

The UP is also party to regulatory proceedings at the STB investigating railroad service problems in the West. The STB has imposed certain temporary measures on the UP pursuant to this proceeding, including, among other things, the diversion of traffic from the UP's lines. Unless the UP is successful in recovering from the congestion and related service problems, certain parties may request the STB to order the UP to take additional actions, including, among other things, further diversions of traffic or the transfer of certain Company rail lines or other facilities to other railroads.

The Company is also subject to Federal, state and local environmental laws and regulations, and is currently participating in the investigation and remediation of numerous sites. Where the remediation costs can be reasonably determined, and where such remediation is probable, the Company has recorded a liability. At December 31, 1997, the Company had accrued \$219 million for estimated future environmental costs and believes it is reasonably possible that actual environmental costs could be lower than the recorded reserve or as much as 25% higher. In addition, the Company periodically enters into financial and other commitments and has retained certain contingent liabilities upon the disposition of formerly-owned operations.

In addition, UPC and certain of its officers and directors (who are also officers and directors of the Company) are currently defendants in two purported class action securities lawsuits, and certain current and former directors of the Corporation and the Company are currently defendants in a purported derivative action filed on behalf of the Corporation. The class action suits allege, among other things, that management failed to properly disclose the UP's service and safety problems and thereby issued materially false and misleading statements concerning the merger with SP and the safe, efficient operation of its rail network. The derivative action alleges, among other things, that the named current and former directors breached their fiduciary duties to the Corporation by approving the mergers of SP and CNW into the Company without ensuring that the Corporation or the Company had adequate systems in place to effectively integrate those acquisitions into the operations of the Corporation and the Company. Because both the size of the class and the damages are uncertain, UPC and the UP are unable at this time to determine the potential liability, if any, which might arise from these lawsuits. Management believes that these claims are without merit and intends to defend them vigorously.

It is not possible at this time for the Company to fully determine the effect of all unasserted claims on its consolidated financial condition, results of operations or liquidity; however, to the extent possible, where unasserted claims can be estimated and where such claims are considered probable, the Company has recorded a liability. The Company does not expect that any known lawsuits, claims, environmental costs, commitments or guarantees will have a material adverse effect on its consolidated financial condition or operating results.

15. Accounting Pronouncements

The American Institute of Certified Public Accountants issued Statement of Position 96-1, "Environmental Remediation Liabilities," effective for 1997, which clarifies the accounting for environmental remediation liabilities. Adoption did not have a significant impact on the Company's operating results or financial condition.

In June 1997, the FASB issued Statement No. 130, "Reporting Comprehensive Income" that will be effective in 1998. The Company anticipates minimal impact from this Statement.

Also in June 1997, the FASB issued Statement No. 131, "Disclosures about Segments of an Enterprise and Related Information" that will be effective in 1998. The Company currently complies with most provisions of this Statement, and any incremental disclosure required by that Statement is expected to be minimal.

Exhibit (TDC-2)
Page 11 of 24

200. COMPARATIVE STATEMENTS OF FINANCIAL POSITION - EXPLANATORY NOTES - Concluded

NOTES TO FINANCIAL STATEMENTS

16. Supplemental Cash Flow Information

The Corporation contributed \$2,476 million, the equity portion of the SP acquisition, to the Company in conjunction with the SPT Merger, which caused a non-cash increase in the Company's fixed assets and capital surplus in 1996—the year common control of SP was acquired.

17. Union Pacific Fund for Effective Government

The Corporation, UP's parent, is the sponsor of the Union Pacific Fund for Effective Government (the FFEG), a separate segregated fund utilized for political purposes, established and operated in accordance with the Federal Election Campaign Act of 1971, as amended, (the Act). The administrative expenses of the FFEG are paid by the Corporation. UP's executive and administrative personnel are solicited annually by the FFEG within the guidelines of the Act and certain executive officers of UP are members of the FFEG's managing Finance Committee.

210. RESULTS OF OPERATIONS
(Dollars in Thousands)

Cross-checks

1 Disclose the requested information for respondent pertaining to results of operations for the year.

2 Report total operating expenses from Schedule 410. Any differences between this schedule and Schedule 410 must be explained on page 18.

3 List dividends from investments accounted for under the cost method on line 19, and list dividends accounted for under the equity method on line 25.

4 All contra entries should be shown in parenthesis.

Schedule 210

Line 15, col b

Lines 47, 48, 49 = b

Line 50, col b

Schedule 210

= Line 62, col b

= Line 63, col b

= Line 64, col b

Schedule 410

= Line 620, col h

= Line 620, col f

= Line 620, col g

Line 14, col b

Line 14, col d

Line 14, col e

Line No.	Cross Check	Item (a)	Amount for current year (b)	Amount for preceding year (c)	Freight-related revenue and expenses (d)	Passenger-related revenue and expenses (e)	Line No.
		ORDINARY ITEMS					
		OPERATING INCOME					
		Railway Operating Income					
1		(101) Freight	9,474,675	7,284,204	9,474,675		1
2		(102) Passenger	59,038	58,312		59,038	2
3		(103) Passenger-Related	538	550		538	3
4		(104) Switching	117,502	60,033	117,502		4
5		(105) Water Transfers					5
6		(106) Demurrage	66,982	49,280	66,982		6
7		(110) Incidental	35,918	17,301	35,918		7
8		(121) Joint Facility-Credit	7,122	8,769	7,122		8
9		(122) Joint Facility-Debit					9
10		(501) Railway operating revenues (Exclusive of transfers from government authorities-lines 1-9)	9,761,775	7,478,449	9,702,199	59,576	10
11		(502) Railway operating revenues-transfers from government authorities	38,913	31,359		38,913	11
12		(503) Railway operating revenues-amortization of deferred transfers from government authorities		0	0		12
13		TOTAL RAILWAY OPERATING REVENUES (lines 10-12)	9,800,688	7,509,808	9,702,199	98,489	13
14		(531) Railway operating expenses	8,594,138	5,975,211	8,496,644	97,494	14
15		Net revenue from railway operations	1,206,550	1,534,547	1,205,555	995	15
		OTHER INCOME					
16		(506) Revenue from property used in other than carrier operations	31,241	41,505			16
17		(510) Miscellaneous rent income	77,499	45,014			17
18		(512) Separately operated properties-Profit					18
19		(513) Dividend income (cost method)	250	34			19
20		(514) Interest income	14,599	14,075			20
21		(516) Income from sinking and other funds	1	3			21
22		(517) Release of premiums on funded debt	16,696				22
23		(518) Reimbursements received under contracts and agreements					23
24		(519) Miscellaneous income	139,425	84,851			24
25		Income from affiliated companies: 519					
		a. Dividends (equity method)	9,210	4,627			25
		b. Equity in undistributed earnings (losses)	42,858	55,190			26
26		TOTAL OTHER INCOME (lines 16-26)	331,779	245,299			27
27		TOTAL INCOME (lines 15, 27)	1,538,329	1,779,846			28
		MISCELLANEOUS DEDUCTIONS FROM INCOME					
29		(534) Expenses of property used in other than carrier operations	11,750	8,765			29
30		(544) Miscellaneous taxes					30
31		(545) Separately operated properties-Loss		75			31
32		(549) Maintenance of investment organization					32
33		(550) Income transferred under contracts and agreements					33
34		(551) Miscellaneous income charges	90,973	43,044			34
35		(553) Uncollectible accounts					35
		TOTAL MISCELLANEOUS DEDUCTIONS	102,723	51,884			36
		Income available for fixed charges	1,435,606	1,727,962			37

See note on pages 18 and 18A.

Exhibit (TDC-2)
Page 13 of 24