STB FD-32760(SUB26) 7-8-98 I ID-189373 2 OF 3

210. RESULTS OF OPERATIONS - Concluded
(Dollars in Thousands)

Line No.	Cross Check	Item (a)	Amount for current year (b)	Amount for preceding year (c)	Line No.
		FIXED CHARGES			
		(546) Interest on funded debt:			
38		(a) Fixed interest not in default	258,922	121,361	38
39		(b) Interest in default			39
40		(547) Interest on unfunded debt	211,488	181,751	40
41		(548) Amortization of discount on funded debt	9,679	5,724	41
42		TOTAL FIXED CHARGES (lines 38-41)	480,089	308,836	42
43		Income after fixed charges (line 37 minus line 42)	955,517	1,419,126	43
		OTHER DEDUCTIONS			
		(546) Interest on funded debt:			
44		(c) Contingent interest	9,482	9,522	44
		UNUSUAL OR INFREQUENT ITEMS			
45		(555) Unusual or infrequent items (debit) credit			45
46		Income (Loss) from continuing operations (before income taxes)	946,035	1,409,604	46
		PROVISIONS FOR INCOME TAXES			
		(556) Income taxes on ordinary income:			
47	•	(a) Federal income taxes	(1,166)	238,705	47
48	•	(b) State income taxes	(8,397)	14,795	48
49	•	(c) Other income taxes			49
50	•	(557) Provision for deferred taxes	335,577	215,880	50
51		TOTAL PROVISIONS FOR INCOME TAXES (lines 47-52)	326,014	469,380	51
52		Income from continuing operations (ine 46 minus line 51)	620,021	940,224	52
		DISCONTINUED OPERATIONS			
53		(560) Income or loss from operations of discontinued segments (less applicable income taxes of $________)			53
54		(562) Gain or loss on disposal of discontinued segments (less applicable income taxes of $________)			54
55		Income before extraordinary items (lines 52 - 54)	620,021	940,224	55
		EXTRAORDINARY ITEMS AND ACCOUNTING CHANGES			
56		(570) Extraordinary items (Net)			56
57		(590) Income taxes on extraordinary items			57
58		(591) Provision for deferred taxes - Extraordinary items			58
59		TOTAL EXTRAORDINARY ITEMS (lines 56-58)			59
60		(592) Cumulative effect of changes in accounting principles (less applicable income taxes of $____________)			60
61	•	Net income (Loss) (Lines 55 + 59 + 60)	620,021	940,224	61
		RECONCILIATION OF NET RAILWAY OPERATING INCOME (NROI)			
62	•	Net revenues from railway operations	1,206,550	1,534,547	62
63	•	(556) Income taxes on ordinary income (-)	9,563	(253,500)	63
64	•	(557) Provision for deferred income taxes (-)	(335,577)	(215,880)	64
65		Income from lease of road and equipment (-)		0	65
66		Rent for leased roads and equipment (+)	2,233	2,262	66
67		Net railway operating income (loss)	882,769	1,067,429	67

Exhibit__(TDC-2)
Page 14 of 24

NOTES AND REMARKS FOR SCHEDULES 210 AND 220

Exhibit__(TDC-2)
Page 15 of 24

Note to Schedule 210

IMPACT OF CONGESTION ON 1997 OPERATIONS

In the third quarter of 1997, congestion in and around Houston and the coastal areas of Texas and Louisiana (the Gulf Coast region) began to have a material adverse effect on the Respondent's operations and earnings. System congestion started in the Gulf Coast region and spread throughout the system as the Respondent shifted resources to help mitigate the need for locomotives due to slower average train velocity. The congestion was brought on by, among other things, crew shortages and restricted track access caused by necessary track maintenance on former Southern Pacific lines, increased demand, washouts due to severe weather, derailments and congestion at Texas/Mexico gateways. Traffic slowed further as rail yards in the Gulf Coast region filled, slowing access into and out of the yards and forcing trains to be held on sidings.

Service Recovery Plan - To restore service to acceptable levels, the Respondent announced on October 1, 1997, that it was implementing a Service Recovery Plan (the Plan). The Plan focuses on reducing the number of cars on the system and restoring system velocity, which, in turn, results in more reliable service to customers. Key elements of the Plan include:

- *Power:* Bringing more locomotives into the Gulf Coast region through acquisitions, leasing from other railroads and moving locomotives from selected areas of the Respondent's system;
- *People*: Engaging in an extensive hiring program, allocating additional managers and operating personnel and revising operating plans to relieve congested terminals and remove trains from congested lines; and
- *Cooperation:* Working with customers and other railroads to curtail additional congestion and to provide alternative transportation.

Recent Actions Under the Plan - Implementation of the Plan has resulted in improvement in the overall operation of the UP and has generally eliminated congestion problems outside the Gulf Coast region and the surrounding southeast portion of the Company's rail system (although weather problems have caused intermittent periods of congestion, primarily in the Midwest). However, significant congestion has continued in the Gulf Coast region, which has been aggravated recently by several severe storms and congestion caused by operational problems on Mexican railroad lines south of Laredo, Texas. As discussed below, the Company has announced that it has embargoed most southbound traffic destined for the Laredo gateway to address worsening congestion at that gateway. In connection with its integration with Southern Pacific, the Respondent has implemented (i) Transportation Control System (TCS) in the southeast portion of the Respondent's system, which includes the Gulf Coast region, where the cutover to TCS occurred on December 1, 1997, (ii) directional running from Dexter Junction, Missouri on the north, across Arkansas, western Louisiana and eastern Texas to the Houston and San Antonio areas on the south, beginning on February 1, 1998 and (iii) the "hub-and-spoke" labor agreements in Texas and Arkansas. Although the Company believes that the full implementation of these changes is essential to achieving significant long-term benefits, their implementation also contributed to the persistence of congestion in the affected Gulf Coast region during late 1997 and early 1998.

In addition to decreased revenues and increased operating costs resulting from the congestion-related slowdown in the Company's traffic, discussed above, certain customers have submitted claims or stated their intention to submit claims to the Company for damages related to delays in shipments. The Company will continue to evaluate the adequacy of its reserves for these claims and expects to add to such reserves as appropriate.

In order to address the congestion problem and to realize the benefits to the Respondent and its customers of the merger implementation steps outlined above, the Respondent has recently initiated certain actions under the Plan:

- *Power:* Arranging for the deployment of approximately 200 locomotives in the Gulf Coast region through selective redeployment and short-term leases and loans from other railroads to reduce congestion in yards and remove trains from sidings.
- *People:* Continuing its hiring program and redeploying personnel to (i) improve management of certain major terminals, (ii) update TCS information in congested areas to improve operational reliability and (iii) identify empty cars and expedite them to shipper facilities for loading to reduce the number of cars in yards and on sidings.
- *Cooperation:* Working with the Respondent's connecting railroads to expedite the interchange of traffic and entering into arrangements with competitors to share tracks and coordinate dispatching. For example, the recent agreement between the Respondent and the BNSF, which, among other things, grants certain trackage rights to the Respondent in the Houston area and provides for joint dispatching of various lines in the Houston area and between Houston and New Orleans.

On March 24, 1998, the Company announced that it wou[illegible] embargo most southbound traffic destined for the Laredo, Texas gateway commencing Saturday, March 28, 1998, to clear the backlog of cars waiting to cross into Mexico. The embargo applies to grain, chemicals, industrial products and coal, but not finished automobiles, auto parts or intermodal traffic or any northbound traffic through Laredo. The Company is attempting to reroute some of the embargoed traffic through other Company gateways, none of which are subject to the embargo. The Company believes that this embargo is necessary because congestion problems principally within Mexico that affect the Laredo gateway have worsened during recent weeks and are affecting other areas within the southeast region of its system. As of March 26, 1998, there were

Exhibit__(TDC-2)
Page 16 of 24

NOTES AND REMARKS FOR SCHEDULES 210 AND 220

Note to Schedule 210

more than 5,800 cars waiting to move south to Laredo as compared with approximately 3,100 cars, which is considered normal. These car numbers include a small amount of traffic terminating in Laredo. The Company's crossings at Laredo have declined from a daily average of 375 southbound cars in January to 335 cars in February and 305 for the first 24 days of March. Although the Company is unable to predict the duration of the embargo, it currently expects it to last for at least one month.

The Respondent believes that the steps it is taking to continue the integration of Southern Pacific and implement the Plan (including the limited embargo at the Laredo gateway) will alleviate the congestion and service issues affecting the Respondent and that substantial operational improvement will begin to occur in the near term. The Respondent is also prepared to take additional action, including transferring business to other carriers and arranging other temporary embargos on shipments to allow the Respondent to clear the system, if such actions become necessary. However, the Respondent does not believe that such additional actions are necessary at this time.

In conjunction with the Plan, the Respondent is engaged in a comprehensive examination of its long-term capital spending program in the areas affected by congestion. The study focuses on further upgrading the Respondent's operations infrastructure in order to keep pace with business growth primarily driven by current and anticipated chemical plant expansion along the Gulf Coast as well as intermodal, automotive, industrial products, grain and Mexico business. The scope of the examination includes all terminal operations, yards, industrial complexes, joint operations, connecting routes and Mexican gateways in the El Paso-New Orleans corridor. The Respondent currently plans to spend more than $570 million on capital projects in Texas and Louisiana in 1998 and 1999. Management remains committed to capital spending to continue capacity expansion on its main lines and in its yards, upgrade and augment equipment to meet customer needs and develop and implement new technology.

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.

INSTRUCTIONS CONCERNING RETURNS TO BE MADE IN SCHEDULE 410

Exhibit__(TDC-2)
Page 17 of 24

Cross-checks

Schedule 410		**Schedule 210**
Line 620, column (h)	=	Line 14, column (b)
Line 620, column (f)	=	Line 14, column (d)
Line 620, column (g)	=	Line 14, column (e)
		Schedule 412
Line 136 thru 138 column (f)	=	Line 29, column (b)
Line 118 thru 123, and 130 thru 135 column (f)	=	Line 29, column (c)
		Schedule 414
Line 231, column (f)	=	Line 19, columns (b) thru (d)
Line 230, column (f)	=	Line 19, columns (e) thru (g)
		Schedule 415
Lines 207, 208, 211, 212, columns (f)	=	Lines 5, 38, column (f)
Lines 226, 227, column (f)	=	Lines 24, 39, column (f)
Lines 311, 312, 315, 316, column (f)	=	Lines 32, 35, 36, 37, 40, 41, column (f)
		And
		Schedule 414
		Minus line 24, columns (b) thru (d) plus line 24, columns (e) thru (g)
		Schedule 415
Line 213, column (f)	=	Lines 5, 38, columns (c) and (d)
Line 232, column (f)	=	Lines 24, 39, columns (c) and (d)
Line 317, column (f)	=	Lines 32, 35, 36, 37, 40, 41, columns (c) and (d)
Lines 202, 203, 216, column (f) (equal to or greater than, but variance cannot exceed line 216, column (f))		Lines 5, 38, column (b)
Lines 221, 222, 235, column (f) (equal to or greater than, but variance cannot exceed line 235, column (f))		Lines 24, 39, column (b)
Lines 302 thru 307 and 320, column (f) (equal to or greater than, but variance cannot exceed line 320, column (f))		Lines 32, 35, 36, 37, 40, 41, column (b)
		Schedule 417
Line 507, column (f)	=	Line 1, column (j)
Line 508, column (f)	=	Line 2, column (j)
Line 509, column (f)	=	Line 3, column (j)
Line 510, column (f)	=	Line 4, column (j)
Line 511, column (f)	=	Line 5, column (j)
Line 512, column (f)	=	Line 6, column (j)
Line 513, column (f)	=	Line 7, column (j)
Line 514, column (f)	=	Line 8, column (j)
Line 515, column (f)	=	Line 9, column (j)
Line 516, column (f)	=	Line 10, column (j)
Line 517, column (f)	=	Line 11, column (j)
Schedule 450		**Schedule 210**
Line 4, column (b)	=	Line 47, column (b)

410. RAILWAY OPERATING EXPENSES

(Dollars in Thousands)

Exhibit__(TDC-2)
Page 18 of 24

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries and Wages (b)	Material, tools, supplies, fuels and lubricants (c)	Purchased Services (d)	General (e)	Total Freight Expense (f)	Passenger (g)	Total (h)	Line No.
		WAY AND STRUCTURES								
		ADMINISTRATION								
1		Track	13,477	4,773	3,603	2,317	24,170	572	24,742	1
2		Bridge & Building	4,974	720	1,392	1,681	8,767	327	9,094	2
3		Signal	7,225	2,472	6,292	(1,355)	14,634	436	15,070	3
4		Communication	2,369	85	1,044	574	4,072	132	4,204	4
5		Other	10,034	83	8,470	1,886	20,473	280	20,753	5
		REPAIR AND MAINTENANCE								
6		Roadway - Running	17,755	1,757	20,478	(1,560)	38,430	1,926	40,356	6
7		Roadway - Switching	4,428	735	5,420	(67)	10,516	0	10,516	7
8		Tunnels and Subways - Running	70	0	2,304	0	2,374	17	2,391	8
9		Tunnels and Subways - Switching	18	0	641	0	659	0	659	9
10		Bridges - Culverts - Running	14,943	3,356	14	4,353	22,666	295	22,961	10
11		Bridges - Culverts - Switching	3,722	868	133	1,096	5,819	0	5,819	11
12		Ties - Running	9,037	4,882	614	1,134	15,667	497	16,164	12
13		Ties - Switching	2,357	1,366	155	292	4,170	0	4,170	13
14		Rail & Other Track Material - Running	79,918	20,812	5,753	5,173	111,6[illegible]6	2,485	114,141	14
15		Rail & Other Track Material - Switching	20,477	6,462	1,509	1,352	29,900	7	29,907	15
16		Ballast - Running	479	(837)	(14)	21	(351)	35	(316)	16
17		Ballast - Switching	128	(136)	(4)	5	(7)	0	(7)	17
18		Road Property Damaged - Running	1,320	59	147	24	1,550	32	1,582	18
19		Road Property Damaged - Switching	334	13	37	6	390	3	393	19
20		Road Property Damaged - Other	130	6	14	2	152	0	152	20
21		Signal & Interlockers-Running	31,395	13,494	5,421	2,530	52,840	3,380	56,220	21
22		Signal & Interlockers-Switching	8,271	3,543	1,582	689	14,085	0	14,085	22
23		Communications Systems	19,440	9,545	3,390	1,355	33,730	121	33,851	23
24		Power Systems	1,087	0	0	0	1,087	175	1,2[illegible]2	24
25		Highway Grade Crossing - Running	14,969	171	897	0	16,037	570	16,607	25
26		Highway Grade Crossing - Switching	0	0	0	0	0	0	0	26
27		Station & Office Buildings	6,870	9,652	18,167	9,471	44,160	1,826	45,986	27
28		Shop Building - Locomotives	8,193	0	0	0	8,193	279	8,472	28
29		Shop Buildings - Freight Cars	416	0	0	0	416	N/A	416	29
30		Shop Buildings - Other Equipment	0	15	0	0	18	0	18	30
101		Locomotive Servicing Facilities	466	1,002	5,534	144	7,246	99	7,345	101
102		Miscellaneous Buildings & Structures	4,791	783	122	28	5,724	709	6,433	102
103		Coal Terminals	0	0	0	0	0	0	0	103
104		Ore Terminals	273	60	120	235	688	0	688	104
105		Other Marine Terminals	0	0	0	0	0	0	0	105
106		TOFC/COFC-Terminals	0	0	10,792	0	10,792	0	10,792	106
107		Motor Vehicle Loading & Distribution Facilities	0	0	0	0	0	0	0	107
108		Facilities for Other Specialized Service Operations	0	0	0	0	0	0	0	108
109		Roadway Machines	3,135	9,358	(887)	273	11,879	1,283	13,162	109
110		Small Tools and Supplies	0	0	0	0	0	0	0	110
111		Snow Removal	670	1,826	742	0	3,238	411	3,649	111
112		Fringe Benefits - Running	N/A	N/A	N/A	70,697	70,697	2,842	73,539	112
113		Fringe Benefits - Switching	N/A	N/A	N/A	14,896	14,896	187	15,083	113
114		Fringe Benefits - Other	N/A	N/A	N/A	23,412	23,412	360	23,772	114

Exhibit__(TDC-2)
Page 19 of 24

410. RAILWAY OPERATING EXPENSES

(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries and Wages (b)	Material, tools, supplies, fuels and lubricants (c)	Purchased Services (d)	General (e)	Total Freight Expense (f)	Passenger (g)	Total (h)	Line No.
115		Casualties & Insurance - Running	N/A	N/A	N/A	31,661	31,661	35	31,696	115
116		Casualties & Insurance - Switching	N/A	N/A	N/A	7,428	7,428	0	7,428	116
117		Casualties & Insurance - Other	N/A	N/A	N/A	16,669	16,669	0	16,669	117
118		Lease Rentals - Debit - Running	N/A	N/A	2,392	N/A	2,392	0	2,392	118
119		Lease Rentals - Debit - Switching	N/A	N/A	0	N/A	0	0	0	119
120		Lease Rentals - Debit - Other	N/A	N/A	18,405	N/A	18,405	457	18,862	120
121		Lease Rentals - (Credit) - Running	N/A	N/A	0	N/A	0	0	0	121
122		Lease Rentals - (Credit) - Switching	N/A	N/A	0	N/A	0	0	0	122
123		Lease Rentals - (Credit) - Other	N/A	N/A	0	N/A	0	0	0	123
124		Joint Facility Rent - Debit - Running	N/A	N/A	25,852	N/A	25,852	0	25,852	124
125		Joint Facility Rent - Debit - Switching	N/A	N/A	244	N/A	244	0	244	125
126		Joint Facility Rent - Debit - Other	N/A	N/A	249	N/A	249	0	249	126
127		Joint Facility Rent - (Credit) - Running	N/A	N/A	(13,623)	N/A	(13,623)	0	(13,623)	127
128		Joint Facility Rent - (Credit) - Switching	N/A	N/A	(96)	N/A	(96)	0	(96)	128
129		Joint Facility Rent - (Credit) - Other	N/A	N/A	(42)	N/A	(42)	0	(42)	129
130		Other Rents - Debit - Running	N/A	N/A	(5)	N/A	(5)	27	22	130
131		Other Rents - Debit - Switching	N/A	N/A	0	N/A	0	0	0	131
132		Other Rents - Debit - Other	N/A	N/A	22	N/A	22	0	22	132
133		Other Rents - (Credit) - Running	N/A	N/A	0	N/A	0	0	0	133
134		Other Rents - (Credit) - Switching	N/A	N/A	0	N/A	0	0	0	134
135		Other Rents - (Credit) - Other	N/A	N/A	0	N/A	0	0	0	135
136		Depreciation - Running	N/A	N/A	N/A	491,754	491,754	1,498	493,252	136
137		Depreciation - Switching	N/A	N/A	N/A	109,263	109,263	0	109,263	137
138		Depreciation - Other	N/A	N/A	N/A	45,274	45,274	0	45,274	138
139		Joint Facility - Debit - Running	N/A	N/A	97,505	N/A	97,506	85	97,590	139
140		Joint Facility -Debit - Switching	N/A	N/A	13,449	N/A	13,449	0	13,449	140
141		Joint Facility - Debit - Other	N/A	N/A	1,538	N/A	1,538	0	1,538	141
142		Joint Facility - (Credit) - Running	N/A	N/A	(34,073)	N/A	(34,073)	0	(34,073)	142
143		Joint Facility - (Credit) - Switching	N/A	N/A	(42)	N/A	(42)	0	(42)	143
144		Joint Facility - (Credit) - Other	N/A	N/A	(31)	N/A	(31)	0	(31)	144
145		Dismantling Retired Road Property - Running	0	0	0	0	0	0	0	145
146		Dismantling Retired Road Property - Switching	0	0	0	0	0	0	0	146
147		Dismantling Retired Road Property - Other	0	0	0	0	0	0	0	147
148		Other - Running	0	0	(41)	512	471	0	471	148
149		Other - Switching	0	0	0	0	0	0	0	149
150		Other - Other	190	278	216	105	789	4	793	150
151		TOTAL WAY & STRUCTURE	293,361	97,206	216,001	843,330	1,449,898	21,392	1,471,290	151
		EQUIPMENT								
		LOCOMOTIVES								
201		Administration	6,672	(6,713)	7,987	1,532	9,478	247	9,725	201
202		Repair & Maintenance	133,800	183,954	56,761	3,716	378,231	3,263	381,494	202
203		Machinery Repair	0	3,527	698	0	4,225	0	4,225	203
204		Equipment Damaged	152	(4)	0	0	148	0	148	204
205		Fringe Benefits	N/A	N/A	N/A	51,767	51,767	1,144	52,911	205
206		Other Casualties and Insurance	N/A	N/A	N/A	23,463	23,463	7	23,470	206
207		Lease Rentals - Debit	N/A	N/A	125,059	N/A	125,059	0	125,059	207
208		Lease Rentals - (Credit)	N/A	N/A	(2,702)	N/A	(2,702)	0	(2,702)	208

410. RAILWAY OPERATING EXPENSES

(Dollars in Thousands)

Exhibit__(TDC-2)
Page 20 of 24

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries and Wages (b)	Material, tools, supplies, fuels and lubricants (c)	Purchased Services (d)	General (e)	Total Freight Expense (f)	Passenger (g)	Total (h)	Line No.
209		Joint Facility Rent - Debit	N/A	N/A	58	N/A	58	0	58	209
210		Joint Facility Rent - (Credit)	N/A	N/A	0	N/A	0	0	0	210
211		Other Rents - Debit	N/A	N/A	351	N/A	351	0	951	211
212		Other Rents - (Credit)	N/A	N/A	(114)	N/A	(114)	0	(114)	212
213		Depreciation	N/A	N/A	N/A	159,450	159,450	22	159,472	213
214		Joint Facility - Debit	N/A	N/A	205	N/A	205	0	205	214
215		Joint Facility - (Credit)	N/A	N/A	0	N/A	0	0	0	215
216		Repairs Billed to Others - (Credit)	N/A	N/A	0	N/A	0	0	0	216
217		Dismantling Retired Property	0	0	0	0	0	0	0	217
218		Other	113	9	4,707	(686)	4,143	(15)	4,128	218
219		TOTAL LOCOMOTIVES	140,737	180,775	193,610	239,242	754,362	4,668	759,030	219
		FREIGHT CARS								
220		Administration	9,731	849	3,021	1,811	15,412	N/A	15,412	220
221		Repair & Maintenance	113,075	138,410	80,988	6,772	339,245	N/A	339,245	221
222		Machinery Repair	0	5,246	230	0	5,476	N/A	6,476	222
223		Equipment Damaged	0	0	0	0	0	N/A	0	223
224		Fringe Benefits	N/A	N/A	N/A	46,423	46,423	N/A	46,423	224
225		Other Casualties & Insurance	N/A	N/A	N/A	45,100	45,100	N/A	45,100	225
226		Lease Rentals - Debit	N/A	N/A	191,458	N/A	191,458	N/A	191,458	226
227		Lease Rentals - (Credit)	N/A	N/A	(2,162)	N/A	(2,162)	N/A	(2,162)	227
228		Joint Facility Rent - Debit	N/A	N/A	0	N/A	0	N/A	0	228
229		Joint Facility Rent - (Credit)	N/A	N/A	0	N/A	0	N/A	0	229
230		Other Rents - Debit	N/A	N/A	893,827	N/A	893,827	N/A	893,827	230
231		Other Rents - (Credit)	N/A	N/A	(151,675)	N/A	(151,675)	N/A	(151,675)	231
232		Depreciation	N/A	N/A	N/A	117,877	117,877	N/A	117,877	232
233		Joint Facility - Debit	N/A	N/A	427	N/A	427	N/A	427	233
234		Joint Facility - (Credit)	N/A	N/A	0	N/A	0	N/A	0	234
235		Repairs Billed Other - (Credit)	N/A	N/A	(196,525)	N/A	(196,525)	N/A	(196,525)	235
236		Dismantling Retired Property	0	0	0	0	0	N/A	0	236
237		Others	2,659	(71)	185	(313)	2,460	N/A	2,460	237
238		TOTAL FREIGHT CARS	125,465	144,434	820,774	217,670	1,308,343	N/A	1,308,343	238
		OTHER EQUIPMENT								
		REPAIR AND MAINTENANCE								
301		Administration	48	1	0	0	49	45	94	301
		Repair and Maintenance								
302		Track, Trailers & Containers - Revenue Service	577	5,915	16,039	386	22,917	N/A	22,917	302
303		Floating Equipment - Revenue Services	0	0	0	0	0	N/A	0	303
304		Passenger & Other Revenue Equipment	806	541	351	83	1,781	10,895	12,676	304
305		Computers & Data Process Systems	0	9,018	27,290	0	36,308	701	37,009	305
306		Machinery	0	326	114	0	440	206	646	306
307		Work & Other Nonrevenue Equipment	509	1,516	24,717	0	26,742	694	27,436	307
308		Equipment Damaged	0	0	0	721	721	0	721	308
309		Fringe Benefits	N/A	N/A	N/A	701	701	3,243	3,944	309
310		Other Casualties & Insurance	N/A	N/A	N/A	593	593	10	603	310
311		Lease Rentals - Debit	N/A	N/A	58,931	N/A	58,931	1,028	59,959	311
312		Lease Rentals - (Credit)	N/A	N/A	4,552	N/A	4,552	0	4,552	312
313		Joint Facility Rent - Debit	N/A	N/A	(2,236)	N/A	(2,236)	0	(2,236)	313

410. RAILWAY OPERATING EXPENSES

(Dollars in Thousands)

Exhibit__(TDC-2)
Page 21 of 24

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries and Wages (b)	Material, tools, supplies, fuels and lubricants (c)	Purchased Services (d)	General (e)	Total Freight Expense (f)	Passenger (g)	Total (h)	Line No.
314		Joint Facility Rent - (Credit)	N/A	N/A	(14)	N/A	(14)	0	(14)	314
315		Other Rents - Debit	N/A	N/A	72,026	N/A	72,026	0	72,026	315
316		Other Rents - (Credit)	N/A	N/A	(56)	N/A	(56)	0	(56)	316
317		Depreciation	N/A	N/A	N/A	43,363	43,363	115	43,478	317
318		Joint Facility - Debit	N/A	N/A	5,199	N/A	5,199	0	5,199	318
319		Joint Facility - (Credit)	N/A	N/A	(34)	N/A	(34)	0	(34)	319
320		Repairs Billed Other - (Credit)	N/A	N/A	(14,188)	N/A	(14,188)	0	(14,188)	320
321		Dismantling Retired Equipment	0	0	0	0	0	0	0	321
322		Other	97	68	84	15	264	0	264	322
323		TOTAL OTHER EQUIPMENT	2,037	17,385	192,775	45,862	253,059	16,937	274,996	323
324		TOTAL EQUIPMENT	268,239	342,592	1,207,159	502,774	2,320,764	21,605	2,342,369	324
		TRANSPORTATION								
		TRAIN OPERATIONS								
401		Administration	27,010	1,795	7,082	4,761	40,648	1,372	42,020	401
402		Engine Crews	483,330	1,285	4,189	84,085	572,889	4,809	577,698	402
403		Train Crews	499,576	302	386	359	500,623	9,614	510,237	403
404		Dispatching Trains	39,794	525	3,762	577	44,658	256	44,914	404
405		Operating Signal & Interlockers	297	(1)	0	0	296	255	551	405
406		Operating Drawbridges	0	0	0	0	0	0	0	406
407		Highway Crossing Protection	0	0	0	0	0	0	0	407
408		Train Inspection & Lubricants	83,650	21,190	3	2,156	106,999	619	107,618	408
409		Locomotive Fuel	0	790,098	0	0	790,098	5,435	795,533	409
410		Electric Power Purchased or Produced for Motive Power	0	0	0	0	0	0	0	410
411		Servicing Locomotives	42,401	6,720	2,266	50	51,437	1,923	53,360	411
412		Freight Lost or Damaged	N/A	N/A	N/A	0	0	0	0	412
413		Clearing Wrecks	2,085	261	22,120	0	24,466	28	24,494	413
414		Fringe Benefits	N/A	N/A	N/A	357,003	357,003	5,454	362,457	414
415		Other Casualties & Insurance	N/A	N/A	N/A	158,253	158,253	5,934	164,187	415
416		Joint Facility - Debit	N/A	N/A	108,618	N/A	108,618	0	108,618	416
417		Joint Facility - (Credit)	N/A	N/A	(49,806)	N/A	(49,806)	0	(49,806)	417
418		Other	30,686	219	(247)	4,774	35,432	194	35,626	418
419		TOTAL TRAIN OPERATIONS	1,208,829	822,394	98,373	612,018	2,741,614	35,893	2,777,507	419
		YARD OPERATIONS								
420		Administration	13,422	1,084	4,421	775	19,702	0	19,702	420
421		Switch Crews	252,620	4,117	6,366	13,431	276,534	820	277,354	421
422		Controlling Operations	25,015	0	0	0	25,015	399	25,414	422
423		Yard & Terminal Clerical	25,815	311	571	135	26,832	67	26,899	423
424		Operating Switches, Signals, Retarders & Humps	154	2	4	0	160	45	205	424
425		Locomotive Fuel	487	82,551	4	(1)	83,041	0	83,041	425
426		Electric Power Purchased or Produced for Motive Power	0	0	0	0	0	0	0	426
427		Servicing Locomotives	3,524	0	0	0	3,524	0	3,524	427
428		Freight Lost or Damaged - Solely Related	N/A	N/A	N/A	0	0	0	0	428
429		Clearing Wrecks	(2)	0	0	0	(2)	2	0	429
430		Fringe Benefits	N/A	N/A	N/A	99,760	99,760	461	100,221	430
431		Other Casualties & Insurance	N/A	N/A	N/A	35,694	35,694	0	35,694	431
432		Joint Facility - Debit	N/A	N/A	18,586	N/A	18,586	0	18,586	432
433		Joint Facility - (Credit)	N/A	N/A	(1,729)	N/A	(1,729)	0	(1,729)	433

Road Initials: UPRR Year: 1997

410. RAILWAY OPERATING EXPENSES

(Dollars in Thousands)

Exhibit__(TDC-2)
Page 22 of 24

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries and Wages (b)	Material, tools, supplies, fuels and lubricants (c)	Purchased Services (d)	General (e)	Total Freight Expense (f)	Passenger (g)	Total (h)	Line No.
434		Other	0	0	0	0	0	0	0	434
435		TOTAL YARD OPERATION	321,035	88,065	28,223	149,794	587,117	1,794	588,911	435
		TRAIN & YARD OPERATIONS COMMON								
501		Cleaning Car Interiors	967	8	8,251	N/A	9,226	0	9,226	501
502		Adjusting & Transferring Loads	98	0	4,443	N/A	4,541	N/A	4,541	502
503		Car Loading Devices & Grain Doors	552	140	20,7[illegible]	N/A	21,437	N/A	21,437	503
504		Freight Loss or Damaged - All Other	N/A	N/A	N/A	37,882	37,882	2,700	40,582	504
505		Fringe Benefits	N/A	N/A	N/A	15,324	15,324	0	15,324	505
506		TOTAL TRAIN & YARD OPERATIONS COMMON	1,6[illegible]7	148	33,439	53,206	88,410	2,700	91,110	506
		SPECIALIZED SERVICE OPERATIONS								
507		Administration	3,213	119	3,904	4,049	11,285	N/A	11,285	507
508		Picking & Delivery & Marine Line Haul	4	0	15,794	0	15,798	N/A	15,798	508
509		Loading & Unloading Local Marine	3,788	5,550	105,029	1,079	115,446	N/A	115,446	509
510		Protective Services	0	0	5	0	5	N/A	5	510
511		Freight Loss or Damaged - Solely Related	N/A	N/A	N/A	3,519	3,519	N/A	3,519	511
512		Fringe Benefits	N/A	N/A	N/A	9,463	9,463	N/A	9,463	512
513		Casualties & Insurance	N/A	N/A	N/A	1,675	1,675	N/A	1,675	513
514		Joint Facility - Debit	N/A	N/A	22	N/A	22	N/A	22	514
515		Joint Facility - (Credit)	N/A	N/A	(83)	N/A	(83)	N/A	(83)	515
516		Others	236	198	103	152	689	N/A	689	516
517		TOTAL SPECIALIZED SERVICES OPERATIONS	7,241	5,867	124,774	19,937	157,819	N/A	157,819	517
		ADMINISTRATIVE SUPPORT OPERATIONS								
518		Administration	104,002	8,094	21,862	6,413	140,371	822	141,193	518
519		Employees Performing Clerical & Acctg Functions	62,828	1,953	1,796	944	67,321	4,215	71,536	519
520		Communication Systems Operations	4,181	(62)	5,187	267	9,573	835	10,408	520
521		Loss & Damage Claims Process	11,963	663	1,771	1,543	15,940	27	15,967	521
522		Fringe Benefits	N/A	N/A	N/A	51,393	51,393	1,475	52,868	522
523		Casualties & Insurance	N/A	N/A	N/A	25,134	25,134	0	25,134	523
524		Joint Facility - Debit	N/A	N/A	50	N/A	50	0	50	524
525		Joint Facility - (Credit)	N/A	N/A	(4)	N/A	(4)	0	(4)	525
526		Other	2,257	24	91	365	2,737	2	2,739	526
527		TOTAL ADMINISTRATION SUPPORT OPERATIONS	185,031	10,672	30,753	86,059	312,515	7,376	319,891	527
528		TOTAL TRANSPORTATION	1,723,753	927,146	315,562	921,014	3,887,475	47,763	3,935,238	528
		GENERAL & ADMINISTRATIVE								
601		Officers General & Administration	23,996	3,802	21,818	20,283	69,899	435	70,334	601
602		Accounting, Auditing & Finance	41,976	914	9,172	4,814	56,876	448	57,324	602
603		Management Services & Data Processing	25,055	512	58,989	1,472	86,028	1,129	87,157	603
604		Marketing	39,388	702	12,624	9,756	62,470	0	62,470	604
605		Sales	0	(4)	0	0	(4)	0	(4)	605
606		Industrial Development	1,640	73	412	122	2,247	N/A	2,247	606
607		Personnel & Labor Relations	13,563	823	5,607	11,968	31,966	705	32,671	607
608		Legal & Secretarial	13,135	260	34,545	1,771	49,711	1,598	51,309	608
609		Public Relations & Advertising	(2,745)	(335)	(1,237)	913	(3,404)	86	(3,318)	609
610		Research & Development	1,333	41	2,089	173	3,636	91	3,727	610
611		Fringe Benefits	N/A	N/A	N/A	75,161	75,161	882	76,043	611
612		Casualties & Insurance	N/A	N/A	N/A	13,412	13,412	12	13,424	612
613		Writedown of Uncollectible Accounts	N/A	N/A	N/A	12,534	12,534	31	12,565	613

Exhibit__(TDC-2)
Page 23 of 24

410. RAILWAY OPERATING EXPENSES

(Dollars in Thousands)

State the railway operating expenses on respondent's road for the year, classifying them in accordance with the Uniform System of Accounts for Railroad Companies, and allocate the common operating expenses in accordance with the Board's rules governing the separation of such expenses between freight and passenger services.

Line No.	Cross Check	Name of railway operating expense account (a)	Salaries and Wages (b)	Material, tools, supplies, fuels and lubricants (c)	Purchased Services (d)	General (e)	Total Freight Expense (f)	Passenger (g)	Total (h)	Line No.
614		Property Taxes	N/A	N/A	N/A	115,926	115,926	1,080	117,006	614
615		Other Taxes	N/A	N/A	N/A	65,215	65,215	0	65,215	615
616		Joint Facility - Debit	N/A	N/A	2,274	N/A	2,274	0	2,274	616
617		Joint Facility - (Credit)	N/A	N/A	(51)	N/A	(51)	0	(51)	617
618		Other	56,087	34,755	9,915	93,854	194,611	237	194,848	618
619		TOTAL GENERAL & ADMINISTRATIVE	213,428	41,548	156,157	427,374	838,[illegible]	6,734	845,241	619
620		TOTAL OPERATING EXPENSE	2,498,781	1,408,492	1,894,879	2,694,492	8,496,64[illegible]	97,494	8,594,138	620

NOTES AND REMARKS

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Identification of Railroad Extraordinary Charges
Excluded from ICC Rail Form A and URCS Unit Costs -- 1985-1996

Railroad (1)	Year (2)	Aggregate Extraordinary Charges ($000) Identified in Annual Report Form R-1: Labor Buy-Out (3)	Other (4)	Total (5)	Amount RFA and URCS Aggregate Costs Less than Annual Report R-1 Aggregate (000) (6)
1. BO/CO/SBD	1985	$112,033	$672,415	$784,448	$784,448
2. ATSF	1986	$165,632	$147,177	$312,809	$312,809
3. ICG	1986	151,009	260,991	412,000	412,000
4. KCS	1986	2,000	51,800	53,800	53,800
5. SOO	1986	62,743	19,268	82,011	82,011
6. SP	1986	189,423	298,859	488,282	488,282
7. NS	1987	$315,338	$291,931	$607,269	$607,269
8. CSXT	1988	$592,000	$330,000	$922,000	$922,000
9. ICG	1988	18,800	16,200	35,000	35,000
10. ATSF	1989	$389,631	$52,200	$441,831	$441,831
11. CNW	1989	23,600	0	23,600	23,600
12. CNW	1990	$13,361	$0	$13,361	$13,361
13. BN	1991	$225,000	$483,000	$708,000	$708,000
14. CNW	1991	69,200	32,163	101,363	101,363
15. CR	1991	211,911	507,194	719,105	719,105
16. DRGW	1991	11,200	600	11,800	11,800
17. NS	1991	450,223	32,827	483,050	483,050
18. CSXT	1991	647,200	0	647,200	647,200
19. SP	1991	125,000	144,938	269,938	269,938
20. UP	1991	480,000	265,000	745,000	745,000
21. ATSF	1992	$149,000	$182,187	$331,187	$331,187
22. CNW	1992	30,000	0	30,000	30,000
23. CR	1992	0	(11,031)	(11,031)	(11,031)
24. CSXT	1992	$644,000	$20,000	$664,000	$664,000
25. SOO	1992	79,479	0	79,479	79,479
26. CNW	1993	($7,754)	$0	($7,754)	($7,754)
27. NS	1993	(3,600)	0	(3,600)	(3,600)
28. CNW	1994	($5,000)	$0	($5,000)	($5,000)
29. CR	1994	50,522	32,614	83,136	83,136

Identification of Railroad Extraordinary Charges
Excluded from ICC Rail Form A and URCS Unit Costs -- 1985-1996

Railroad (1)	Year (2)	Aggregate Extraordinary Charges ($000) Identified in Annual Report Form R-1: Labor Buy-Out (3)	Other (4)	Total (5)	Amount RFA and URCS Aggregate Costs Less than Annual Report R-1 Aggregate (000) (6)
30. CR	1995	$2,500	$280,912	$283,412	$283,412
31. GTW	1995	0	155,662	155,662	155,662
32. NS	1995	33,600	0	33,600	33,600
33. CSXT	1995	33,000	163,000	196,000	196,000
34. BN	1995	477,441	193,731	671,172	671,172
35. SOO	1995	53,600	236,100	289,700	289,700
36. SP	1995	42,200	70,357	112,557	112,557
37. CR	1996	$102,500	$32,500	$135,000	$135,000
38. SOO	1996	0	(86,614)	(86,614)	(86,614)

UP's 1997 Variable Cost of Handling a Hypothetical Unit Coal Train Movement
(Including SP Inefficiency Charges)

	Item	Calendar Year URCS: Source	Unit Cost	Service Units Per Carload 1/	Variable Cost Per Carload Source		Amount
	(1)	(2)	(3)	(4)	(5)		(6)
	UP Origin Terminal						
1.	Station Clerical cost per carload originated or terminated	E1P1L109	$20.28467	1.0	Col. 3 x Col. 4 x 0.46767	2/	$9.49
2.	Carload claims cost per carload handled	E1P1L106	6.11185	1.0	Col. 3 x Col. 4		6.11
3.	Loss and damage expense per ton originated or terminated	N/A	N/A	105.00	Col. 4 x 0.00250	3/	0.26
4.	Total origin terminal cost per carload	N/A	N/A	N/A	Sum of Lines 1-3		$15.86
	UP Line-Haul						
5.	Cost per gross ton-mile	E1P1L101	$0.00267	262,350	Col. 3 x Col. 4		$700.47
6.	Cost per locomotive unit-mile	E1P1L105	2.43505	90.000	Col. 3 x Col. 4		219.15
7.	Crew cost per train-mile	E1P1L104	7.47558	30.000	Col. 3 x Col. 4		224.27
8.	Other cost per train-mile	E1P1L103	0.72533	30.000	Col. 3 x Col. 4		21.76
9.	Total line-haul cost per carload	N/A	N/A	N/A	Sum of Lines 5-8		$1,165.65
	UP Destination Terminal						
10.	Station Clerical cost per carload originated or terminated	E1P1L109	$20.28467	1.0	Col. 3 x Col. 4 x 0.46767	2/	$9.49
11.	Carload claims cost per carload handled	E1P1L106	6.11185	1.0	Col. 3 x Col. 4		6.11
12.	Loss and damage expense per ton originated or terminated	N/A	N/A	105.00	Col. 4 x 0.00250	3/	0.26
13.	Total destination terminal cost per carload	N/A	N/A	N/A	Sum of Lines 10-12		$15.86
14.	Total Variable Cost Per Carload	N/A	N/A	N/A	(L4 + L9 + L13)		$1,197.37
15.	Total Variable Cost Per Ton	N/A	N/A	105.00	(L14 ÷ Col (4))		$11.40

UP's 1997 Variable Cost of Handling a Hypothetical Unit Coal Train Movement
(Including SP Inefficiency Charges)

URCS Inputs 4/

URCS Table Reference (1)	UP (2)
E1P1L101C01	$0.00117001
E1P1L101C02	0.00044429
E1P1L101C03	0.00105518
E1P1L103C01	0.71664000
E1P1L103C02	0.00751291
E1P1L103C03	0.00117685
E1P1L104C01	7.47558000
E1P1L105C01	1.76484000
E1P1L105C02	0.33549000
E1P1L105C03	0.33472000
E1P1L106C01	6.11185000
E1P1L106C02	0.00000000
E1P1L106C03	0.00000000
E1P1L109C01	20.28467000

Traffic and Operating Inputs 5/

Item (1)	UP (2)
# of Terminals	2
Cars Handled	1
Tons per car	105
Tare per car	27
Loaded miles	1650
Empty miles	1650
Total miles	3,300
Locos per train	3.00
Cars per train	110
Loss & Damage	$0.0025

UP's 1997 Variable Cost of Handling a Hypothetical Unit Coal Train Movement
(Including SP Inefficiency Charges)

Item (1)	Source (2)	Amount Per Carload (3)
UP Origin Terminal		
Terminals per carload	Given	1.0
Terminal tons per carload	Average net tons per car	105
UP Line-Haul		
Gross ton-miles per car	(Average net tons per car x loaded direction car-miles per car) + (average tare tons per car x round trip car-miles per car)	262,350
Locomotive unit miles per car	Locomotive units by segment x train miles by segment ÷ average cars per train	90.000
Train miles per car	Average round trip train miles ÷ average cars per train	30.000
Car miles per car	Average round trip miles per car	3,300.0
UP Destination Terminal		
Terminals per carload	Given	1.0
Terminal tons per carload	Average net tons per car	105

N/A = Not applicable

1/ See Exhibit_(TDC-4), page 3 of 3.

2/ Based on ICC, Rail Revenue Contribution by Commodity and Territory for the Year 1972, Statement No. 153-72, April 1975. Unit train station clerical expenses are adjusted on a per car basis to reflect 46.767 percent of system average station clerical expenses.

3/ UP's estimated loss and damage cost per ton of coal originated or terminated.

4/ 1997 UP URCS Including SP Inefficiency Charges

5/ Assumed Hypothetical Movement

UP's 1997 Variable Cost of Handling a Hypothetical Unit Coal Train Movement
(Excluding SP Inefficiency Charges)

Item	Calendar Year URCS: Source	Unit Cost	Service Units Per Carload 1/	Variable Cost Per Carload Source		Amount
(1)	(2)	(3)	(4)	(5)		(6)
UP Origin Terminal						
1. Station Clerical cost per carload originated or terminated	E1P1L109	$17.35499	1.0	Col. 3 x Col. 4 x 0.46767	2/	$8.12
2. Carload claims cost per carload handled	E1P1L106	5.22913	1.0	Col. 3 x Col. 4		5.23
3. Loss and damage expense per ton originated or terminated	N/A	N/A	105.00	Col. 4 x 0.00250	3/	0.26
4. Total origin terminal cost per carload	N/A	N/A	N/A	Sum of Lines 1-3		$13.61
UP Line-Haul						
5. Cost per gross ton-mile	E1P1L101	$0.00240	262,350	Col. 3 x Col. 4		$629.64
6. Cost per locomotive unit-mile	E1P1L105	2.18015	90.000	Col. 3 x Col. 4		196.21
7. Crew cost per train-mile	E1P1L104	6.39590	30.000	Col. 3 x Col. 4		191.88
8. Other cost per train-mile	E1P1L103	0.62183	30.000	Col. 3 x Col. 4		18.65
9. Total line-haul cost per carload	N/A	N/A	N/A	Sum of Lines 5-8		$1,036.38
UP Destination Terminal						
10. Station Clerical cost per carload originated or terminated	E1P1L109	$17.35499	1.0	Col. 3 x Col. 4 x 0.46767	2/	$8.12
11. Carload claims cost per carload handled	E1P1L106	5.22913	1.0	Col. 3 x Col. 4		5.23
12. Loss and damage expense per ton originated or terminated	N/A	N/A	105.00	Col. 4 x 0.00250	3/	0.26
13. Total destination terminal cost per carload	N/A	N/A	N/A	Sum of Lines 10-12		$13.61
14. Total Variable Cost Per Carload	N/A	N/A	N/A	(L4 + L9 + L13)		$1,063.60
15. Total Variable Cost Per Ton	N/A	N/A	105.00	(L14 ÷ Col (4))		$10.13

UP's 1997 Variable Cost of Handling a Hypothetical Unit Coal Train Movement
(Excluding SP Inefficiency Charges)

URCS Inputs 4/	
URCS Table Reference (1)	UP (2)
E1P1L101C01	$0.00100103
E1P1L101C02	0.00044429
E1P1L101C03	0.00095966
E1P1L103C01	0.61314000
E1P1L103C02	0.00751291
E1P1L103C03	0.00117686
E1P1L104C01	6.39590000
E1P1L105C01	1.50994000
E1P1L105C02	0.33549000
E1P1L105C03	0.33472000
E1P1L106C01	5.22913000
E1P1L106C02	0.00000000
E1P1L106C03	0.00000000
E1P1L109C01	17.35499000

Traffic and Operating Inputs 5/	
Item (1)	UP (2)
# of Terminals	2
Cars Handled	1
Tons per car	105
Tare per car	27
Loaded miles	1650
Empty miles	1650
Total miles	3,300
Locos per train	3.00
Cars per train	110
Loss & Damage	$0.0025

UP's 1997 Variable Cost of Handling a Hypothetical Unit Coal Train Movement
(Excluding SP Inefficiency Charges)

Item (1)	Source (2)	Amount Per Carload (3)
UP Origin Terminal		
Terminals per carload	Given	1.0
Terminal tons per carload	Average net tons per car	105
UP Line-Haul		
Gross ton-miles per car	(Average net tons per car x loaded direction car-miles per car) + (average tare tons per car x round trip car-miles per car)	262,350
Locomotive unit miles per car	Locomotive units by segment x train miles by segment ÷ average cars per train	90.000
Train miles per car	Average round trip train miles ÷ average cars per train	30.000
Car miles per car	Average round trip miles per car	3,300.0
UP Destination Terminal		
Terminals per carload	Given	1.0
Terminal tons per carload	Average net tons per car	105

N/A = Not applicable

1/ See Exhibit_(TDC-5), page 3 of 3.

2/ Based on ICC, Rail Revenue Contribution by Commodity and Territory for the Year 1972, Statement No. 153-72, April 1975. Unit train station clerical expenses are adjusted on a per car basis to reflect 46.767 percent of system average station clerical expenses.

3/ UP's estimated loss and damage cost per ton of coal originated or terminated.

4/ 1997 UP URCS Excluding SP Inefficiency Charges

5/ Assumed Hypothetical Movement

AVERA

VERIFIED STATEMENT
OF
WILLIAM E. AVERA, Ph.D, CFA

I. OVERVIEW

My name is William E. Avera. I am a principal in Financial Concepts and Applications, Inc. (FINCAP), an economic and financial consulting firm that provides technical and regulatory policy advice to government agencies, utilities, and large consumers of utility services. FINCAP's offices are at 3907 Red River, Austin, Texas 78751.

I received my undergraduate degree in economics from Emory University in Atlanta, Georgia. After serving in the United States Navy, I entered the Ph.D program in economics at the University of North Carolina at Chapel Hill. Upon graduation, I joined the faculty at the University of North Carolina and taught finance in the Graduate School of Business. I subsequently accepted a position at the University of Texas at Austin where I taught courses in financial management and investment analysis. I then went to work for International Paper Company, Inc. in New York City as Manager of Financial Education, a position in which I had responsibility for all corporate education programs in finance, accounting, and economics. While employed at International Paper Company I earned the designation of Chartered Financial Analyst (CFA).

In 1977, I joined the staff of the Public Utility Commission of Texas (PUC) as Director of the Economic Research Division. During my tenure at the PUC, I had responsibility for economic and financial research, financial analysis, cost allocation and rate design, and information systems, and I testified in a number of utility cases on a variety of economic and financial issues. While at the PUC, I served as vice-chair of the National Association of Regulatory Utility Commissioners (NARUC) Subcommittee on Economics.

Since leaving the PUC in 1979, I have been engaged in my current capacities with FINCAP. I have presented testimony before the Surface Transportation Board ("STB")(and its predecessor, the Interstate Commerce Commission), the Federal Energy Regulatory Commission ("FERC"), the Federal Communications Commission ("FCC"), the Canadian Radio-Television and Telecommunications Commission, and twenty-fcur state regulatory agencies as well as before federal and state courts and legislative committees. In addition, I have lectured on economic and regulatory topics in programs sponsored by universities and industry groups and have also served as an officer in various professional organizations and societies. My qualifications and experience are attached to this verified statement as Exhibit ___ (WEA-1).

The Western Coal Traffic League ("WCTL") has asked me to analyze the accounting of certain expenses by the Union Pacific Railroad Company ("UP"). In particular, UP noted in its annual report filed with the STB that it had incurred significant expenses in connection with problems associated with its merger with Southern Pacific ("SP"). The railroad chose to classify these charges with its other operating expenses rather than with extraordinary items. The question presented is whether the railroad's treatment of such expenses as ordinary operating expenses was correct under Generally Accepted Accounting Practices ("GAAP"), particularly as those practices are applied to regulated firms.

As I shall explain, both GAAP and traditional principles of regulatory accounting prohibit regulated entities from mixing their abnormal, nonrecurring charges, such as those identified by UP, with their ongoing operating expenses. Doing so distorts the accounting measures that are used as benchmarks for setting rates prospectively for regulated utilities. The same principles would also apply in other regulatory contexts such as the determination of the jurisdictional threshold, the implementation of the RCAF, and the identification of revenue adequacy. Accordingly, UP's treatment of the significant added costs it incurred as a result of its service problems in 1997, as ordinary operating costs, was *incorrect*.

II. REGULATORY TREATMENT OF ABNORMAL AND UNUSUAL EXPENSES

A. Need for a Uniform Systems of Accounts

The goals of general utility regulation are entirely consistent with the federal government's specific policy for regulating the railroad industry that appears in 49 U.S.C. § 10101. Regulatory commissions generally seek, among other things, to prevent excessive monopoly profits, to ensure earnings adequate to finance growth of the regulated industry, to provide service to the greatest number of customers, to promote the development of the industry, and to ensure public safety and management efficiency. *See, e.g.* C.F. Phillips, THE REGULATION OF PUBLIC UTILITIES 172-73 (1993).

The objectives of regulation, of course, are not achievable without accurate and consistent records of revenues, operating costs, depreciation expenses, investment in plant and equipment, and so forth. But regulators must have control over the accounts of regulated entities for other purposes as well. Uniformity of accounting by regulated firms is essential for making industry-wide comparisons. Measuring and comparing rates of return on investment likewise require accurate statements of accounts. Without accounting regulation, investors would not have sufficient confidence in statements of property and earnings to invest in regulated enterprises. Finally, by providing consistent unit cost information regarding various services--including competitive services--a uniform system of accounts makes it possible to evaluate the reasonableness of regulated rates and to determine the profitability of competitive rates.

Since a uniform system of accounts is an essential tool for achieving the goals of regulation, one of the most important duties of regulatory bodies is promulgating and enforcing such an accounting regimen. As Alfred Kahn pointed out, the early experience of regulators established that "if the commissions were to be something more than rubber stamps they had to exercise their own judgment about the propriety of the items presented to them as components of the cost of service." 1 THE ECONOMICS OF REGULATION 26 (1988).

B. The Regulatory Treatment of Abnormal and Unusual Expenses

Although this Board's maximum rate jurisdiction is limited to the non-competitive portion of rail traffic, within that realm the same principles apply, and thus STB regulations quite properly and necessarily define how the major railroads must keep their books and account for their income and expenditures. In particular, according to the classification of accounts promulgated by the STB:

> Extraordinary items are characterized by both their unusual nature and infrequent occurrence taking into account the environment in which the firm operates; they must also meet the materiality standard.
>
> Unusual means the event or transaction must possess a high degree of abnormality and be of a type clearly unrelated to, or only incidentally related to the ordinary and typical activities of the entity.
>
> Infrequent occurrence means the event or transaction shall be of a type not reasonably expected to recur in the foreseeable future.

49 C.F.R. § 1201.1-2. STB regulations further specify that such items are *not* to be included in the calculation of ordinary income. *Id.*

These STB rules closely parallel the language in *APB Opinion No. 30* that sets forth the definition of extraordinary items according to GAAP. American Institute of Certified Public Accountants, OPINIONS OF THE ACCOUNTING PRINCIPLES BOARD NO. 30, *Reporting the Results of Operations* ¶ 20 (1973). That the two definitions are nearly identical is to be expected, since the Congress directed the STB to conform its system of accounts, cost accounting principles, and cost reporting requirements to GAAP "to the maximum extent practicable." 49 U.S.C. §§ 11142, 11161 & 11164.

But we must remember that the STB system of accounts is not an end in itself. Rather, its purpose is to ensure that the railroads appropriately disclose the economic consequences of transactions, events, and circumstance affecting them. In that manner, the system of accounts and the financial reporting requirements aid users of financial data in making decisions regarding the railroads. This regulatory purpose is entirely consistent with the goals intrinsic to GAAP. For example, in connection with accounting for "irregular items" such as extraordinary expenses, GAAP requires that such items be highlighted "in order that the reader of financial statements can better determine the long-run earning power of the enterprise." D.E. Kieso & J.J. Weygandt, INTERMEDIATE ACCOUNTING 128 (1989).

When administering its accounting regulations then, the STB must remain mindful of the goals Congress seeks to achieve in regulating the railroad industry. One of those goals is "to ensure the availability of accurate cost information in the regulatory proceedings while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information." 49 U.S.C. § 10101(13). Accurate railroad cost information is the essential underpinning of numerous regulatory concepts that form the basis of modern federal railroad regulation, including revenue adequacy, the RCAF, and the jurisdictional threshold.[1]

Because the classification of expenses cannot be reduced to an automatic process, the STB may be called upon from time to time to review and supervise the decisions of railroad company accountants. In this connection, a recent decision by FERC presents an excellent analysis of the issues raised by a disagreement over whether particular expenses should be classified as extraordinary items. *Re Amerada Hess Pipeline Corp.*, Docket No. IS94-10-005, Opinion No. 393 (FERC, April 13, 1995), *aff'd*, *Amerada Hess Pipeline Corp. v. FERC*, 117 F.3d 596 (D.C. Cir. 1997),

In *Amerada Hess Pipeline*, FERC was called upon to supervise the accounting of a pipeline company. The pipeline and its auditors had classified certain costs as ordinary expenses, which were therefore recoverable in rates. The expenses in question were about $117 million in claims and litigation costs that arose from the Exxon Valdez oil spill. The State of Alaska

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[1]While GAAP requires segregation of extraordinary items from normal and recurring ones, it does not in and of itself dictate how that segregation should affect rate regulation or other regulatory actions. Sound regulatory precepts fill that gap by specifying that "cost of service" for ratemaking purposes means normal, recurring expenses, and does not include extraordinary items. Such items, if allowed to be recovered from ratepayers at all, are typically amortized over a number of years through special surcharges, etc. They are not simply lumped in with ordinary expenses in the year incurred, as UP has done with its 1997 merger-related expenses.

Witness Crowley testifies that the STB and its predecessor, the ICC, have consistently followed that policy, as well.

objected, arguing that the expenses should instead be classified as an extraordinary item.

FERC overruled the pipeline accountants, concluding that classifying the expenses as extraordinary was "consistent not only with the letter of the USOA (Uniform System of Accounts) and GAAP, but with their intent and purpose as well." Slip opinion at 24. Significantly, FERC stressed the importance of distinguishing between recurring and nonrecurring items:

> One of the purposes of the USOA is to distinguish between a reporting entity's income from continuing, ordinary, and typical operations from items that are not expected to be incurred or realized on an ongoing basis, i.e., to distinguish between the permanent and the transitory component of income and expenses. Absent this distinction, external parties may not be able to distinguish fully that part of an entity's current performance that is likely to recur, and that which will only occur during this period.
>
> In this case, including the costs related to the Exxon Valdez oil spill in Account No. 610 as routine, typical operating expenses would blur this distinction and would be contrary to the purposes of the USOA and GAAP. . . . The Exxon Valdez oil spill and the [litigation and settlement] costs were not the typical, recurring routine costs of doing business, and including them in Account No. 610 is contrary to the purpose of the USOA.

Id.

In concluding that the expenses in question were extraordinary items, FERC examined whether they met the three necessary conditions: infrequent occurrence, unusual nature, and materiality. As a preliminary matter, it decided that the "event" that had to be evaluated was the Exxon Valdez oil spill itself, and not the planning for and response to the oil spill. The pipeline had of course argued that oil spills were frequent occurrences and not at all unusual. But FERC noted that an oil spill of the magnitude of the Exxon Valdez was unprecedented in Alaska, the environment in which the pipeline operated. The magnitude of the spill thus distinguished it; there were no other spills approaching it in size. FERC therefore ruled that the oil spill was of an unusual nature and infrequent occurrence. Finally, FERC ruled that all components of the expenses in question had to be aggregated to determine materiality, and on that basis, it concluded that the materiality standard was met.

III. UP MERGER-RELATED SERVICE PROBLEMS

The financial community has, of course, closely monitored UP's service problems as they developed. Less than two months after industry analysts heard the first rumblings of serious congestion problems on the UP system, Natwest Securities described the problems as "unprecedented" and attributed them to the "merger effect." A.B. Hatch, *Union Pacific/Burlington Northern—Company Report* (Sept. 19, 1997). Salomon Brothers downgraded the company's stock, noting that UP's "systemwide" congestion appeared worse than previously believed. J.J. Valentine, *Inside Track/Railroads—Industry Report* (Sept. 23, 1997). Even so, the company was generally expected at the time to earn about $3.75 per share for the year, which would have represented a slight increase over 1996.

Expectations were soon lowered as it became apparent that the railroad recovery would be slow and that the impact on revenues and costs would be greater than had been anticipated by both the company and industry analysts. But even while recognizing the seriousness of the service problems, well-regarded industry analysts maintained their optimism for a relatively quick recovery. Well into the fall, for example, PaineWebber assured investors that the dividend payout appeared safe. S.D. Flower, *Union Pacific Corporation—Company Report* (Nov. 14, 1997). And Prudential Securities expected that by the second half of 1998, earnings to return to an annual rate of $5.00 per share. B.R. Routledge, *Union Pacific—Company Report* (Nov. 6, 1997).

By early this year, it became apparent to industry observers that UP's problems were much more intractable than most had imagined last fall. The congestion problems caused the company to post a loss of $152 million for the fourth quarter, with income for the year falling 41 percent from 1996. In February, UP announced that it was cutting its dividend by over 50 percent. In April, it announced completion of a $1.5 billion convertible preferred offering. By that time, the company's stock had fallen nearly 32 percent from its level when the service problems began. Institutional Shareholder Services, *Union Pacific Corp.—Company Report* (Feb. 6, 1998).

In February, Moody's downgraded UP's bond rating to Baa3 from Baa2. The rating action reflected Moody's belief that "the congestion centered in Union Pacific's Southern line is more persistent and extensive than originally thought and that the timetable for implementing a comprehensive solution has become uncertain." *Dow Jones News Service* (Feb. 26, 1998). At the same time, Standard & Poor's ("S&P") placed UP on CreditWatch as a result of an announcement that it would report a loss for the first quarter of 1998.

In May, S&P lowered its ratings on UP after the company announced that it expected to report its third consecutive quarterly loss due to the negative impact of the congestion on revenues, costs, and customer claims. According to the rating service, the lower rating reflected "the impact of persistent, serious congestion on Union Pacific's financial position." *Dow Jones Newswires* (May 29, 1998).

At the same time, Value Line sharply lowered its 1998 earnings estimate to $0.50 per share, noting that UP's service should return to normal levels by the end of the year or early 1999. *Value Line Investment Survey* 304 (June 19, 1998). The investment advisory service also observed that the railroad's problems have a significant effect on the nation's economy:

> The U.S. economy is continuing to feel an impact from this congestion, as some companies are being forced to curtail production levels since there is no way for them to move their goods. The all-important Christmas season is rapidly approaching, and if the service problems in the West are not resolved by the time shipments begin to accelerate, the economy may take another substantial hit.

Id. at 298.

IV. SUMMARY AND RECOMMENDATION

In this case, the STB must exercise its judgment to determine whether the expenses in question are extraordinary items. Just as in the pipeline case at FERC, the classification of the expenses in question rests on whether they meet the three standards of infrequent occurrence, unusual nature, and materiality.

As WCTL Witness Thomas Crowley explains, UP incurred very significant expenses last year in connection with its absorption and operation of the former properties of SP. Under the standard promulgated by the STB, "an item shall be considered material when it exceeds 10 percent of annual income (loss) before extraordinary items." 49 C.F.R. § 1201.1-2. According to Mr. Crowley, UP's special charges amount to $814 million. Since UP reported an annual income of $946 million in 1997 with no deductions for extraordinary items, the special charges (along with any component of the special charges that exceeds $94.6 million) meet the materiality standard.

The railroad may assert that congestion problems are common occurrences, particularly after mergers involving two large railroad systems. No doubt individual railroads have suffered chronic congestion due to poor management or other reasons. But the usual railroad company congestion does not so dramatically affect a railroad's earnings that its bond ratings fall, its dividends are cut in half, its stock price plummets, and the company must issue $1.5 billion of equity securities.

In the *Amerada Hess* case, FERC and the D.C. Circuit Court rejected the pipeline's argument that because oil spills are a common occurrence, the Exxon Valdez oil spill was not an extraordinary event. FERC and the court recognized that the vast difference in magnitude between the average 10-gallon oil spill and an 11-million-gallon oil spill fundamentally changes the character of the event.

Similarly, it is clear that as a result of its merger with Southern Pacific, UP has run aground and is attempting to recover from an "Exxon Valdez" event. Just as the Exxon Valdez was no ordinary oil spill, the scale of the UP congestion exceeds all experience. It has not only affected the overall financial condition of the company, it has had a measurable effect on the nation's economy. In the environment in which UP operates, congestion problems of this scale clearly have a high degree of abnormality and are only incidentally related to typical railroad activities. It is thus proper to regard the expenses arising out of the merger-related congestion to be of an unusual character.

Finally, an event meets the STB's infrequency-of-occurrence standard if it is of a type "not reasonably expected to recur in the foreseeable future." UP's merger-related congestion problems are unique in part because UP is the largest railroad in the country, and its merger with Southern Pacific is the largest railroad merger in history. I would not expect UP to contend that we should expect such problems to recur on its system, and it is not reasonable to expect that another railroad merger of this magnitude will result in similar congestion. The event thus meets the "infrequency" standard.

For the reasons discussed above and in Mr. Crowley's testimony, I believe that the costs incurred by UP in 1997 to overcome the effects of its merger-related service problems met all three standards, and they should have been classified as extraordinary in the company's reports to the STB.

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF TRAVIS

I have read the foregoing document, and every statement contained therein is true and correct to the best of my knowledge.

William E. Avera

Subscribed and sworn to before me on the 6th day of July 1998.

Notary Public

ADRIEN McKENZIE
NOTARY PUBLIC
State of Texas
Comm. Exp. 11-21-98

CHRISTENSEN

VERIFIED STATEMENT
OF
DR. LAURITS R. CHRISTENSEN

I. INTRODUCTION

My name is Dr. Laurits R. Christensen. I am Chairman of Christensen Associates, an economic consulting firm. My business address is 4610 University Avenue, Suite 700, Madison Wisconsin 53705.

I received a B.A. in Economics from Cornell University in 1964. I subsequently received an M.A. in Statistics and a Ph.D. in Economics from the University of California, Berkeley in 1966 and 1968, respectively. Between 1967 and 1987, I was a faculty member of the Economics Department at the University of Wisconsin, Madison. I retired from teaching in 1987 to concentrate on my research and economic consulting activities at Christensen Associates. Our firm has approximately 80 employees, and we conduct economic studies for both government and private clients.

A principal focus of my professional research since 1975 has been the economics of the U.S. and Canadian railroad industries. This includes research on productivity, cost structure, and rate-setting mechanisms. Much of this research has been supported by the U.S. National Science Foundation. I have published papers based on this research in the American Economic Review, the Quarterly Journal of Economics, the Journal of Political Economy, the Review of Economics and Statistics, the Bell Journal of Economics, and the Southern Economic Journal. Much of my research on the railroad industry has been done in collaboration with my colleague, Dr. Douglas W. Caves, who is Vice Chairman of Christensen Associates.

In addition to our academic research, Dr. Caves and I were the principal architects of the productivity measure for the Rail Cost Adjustment Factor (RCAF) established by the Interstate Commerce Commission ("ICC"). The RCAF is a mechanism to enable railroads to adjust their rates to cover changes in their costs of providing service. Dr. Caves and I filed eleven verified statements with the ICC on this subject from 1982 to 1989. In 1989, the ICC adopted, with only minor modification, the RCAF productivity adjustment methodology that Dr. Caves and I had developed.

Recently, I was retained by the U.S. Department of Justice in the Union Pacific-Southern Pacific ("UP" and "SP") merger proceeding.[1] In that proceeding, I analyzed the merger benefits claimed by the UP and SP in their merger application submitted to the Surface Transportation Board ("STB"). I concluded that UP and SP vastly overstated the potential benefits to their proposed merger and that a worsening of service might result from the merger, at least in the short-term.

In addition to my research on the railroad industry, I have performed extensive research on a number of other network industries, including the telecommunications and electric power industries. Among the topics I have studied in these industries are productivity, cost structures, and appropriate regulatory frameworks that most effectively emulate the outcomes of competitive markets. Full details of my qualifications and the sixty-six professional papers that I have published are contained in my curriculum vitae, which is attached as the Appendix.

I have been retained by the Western Coal Traffic League ("WCTL") in the current proceeding to discuss the appropriate treatment of certain charges incurred by the Union

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[1] Surface Transportation Board, Finance Docket 32760.

Pacific Railroad Company ("UP") related to its recent merger activity and service problems. Neither regulatory nor competitive market standards would allow for the flow-through of these extraordinary charges to captive shippers. Such charges are appropriately borne by UP's shareholders.

II. IT IS NOT APPROPRIATE TO INCLUDE CHARGES ASSOCIATED WITH SP MERGER INEFFICIENCIES IN UNION PACIFIC'S UNIT COSTS THAT ARE THE BASIS OF COST-BASED RATES

As discussed by Thomas D. Crowley in his Verified Statement, in UP's filed R-1 report for 1997, UP identified substantial expenses related to UP's merger activity and service-related problems, but did not separate them from normal operating expenses. Mr. Crowley has determined that UP included $814 million in such charges in its 1997 operating expenses and another $162 million in 1997 return on investment.

It is not surprising to me that UP incurred such charges. In my analysis of the UP-SP merger application, I noted that the UP was overly optimistic in its calculation of merger benefits and that a worsening of service might occur, at least in the short-term:[2]

> "The benefits attributed to the proposed UP-SP merger by the Applicants are significantly overstated. From a social welfare perspective, the proposed merger would be beneficial only if it caused greater output (including quality improvements) being produced with the same amount of resources, or the same output being produced with fewer resources. ... Many of the benefit estimates are based on subjective analyses that are not well-documented, making it difficult to audit or replicate the results. ... the claim that SP service problems will be remedied by the merger is not supported by UP's own recent experience with the absorption of the Chicago and Northwestern ("CNW"). This experience demonstrates that, at least in the short term, service may actually worsen rather than improve."

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[2] Verified Statement of Dr. Laurits R. Christensen, STB FD 32760, pp. 3-4.

The charges associated with SP merger inefficiencies should be segregated from UP's normal operating expenses. The inclusion of these charges in UP's normal operating expenses results in an overstatement of UP's variable costs. As Mr. Crowley explains, not only could this have the effect of increasing prescribed rates for captive shipper movements, but it could also affect the determination of whether the STB has jurisdiction over a particular movement.[3] Regulatory and economic principles lead to the conclusion that a company that has market power should not have the ability to take actions that raise costs above what they would have otherwise been and include these costs in the rates of captive customers.

The fundamental economic principle of regulation is that regulation should emulate the outcomes of competitive markets. This means that companies should produce their services in the most efficient manner so that consumers can obtain these services at the lowest possible price. To this end, cost-based approaches to regulation often undertake reviews of investments and expenses to ensure that they are prudently incurred in the provision of service to customers. The ultimate goal of these reviews is to ensure that the rates paid by captive customers (which are based on costs) are just and reasonable. When customers are captive and have no options to the monopolistic service provider, such reviews are vitally important to protect consumer welfare. The regulatory body has the ability and the obligation to disallow costs that are not prudently incurred from the ratemaking process.

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[3] The STB determines whether it has jurisdiction over a particular movement based on the ratio of revenue to variable cost. If the ratio exceeds 1.8, the STB has jurisdiction. Therefore, if special charges are included in the computation of variable costs, this ratio is artificially reduced, increasing the possibility that the STB will not have jurisdiction over the movement.

The STB and its predecessor, the ICC, have followed this dictum in their oversight of the railroads. According to Mr. Crowley, the STB (and the ICC) have consistently excluded extraordinary charges from the calculation of railroad unit costs. Exclusion of extraordinary charges ensures that rates based on unit costs will be appropriately determined under the Constrained Market Pricing rules.

The regulatory practice of allowing only prudently-incurred costs to enter into cost-based ratemaking is a reflection of the regulatory goal of emulating the competitive market process. Firms that are not under intense price competition, such as dominant railroads serving captive shippers, are not under the same pressures to hold down costs (and prices) as are firms in more competitive circumstances. In these instances, for the regulatory process to be an effective substitute for competition, costs for extraordinary or special items that represent inefficient operations and/or a degradation of service quality should not be passed through to captive customers. These costs are the responsibility of the company's shareholders.

III. CONCLUSION

The Union Pacific should not be allowed to include the costs of merger-related charges and service problems in its calculation of normal operating expenses for Schedule 410 purposes. Inclusion of such costs, which represent inefficiency and service quality degradation, would further penalize UP's captive shippers, who have already suffered untold losses because of the inability of UP to follow through on its overly optimistic pre-merger pronouncements.

VERIFICATION

STATE)
)
OF) ss.
)
WISCONSIN)

LAURITS R. CHRISTENSEN, 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.

L R Christensen

Laurits R. Christensen

SWORN TO BEFORE ME and subscribed in my presence this 7th day of July, 1998.

Melinda J. Hensen

NOTARY PUBLIC

My Commission expires August 6, 2000

Laurits R. Christensen

Resume

January 1998

Laurits R. Christensen Associates, Inc.
4610 University Avenue, Suite 700
Madison, WI 53705-2164
(608) 231-2266 FAX: (608) 231-2108

Born January 31, 1941, Manitowoc, Wisconsin
U.S. Citizen
Married, Four Children

Current Position

Chairman, Laurits R. Christensen Associates, Inc., 1997-present
President, Laurits R. Christensen Associates, Inc., 1976-1996.

Education

B.A. Economics	1964	Cornell University
M.A. Statistics	1966	University of California, Berkeley
Ph.D. Economics	1968	University of California, Berkeley
Doctoral Dissertation		Saving and the Rate of Return

Scholarships and Fellowships

Cornell National Scholarship	1959-1964
National Defense Education Act Title IV Fellowship	1965-1967
Romnes Faculty Fellow	1979-1987

Academic Positions

Teaching Assistant, University of California, Berkeley	1964-1965
Assistant Professor, University of Wisconsin, Madison	1967-1971
Associate Professor, University of Wisconsin, Madison	1971-1976
Professor, University of Wisconsin, Madison	1976-1987

Other Previous Employment

Full-time consultant to U.S. Treasury, Office Of Tax Analysis, September 1971-1972.
Full-time consultant to U.S. Bureau of Labor Statistics, Office of Prices, July 1972-December 1972.
Visiting associate professor of economics, University of British Columbia, Spring term 1973.
Full-time consultant to U.S. Bureau of Labor Statistics, Office of Prices, May 1973-August 1973.
Visiting scholar, National Bureau of Economic Research, Stanford, California, Spring 1975.

Service to the Economics Profession

Editorial consultant, American Economic Review, 1970-1972
Member of the Board of Editors, American Economic Review, 1976-1978
Executive Committee, Conference on Income and Wealth, National Bureau of Economic Research, 1977-1980

Frequent referee of manuscripts for numerous journals
Frequent reviewer of proposals for the National Science Foundation and other funding organizations

Research Funded by U.S. Government Agencies

National Science Foundation (8 multi-year grants)
Department of Commerce
Bureau of the Census
Department of Energy
Department of Labor
Bureau of Labor Statistics
Federal Preparedness Agency
Postal Service

Research Funded by Other Government Agencies

Canadian Postal Service
Canadian Transport Commission
Illinois Commerce Commission
Wisconsin Public Service Commission
Wisconsin Strategic Development Commission

Publications

1. "The Measurement of U.S. Real Capital Input, 1929-1967," Review of Income and Wealth, December 1969 (with D. W. Jorgenson), pp. 293-320.

2. "U.S. Real Product and Real Factor Input, 1929-1967," Review of Income and Wealth, March, 1970 (with D. W. Jorgenson), pp. 19-50.

3. "Tax Policy and Investment Expenditures in a Model of General Equilibrium," American Economic Review, May 1970, pp. 18-22.

4. "Saving and the Rate of Return," Journal of Finance, September, 1970, abstract of doctoral dissertation, pp. 936-937.

5. "Entrepreneurial Income: How Does It Measure Up," American Economic Review, September 1971, pp. 575-585.

6. "Conjugate Duality and the Transcendental Logarithmic Production Function," Econometrica, July 1971, abstract (with D. W. Jorgenson and L. J. Lau), pp. 255-256.

7. "Measuring Economic Performance in the Private Sector," in M. Moss ed., The Measurement of Economic and Social Performance, National Bureau of Economic Research, 1973, (with D. W. Jorgenson), pp. 233-351.

8. "Simultaneous Statistical Inference in the Normal Multiple Linear Regression Model," Journal of the American Statistical Association, June 1973, pp. 457-461.

9. "Transcendental Logarithmic Production Frontiers," Review of Economics and Statistics, February 1973 (with D. W. Jorgenson and L. J. Lau), pp. 28-45.

10. "The Internal Structure of Functional Relationships: Separability Substitution, and Aggregation," Review of Economic Studies, July 1973 (with E. R. Berndt), pp. 403-410.

11. "The Translog Function and the Substitution of Equipment, Structures, and Labor in U.S. Manufacturing 1929-1968," Journal of Econometrics, March 1973 (with E. R. Berndt), pp. 81-113.

12. "U.S. Income Saving, and Wealth, 1929-69," Review of Income and Wealth, December 1973, (with D. W. Jorgenson), pp. 329-362.

13. "Testing for the Existence of a Consistent Aggregate Index of Labor Inputs," American Economic Review, June 1974 (with E. R. Berndt), pp. 391-404.

14. "Substitution Effects in Consumer Expenditures," Business Economics, January 1975, pp. 58-63.

15. "Transcendental Logarithmic Utility Functions," American Economic Review, June 1975 (with D. W. Jorgenson and L. J. Lau), pp. 367-383.

16. "Concepts and Measurement of Agricultural Productivity," American Journal of Agricultural Economics, December 1975, pp. 910-915.

17. "Cost of Living Indexes and Price Indexes for U.S. Meat and Produce, 1947-1971," in N. Terleckyj, ed., Household Production and Consumption, National Bureau of Economic Research, 1976 (with M. E. Manser), pp. 399-446.

18. "Economies of Scale in U.S. Electric Power Generation," Journal of Political Economy, August 1976 (with W. H. Greene), pp. 655-676, reprinted in Managerial Economics: Concepts, Application, and Cases, Dun-Donnelly, 1977.

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21. "Productivity Growth, 1947-1973: An International Comparison," in W. Dewald, ed., The Impact of International Trade and Investment on Employment, U.S. Department of Labor (with D. Cummings and D. W. Jorgenson), 1978.

22. "Using Statistical Cost Analysis to Estimate Marginal Costs for Electric Utilities," Proceedings of Conference on Marginal Costing and Pricing of Electrical Energy, Energy, Mines, and Resources Canada, 1978 (with W. H. Greene).

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24. "Modelling the Structure of Cost and Production for Multiproduct Firms," Southern Economic Journal, July 1979 (with R. S. Brown and D. W. Caves).

25. "Economic Growth, 1947-1973: An International Comparison," in J. Kendrick and B. Vaccara, editors, New Developments in Productivity Measurement and Analysis, University of Chicago Press for the National Bureau of Economic Research, 1980 (with D. Cummings and D. W. Jorgenson).

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33. "Comment on 'Capital and the Theory of Productivity Measurement'" (by W. E Diewert) American Economic Review: Papers and Proceedings, May 1980.

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37. "The High Cost of Regulating U.S. Railroads," Regulation, January/February 1981 (with D. W. Caves and J. A. Swanson).

38. "Relative Productivity Levels, 1947-1973: An International Comparison," (with D. Cummings and D. W. Jorgenson), European Economic Review, Vol. 16, No. 1, May 1981.

39. "Productivity Growth, Scale Economies, and Capacity Utilization in U.S. Railroads, 1955-1974," (with D. W. Caves and J. A. Swanson), American Economic Review, December 1981.

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51. "Comments on, 'The Bias in Price Elasticity Estimates under Homothetic Separability: Implications for Analysis of Peak Load Electricity Pricing' by D.F. Kohler," Journal of Business and Economic Statistics, (with D. W. Caves), Vol. 1, No. 3, July 1983.

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64. "A Reexamination of the Cost Structure for Specialized Motor Carriers," (with J. H. Houston) The Logistics and Transportation Review, Vol. 23, No. 4, December 1987, pp. 339-351.

65. "The Importance of Economies of Scale, Capacity Utilization, and Density in Explaining Interindustry Differences in Productivity Growth," (with D. W. Caves) The Logistics and Transportation Review, Vol 24, No. 1, March 1988, pp. 3-32.

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Other Papers

1. "Intertemporal Optimization and the Explanation of Consumer Behavior," (with D. W. Jorgenson), December 1968.

2. "The Geometry of Linear Hypothesis Testing in the Normal Multiple Linear Regression Model," October 1970, SSRI Paper #7037.

3. "A New Look at Farm Income in the United States," June 1971, SSRI Paper #7112.

4. "The Specification of Technology in U.S. Manufacturing," (with E. R. Berndt) March 1974, SSRI Paper #7321.

5. "Real Product, Real Factor Input, and Productivity in France, 1951-1973, (with D. W. Brazell and D. Cummings), October 1975, SSRI paper #7527.

6. "Real Product, Real Factor Input, and Productivity in Italy, 1952-1973," (with D. Cummings and B. Norton), October 1975, SSRI Paper #7528.

7. "Real Product, Real Factor Input, and Productivity in the Netherlands,1951-1973," (with D. Cummings and P. Schoech), October 1975, SSRI Paper #7529.

8. "Real Product, Real Factor Input, and Productivity in the United Kingdom, 1955-1973," (with D. Cummings and K. Singleton), October 1975, SSRI #7530.

9. "Real Product, Real Factor Input, and Productivity in Canada, 1947-1973," (with D. Cummings), April 1976, SSRI Paper #7604.

10. "Productivity in Canadian Railroads, 1956-1975," (with D. W. Caves), October 1978, SSRI Paper #7825.

11. "Productivity in the Bell System, 1947-1977," presented at the Eighth Annual Telecommunications Policy Research Conference, Annapolis, Maryland, April 27-30, 1980 (with D. Cummings and P. E. Schoech).

Papers Presented at Professional Meetings

1968 Econometric Society: "Intertemporal Optimization and the Explanation of Consumer Behavior."

1969 American Economic Association: "Tax Policy and Investment Expenditures in a Model of General Equilibrium."

1970 World Congress of the Econometric Society, Cambridge, England: "Entrepreneurial Income: How Does It Measure Up?" and "Conjugate Duality and the Transcendental Logarithmic Production Function."

1971 Twelfth General Conference of the International Association for Research in Income and Wealth: "A New Look at Farm Income in the United States."

1971 Winter Meetings of the Econometric Society: "The Translog Production Function and Factor Substitution in U.S. Manufacturing, 1929-1968."

1972 Western Economic Association Meeting: "Testing for the Existence of a Consistent Aggregate Index of Labor Inputs."

1972 Conference on Applications of Duality Theory, Canadian Department of Manpower and Immigration: "The Internal Structure of Functional Relationships: Separability, Substitution, and Aggregation" and "Testing for the Existence of a Consistent Aggregate Index of Labor Inputs."

1972 Winter Meetings of the Econometric Society: "The Translog Utility Function and the Substitution of Meats in U.S. Consumption, 1946-1968."

1973 Western Economic Association Meetings: "The Specifications of Technology in U.S. Manufacturing.

1973 Conference on Household Production and Consumption, National Bureau of Economic Research: "Cost of Living Indexes and Price Indexes for U.S. Meat and Produce, 1947-1972."

1974 Annual Meetings of the National Association of Business Economists: "Substitution Effects in Consumer Expenditures."

1975 Annual Meetings of the American Agricultural Economics Association: "Concepts and Measurement of Agricultural Productivity."

1975 Third World Congress of the Econometric Society: "A New Look at Returns to Scale in Electricity Supply."

1975 Conference on New Developments in Productivity Research, National Bureau of Economic Research: "An International Comparison of Growth in Productivity, 1947-1973."

1976 Econometric Society Meetings, Atlantic City, New Jersey: "An Econometric Assessment of Cost Savings from Coordination in U.S. Electric Power Generation" and "Modelling the Structure of Production in the U.S. Railroad Industry."

1976 Conference on the Impact of International Trade and Investment on Employment, Washington, D.C.: "Productivity Growth, 1947-1973: An International Comparison."

1977 Econometric Society Meetings, New York, N.Y.: "Consumer Demand for Automobiles in the U.S."

1978 Canadian Electrical Association and Energy, Mines, and Resources Canada, Conference on Marginal Costing and Pricing of Electrical Energy: (1) "Time-of-Use Pricing for Residential Electricity Customers: The Wisconsin Experiment"; (2) "Using Statistical Cost Analysis to Estimate Marginal Costs for Electric Utilities."

1978 Electric Power Research Institute, Workshop on Energy Utilization and Conservation: "Econometric Analysis of the Wisconsin Residential Time-of-Use Pricing Experiment."

1978 American Economic Association, "Economic Performance in Regulated and Unregulated Environments: The Case of U.S. and Canadian Railroads."

1979 NSF Conference on Productivity in Regulated Industries: "Total Factor Productivity of U.S. Trunk Air Carriers, 1971-1977."

1979 Wisconsin Public Service Commission Conference on Time-of-Use Pricing: "Effects on the Residential Load Curve from Time-of-Day Pricing of Electricity: Econometric Inferences from the Wisconsin Experiment."

1979 AEA Annual Meetings: Comment on "Capital and Theory of Productivity Measurement" (by W. E. Diewert).

1980 U.S. Department of Energy Electric Utility Rate Conference: "Effects on the Residential Load Curve from Time-of-Use Pricing of Electricity: Econometric Inferences from the Wisconsin Experiment for Summer System Peak Days."

1980 International Seminar on Macroeconomics: "Relative Productivity Levels, 1947-1973: An International Comparison."

1980 Eight Annual Telecommunications Policy Research Conference: "Productivity in the Bell System, 1947-1977."

1980 American Economic Association: "Relative Productivity Levels, 1947-1973: An International Comparison."

1980 Econometric Society: (1) "Econometric Estimation of Scale Economies in Telecommunications." (2) "Economies of Scale for U.S. Trunk Air Carriers, 1972-1978."

1981 Telecommunications in Canada, Economic Analysis of the Industry (Montreal, Quebec): "Econometric Estimation of Scale Economies in Telecommunications."

1981 International Association of Energy Economists (Toronto, Canada): "Econometric Results from the Wisconsin Time-of-Day Rate Demonstration Project."

1981 Institute for Research on Public Policy and UCLA: Managing Public Enterprises; Purposes and Performance (Vancouver, British Columbia): "The Significance of Ownership and the Regulatory Environment: Economic Performance of U.S. and Canadian Railroads."

1982 Conference on International Comparisons of Productivity, sponsored by the American Enterprise Institute (Washington, D.C.) "Comments on 'The Diffusion of Economic Growth in the World Economy, 1950-80.'"

1982 Fourteenth Annual Conference of the Institute for Public Utilities: "Transferability of Residential Response to Time-of-Use Electricity Rates."

1982 Econometric Society: "Economies of Density and the Effects of Network: A Re-evaluation of Scale Economies for U.S. Trunk Airlines."

1983 Western Economic Association: "The Success of the Residential Time-of-Use Electricity Pricing Experiments."

1983 Econometric Society: "Cost-Benefit Analysis: A Comparison of Different Approaches In a Case Study of Residential Time-of-Use Electricity Pricing."

1983 Econometric Society: "Estimating the Cost Savings from Rail Mergers."

1984 Conference on Interindustry Differences in Productivity Growth sponsored by the American Enterprise Institute (Washington, D.C): "The Importance of Economies of Scale, Capacity Utilization, and Density in Explaining Interindustry Differences in Productivity Growth."

1985 National Bureau of Economic Research, U.S.-Japan Productivity Conference (Cambridge, Mass.): Discussant for "Bilateral Models of Production for Japanese and U.S. Industries."

1985 National Science Foundation/Carnegie Mellon University Confernece on Regulation (Airlie, Virginia): "An Assessment of the Efficiency Effects of U.S. Airline Deregulation Via an International Comparison."

1985 Harvard University, Kennedy School of Government, Conference on Technology and Capital Formation (Cambridge, Mass.): "Measurement of Capital Stock and Capital Input for the United States Postal Service, 1963-1984."

1987 Rutgers University Advanced Workshop in Public Utility Economics and Regulation (Bolton Landing, N.Y.): "Rate Design for Real-Time Pricing of Electricity."

1988 Electric Power Research Institute and Niagara Mohawk Power Corporation: New Diminsions in Pricing Electricity (Syracuse, NY): "Revenue and Rate of Return Requirements in Innovative Pricing."

1989 Fraser Institute: Canada Post Privatization: A Postal Reform Option? (Toronto) "Productivity in the Post Office."

1990 Electric Power Research Institute and Wisconsin Electric Power Corporation: Innovations in Pricing and Planning (Milwaukee): "Incentive Regulation and Price Flexibility in the U.S. Railroad, Telecommunications, and Electric Power Industries."

1990 New York State Energy Office: Incentive Regulation to Achieve New York's Energy Policy Goals (Saratoga Springs, NY): "Price Cap Regulation."

<u>Courses Taught</u>

Economic Statistics and Econometrics:

715, 716, 717, 718 Graduate sequence for econometric majors
611, 612 Graduate sequence required for all Ph.D. candidates
613 Optional course for general graduate students

Economic Theory:
713 Second Semester of graduate sequence in microeconomic theory
702 One semester survey of macroeconomic theory at the graduate level

Principles of Economics

International Economics

Public Policy Toward Business, Economics/Business 732

Administrative Positions, University of Wisconsin

Director, Program and Computation Service for the Social Sciences, 1970, 1971, 1973-1974
Computer Advisory Committee, 1973-1974
Director, Social Systems Research Institute, 1976-1980
Graduate School Research Committee, 1976-1977
Letters and Sciences Review Committee for Computer Science Department, 1977
Graduate School Fellowships Committee, 1977-1981 (chairman, 1978-1981)
Data and Computation Center Advisory Committee, 1978-1979
Graduate Admission and Aid Committee, numerous times including chairman, 1975-1977
Economic Theory and Econometrics Prelim Committees, numerous times
Chairman, Ad Hoc Committee on Master's and Ph.D. Theory Requirements, 1971
Chairman, Economics-SSRI Colloquium Committee, 1969-1971
Personnel Committee, 1970-1971, 1974-1975, 1981-1982
Ad Hoc Space Committee, 1973-1974
Budget Committee, 1976-1978
Promotions Committee, 1977-78, 1979-80, 1982-83
Chairman, Graduate Committee, 1983-1984
Graduate Committee, 1984-1985

SUMMARY OF POSITION

SUMMARY OF WCTL'S POSITION
IN HOUSTON/GULF COAST OVERSIGHT

The operating debacle which afflicts UP as a consequence of its merger with SP has been labeled by the Board as "unprecedented"[1]. Traditionally, merger applicants have endeavored to satisfy the public interest standard set forth in 49 U.S.C. §§ 11321-27 through evidence projecting operating efficiencies and resultant savings. 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, ICC served August 23, 1995, at 65. The UP/SP merger evidence followed the traditional pattern. In their evidence in support of their merger proposal, UP and SP identified annual efficiency savings of $659 million. The evidence on these operating savings formed a significant predicate for the Board's finding that the merger was consistent with the public interest.

Regrettably, the events which ensued the merger consummation have ill-served the public interest. To the dismay of many -- including the Board -- UP has failed to realize its

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[1] Finance Docket No. 32760 (Sub. No. 26), Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company [HOUSTON/GULF COAST OVERSIGHT], Decision served May 19, 1998, at 5.

projected efficiencies and savings. Instead, its operation of the merged properties has resulted in inefficiencies, congestion, and service failures which have generated huge and additional costs. For 1997, WCTL Witness Crowley has determined that UP's inefficiency charges caused by its SP merger problems total $977 million. These charges are comprised of $814 million in SP-related expenses and $163 million in returns on another $958 million in SP related charges which UP elected to capitalize. As the WCTL evidence discloses, in 1997 we have a $1.5 <u>billion</u> swing in the merger operating costs. Instead of $534 million in savings, we have $977 million in additional charges as a consequence of the merger.

Unless the Board intercedes as WCTL requests, a portion of these huge SP inefficiency charges will be passed on to captive shippers through UP's improper accounting methods. Instead of recording its SP inefficiency charges as Extraordinary Items which are excluded from URCS and related cost determinations, UP has folded these monies into its general cost structure for 1997. WCTL has presented evidence through highly qualified and competent witnesses that UP's 1997 R-1 report is flawed. Witness Crowley has explained why the costs of the SP inefficiencies cannot be commingled with routine operating costs, but must instead be segregated and accounted for as Extraordinary Items in

R-1 Account No. 570. WCTL's Witness Avera presents compelling evidence as to why the SP inefficiency charges qualify as Extraordinary Items under both the STB's railroad accounting rules (49 C.F.R. §1201) and Generally Accepted Accounting Principles (GAPP). Because of UP's mis-accounting, its 1997 costs are overstated. For a typical western coal haul, the jurisdictional rate would <u>increase</u> by $2.29 per ton as a consequence of UP's flawed R-1 for 1997 (Crowley, sheet 13).

To avoid any further harm to the public interest, WCTL seeks a new condition which would require UP to segregate and record all charges, costs, etc. caused by SP merger inefficiencies in Account 570-Extraordinary Items of the Railroad Uniform System Accounts (R-1, Schedule 210, Line 56). UP must be directed to reverse its 1997 R-1 accounting by purging the inefficiency costs which it has commingled with its traditional operating expenses from Schedule 410 Railway Operating Expenses and placing them in Account 570. Through this expedient, the segment of the shipping public whose rates are impacted by UP's operating costs will be spared the burden of underwriting the costs of UP's service failures. As WCTL Witness Christensen has testified, these inefficiency costs must be borne by UP's stockholders.

STB FD-32760(SUB26) 7-8-98 I ID-189373 3 OF 3

REQUEST FOR A NEW REMEDIAL CONDITION

WCTL requests that the UP/SP merger be further conditioned by a requirement that all UP costs and charges arising as a consequence of the inefficiencies caused by the SP merger be segregated and recorded in Account No. 570-Extraordinary Items of the Railroad Uniform System of Accounts (Schedule 210, Line 56 of the R-1). Further the Board should specifically reaffirm its long-standing policy that Extraordinary Items play no role in URCS and other carrier cost determinations.

CONCLUSION

WCTL's Houston/Gulf Coast Oversight request is the very kind which the Board's oversight authority is designed to redress. Because the UP/SP merger was approved largely on the basis of applicants' forecasts of huge savings, no consideration was given the treatment of operating losses. Now that losses have become the reality, oversight affords the public and the Board the opportunity to make sure that UP does not aggravate an already intolerable situation through improper accounting. Oversight presents the Board with the opportunity to promote the public interest by directing UP to reform its 1997 accounting practices.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I hereby certify that I have properly served a copy of the foregoing Request of The Western Coal Traffic for a New Remedial Condition.

Dated this 8th day of July 1998 at Washington, D.C.

William L. Slover

189388

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JUL 8 1998
MAIL MANAGEMENT
STB

Commonwealth Consulting Associates

July 7, 1998

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

ENTERED
Office of the Secretary

JUL 09 1998

Part of
Public Record

Re: STB Finance Docket No. 32760 (Sub-No. 26)
Union Pacific Corp., et al. – Control & Merger – Southern Pacific Corp., et al.
Houston/Gulf Coast Oversight Proceeding

Dear Secretary Williams:

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

Respectfully submitted,

David L. Hall

13103 FM 1960 West · Suite 204 · Houston, Texas 77065-4069 · Tel (281) 970-6700 · Fax (281) 970-6800

BEFORE THE

SURFACE TRANSPORTATION BOARD

WASHINGTON, D. C.

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

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

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

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

Due Date: July 8, 1998

SHELL INTEREST

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

It is our belief that these degraded service levels are a direct consequence of the diminution of rail competition in the Houston/Gulf Coast region. It is in Shell's interest, and indeed in the interest of the U.S. economy, to restore rail competition to this vitally important industrial region. By instituting this proceeding the Board has positioned itself to implement policies which will facilitate the restoration of Houston/Gulf Coast region rail competition.

RECOMMENDATIONS FOR NEW REMEDIAL CONDITIONS

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

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

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

- Restore neutral switching lost in Houston with the dissolution of HBT by UP and BNSF and open the Houston/Gulf Coast region to competition. With PTRA as the neutral switch carrier, the neutral switching area should include;
    - ◊ All industries and trackage served by the former HBT.
    - ◊ All industries and trackage served by the PTRA.
    - ◊ All shippers located on the former SP Galveston Subdivision between Harrisburg Junction and Galveston.
    - ◊ Galveston over both the UP and former SP routes between Houston and Galveston and including all industries located along these lines.
- Grant PTRA access to the former SP and UP yards at Strang and Galveston to facilitate service to local industries, as well as the switching and classification of rail cars for those railroads which interchange with PTRA.
- Require neutral dispatching, located, managed and administered by the PTRA within the neutral switching area.
- Grant all railroads serving Houston terminal trackage rights over all tracks within the neutral switching area to enable PTRA to route trains in the most efficient manner.
- Require UP and BNSF to restore the Port of Houston Authority as a full voting member of the PTRA Board and add the Tex Mex to the PTRA Board.
- Facilitate the sale by UP to Tex Mex of the former SP line between Milepost 0.0 at Rosenberg and Milepost 87.8 at Victoria, Texas. While the Consensus Plan advocates requiring UP to sell this track, Shell would prefer the parties agree to the

transfer of this asset at a mutually acceptable price. If no such agreement can be reached the matter should be submitted to arbitration.

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

would prefer the parties agree to the transaction under mutually acceptable conditions. If no such agreement can be reached the matter should be submitted to arbitration.

CONCLUSIONS

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

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

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

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

Respectfully submitted,

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

Brian Felker

Brian P. Felker
One Shell Plaza
Houston, Texas 77252

Dated: July 7, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 1998, copies of the Request for New Remedial Conditions of Shell Oil Company and Shell Chemical Company were served by first class mail, postage prepaid, in accordance with the rules of the Surface Transportation Board on the U.S. Secretary of Transportation, and all other parties of record.

Brian Felker

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STB FD 32760 (Sub 26) 7-8-98 I 189383

189383

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July 8, 1998

BY HAND

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

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 Central Power & Light Company for Supplemental Condition Permitting BNSF Coal Deliveries to Coleto Creek Generating Station."*

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,

Donald G. Avery

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

Encl.

Original

BEFORE THE
SURFACE TRANSPORTATION BOARD

189383

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

REQUEST OF CENTRAL POWER & LIGHT COMPANY
FOR SUPPLEMENTAL CONDITION
PERMITTING BNSF COAL DELIVERIES
TO COLETO CREEK GENERATING STATION

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

OF COUNSEL:

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

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

Dated: July 8, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

REQUEST OF CENTRAL POWER & LIGHT COMPANY FOR SUPPLEMENTAL CONDITION PERMITTING BNSF COAL DELIVERIES TO COLETO CREEK GENERATING STATION

Pursuant to the orders of the Surface Transportation Board ("STB") served March 31, May 19, and June 1, 1998 in this proceeding, Central Power & Light Company ("CPL"), of Corpus Christi, Texas, hereby submits this, its request for the imposition of a supplemental condition on the merger of the Union Pacific and Southern Pacific Rail Systems. Specifically, CPL seeks an order requiring UP to let the Burlington Northern and Santa Fe Railway Company ("BNSF") operate over an additional 16 miles of track in order to deliver unit coal trains to CPL's power plant at Coleto Creek, Texas.

As explained in the testimony and argument that follow, CPL's requested condition is necessary in order to enable CPL to obtain adequate volumes of coal in the face of UP's continuing inability to provide timely and reliable service to that plant.

This Request for Condition consists of argument of counsel preceded by the testimonies of the following witnesses:

- **MARGUERITE C. MILLS**, Director - Solid Fuels for Central and South-West Services, Inc. Ms. Mills, who is responsible for management of coal purchases and rail transportation arrangements for the four operating subsidiaries of Central and South West, Inc., including CPL, describes the signficant deterioration in coal deliveries that CPL has experienced at its Coleto Creek generating station since UP's problems came to a head last year, and the harm that this deterioration has caused and is causing for CPL and its customers. Ms. Mills also describes the lengths to which CPL has gone to mitigate the harm it is suffering, as well as BNSF's offer, rejected by UP, to take over PRB coal deliveries to CPL;

- **GEORGE L. STERN**, a former railroad executive with extensive experience in railroad operations. Mr. Stern describes the UP facilities used in delivering coal to CPL's power plant at Coleto Creek, as well as the BNSF facilities that BNSF could use to bypass much of the congestion on UP's lines, and explains how the proposed BNSF access is operationally practicable and efficient, and will improve service to CPL without any negative impact on UP's service to its other shippers; and

- **JAMIE N. HELLER**, a railroad transportation consultant with extensive experience in western coal transportation issues and operations. Mr. Heller explains how the UP/SP merger has substantially exacerbated the impact of UP's current service problems on CPL's coal deliveries -- and especially on its ability to exercise a degree of self-help to bypass UP problems. Mr. Heller also explains why giving BNSF access to Coleto Creek on a long-term, rather than short-term, basis is necessary in order effect a permanent service solution, and how doing so will have a positive impact on UP's other operations.

MILLS

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

VERIFIED STATEMENT OF
MARGUERITE C. MILLS

Q. **PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.**

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

Q. **HAVE YOU BEEN AUTHORIZED BY CENTRAL POWER AND LIGHT COMPANY (CPL) TO FILE TESTIMONY IN THIS PROCEEDING?**

A. Yes, I have been authorized as an employee of CSWS on behalf of CPL to file testimony in this proceeding, and do so based upon my personal knowledge and in my capacity as Director, Solid Fuels for the CSW system. CPL and CSWS are both wholly-owned subsidiaries of Central and South West Corporation (CSW). Specifically, I appear in support of CPL's request that the Union Pacific Railroad Company ("UP") be ordered to allow the Burlington Northern Santa Fe Railway Company ("BNSF") to deliver coal to CPL's generating station at Coleto Creek, Texas, which is located about sixteen miles west of Victoria, Texas.

Q. **PLEASE BRIEFLY DESCRIBE WHAT YOU MEAN AS THE "CSW SYSTEM".**

A. CSW is a public utility holding company that, in addition to other subsidiary and affiliate companies, owns all of the common stock of four domestic electric operating subsidiaries, namely, CPL, Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU). The four domestic electric operating companies, together with CSWS, which provides, at cost, professional services for the corporation and its subsidiaries, comprise what I refer to in my testimony as the "CSW System".

Q. **WHAT ARE YOUR PRINCIPAL AREAS OF RESPONSIBILITY AS DIRECTOR, SOLID FUELS FOR CSWS?**

A. I have responsibility for the management and direction of the CSW System's coal, lignite, rail transportation, and rail maintenance functions. These functions include forecasting, planning, procurement, negotiation and administration activities involved with the supply and transportation of coal and lignite, as well as the management of inventory levels at the CSW System's solid fossil fuel plants.

Q. **DO YOUR RESPONSIBILITIES INCLUDE PROVIDING FOR CPL'S COAL SUPPLY AND RELATED TRANSPORTATION NEEDS?**

A. Yes, CSWS acts as CPL's representative in planning, managing, and administering CPL's coal supply and related transportation agreements.

Q. **PLEASE DESCRIBE CPL.**

A. CPL is a public utility providing electric power to over 627,000 industrial, commercial and residential customers in south Texas. CPL owns and operates several gas-fired generating units, but virtually all of its baseload power requirements are met in about equal amounts with power from two units: CPL's interest in the South Texas Project nuclear unit, and its coal-burning generating station, Coleto Creek.

Q. **WHERE DOES CPL ACQUIRE ITS COAL FOR COLETO CREEK?**

A. Coleto Creek consumes in excess of two (2) million tons of coal annually. CPL is dependent upon the Union Pacific Railroad ("UP"), the only railroad with tracks serving Coleto Creek, to deliver all of its coal. Traditionally most of that coal has come from mines in northwest Colorado, which like Coleto Creek are served only by UP. However, in 1995, CPL completed installation of a coal blending facility at the plant and began purchasing a portion of its coal requirements from mines in the Powder River Basin of Wyoming

("PRB"). Even though such coal has a lower energy (Btu) content than the Colorado coal and must be transported a greater distance, the mine-mouth prices of PRB coals are so much lower than those of Colorado coals that CPL can reduce its overall generation cost through such substitution. CPL's objective is to burn approximately 50% PRB coal in 1998, with the percentage increasing in future years.

Q. **IS UP THE ONLY RAILROAD THAT TRANSPORTS COAL TO COLETO CREEK?**

A. Yes, it is now. However, when Colorado coal first began moving to Coleto Creek in 1980, there were three rail carriers involved: the Denver & Rio Grande Western Railroad served the Colorado mines and transported the coal to Pueblo, Colorado where the Atchison, Topeka and Santa Fe Railway ("Santa Fe") took over and moved the coal to Caldwell, Texas, where it was interchanged to the Southern Pacific Transportation Company ("SP") which owned the tracks serving Coleto Creek. Although both the origin and destination of CPL's coal movement were captive to single (albeit different) carriers, Santa Fe faced competition from the Burlington Northern Railroad Company ("BN") for the "bridge" portion of the movement. Indeed, during the contract negotiations in 1985 and 1986, BN underbid Santa Fe and actually replaced Santa Fe as the "bridge" carrier. BN took the coal at Pueblo, Colorado, but interchanged it to SP at Forth Worth, Texas, about 170 miles north of Caldwell.

Even after SP merged with DRGW, Santa Fe and BN remained competitive alternatives for the bridge portion of CPL's Colorado coal movements until the BN-Santa Fe merger in 1995. The BN-Santa Fe ("BNSF") merger not only eliminated their head-to-head competition, but also gave SP trackage rights between Pueblo and Fort Worth, enabling SP to handle CPL's Colorado coal movement in single line service. By then, as I have already noted, CPL had installed a coal blending facility and was looking to the PRB as a source of more competitively priced coals. For the PRB coal movements, CPL continued to have a choice for origin carriers -- BNSF or UP -- until the UP-SP merger in 1996. However, with the consummation of the UP-SP merger, CPL became completely dependent upon UP for all of its coal deliveries, regardless of source.

Q. **HAS CPL BEEN AFFECTED BY THE SERVICE PROBLEMS THAT UP HAS BEEN EXPERIENCING IN TEXAS AND ELSEWHERE OVER THE PAST YEAR?**

A. Yes, it has. As early as the Spring of 1997, CPL noted a deterioration in unit-train cycle times for its coal deliveries from both Colorado and Wyoming. The UP initially reported that the slow-down was the result of poor maintenance by SP, and promised that service would soon return to normal. Rail service, however, continued to degrade. UP and its predecessors have been able in the past to operate CPL's Colorado coal trains on an average cycle time of 8 to

9 days, but by late July and early August 1997 its average cycle times almost doubled to 14 days. The monthly average cycle times on CPL's Colorado coal trains continued to increase through November 1997, with one train actually taking over 649 hours, nearly four weeks or four times the expected cycle time, to make the trip. UP's monthly average cycle time reached a high of 382 hours in October 1997, and cycle times remained well above 10 days for the rest of 1997.

UP's service on CPL's PRB coal shipments also deteriorated in mid-1997. During the Spring of 1997 CPL had been conducting an extended test burn of coal from the Jacobs Ranch mine in the PRB, and planned to build up its inventory of Jacobs Ranch coal even as it continued to burn such coal during that summer. Unfortunately, UP's average cycle time on these movements increased by almost 50% during this period, reaching 14.5 days in June, and for the remainder of 1997 they remained well above the target of 10 days that UP itself had originally proposed. Since CPL was just implementing its PRB conversion strategy in 1996 and 1997, it has limited information on which to calculate the UP's historical cycle times for such traffic. However, even UP must admit that its long cycle times from the PRB should be substantially better than those CPL has experienced.

Q. **HOW DID THESE INCREASES IN CYCLE TIMES AFFECT CPL'S OVERALL COAL DELIVERIES IN 1997?**

A. For the second, third and fourth quarters of 1997, UP's overall average cycle times on CPL's Colorado coal shipments were 252.0, 295.9 and 373.9 hours, respectively. This caused CPL's overall 1997 Colorado coal deliveries to fall short of target by 575,000 tons, or almost 30% Note that this is net of the tonnage delivered by UP in its own trainset, which UP added to the CPL "fleet" at CPL's request to help reduce the growing deficit.

CPL also experienced a deficit in its PRB coal deliveries. Moreover, during the last half of 1997, CPL could only move Colorado coal to the plant since this was a substantially shorter movement and appeared the most efficient use of the limited number of trainsets that UP would allow CPL to employ. (Although CPL would have added still more trainsets into service at Coleto Creek to get the coal moving, UP denied its requests to do so.) Thus the tonnage deficit, itself, was just the tip of the iceberg for CPL; an even more serious consequence of UP's poor performance with the PRB trains has been to frustrate, or at least delay, our planned shift of tonnage from Colorado to the PRB.

Q. **WOULD CPL HAVE ACTUALLY SHIPPED ALL OF THAT ADDITIONAL COAL IF UP HAD OPERATED ON NORMAL CYCLE TIMES?**

A. Absolutely. Coleto Creek is a "baseload" unit for CPL and absent fuel constraints, operates at a high capacity factor. Moreover, in early 1997 CPL's coal inventory was at an unusually low level, anyway, because CPL had burned down its inventory of Colorado coal in order to make room for a separate PRB coal pile. (A minor contributing factor to the low inventory level was a problem associated with an unsuccessful test burn of PRB coal in late 1996.) CPL had planned to build up its inventories of both Colorado and PRB coal once setup of the dual-pile configuration was complete, and would then have taken every ton UP could have delivered.

Q. **HOW DID CPL RESPOND TO THE SHORTFALL IN UP'S COAL DELIVERIES?**

A. In its initial response to the situation, CPL leased additional trainsets and put them in service to augment its coal deliveries. By early July 1997, however, it had become clear that the UP's problems would not be quickly resolved and that CPL would need to take additional measures to protect its coal generating capability at Coleto Creek. These measures included adding still more trainsets to CPL's fleet (when allowed to do so by UP), including one of UP's trainsets; purchasing supplemental fuel from overseas delivered through the Port of Corpus Christi; and the use of petroleum coke. However, the most drastic action that CPL was compelled to take in response to UP's poor service was a reduction of generation from the Coleto Creek Power Station from July 1997 through mid-January 1998. The latter action forced CPL to substitute more costly power from other sources (gas generation and purchased power) to meet the needs of its customers.

Q. **WHAT WOULD HAVE HAPPENED IF CPL HAD NOT REDUCED ITS GENERATION AT COLETO CREEK?**

A. CPL would have run completely out of coal in early September, and been forced to shut Coleto Creek down.

Q. **HAS UP'S SERVICE IMPROVED IN 1998?**

A. No, it has not. Despite a brief improvement in performance during January and February 1998, cycle times since that time have worsened. In fact, in May 1998, the monthly average cycle time of CPL's Colorado trains was approximately the same as that for November 1997, the second worst month since this service disruption began.

Cycle times for CPL's PRB coal shipments have also continued to lag, and they still are averaging 20%-35% above the target.

Q. **WHAT IMPACT IS THE UP'S CONTINUING SERVICE DISRUPTION HAVING ON CPL?**

A. UP's service disruption continues to prevent CPL from obtaining enough Colorado and PRB coal to ensure that the needs of Coleto Creek and thus, its customers in South Texas, will be met. Despite CPL's best efforts to manage the problem, though entreaties to UP, etc., CPL has necessarily had to incur millions of dollars in increased costs for substitute fuels and power.

Furthermore, UP's service problems have even impeded the delivery of CPL's imported coal. Although past imported coal shipments have moved by rail from the Port of Corpus Christi to the plant, UP refused to transport any part of CPL's most recent (May 1998) shipload of imported coal. As a result, CPL has been forced to move the entire 59,000 tons of coal by truck, a more expensive and less efficient transportation alternative that will take over two months to complete. This coal could have moved the ninety (90) miles from the port to the plant by train in a fraction of this time and with far less impact on local communities.

Finally, while the added expense that CPL has incurred is significant, it is by no means the only harm CPL has suffered as a result of UP's service problems. CPL was able to conserve its limited coal supplies during the last half of 1997 and into 1998 by reducing Coleto Creek's generation during off-peak periods. However, this may not be an option during the summer months of 1998 when all of CPL's generating units will be required to meet its customers' power requirements. If Coleto Creek were to run out of coal and shut down completely, it would force CPL to purchase power at greater cost, and could even trigger electric service disruptions to CPL's customers. This possibility would be magnified if one or more other generating units in the Electric Reliability Council of Texas ("ERCOT") were forced to go off-line. CPL has been working extremely hard to prevent the occurrence of such a public disaster, but the failure of UP to correct its service problems has made this an uphill battle.

Q. **WHY DO YOU THINK THAT ALLOWING BNSF TO DELIVER COAL TO COLETO CREEK WOULD LESSEN THE SERVICE PROBLEMS YOU HAVE BEEN EXPERIENCING?**

A. I think that allowing BNSF to deliver coal to Coleto Creek would help in several ways. First, a major cause of CPL's inflated cycle times has been UP's inability to pick up empty trains after they have been unloaded at the plant. CPL's empty trains have frequently languished at Coleto Creek for several days while awaiting a UP crew. UP has publicly stated that some of its service problems have been caused by a shortage of locomotives, and that it has been unable to keep enough operating crew members on duty to meet the needs of its shippers. Allowing BNSF -- which already operates through Victoria, Texas, just sixteen miles from the Coleto Creek plant -- to come out to the plant to pick up CPL's trains would add a whole new pool of locomotives and working crew members to the limited and inadequate resources presently available to move CPL's traffic. This would have to help Coleto Creek's situation.

Second, allowing BNSF to handle some of CPL's PRB coal shipments would take that traffic off some of the more congested parts of UP's system. As I mentioned previously, BNSF acquired the old Santa Fe main line from Colorado down through Texas to Caldwell, which bypasses all of the congestion between Stratford and Fort Worth, as well as the significantly congested spot of Hearne, Texas. We believe that most of the en route delays to CPL's trains have occurred at Hearne or at points north of there.

Last, but not least, opening up some of CPL's coal traffic to diversion by BNSF would encourage UP to be more responsive to CPL's service needs. Because CPL will remain captive to UP for its Colorado coal requirements, regardless of which railroad ends up delivering its PRB coal shipments, it is imperative that UP devote the necessary attention to insure CPL receives appropriate service.

Q. **DO YOU HAVE ANY REASON TO BELIEVE THAT BNSF IS INTERESTED IN HANDLING CPL'S PRB COAL TRAFFIC?**

A. Yes. BNSF has expressed that interest to CPL directly. BN has also represented that it has approached UP with the suggestion that BNSF handle CPL's 1998 PRB coal shipments to help reduce UP's congestion problems and improve UP's ability to handle its other traffic. Unfortunately, UP has rejected that suggestion.

Q. **UP HAS EXPRESSED CONFIDENCE THAT THE MEASURES IT HAS TAKEN OR AGREED TO TAKE, SUCH AS INSTITUTING DIRECTIONAL RUNNING ON SEVERAL LINES (INCLUDING THE FORMER SP LINE THROUGH VICTORIA USED BY CPL'S COAL TRAINS), WILL SOON RESTORE ITS SERVICE TO NORMAL LEVELS. WHY CANNOT CPL SIMPLY RIDE OUT THE CURRENT PROBLEM AND WAIT FOR UP TO HONOR ITS PROMISES?**

A. UP has been assuring us that a return to normal service was imminent for almost a year now and yet, its problems remain and service is not improving. The real problem, apparently, is that the causes of UP's difficulties are too complex and intractable for an easy or quick fix. Meanwhile, CPL's need is urgent. As I explained earlier, CPL cannot afford to wait indefinitely for coal deliveries to improve at its Coleto Creek plant.

Q. **IN CONTRAST TO UP'S ONGOING PROBLEMS AND FREQUENT PROMISES OF BETTER SERVICE, WHAT IS THE CURRENT STATUS OF CPL'S COAL INCENTORY AT COLETO CREEK?**

A. Since mid-January 1998 when the plant was released for unconstrained operation, Coleto Creek's coal inventory has remained only a handful of days above the level at which CPL must again consider forced reduction of its generation. Except for a brief period during which the plant was down for planned maintenance and inventory built to over 30 days of supply, the coal inventory at the plant has generally hovered between 18 and 25 days of generation. This is only about half of the inventory that CPL is approved to carry at the plant by the Public Utility Commission of Texas. In light of the extremely hot weather that Texas has already experienced this year, Coleto Creek's precarious inventory levels become even more critical to the security of its customers.

Q. **IS THE ANSWER, THEN, FOR BNSF TO BE GRANTED TEMPORARY ACCESS TO COLETO CREEK, WITH SUCH ACCESS SUBJECT TO TERMINATION ONCE UP SERVICE RETURNS TO NORMAL?**

A. While temporary BNSF access would certainly help, it would only be half a solution. UP's efforts to overcome its service problems have thus far exhibited a recurring pattern of modest improvements, followed by major relapses. What will happen if UP insists on throwing BNSF off its property during an improvement period, only to suffer another relapse? Will BNSF be expected to stand by, awaiting yet another invitation to help that might never come? That strikes me as unrealistic. In my view, UP's service problems have lasted long enough to justify imposition of a permanent solution. When and if UP's service finally returns to normal, UP can seek to recapture CPL's PRB traffic by demonstrating reliable service on CPL's Colorado coal shipments. UP should not, however, be allowed to simply declare this crisis over, retake all CPL's PRB coal traffic, and return to the *status quo* that produced the crisis.

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

A. No, that completes my testimony.

VERIFICATION

STATE OF TEXAS) ss:
COUNTY OF Dallas)

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

Marguerite C. Mills
Marguerite C. Mills

Subscribed and sworn to
before me this 6th day
of July, 1998.

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

My Commission Expires 10/23/2001

STERN

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

VERIFIED STATEMENT OF
GEORGE L. STERN

My name is George L. Stern. I am currently a transportation consultant with offices in Birmingham, Michigan, and have previously appeared before this Board as an expert witness. During the past thirty-nine years I have held a variety of operations, transportation, and executive positions in the railroad industry, including Assistant Vice President-Operations of the *Grand Trunk*, Vice President-Operations of the *Detroit, Toledo & Ironton*, and President of the *New York & Atlantic* and the *Chicago & Illinois Midland* Railways. A more detailed statement of my professional experience is attached as Exhibit A.

I have been asked by Central Power & Light Company (CPL) to examine the operational feasibility and practicality of having the Burlington Northern Santa Fe Railroad Company (BNSF) deliver unit coal trains all the way to CPL's power plant at

Coleto Creek, Texas, which would require BNSF to operate over the lines of the Union Pacific Railroad (UP) from Caldwell, Texas to the destination, a distance of 162 miles. (BNSF is presently operating over all of that trackage except the 16-mile branch line to Coleto Creek.) I have also been asked to determine whether allowing direct BNSF service to Coleto Creek in this manner would be likely to improve coal deliveries to the plant, and what its impact would be on UP's ability to handle its other traffic -- including UP's remaining coal deliveries to Coleto Creek, which originate in Colorado.

As I shall explain in more detail below, I conclude that allowing BNSF to deliver unit coal trains all the way to Coleto Creek is quite feasible operationally, and that such direct BNSF service would greatly improve CPL's ability to get the coal it needs in the face of UP's continuing service problems in the region. Moreover, I believe it is clear that diversion of a portion of CPL's coal traffic to BNSF would help, not hurt, UP's ability to handle its other traffic. I therefore strongly recommend that the Surface Transportation Board grant BNSF such direct access in this proceeding.

Background--the Problem

As CPL witness Mills will explain, UP's service problems during the past year, and especially its chronic inability to operate Texas-bound unit coal trains on schedule, have hit CPL especially hard, forcing it at times to curtail operations at

Coleto Creek in order to conserve its dwindling coal supplies. According to the Texas PUC, CPL's Coleto Creek generating station is the only coal-fired plant in Texas served exclusively by UP. As a consequence, it is uniquely dependent on UP service, and uniquely vulnerable when such service is disrupted, as it has been for the past year.

The virtual meltdown of UP's rail operations following its takeover of Southern Pacific in 1996-97 is a well-known tale, and I won't waste the Board's time by repeating it here. Suffice it to say that whatever the root cause of UP's problems in the Houston terminal area, the condition of SP's tracks and facilities is not the cause of UP's inability to operate CPL's coal trains in a timely fashion. CPL's trains operate over former SP tracks only on the final leg of the movement, from Fort Worth south to Victoria and Coleto Creek. Those lines are in good shape, fully capable of sustaining unit coal train operations at timetable speeds -- just as they did before the UP/SP merger. Clearly, the source of UP's service problems with respect to CPL must lie elsewhere.

When one looks more carefully at how CPL's trains have been delayed, and where the delays have occurred, it becomes clear that those delays result primarily from the persistent locomotive and operating crew shortages plaguing UP, exacerbated by merger-related operational changes. Specifically, as witness Mills explains, empty coal trains have regularly languished at the plant for days at a time, waiting for a UP crew to come out and get them. Loaded and empty trains alike have routinely been stalled for days en route, awaiting crews -- or backed up behind other trains awaiting crews or locomotives. Moreover, I understand that most of the en route delays have occurred at Hearne or other points north of Caldwell, Texas, which is significant, as I shall explain later.

UP's decision to institute directional running on its line between Flatonia and Victoria, while it may have helped alleviate congestion in Houston and elsewhere, has further slowed the empty return movement of CPL coal trains by forcing them to stop in Victoria while the locomotives run around the train in order to be in position to pull it south to UP's Brownsville-Houston line and then east to and through Houston, before returning north to the mine.

All of this might be nothing but an interesting historical footnote, if UP had been able to get its act together and restore normal operations by the end of last year, as its executives had promised. Unfortunately, the detailed service reports that UP files with the Board in Ex Parte 573 underscore just how difficult it is proving to be for UP to overcome its problems and return to "normal." Each week, even as UP's lawyers are touting an improvement in some statistical measure of service in one area, they are forced to concede that other measures have gotten worse, as the company's problems build upon themselves. Moreover, improvements seem to be fleeting when they do occur. For example, in late May UP was reporting modest improvements in its cycle times for unit coal trains operated into Texas, but by the second week in June those cycle times had shot back up again. According to Ms. Mills, CPL's own experience reflects that same "one step forward, two steps back" pattern.

With an end to UP's service problems nowhere in sight, and another summer of inadequate coal deliveries, potential forced generation cutbacks, and high-cost procurements of substitute power facing them, CPL asked me to examine the feasibility of bringing in the additional coal supplies it needs via a different transportation provider, BNSF. That is the purpose of this testimony.

<u>BNSF Direct Service to Coleto Creek is Feasible and Will Substantially Increase Coal Deliveries As Well As Helping to Reduce Congestion on UP</u>

As witness Mills explains, CPL purchases coal from both Colorado and Wyoming (Powder River Basin) origins for its Coleto Creek power plant. However, while historically it obtained most of its coal from Colorado, it is in the process of shifting more and more of its tonnage to the less-expensive PRB origins, with plans to take about 50% PRB coal this year and even more in succeeding years.

At present, UP operates CPL's loaded coal trains from Colorado over its own lines to Pueblo, Colorado, then over BNSF lines (formerly operated by BNSF's predecessor, the Atchison, Topeka & Santa Fe Railway (ATSF)) to Stratford, Texas, then back over its own lines to Dalhart, Texas, then over BNSF lines again (this time, lines formerly operated by BNSF's other predecessor, the Burlington Northern Railroad Company (BN)) all the way to Fort Worth, then over its own (former SP) lines south through Hearne, Caldwell, and Flatonia to Victoria, then over its 16-mile branch line to Coleto Creek. UP operates loaded coal trains from the Powder River Basin (PRB) over its own lines east to Kansas City and then south to Fort Worth, after which those trains follow the same route as the Colorado trains use.

For the most part, UP operates empty CPL unit trains in the reverse direction over the same routes that the loaded trains use, but the directional running scheme instituted by UP in response to its service problems has required a change in that pattern south of Fort Worth. Specifically, because the Flatonia-Victoria line is one-way southbound, empty trains coming off the Coleto Creek branch are rerouted south from Victoria to a connection with UP's Brownsville-Houston line, then northeast on that heavily-used line to and through Houston, then northwest to Bryan Junction, where they get back on the loaded movement route. UP has, however, reported to the Board that powered sidings will be installed on the Flatonia to Victoria segment and that this will permit empty CPL coal trains to resume bidirectional running north to Fort Worth.

UP has been reporting significant congestion and delays north of Fort Worth, on both its Colorado coal route and its PRB coal route. It has from time to time rerouted loaded CPL trains from Colorado all the way south and west to El Paso, Texas and then east to Coleto Creek -- adding 549 miles or 38% to the length of the haul -- in order to avoid tie-ups on BNSF's Dalhart-Fort Worth line. Similarly, UP has sometimes had to reroute empty CPL trains destined for PRB mines via circuitous routings (for example, through Omaha, Nebraska) in order to avoid congestion on its direct line from Kansas City to the PRB. And, as noted earlier, UP has also experienced significant delays of CPL trains at Hearne, which is between Fort Worth and Caldwell on a line used by all of CPL's coal trains.

Allowing BNSF to operate CPL's coal trains all the way to Coleto Creek will go a long way toward overcoming UP's service shortfalls, at least on the PRB coal shipments that BNSF can originate. BNSF can move such unit trains to Denver over its own, direct route, then south to Pueblo over the joint trackage it shares with UP (former DGRW). From there BNSF has a choice of <u>two</u> routes to Amarillo and beyond: it can use the former ATSF line through Stratford and Amarillo, and thence southeast to a connection with UP at Caldwell, or it can use the former BN line through Dalhart and Amarillo and thence southeast to Fort Worth. (It can also switch from one to the other at Amarillo.) Significantly, the former ATSF line -- which would bypass all the major bottlenecks impeding UP operations between Colorado and Coleto

Creek -- is the one CPL's Colorado-origin unit trains actually used whenever ATSF handled the bridge portion of CPL's traffic prior to the BNSF merger. That ATSF line is reported to be in excellent condition, as is its connection to UP at Caldwell. BNSF is already moving substantial traffic over that connection and south through Victoria, under trackage rights arrangements with UP. CPL unit trains from the PRB could start using that route tomorrow (it is 250 miles, or 15%, shorter than UP's route from the PRB); all that is required for this to happen is for the Board to grant BNSF the right to operate from Victoria to the plant over the 16-mile Coleto Creek branch.

Insofar as CPL trains are diverted around congested portions of the UP system, this will not only benefit CPL, but also the other UP shippers whose traffic will remain on UP and face that much less congestion.

BNSF-operated CPL coal trains must of course remain on the same UP lines as the UP-operated CPL trains use south of Caldwell, and thus allowing BNSF to operate those trains would not necessarily reduce congestion on that portion of UP's system (apart from the benefit from using BNSF crews and locomotives, which I will discuss in a moment). But even here, the substitution of BNSF for UP would <u>at worst</u> be an even trade; it could not possibly increase congestion, because it would not constitute added traffic. It would be precisely the same traffic, with a change in the color of the locomotives. This is true if the trains continue to follow UP's directional running program by running through Houston on the empty return trip, and it will remain true if UP proceeds with its plan to power the switches between Flatonia and Victoria and then to permit two-way operation of the coal trains. (The latter change should remain in UP's self-interest regardless of who is operating the PRB coal trains to Coleto Creek, since UP will still be operating the CPL Colorado trains, and moreover taking the PRB trains out of the Houston loop should help to mitigate congestion in that area.)

Not only would granting BNSF direct access to Coleto Creek permit CPL's PRB coal trains to bypass most of the congestion they face on UP, but in addition it would allow those trains to benefit from access to BNSF's less taxed locomotive fleets and operating crews. Having BNSF crews available to pick up empty unit trains as soon as the unloading is completed should, in and of itself, eliminate a substantial portion of the delays CPL has been experiencing with UP.

Even with direct access to Coleto Creek BNSF still could not handle CPL's Colorado-origin coal trains, because it does not serve the mines. If UP were willing to do so it could interchange the CPL Colorado trains to BNSF at Denver or Pueblo, and BNSF could then move them to Caldwell and thence to the destination. Such an interline operation would, in my judgment, have the same beneficial effects for the Colorado movements as BNSF direct service will have for the PRB movements. The Board may wish to consider ordering UP to short-haul itself on the CPL Colorado traffic in this fashion, if UP's handling of that traffic does not improve after BNSF comes to its rescue on the PRB trains. At least for the present, however, that half of CPL's coal traffic will have to remain UP's responsibility.

Conclusion

For the past year UP has been unable to deliver enough coal to CPL's Coleto Creek power plant to meet that plant's needs, as its average cycle times on CPL's unit trains have vastly exceeded historic and planned (contract) levels. As a result that plant has been forced to conserve dwindling supplies by, among other things, cutting back its own output.

The root causes of UP's service problems are no doubt complex and subject to debate, but the end result has been a railroad unable to provide adequate and reliable service -- and unable to promise a cure any time soon.

I suspect that UP's problems in the Houston area are too complex and intractable to admit of a simple solution. A simple yet effective solution is available, however, for UP's unreliable and inadequate service to Coleto Creek: allow BNSF, which already operates over UP to and through Victoria, also to operate over the 16-mile branch line serving the Coleto Creek plant, and handle the delivery of CPL's PRB-origin coal trains. I urge the Board to grant CPL's request for such a permanent condition.

GEORGE L. STERN
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Birmingham, Michigan 48009
Office: (248) 433-3400 Home: (248) 258-1924

BUSINESS EXPERIENCE

1997 **NEW YORK & ATLANTIC RAILWAY** **New York, New York**
President and Chief Operating Officer

Directed short line railroad through start-up.

- Hired operating and marketing personnel, acquired equipment and opened an office.
- Developed and implemented operating and marketing plans and reporting systems.
- Profitable in first full month of operation.

1996-1997 **TRANSPORTATION CONSULTANT** **Birmingham, Michigan**

- Performed survey of Intermodal container and trailer handling in a major metropolitan area:
  - Recommended construction of centralized terminal
  - Calculated benefits from estimated $100 million construction cost.
  - Pinpointed target users.
- Appraised three potential acquisitions, performed due diligence on two more, and calculated the Net Liquidation Value on five others.
- Appeared as expert witness in railroad valuation.

1989-1996 **CHICAGO & ILLINOIS MIDLAND RAILROAD** **Springfield, Illinois**
President and Chief Executive Officer

Transformed short line railroad from potential liquidation status to assured high margin, long term profitability.

- Increased stockholders equity by more than $10 million.
- Improved net income from $2.4 million loss to $3.3 million after tax profit.
- Improved revenue by more than $50% by developing new diversified sources, negotiating long term contracts, and creating unique high margin rail based unloading systems:
  - Developed Municipal Solid Waste transportation market. Won Golden Freight Car Award.
  - Purchased property, designed and build rail-to-water port for grain and grain products.
  - Converted power plant from conveyor belt to rail delivery under ten year contract .
  - Introduced multimodal lumber and potash terminals.
- Reduced employment by 60% thereby reducing the operating ratio to nearly 50%.

1987-1989 **TRANSPORTATION CONSULTANT** **Birmingham, Michigan**

- Performed study which resulted in Great Lakes boat operator entering Powder River Basin coal market in the U.S., pursuing joint opportunities in Canada.
- Investigated and taught seminar on transportation impediments in sub Sahara Africa.

1981-1987 **GRAND TRUNK WESTERN RAILROAD** **Detroit, Michigan**
Assistant Vice President, Operations

Responsible for more than 1,000 persons involved in operations support functions.

- Cut field clerical support by 50% (430 persons) through computerization's and centralization.
- Reduced freight car fleet 45% (7,000 cars), improved net rents by $4 million.
- Chaired interdepartmental committees that reduced track by 31%, closed 3 switch yards, consolidated operating divisions, established operation plans in case of customer or employee work stoppage, and established 10 year locomotive acquisition and maintenance strategy.

1977-1981 **DETROIT, TOLEDO, AND IRONTON RAILROAD** **Dearborn, Michigan**
Vice President - Operations
Responsible for Transportation, Maintenance of Track and Equipment and Computer Services.

1971-1976 **ILLINOIS CENTRAL GULF RAILROAD** **Chicago, Illinois**
Assistant Vice President - Intermodal Automotive

- Introduced "Slingshot" service into competitive short haul motor carrier market incorporating breakthroughs in labor manning and work rules, inter-corporate pooling of services and operations. Won Golden Freight Car Award.

1967-1971 **LITTON GREAT LAKES DIVISION , LITTON INDUSTRIES** **Cleveland, Ohio**
Director of Planning

- Developed marketing program to capture significant portion of Lake Superior iron ore movement.

1959-1965 **CHESAPEAKE & OHIO - BALITIMORE & OHIO RAILROADS** **Baltimore, Maryland**
Various line and staff positions in Operating Department.

EDUCATION **Harvard Graduate School of Business Administration** **Boston, Massachusetts**
Master of Business Administration, 1963. Century Club.
Columbia School of Engineering **New York, New York**
Bachelor of Science in Civil Engineering, 1959. Tau Beta Pi.
Columbia College **New York, New York**
Bachelor of Arts, 1958.

LICENSES Licensed Professional Engineer.
American Society of Transportation and Logistics, Certified Member.

AUTHOR & SPEAKER Harvard Business Review
Pan American Railway Congress; Transportation Research Forum.
Frequent speaker at Professional Seminars, Universities and civic organizations

PERSONAL Married, 3 children, 5'10", 180 pounds, good health.

VERIFICATION

STATE OF MICHIGAN)
)
OAKLAND COUNTY)

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

George L. Stern

Sworn to and signed before me
this 6 day of July, 1998

Catherine A. Humenny
Notary Public

CATHERINE A. HUMENNY
Notary Public, Oakland County, MI
My commission expires: My Commission Expires Oct. 12, 2001

HELLER

July 7, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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VERIFIED STATEMENT OF
James N. Heller

Q. **Please state your name, occupation, and business address.**

A. My name is James N. Heller. I am president of Fieldston Company Inc., an economics consulting firm specializing in energy and transportation analyses, with a particular focus on coal and coal transportation. My business address is 1800 Massachusetts Ave., NW, Suite 500, Washington, D.C.

Q. **On whose behalf are you presenting testimony in this proceeding?**

A. I have been requested by Central Power and Light Company ("CPL"), of Corpus Christi, Texas, to testify in connection with its request that the Burlington Northern Santa Fe

Railway Company ("BNSF") be granted the right to deliver unit coal trains to CPL's electric generating station at Coleto Creek, Texas, over the lines of the Union Pacific Railroad Company ("UP/SP"). More specifically, I have been asked to address the extent to which UP/SP's merger with the Southern Pacific Transportation Company ("SP"), approved by the Surface Transportation Board ("STB") in 1996, may have caused or contributed to the service problems UP/SP has been experiencing for the past year in delivering coal to Coleto Creek, and the extent to which the relief requested by CPL might improve service, not only for CPL, but also for UP/SP's other customers.

Q. **Please describe your experience.**

A. I have over 20 years of experience providing consulting services to coal producers, electric utilities, coal transportation companies and others in the energy and transportation markets. In particular, my work has focused upon the economic analysis of coal and rail markets.

Many of the analytical studies that I have performed relate to the markets for Powder River Basin coal and the transportation of that coal via rail to various markets in the U.S. These studies have been performed for many of the major coal producers, the Electric Power Research Institute, the U.S. Department of Interior, many electric utilities and others. At various times, I have considered the numerous factors which affect the use of Powder River Basin coal including technical constraints, transportation pricing and capacity, production costs and capabilities, environmental regulation, and competing coals.

I have also filed expert testimony in various forums including state commissions, U.S. and international arbitration panels, district courts, the Federal Energy Regulatory Commission and the Surface Transportation Board regarding coal and coal transportation related matters. My qualifications are presented in more detail in Appendix A.

Q. **Has your experience included coal movements from the Powder River Basin into Texas?**

A. Yes. I have worked on Powder River Basin coal and coal transportation related matters for almost all of the coal-fired electric utilities in Texas including the City of Austin, Houston Lighting & Power, Lower Colorado River Authority, Southwestern Electric Power Company, Southwestern Public Service Company, Texas New Mexico Power, Texas Utilities, and West Texas Utilities.

As a result of these many assignments over an extended period of time, I have become quite familiar with the movements of Powder River Basin coal by both the UP/SP and the BNSF and their predecessor carriers into the state of Texas. My involvement has included analysis of rail rate structures, assistance in development of rail contract provisions, assistance in rail contract negotiations, analysis of federal policy regarding rail transportation matters, analysis of rail service, and analysis of the prudence of various utility actions. In addition, I have also worked on many coal market related matters specific to Powder River Basin coal.

Q. **Did any of the movements which you have analyzed involve BNSF or its predecessors?**

A. Yes. The movements that I have analyzed over time have involved BNSF and its predecessors as well as UP/SP and its predecessors.

Q. **Are you familiar with the routes that BNSF and UP/SP use to move unit coal trains between the Powder River Basin and Texas destinations?**

A. Yes, I am. In general, BNSF moves Powder River Basin coal into Texas through Denver and Pueblo, Colorado, and then southeast to Amarillo, Texas and beyond. UP/SP, on the other hand, normally moves Powder River Basin coal into Texas via Kansas City, and then southwest to Fort Worth and beyond. For most destinations BNSF's route is somewhat shorter and more direct than UP/SP's; for example, BNSF's route to Fort Worth is about 150 miles shorter than UP/SP's (see map Exhibit JNH_1).

Q. **Turning now to the matters at issue in this proceeding, are you familiar with the relief that CPL is seeking against UP/SP?**

A. Yes, I have read the verified statements of CPL witnesses Mills and Stern, which describe that relief.

Q. **Do you have an opinion as to whether the UP/SP's merger with SP caused or contributed to UP/SP's problems in delivering coal to Coleto Creek?**

A. Yes, I think it is probable that the merger – as conditioned by the STB, and as those conditions were implemented by UP/SP – played a major role in precipitating UP/SP's service problems at Coleto Creek. Moreover, I think the merger has made it much more difficult for CPL to solve those service problems, and thus caused it to seek relief from the Board.

I am not commenting on whether the UP/SP merger or UP/SP's implementation of the merger agreement caused UP/SP's congestion problems in the Houston area, or whether these problems would have occurred if there had been no merger. I have concluded that the changes brought about by the merger, including changes in traffic patterns, have contributed to the spread of the problem to Coleto Creek, and that the merger has effectively precluded CPL from diverting its Powder River Basin traffic to BNSF in order to obtain more expeditious service.

Q. **Please explain.**

A. Prior to the UP/SP merger, Coleto Creek was not dependent on UP/SP – or, for that matter, BNSF – for its coal transportation requirements. It was of course captive to SP, and as witness Mills points out, after the BNSF merger, SP was able to control Coleto Creek's Colorado coal supplies from minemouth to destination. But since SP did not serve the Powder River Basin, any CPL coal supplies from that region could be delivered to Texas by either UP/SP or BNSF. Moreover, as CPL shifted more of its coal purchases to the Powder River Basin, it would have been in a better position to force UP/SP to keep the Colorado coals competitive especially in terms of service.

I am aware that the STB has held that shippers captive to a single carrier at destination typically do not benefit from price competition between origin carriers. However, even destination-captive shippers can clearly benefit from improved service – *e.g.*, faster cycle times – on the part of the origin carriers. If UP/SP had been originating Powder River Basin coal traffic to Coleto Creek prior to the UP/SP merger, and it began suffering from the congestion and locomotive and crew shortages that have been plaguing it in recent months, CPL could have begun moving coal over BNSF to supplement (or replace) its inadequate supplies off the UP/SP. SP would have had no right to block such a routing choice by the shipper, and SP would likely have welcomed the diversion, as greater volumes of coal delivered by its origin connection would mean higher revenues and profits for SP.

As a result of the UP/SP merger, however, UP/SP can and does transport CPL's Powder River Basin coal traffic in single line service, and it can and almost certainly will insist on keeping all that traffic to itself, regardless of how well or poorly it handles the traffic. As a result, CPL is now powerless, absent relief from the Board, to divert any of its Powder River Basin coal traffic to BNSF.

Even in the pre-merger period, had SP rather than UP/SP begun suffering from congestion and locomotive or crew shortages (*e.g.*, in the Houston area), those problems would have been less likely to spread to Coleto Creek, and if they had, CPL could with BNSF's and/or UP/SP's help have minimized the impact on its coal shipments.

Congestion on pre-merger SP in Houston would probably not have spread all the way to Coleto Creek for the simple reason that the SP lines serving Coleto Creek – that is, its lines from Caldwell (where BNSF could deliver coal trains, as explained by witness Stern) to Victoria and thence to Coleto Creek – were not heavily used apart from the Coleto Creek coal trains. (see the Map in Exhibit JNH-2) Prior to the merger, SP ran only 13 trains per day over the Hearne to West Point segment of the line (Caldwell is in between these two points).[1]

The merger, however, added traffic from both BNSF and the Texas-Mexican Railway ("Tex-Mex") to the SP lines through Victoria that are also used by Coleto Creek coal trains. That added traffic is presumably not the cause of UP/SP's problems in this region (and in fact, according to witness Stern, most of the congestion-caused delays of CPL coal trains have been north of Caldwell). However, by decreasing the excess capacity of these former SP lines, the added traffic from the merger has likely increased the potential for congestion problems elsewhere to cascade through the system all the way to Victoria and beyond.

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[1] Railroad Merger Application, Union Pacific Corporation, Union Pacific Railroad Company ad 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. Interstate Commerce Commission, Finance Docket No. 32760, Volume 3, p. 383.

By the same token, if a pre-merger SP had experienced locomotive shortages like those UP/SP has incurred over the past several months, those shortages need not have affected Coleto Creek coal trains, as the origin carrier's power could in such circumstances have remained with the train through the delivery by SP, under a typical run-through power arrangement. Even crew shortages, had they become a problem for a pre-merger SP, need not have stalled the Coleto Creek trains, because either SP supervisory personnel or crews from the origin carrier (with pilots) could have been pressed into service over the short distances involved.

The bottom line is, if the UP/SP merger had not taken place, problems of the sort now plaguing UP/SP would have been far less likely to have a significant impact on CPL's Powder River Basin coal shipments, and any impact they did have on that traffic would have been more confined, and hence more manageable.

Q. **With the UP/SP merger a *fait accompli*, what impact do you think the BNSF access condition requested by CPL would have on coal shipments to Coleto Creek, and on rail operations generally in the region?**

A. It seems quite clear that expanding BNSF's present Caldwell-Victoria trackage rights to include unit train coal deliveries over the 16-mile Coleto Creek branch to CPL's power plant, as requested by CPL, would materially improve CPL's ability to obtain adequate coal deliveries. This is true for all the reasons cited by witnesses Mills and Stern: BNSF can bypass any UP/SP congestion north of Caldwell, Texas, and it can make available a whole new pool of locomotives and operating crews to augment UP/SP's overtaxed resources. Judging from the two carriers' weekly service reports to the STB, BNSF is currently doing a much better job of handling its traffic into Texas than UP/SP is, and letting it handle a portion of CPL's coal shipments (recall that UP/SP will in any event continue to control CPL's Colorado traffic) cannot help but improve the reliability and volume of coal shipments to Coleto Creek. Exhibit JNH_3 provides a summary of the relative performance of UP/SP and BNSF trains which haul coal into Texas. The BNSF is clearly performing much closer to scheduled cycle times and with more consistency than the UP/SP.

It is more difficult to predict how much impact such a diversion would have on UP/SP's ability to handle its other traffic, but I agree fully with witness Stern that any impact would be positive. In particular, diverting the traffic will free up track capacity north of Caldwell, which should enable UP/SP to handle its other traffic on those lines somewhat more efficiently, while making no change (that is, not adding any traffic) to the UP/SP system south of Caldwell and through Houston. And perhaps more importantly, diverting the Coleto Creek Powder River Basin coal traffic to BNSF would free up UP/SP crews and locomotives throughout its system, including the Houston area.

Because the volumes we are talking about are small in comparison to UP/SP's total traffic volumes in the region, the impact of the diversion will be correspondingly small. But the important point is that what impact there is, will be favorable

Q. **CPL contends that granting BNSF temporary access to Coleto Creek would be only a half solution, and that permanent BNSF access is necessary to assure the plant a reliable supply of coal. Do you agree?**

A. The question really comes down to BNSF's willingness to be a standby, emergency service provider for CPL, without any assurance of regular business in return. In the present case, I understand that BNSF was willing to handle CPL's Powder River Basin coal traffic during UP/SP's incapacity, even if the operation was only going to be short term (less than a year) and its opportunity to recover those preparation costs was correspondingly limited. BNSF can of course speak for itself in that regard.

However, based upon my own experience in analyzing and negotiating coal transportation agreements, railroads are unlikely to devote substantial resources to a customer or hold such resources in reserve, unless there is a strong likelihood of winning the business. It is apparent that the railroad industry does not have and will not maintain a great deal of surplus capacity. BNSF is no exception in this regard, and without assured access to Coleto Creek, over the long run, it is unlikely that BNSF will make the commitments necessary to handle this traffic.

Q. **Do you have any other comments to offer for the Board?**

A. No, that completes my testimony.

Appendix A
Professional Qualifications

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Internet: Jamie_Heller@Fieldston.com

Current Professional Experience

Mr. Heller is President and founder (1981) of Fieldston Co., Inc. and Fieldston Publications, Inc. which are consulting and publishing firms, respectively. Both companies are located in Washington, D.C. Total staff currently numbers approximately fifty, including economists, research analysts, editors, writers, marketers and other professionals. Business areas include energy (coal, power and natural gas) supply, market analysis and transportation; rail, barge and truck transport of various commodities; and corporate strategic planning. Fieldston has managed hundreds of assignments in the U.S. and overseas for more than 100 clients.

Consulting clients include electric utilities and other power producers, coal suppliers, transportation companies, holding companies, manufacturers, law firms, industry groups (including the Electric Power Research Institute) and various government agencies. Consulting studies performed include strategic planning, market analysis, contract negotiations, production cost analysis, transportation costing and rate estimation, property acquisition, plant siting, equipment acquisition and government policy development, among others.

Mr. Heller has served as an arbitrator, and as an expert witness before various state commissions, federal district and state courts, arbitration panels in the U.S. and overseas, and the Federal Energy Regulatory Commission. He has made numerous speeches and presentations before various conferences and seminars in the U.S. and abroad. His comments have appeared in various trade publications.

Mr. Heller has published two books on coal and coal transportation. *Coal and Profitability: An Investor's Guide* was written with Charles A. Mann and was published by McGraw-Hill in 1979. *Coal Transportation and Deregulation: An Impact Analysis of the Staggers Act* was published in 1984 by Serif Press and the Energy Bureau.

Fieldston Publications, Inc. publishes business-to-business newsletters, reference books and data products in the energy, environmental and transportation area. These publications include: *Rail Business*, *Coal Transportation Report*, *Coal Daily*, *Air Daily*, *Clean Air Compliance Review*, the *Guide to Phase I and Phase II Units*, the *Fieldston Coal Transportation Manual* and the *Fieldston U.S. Coal Export Manual.*

Prior Professional Experience

- **Teknekron, Inc. of Berkeley, Calif. (1979-1980)**. Senior Analyst performing coal market and transportation studies for railroads and coal producers.
- **Energy and Environmental Analysis, Inc. (1975-1979)**. Director of Management Studies responsible for conducting analyses in areas related to air and water pollution control, automobile energy consumption, energy conservation, coal markets and rail transportation. Clients for coal and transportation related studies include U.S. Department of Energy, Executive Office of the President, U.S. Presidential Commission on Coal, U.S. Congress Office of Technology Assessment, and various coal producers.
- **Office of Water Quality Planning and Standards (U.S. Environmental Protection Agency) (1972-1975)**. Section Chief responsible for development and promulgation of industrial water pollution control guidelines.

Education

MBA, Harvard Business School, 1972.

B.S. in Electrical Engineering, Northwestern University, 1970.

Member, Eta Kappa Nu and Tau Beta Pi engineering honorary societies.

Background

Born May 6, 1948 (Chicago, Ill.).

Married with three children.

Appendix A
Professional Qualifications

James N. Heller, President
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Internet: Jamie_Heller@Fieldston.com

Current Professional Experience

Mr. Heller is President and founder (1981) of Fieldston Co., Inc. and Fieldston Publications, Inc. which are consulting and publishing firms, respectively. Both companies are located in Washington, D.C. Total staff currently numbers approximately fifty, including economists, research analysts, editors, writers, marketers and other professionals. Business areas include energy (coal, power and natural gas) supply, market analysis and transportation; rail, barge and truck transport of various commodities; and corporate strategic planning. Fieldston has managed hundreds of assignments in the U.S. and overseas for more than 100 clients.

Consulting clients include electric utilities and other power producers, coal suppliers, transportation companies, holding companies, manufacturers, law firms, industry groups (including the Electric Power Research Institute) and various government agencies. Consulting studies performed include strategic planning, market analysis, contract negotiations, production cost analysis, transportation costing and rate estimation, property acquisition, plant siting, equipment acquisition and government policy development, among others.

Mr. Heller has served as an arbitrator, and as an expert witness before various state commissions, federal district and state courts, arbitration panels in the U.S. and overseas, and the Federal Energy Regulatory Commission. He has made numerous speeches and presentations before various conferences and seminars in the U.S. and abroad. His comments have appeared in various trade publications.

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Exhibit 1
UP/SP & BNSF Routes to Texas

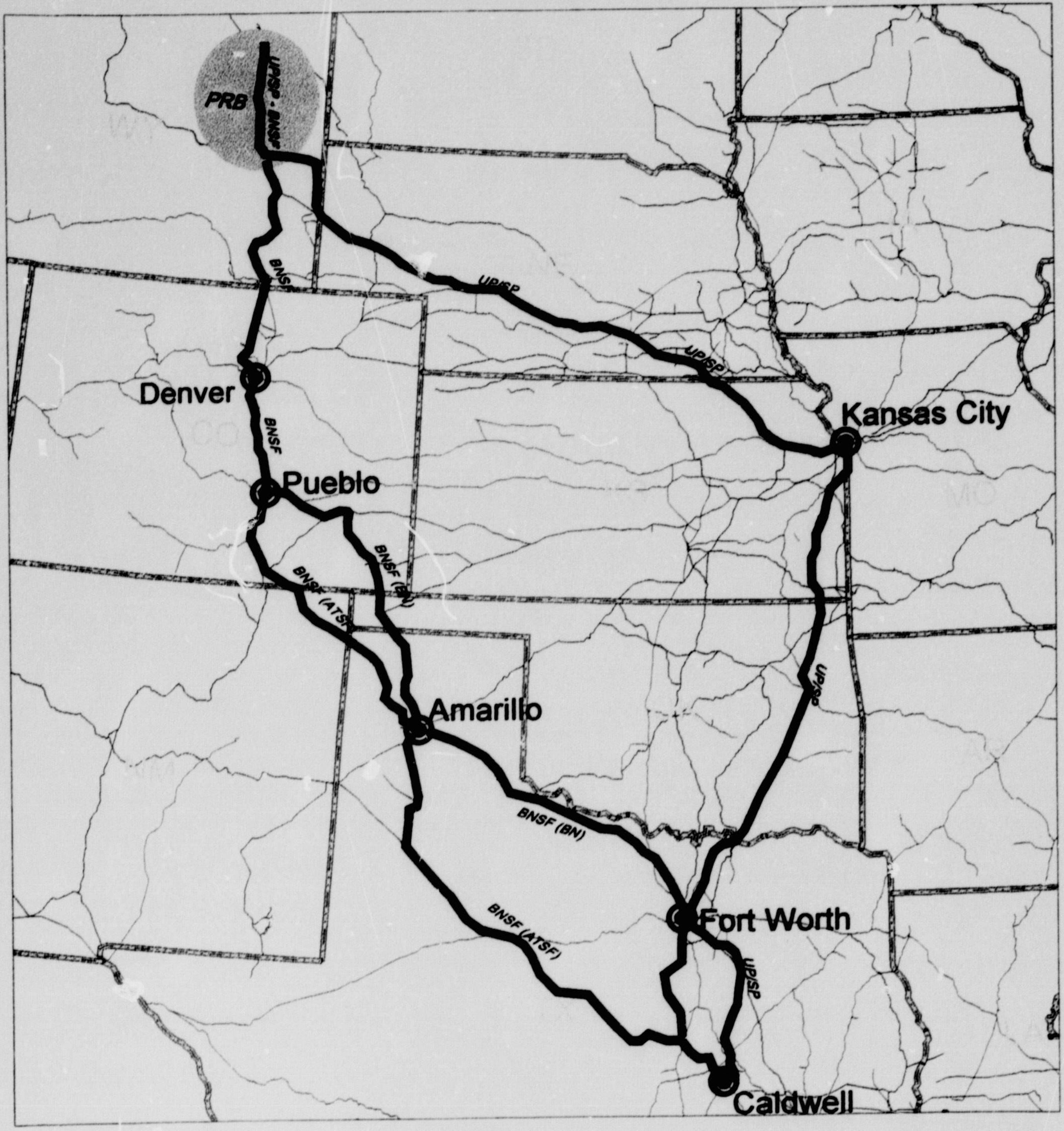


Exhibit 2

Routes Into Coleto Creek

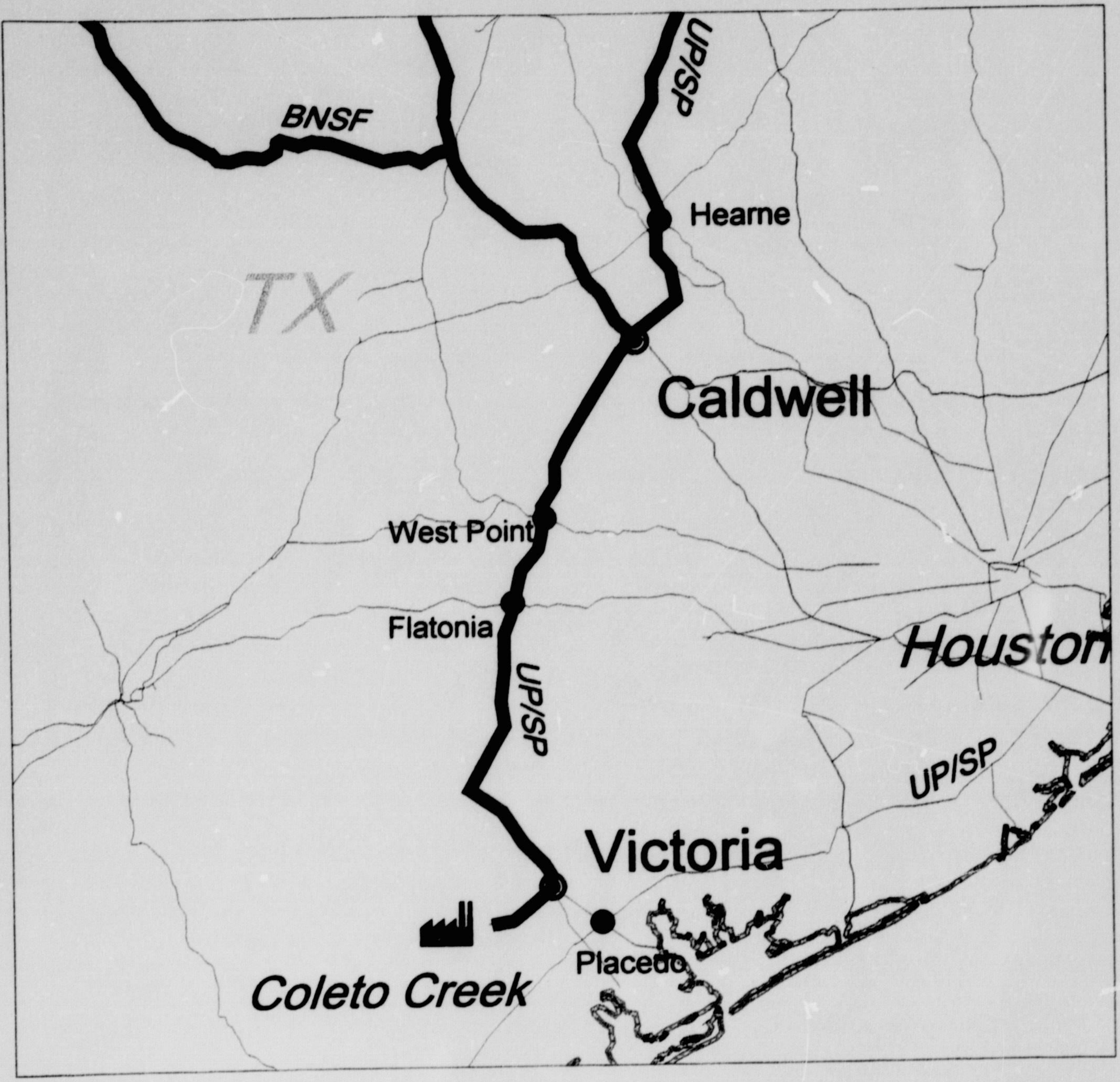
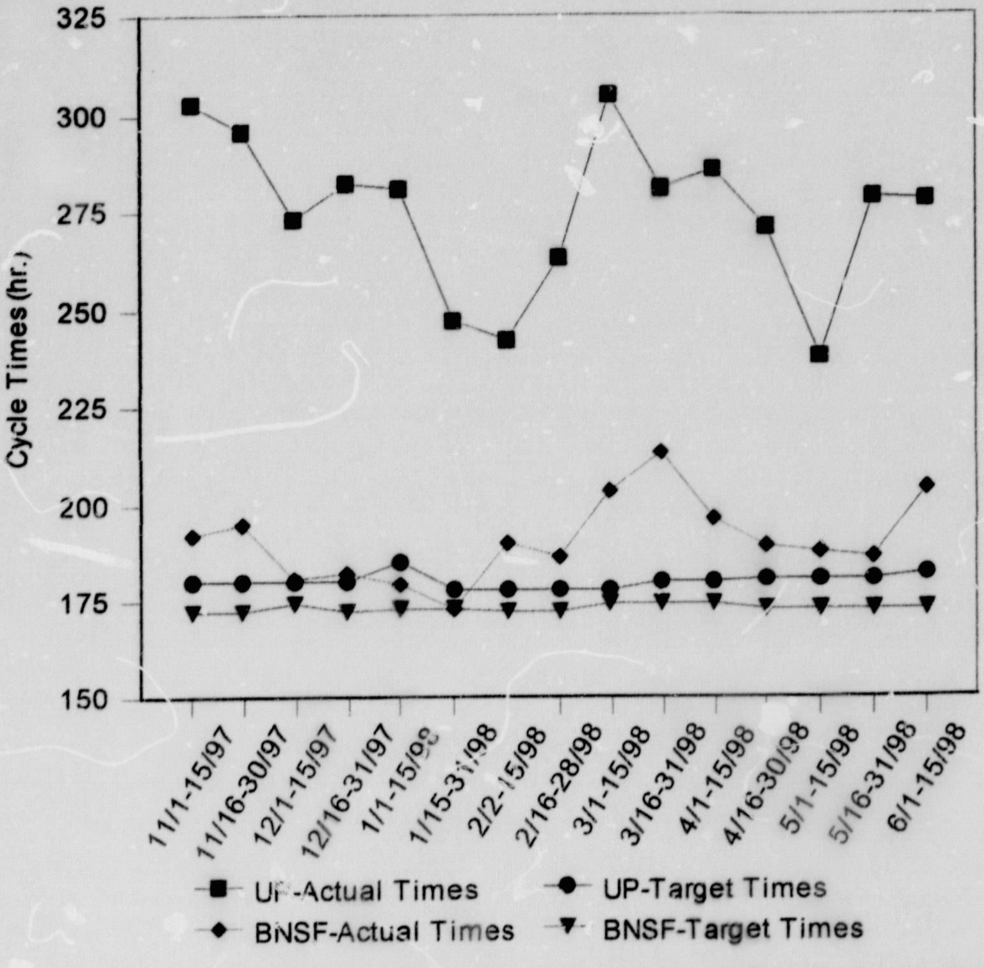


Exhibit 3

Coal Cvcle Times To Texas



Source: Public Utility Commission of Texas and Railroad Commission of Texas

VERIFICATION

DISTRICT OF COLUMBIA)
)
)

JAMES N. HELLER, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated.

James N. Heller

Subscribed and sworn to before me this 7th day of July, 1998.

Notary Public in and for the District of Columbia

My Commission Expires April 30, 2001

ARGUMENT

ARGUMENT

A. Introduction.

In this special oversight proceeding, the Board has invited suggestions for supplemental conditions designed to remedy, on a more permanent basis than its emergency order authority under 49 U.S.C. § 11123 would allow, the critical and persistent service problems UP has been experiencing in the Houston, Texas/Gulf Coast area for the past year as it has tried to "digest" its recent acquisition of SP. Finance Docket No. 32760 (Sub-No. 26), *Union Pacific et al.--Control and Merger--Southern Pacific et al. [Houston/Gulf Coast Oversight]*, Decision No. 1 (served May 19, 1998) (hereinafter, "Decision No. 1").

Consideration of such requested conditions is plainly appropriate, and indeed mandated, by the governing statute, which requires the Board to consider "the effect of the proposed transaction on the adequacy of transportation to the public" in deciding whether the UP-SP merger was "consistent with the public interest."[1] Moreover, the statute gives the Board broad authority to impose such conditions on its approval of that merger as may be necessary to cure its conflicts with the public interest requirements. 49 U.S.C. § 11344(c) (1995); *cf.* 49 U.S.C. § 11324(c) (1998).

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[1]The UP-SP merger was governed by 49 U.S.C. § 11344(b)(1)(A) (1995), which was the law in effect when the proceeding began. The current provision, 49 U.S.C. § 11324(b)(1) (1998), is to the same effect.

B. Central Power & Light Company's Need for Relief.

The Board has heard much, in other proceedings, regarding the magnitude and alleged causes of UP's service deficiencies, and about the hardships that those deficiencies are causing for customers in the Houston/Gulf Coast region and throughout the West. Although CPL has a major coal-fired generating station near Victoria, Texas, which is right in the middle of the affected Gulf Coast region, and although CPL's ability to maintain adequate coal supplies to operate that plant has been seriously and adversely affected by UP's service "meltdown," CPL has until now refrained from joining in the hue and cry, preferring instead to exhaust all avenues for seeking a voluntary solution in cooperation with UP.

CPL can remain silent no longer. As Witness Mills testifies in her verified statement filed herewith ("VS Mills"), UP has been promising an imminent return of normal service for almost a year, yet its operation of CPL's unit coal trains remains grossly subpar -- so much so that CPL, despite employing a panoply of self-help measures such as adding as many additional trainsets as UP would accept to make up for swollen cycle times, trucking in imported coal, and burning petroleum coke, has been unable to maintain anything approaching normal coal inventory levels. Indeed, at one point CPL was forced to scale back its coal-fired generation for an extended period in favor of higher cost gas generation and purchased power, in order to conserve dwindling coal supplies and avoid a forced shut-down of the plant at a critical time. (VS Mills at 5-14.)

Meanwhile, BNSF, which as the Board is aware is helping UP address its service problems elsewhere by accepting traffic that UP cannot handle adequately, has offered to do the same for CPL's coal traffic from the Powder River Basin.[2] (VS Mills at 12-13.) BNSF is already operating via trackage rights over UP (a portion of which are apparently temporary) to and through Victoria, just 16 miles away from CPL's plant at Coleto Creek. As Witness Stern notes (VS Stern at 7-8), using those trackage rights BNSF could easily handle CPL's unit train shipments of PRB coal all the way from origin to destination: all it lacks is the right to operate over that final 16 miles between Victoria and the plant. Unfortunately, UP has refused to let BNSF do that, despite UP's manifest <u>in</u>ability to handle by itself the substantial volumes of coal that CPL needs. (VS Mills at 13.) CPL has therefore found it necessary to appeal to this Board for the necessary relief.

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[2]As Witness Mills explains, CPL obtains a portion of its coal requirements from the PRB, and the rest from Colorado origins. For the foreseeable future UP will continue to handle CPL's Colorado coal shipments, inasmuch as it alone serves the mines in question. However both UP and BNSF serve the mines from which CPL obtains its PRB coal, and thus either can originate such shipments.

C. <u>Granting BNSF Access to CPL's Generating Station at Coleto Creek for Unit Train Coal Deliveries Will Help Ameliorate the Effects of UP's Inability to Provide Adequate Service to that Plant</u>.

As Witness Heller observes (VS Heller at 9), BNSF has for some time been handling its coal deliveries into Texas on a much more consistent and expeditious basis than UP has, and it is reasonable to expect that BNSF could do the same with CPL's PRB coal traffic. The simple fact is, BNSF has not been experiencing the congestion that UP has (except on certain tracks shared with UP), nor has it been plagued by locomotive and crew shortages to the extent UP has. Its weekly reports to the Board in Ex Parte No. 573, *Rail Service in the Western United States* confirm this.

More specifically, Witness Mills testifies that a significant portion of the overall delays experienced by CPL coal trains has been caused by UP's apparent inability to send crews out to pick up empty trains at the plant when they are ready. Indeed, empties have frequently languished at the plant for days at a time awaiting crews to operate them. (VS Mills at 11.) BN can help overcome that part of the problem simply by dispatching its crews on a more expeditious and consistent basis than UP has been able to do for the past year.

Additionally, Witness Stern points out that the former Santa Fe line from Pueblo, Colorado to a junction with UP at Caldwell, Texas, over which BNSF will presumably operate CPL's PRB coal trains if this Board grants CPL the relief it is seeking, conveniently bypasses most of the major congestion points on UP's system through which CPL's Colorado and UP-hauled PRB coal trains must pass. This, too, supports a reasonable presumption that BNSF will in fact provide better service for CPL than UP has been able to provide, and that BNSF will be able to deliver enough PRB coal to help CPL rebuild its coal inventory to a more acceptable level.

D. Diversion of CPL's PRB Coal Traffic to BNSF Should Help, Not Harm, UP's Ability to Recover from its Current Service Problems and Provide Improved Service for its Customers on its Remaining Traffic.

Witness Stern and Heller both point out that relieving UP of responsibility for CPL's PRB coal trains will by definition free up the crews, locomotives, and track capacity north of Caldwell that UP currently devotes to operating such trains, and to that extent can only help, and not impede, UP's efforts to return to normal service levels and standards on its other traffic.

Nor will there be any offsetting increases in interference south of Caldwell, where BNSF coal trains destined for Coleto Creek will have to operate over UP. This is so because, as Witness Stern puts it, the BNSF trains "would not constitute added traffic. [They] would be precisely the same traffic [that operates there today], with a change in the color of the locomotives." (VS Stern at 8.)

E. The UP/SP Merger Exacerbated the Impact of UP's Service Problems on CPL.

While it is not entirely clear from Decision No. 1 whether proof of a causal nexus to the UP/SP merger is required before service-restoring conditions may be imposed in this oversight proceeding, in fact CPL has shown such a nexus in this case. Specifically, as Witness Heller explains (VS Heller at 5-8), by combining SP and UP into a single rail system the merger obliterated corporate boundaries that also served to some extent as firewalls retarding the spread of operational problems from one to the other. By helping to confine an operational crisis like UP's to just SP or (pre-merger) UP, as the case might be, those barriers would have made it more manageable, and thereby facilitated a work-around for CPL.[3]

Perhaps even more importantly, insofar as the operational problems are on former UP lines, Witness Heller notes that an independent SP would have had every reason to support a diversion of CPL's PRB coal trains from UP to BNSF if that would help improve cycle times, as higher volumes would mean higher revenues and profits on the service for SP. A merged UPSP, by contrast, seems unwilling to "shorthaul" itself in that fashion, even though doing so would improve service for CPL. In other words, the UPSP merger has taken away an important means that CPL would have had for bypassing UP's service problems north of Caldwell. In short, whether or not the UPSP merger contributed significantly to the magnitude of UP's current service problems

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[3]Witness Heller notes that the origin carrier -- BNSF or UP -- could and presumably would have kept the CPL trains moving over that last piece of track owned by SP, by running locomotives and even operating crews through to destination as necessary.

overall, it certainly contributed to their harmful effects on CPL.

CONCLUSION

For the reasons set forth above and in the testimonies of Witnesses Mills, Stern, and Heller submitted herewith, respectfully urges the Board to grant BNSF the right to deliver PRB coal to CPL's generating station at Coleto Creek, Texas over UP's tracks, as an additional condition on the Board's approval of the UP/SP merger.[4]

Respectfully submitted,

CENTRAL POWER & LIGHT COMPANY
539 N. Carancahua Street
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Donald G. Avery
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(202) 347-7170

OF COUNSEL:

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

Dated: July 8, 1998

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[4]Because no construction is entailed in CPL's requested condition, and the shift of CPL's PRB coal traffic -- barely one train a day -- to BNSF lines north of Caldwell would not trigger any of the thresholds set forth in 49 C.F.R. § 1105.7(e)(4) or (5), no environmental documentation should be required for this condition, *cf.* 49 C.F.R. § 1105.6(c)(2).

Certificate of Service

I hereby certify that I have this 8th day of July, 1998, caused a copy of the foregoing document to be served by hand upon counsel for Applicants Union Pacific *et al.*, at the following address:

Arvid E. Roach II
Covington & Burling
1201 Pennsylvania Avenue, NW
[Post Office Box 7566]
Washington, DC 20044-7566

Donald G. Avery

STB FD-32760(SUB26) 7-8-98 I ID-189371

DOW-1

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BEFORE THE
SURFACE TRANSPORTATION BOARD

189371

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

REQUEST FOR ADDITIONAL CONDITIONS OF THE DOW CHEMICAL COMPANY

ENTERED
Office of the Secretary

JUL 09 1998

Part of
Public Record

Nicholas J. DiMichael
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
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Attorneys for The Dow Chemical Company

July 8, 1998

TABLE OF CONTENTS

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

REQUEST FOR ADDITIONAL CONDITIONS OF THE DOW CHEMICAL COMPANY

The Dow Chemical Company ("Dow") hereby submits its Request for Additional Conditions in response to Decision No. 1, which was released by the Surface Transportation Board ("STB" or "Board") in the above-captioned proceeding on May 19, 1998.[1] The Board initiated this proceeding as part of the 5-year oversight condition that it imposed in *Union Pacific Corp., Union Pacific R.R. Co., and Missouri Pacific R.R. Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Ry. Co., and The Denver and Rio Grande Western R.R. Co.*, Finance Docket No. 32760, Decision No. 44 (served Aug. 12, 1996), to determine if additional conditions upon the merger of the Union Pacific Railroad ("UP") and the Southern Pacific Railroad ("SP") (collectively referred to as the now merged

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[1] The STB's decision originally was released on March 31, 1998 in Finance Docket 32760 (Sub-No. 21) [Decision 12]. The corrected decision released on May 19, 1998, changed the Sub-No., which resulted in the decision becoming Decision No. 1 in the new docket. In all other respects, both decisions are identical.

carrier "UP" unless used in a pre-merger context) were necessary to address rail service issues in the Houston, Texas/Gulf Coast Area.

I. INTRODUCTION AND SUMMARY OF CONDITIONS

Dow submits that additional remedial conditions are necessary to address UP market power, resulting from the merger of UP and SP, that has contributed to the service crisis. The conditions proposed by Dow would directly address service to Dow's Freeport, Texas complex and would help alleviate the overall congestion and infrastructure deficiencies in the Houston/Gulf Coast Area.

A. Outline of Dow's Submission.

Dow's Request for Additional Conditions consists of three parts:

(1) Dow's formal request for conditions and supporting comments describes the conditions requested by Dow and presents evidence and argument in support of those conditions.

(2) The Verified Statement of William L. Gebo ("Gebo V.S."), Dow's Manager, North American Rail Services Procurement, and accompanying exhibits, describe Dow's facilities, traffic flows, and service problems with UP.

(3) The Verified Statement of Ernest L. Hord ("Hord V.S."), Vice President, Operations of The Burlington Northern and Santa Fe Railway Company ("BNSF") on the UP/SP Lines, and accompanying exhibits, describes the operational feasibility of Dow's conditions and the infrastructure improvements that BNSF has committed to make if it obtains access to Dow's Freeport traffic.

B. Summary of Requested Conditions and Evidence

Dow requests the following additional conditions to address the inter-related competitive and service problems in the Houston/Gulf Coast Area:

1. Permanent haulage rights for BNSF on the Freeport Industrial Spur between the UP mainline at Angleton, Texas and Dow's chemicals and plastics production complex at Freeport, Texas, with

   (a) the right for Dow and/or BNSF to construct and interconnect a storage and gathering yard with the UP line near Angleton or another point to be determined later, along with

   (b) the requirement that UP efficiently interchange Dow's traffic with BNSF at Angleton or at another point where Dow and/or BNSF constructs such interchange and gathering yard, and along with

   (c) haulage rates and terms to be established pursuant to the terms of the Settlement Agreement between UP and BNSF that was imposed by the STB as a condition to the UP/SP merger.

2. In addition, if the STB desires to foster significant additional investment by BNSF and to provide even more thorough relief that bypasses critical "choke points" on the UP system, Dow asks the Board to permit a build-out to and interconnection with the UP mainline between Chocolate Bayou and Angleton, Texas at a point to be determined later.

The first condition is more important because it is necessary for near-term relief from UP's service deficiencies and would help to remedy the anti-competitive effects of the UP/SP merger that have contributed to the service crisis. The second condition would build upon the first by providing additional incentives for even greater investment by BNSF. If the second condition were granted to obtain greater investment in infrastructure and greater service relief (but which would take longer to accomplish), the first condition still would be necessary as an interim measure until a build-out could be constructed.

The UP service crisis can be attributed, in part, to unintended consequences following the UP/SP merger. First, a lack of infrastructure in the region has contributed to congestion and is obstructing UP recovery efforts. Second, post-merger, BNSF initially was given an insufficient traffic base to justify contributions to additional infrastructure and thereby to fulfill its role as the competitive successor to SP in the region. Third, this lack of an independent facilities-based competitive rail system in the region has meant that most rail traffic had little option but to travel long distances over the UP system, even when BNSF has been the transporting rail carrier utilizing the trackage rights that were given to it in the UP/SP merger proceeding. These factors have contributed to the severe service deficiencies that have injured Dow and other shippers to such a great extent and are preventing UP's full recovery. In sum, the post-merger competitive service environment is much different than the pre-merger environment and it has not developed as the Board anticipated in the original merger decision.

Dow's proposed conditions would help to address these unintended competitive consequences and help address the service problems in several ways. The conditions could divert a substantial volume of traffic off of the UP system and on to the BNSF system after only a short distance, while minimizing the need for trackage rights over the UP system, particularly avoiding UP's Houston yards. This volume of traffic would provide incentives for BNSF and Dow to invest in substantial infrastructure improvements to handle Dow's traffic and the traffic of other shippers. Because BNSF would be using more of its own infrastructure to provide competitive service, it would help BNSF's effort to more closely replicate the independent pre-merger infrastructure provided by the SP. In the final analysis, these conditions will help remedy competitive consequences of the UP/SP merger that likely were unforeseen by the Board at the time it initially approved the merger.

II. THE EFFECT OF THE UP SERVICE FAILURES ON DOW'S FACILITIES.

Dow's two largest domestic production complexes are located along the Gulf Coast at Plaquemine, Louisiana and Freeport, Texas. (Gebo V.S. at 3) Both are captive to the UP and both have been severely effected by the service problems on the UP system. (*Id.*) However, while rail service at Plaquemine recently has shown some improvement, service at Freeport continues to remain at unacceptably low levels. (*Id.*) Dow's requested conditions are designed to improve service at Freeport by addressing issues that are behind UP's service problems.

A. Description of Dow's Freeport Complex.

Freeport is Dow's largest domestic chemicals and plastics production facility and may be the largest complex of its kind in the world. (*Id.*) It consists of three separate plants, approximately seven miles apart. (*Id.*) These plants produce several hundred different chemicals and plastics. The total production annually at Freeport is over 15 billion pounds. (*Id.*) Dow ships these bulk chemicals, plastics and other commodities from Freeport to points all across the United States. This amounts to approximately   carloads per year. (*Id.*)

Freeport is situated approximately 55 miles south of Houston. (*Id.*) It is rail-served by the Freeport Industrial Spur, a UP branch line that extends approximately 17 miles south from the UP mainline at Angleton, Texas. (*Id.*) This mainline runs from Houston to Brownsville, Texas. BNSF also operates on the UP mainline pursuant to a combination of trackage rights between Algoa and Bay City that predated the UP/SP merger and an extension of those rights to

Brownsville as a condition imposed upon the merger. (Hord V.S. at 2) Despite this close proximity of another rail carrier, Freeport today remains captive to the UP. Freeport relies heavily upon rail transportation and its captive status makes it particularly vulnerable to service disruptions.

B. Evidence of UP's Service Deterioration at Freeport.

The deterioration in UP service levels over the last year is evidenced by several different measures. Among other factors, cycle times for railcars have increased, railcar availability is more erratic, service has become less regular, and on-time performance has plummeted. All of these factors are illustrated by comparing pre-crisis performance data with performance data from the last 12 months. Regardless of the benchmark used, however, there is no escaping the conclusion that, over the last year, rail service on the UP has deteriorated to unprecedented low levels.

The UP's service deterioration at Freeport first became clearly noticeable in July 1997 with a dramatic drop in on-time delivery performance across strategic traffic corridors that both Dow and UP have agreed are appropriate service measures. (Gebo V.S. at 4) The data shows that, throughout 1996, UP met or exceeded its contractual target for on-time delivery of of all carloads tendered across those corridors. (*Id.*) UP's performance slipped slightly through the first six months of 1997 to an average on-time performance of approximately . (*Id.*) From July through October 1997, UP's on-time performance dropped steadily until reaching an all time low, at that time, of approximately . (*Id.*) Despite signs of improvement at the end of 1997, by February 1998, on-time performance had fallen to an all-time low of approximately . (*Id.*) This was only of UP's average on-time performance for the first six months of 1997 and less than of its 1996 average. (*Id.*) Although UP has improved its performance above this all-time low, it still remains at unacceptable levels.

Although UP's on-time delivery performance from Freeport has shown some improvement since last April, much of this improvement is at least partially attributable to Dow's recent decisions to tender more traffic by alternative (albeit more costly or slower) transportation modes, where possible, and by UP's recent agreement to short-haul itself on some of its most congested traffic corridors, thereby removing some of the worst data from the performance measurements. (*Id.* at 6-7) Furthermore, when Dow has seen performance improvements in the past, the improvements have been short-lived. (*Id.*, Ex. 1) Thus, Dow has no assurance that future significant improvements of performance at Freeport will be achievable and sustainable.

One other performance measurement kept by Dow pertains to "jeopardized cars." Within Dow, a "jeopardized car" is a railcar that is behind schedule and, therefore, in danger of arriving late at its destination. (*Id.* at 4) Dow continually monitors jeopardized cars and generates regular reports. During the first six months of 1997, the number of jeopardized cars originating at Freeport at any one time ranged from below to near , but hovering around for most of that time. (*Id.* at 5) Early trouble signs emerged in June as the number of jeopardized cars began a steady climb to a high of cars in late August 1997. (*Id.*) The numbers see-sawed through October, but never dropped below . (*Id.*) Since then, the number of jeopardized cars has hovered around cars, far above pre-crisis levels, which is unacceptable. (*Id.*)

Another indicator of UP's poor service is a dramatic increase in transit cycle times. The average increase in cycle times over the last four quarters from corresponding quarters one year earlier is approximately higher. (*Id.*) This essentially requires Dow to use more railcars to transport the same volume of traffic handled before the service crisis. As a consequence, Dow has been compelled to lease additional railcars in order to avoid potential production slowdowns or plant shutdowns. (*Id.*)

In addition to slowdowns in service that are reflected in the preceding statistics, Dow also has experienced more erratic performance in UP's ability to return empty railcars to Freeport. (*Id.* at 5-6) This erratic performance often has left Freeport with too few or too many empty railcars. Without a consistent supply of empties, Freeport quickly runs out of storage for its production. This in turn can cause slowdowns or shutdowns at the plants. (*Id.* at 6) On the other hand, too many empty cars at once causes congestion inside the facility and makes it difficult to spot cars where needed. (*Id.*) Under normal service conditions, the flow of railcars was smoother and more regular, maximizing Dow's use of its fleet. (*Id.*)

Despite UP's recent mentions of improved service, Freeport has yet to see acceptable performance or substantial improvements in performance. In fact, Dow's service from UP has been significantly below acceptable levels for a full year now. UP's own weekly reports to the STB reinforce the impression that it seems to be stuck in its current performance pattern. The UP system resembles a balloon. Whenever service improvements are realized by squeezing one end, another area bulges out with new problems. These are indicators that UP has done all it can to resolve the service problems on its own and that others must step in to lend a helping hand.

III. THE CONTRIBUTIONS OF THE UP/SP MERGER TO THE RAIL SERVICE PROBLEMS IN THE HOUSTON/GULF COAST AREA.

The Board has asked "whether there is any relationship between the market power gained by UP through the merger and the failure of service that has occurred here, and, if so, whether the situation should be addressed through additional remedial conditions." Decision No. 1 at 5. The answer to both questions clearly is yes.

In a truly competitive market, shippers would have a real alternative to UP and would shift their business to that alternative if UP service declined significantly. Even under the typical rail duopoly that has emerged since the Staggers Act of 1980, shippers without access to a competing carrier at least would be afforded some protection from service problems by competition as two-carrier shippers shifted traffic to the other competitor, thereby easing congestion on the troubled carrier. (Gebo V.S. at 8) Prior to the merger, UP and SP were the two principle alternatives for chemical and plastics rail traffic on the Texas Gulf Coast. BNSF was a less viable third alternative due in good measure to its lack of significant supporting infrastructure needed to serve the chemicals and plastics industry. (*Id.*) The UP/SP merger, however, consolidated the two key carriers and conditions were imposed to help BNSF fill the competitive vacuum left by the SP's demise.

We now know, however, that the general conditions imposed upon the merger by the STB were not sufficient to prevent the meltdown in UP service. Moreover, the temporary conditions imposed last October in Service Order No. 1578 have not been sufficient to fix the problem after nine months. The merger eliminated the SP as the only competing rail carrier on the Gulf Coast with an independent infrastructure to serve chemicals and plastics shippers. Although the Board tried to substitute BNSF for SP service and competition, that effort appears to have been insufficient for a variety of reasons.

A significant concern has been that BNSF service generally is over long distances of trackage rights before it reaches its own independent rail infrastructure. An inevitable consequence of this fact has been that congestion on the UP system also slowed BNSF service over those same lines.[2] Thus, even those shippers with a choice of carriers (*e.g.*, "2-to-1 shippers") have had no real alternative when the competitive concern is adequacy of service rather than price. This, in turn, compounded the service problems because traffic that otherwise might have been diverted to another rail system by the forces of a truly competitive marketplace, thereby reducing traffic volumes on the congested UP system, has had no place to go but into the vortex of congestion. Not only did this hinder UP efforts to clear out its system, but it further congested the system as many shippers often were forced to add more railcars to the already congested rails in an attempt to keep pace with their former level of service. Each additional railcar, however, only further congested the system, resulting in greater deterioration in service levels and the creation of a vicious cycle from which there has been no real and sustainable improvement.

The Board must modify its approach. It should intervene more actively and more thoroughly if real and sustainable service improvements are to be realized. For example, the Board has identified lack of infrastructure as a contributing factor to the UP service crises and a painfully slow recovery from that crisis. Decision No. 1, p. 4. The merger has contributed to this infrastructure deficiency by not affording BNSF a sufficient and viable traffic base to compete on the same level as the SP did prior to the merger. The conditions imposed by the STB provided BNSF access to traffic only from "2-to-1" points and certain new facilities that might locate along the trackage rights lines sometime in the future. In contrast, the SP was competing prior to the merger with a traffic base that included access to all shippers on its line. Without

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2 *See* "The Burlington Northern and Santa Fe Railway Company's Quarterly Progress Report" (BNSF-PR-8), July 1, 1998, p. 10 ("[B]ecause of the congestion and service problems in the Houston area, BNSF is still a long way from providing reliable, dependable and consistent service to the shippers to which it gained access in the UP/SP merger proceeding.").

access to a greater portion of the SP traffic base, BNSF perhaps has been denied sufficient incentive to invest in additional infrastructure on the Gulf Coast. Thus, as traffic volume has grown in the Gulf Coast since the UP/SP merger, the needed infrastructure has failed to grow with it.

There can be little doubt that the reductions in competition brought about by the UP/SP merger have been significant contributing factors to the service crisis. Although the SP may have had its problems prior to the merger, its personnel appeared to have learned how to operate a railroad on a limited budget. In contrast, the UP had been heralded for its operational efficiency and innovation prior to the merger. After the merger, many of the SP personnel who knew how to hold the system together either left the new company or were replaced. As a consequence, it was only a matter of time before either UP extended its operational ingenuity to the SP system or the SP's problems overtook the UP system. Unfortunately, the latter scenario seems to have prevailed and Dow's Freeport facility, which was solely served by the UP before the merger, has not only failed to receive the improved and more efficient service that UP publicly and loudly promised the merger would bring, but instead, rail service at Freeport has fallen to levels that generally were unthinkable in the past and are totally unacceptable today.

IV. DOW'S ADDITIONAL CONDITIONS ADDRESS THE VERY ISSUES THAT ARE PREVENTING UP'S SERVICE RECOVERY.

In order to address the UP service crisis and to prevent its recurrence, the STB must remedy the consequences of the merger by encouraging BNSF to develop an independent infrastructure from UP to the greatest extent possible. This does not mean that BNSF must reconstruct the entire SP infrastructure. But, it does mean that BNSF reliance on the UP infrastructure should be reduced from the high levels that currently are required by BNSF to provide competing service on the Texas Gulf Coast. Dow's conditions are designed to help accomplish this with the least intrusion upon UP operations.

A. Dow's First Condition Would Make Available to BNSF a Sizeable Volume of Traffic Without Requiring Extensive Use of UP's Congested System.

In order to encourage BNSF to make sufficient infrastructure investments in the Gulf Coast, it will be necessary to provide BNSF with a larger traffic base. A substantial portion of this traffic base also must be accessible to BNSF without heavy reliance upon the currently troubled UP system. Dow's first condition would grant BNSF access to Dow's Freeport facility via haulage rights to an interchange and gathering yard that Dow and BNSF will construct at their own expense and which may benefit other chemical and plastics shippers in the region.

Dow's Freeport facility is an optimal place to begin because it offers BNSF the largest potential volume of traffic of any single chemical and plastics production facility in the region with minimal reliance upon UP trackage and infrastructure. Moreover, because of its massive operations at both Freeport and Plaquemine, Dow has been one of the hardest hit chemical and plastics producers by the UP service crisis. Thus, Dow's first condition would be one of the least intrusive upon UP operations, would provide the greatest potential incentive for the development of an independent BNSF infrastructure, and would help remedy the service problems of one of the hardest hit shippers in the region.

Freeport generates approximately carloads a year. (Gebo V.S. at 3) A substantial part of this traffic could be divertible to BNSF. Currently, approximately of bulk rail carloads originated at Freeport are terminated by UP and thus are not likely to be diverted. (*Id.*) The remaining , however, would be traffic that potentially could be made available to BNSF. (*Id.* at 9) Of this remainder, up to approximately carloads annually could be new traffic in which BNSF does not participate at all currently. (*Id.*) In addition, BNSF currently terminates or interchanges approximately carloads already, and thus would obtain single line hauls or extend its current haul distance. (*Id.*) The vast majority of these interchanges typically have occurred at Sweetwater, Texas and Chicago, Illinois. (*Id.*) By obtaining this traffic at or near Freeport, BNSF could increase its traffic base in the Houston/Gulf Coast Area, where it is needed to justify the infrastructure improvements that could alleviate the UP service problems and prevent their recurrence.

A key advantage to Dow's first condition is that it will not require extensive use of UP trackage and infrastructure. As a result, a large portion of Dow's traffic volume, which currently is originated and handled exclusively by UP in the Houston/Gulf Coast Area, can exit the UP system quickly. This will free up capacity to help reduce the congestion that is currently present in the area.

Dow's conditions minimize BNSF's need to operate over UP track. In fact, the conditions do not request any additional trackage rights for BNSF at all. All

Freeport traffic tendered by Dow to BNSF would be originated by UP as it is today, but pursuant to haulage rights. UP would haul the traffic up the 17 mile long Freeport Industrial Spur to a point of interchange with BNSF at or near Angleton, Texas, where BNSF and Dow would construct an interchange and gathering yard. (Hord V.S. at 2-3; Gebo V.S. at 8) That yard also could be used by BNSF to serve other chemical and plastics shippers in the region to which it would have access. (Gebo V.S. at 8) Thus, there would be no adverse impact to UP operations on its Houston-Brownsville mainline and UP's stated congestion at its own Angleton Yard would be relieved. (Hord V.S. at 4)

BNSF also would operate over the UP mainline for 23 miles between Angleton and Algoa, Texas, where BNSF would shift the traffic to its own line. (*Id.* at 3) This distance, however, is over track on which BNSF had overhead trackage rights even before the UP/SP merger. Thus, BNSF and UP have many years of coordinating operations over this short distance of rail.

Once Dow's traffic reaches Algoa, it will be completely off of the UP system. More importantly, unlike today, Dow's traffic will bypass UP's congestion in the Houston area by transferring to the BNSF system before ever reaching Houston. (*Id.* at 4) Moreover, as a result of the infrastructure improvements discussed in section IV.C, below, BNSF will not have to utilize UP yards for switching, interchange, or car storage. This will free up capacity for UP's other needs and alleviate overall congestion on UP infrastructure in the region. (*Id.*)

B. Dow's Second Remedial Condition Will Lead to Substantially Greater Infrastructure Investments by BNSF and Will Further Reduce Reliance Upon the UP System.

Dow has proposed a second condition that is a potentially longer term solution to the infrastructure deficiencies on the Texas Gulf Coast. Dow requests that BNSF be permitted to build-in to Freeport from a point on the UP mainline between Chocolate Bayou and Angleton, Texas. The first condition, in that case, could become an interim solution until this second condition could be implemented. This condition has the advantage of fostering a substantially higher level of infrastructure investment by BNSF and reducing reliance upon the UP system to a substantially greater degree.

By building its own track to serve Dow at Freeport, BNSF could all but eliminate its reliance upon the UP system to access and service Dow. There would not be any need to rely upon UP haulage from Freeport to Angleton, as would be required by the first condition, and the need to operate over 23 miles of trackage rights on the UP system between Angleton and Algoa could be reduced by as much as half, depending upon the precise point of interconnection. BNSF and Dow could have greater incentive and ability to construct a rail yard and other infrastructure adjacent to BNSF's own track, as opposed to UP track. (Hord V.S. at 5) Also, BNSF service to Freeport would entirely bypass Angleton, which UP has described as the "primary choke point" on its Houston to Brownsville mainline.

Dow's second condition could enhance the likelihood that a build-out will be constructed along with additional infrastructure to serve Gulf Coast shippers. This would build upon Dow's first condition, for haulage rights, if the Board desires to promote even greater infrastructure investment levels than Dow and BNSF already have committed to construct if the haulage rights condition is granted.

C. BNSF has Committed to Make Significant Infrastructure Investments if it Gains Access to Freeport Traffic.

The Board has identified inadequate rail facilities and infrastructure as a key factor behind UP's service problems. Decision 1, p. 5. As noted earlier in these comments, there has been an inadequate traffic base for BNSF to justify additional infrastructure investments. BNSF has indicated, however, that significant infrastructure investments would be justified if it obtains access to Dow's Freeport traffic, and it has committed to make those investments if Dow's requested remedial conditions are granted.

To address the infrastructure issues, the Board directed UP to submit plans, by May 1, 1998, to remedy these inadequacies. In its report to the Board, UP has identified significant infrastructure problems related to Dow's Freeport traffic. Most significantly, UP identified Angleton, Texas as "[t]he primary choke point" on UP's Brownsville Subdivision. Report at 38. In particular, UP states that it has outgrown its yard and yard activities conflict with through trains. However, the Angleton Yard cannot be expanded because of physical constraints. To address this "choke point", the UP report proposes to construct a new yard in the area and to doubletrack the mainline in the area of the yard at a cost of approximately $37.0-$44.0 million. *Id.*

This proposal made in UP's report, however, is contrary to representations made by UP at a March 25, 1998 meeting with shippers. According to UP's attendance sheet (*Id.*, Ex. A), Dow had seven representatives at that meeting. These representatives recall that UP, in response to a specific question on the subject, expressly stated that it would <u>not</u> construct such a yard. (Gebo V.S. at 7) Even if UP has changed its position since March 25, its commitment to spend such a large sum of money in the Freeport/Angleton area must be seriously questioned when UP also has identified so many other costly investment priorities.

BNSF, on the other hand, is committed to make new infrastructure investments in the Angleton area that would serve Dow at Freeport. As part of Dow's first requested condition, BNSF is committed to construct an interchange and gathering yard, which will serve as the interchange point with UP for Dow's Freeport traffic. (*Id.* at 8; Hord V.S. at 2) This facility would be of sufficient size and capacity to handle traffic from other chemical and plastics shippers in addition to Dow. (Gebo V.S. at 8; Hord V.S. at 3, 4) BNSF could go substantially further if Dow's second condition also is granted. It actually could construct a line directly to Freeport and use that line to add even more yard capacity and other infrastructure investments. (*Id.* at 5)

BNSF, as yet, has not become the strong competitor for chemicals and plastics traffic on the Gulf Coast that the STB and shippers had hoped for. BNSF's new investment could be a real contribution to Gulf Coast infrastructure so that shippers truly will have alternative service to that of UP. In addition, BNSF would be able to help UP shoulder the burden of making its own infrastructure investments and thereby decrease current shipper reliance on just UP.

D. The Proposed BNSF Operations are Feasible, Will Not Disrupt UP's Operations, and Will Aid UP's Recovery From its Service Problems.

The attached Verified Statement of Ernest L. Hord, BNSF's Vice President of Operations on the UP/SP Lines, describes how BNSF will provide service to Freeport if Dow's conditions are granted. Mr. Hord's statement demonstrates that BNSF's operations are feasible, will minimize disruptions to UP operations, and will assist UP's recovery efforts.

Under Dow's first requested condition, BNSF would interchange Dow's traffic with UP at the interchange and gathering yard to be constructed near Angleton, Texas. (Hord V.S. at 2-3) This yard would have an operational capacity of 250 cars and a storage capacity of 500 cars. (*Id.* at 3) BNSF would operate a daily train from its South Yard facility to pick up Dow's traffic and return to South Yard to make connections with other BNSF trains. (*Id.*) BNSF would schedule this service with UP to arrange a time slot for operations that would avoid congestion on UP's line between Algoa and Angleton. (*Id.* at 3, 4) Furthermore, BNSF will adapt its service to avoid any interference with UP's operations. (*Id.* at 3) Finally, BNSF's operations between Angleton and Algoa should not interfere with UP's directional flow on that line, since UP itself currently operates its locals against the flow to Angleton and Freeport. (*Id.*) According to Mr. Hord, this interchange and gathering yard could be constructed within approximately 18 months. (*Id.* at 3)

Mr. Hord points out that BNSF's operations would help to alleviate UP's service problems in two ways. First, it would reduce the number of railcars in UP's already congested facilities. (*Id.* at 5) Second, the infrastructure investments that are planned would reduce the need for UP to spend capital in the Angleton area, thereby permitting its limited capital dollars to be spent elsewhere along the Gulf Coast. (*Id.*) This latter effect would be magnified if the Board were to grant Dow's build-out condition in addition to the haulage rights condition.

V. CONCLUSION AND REQUEST FOR RELIEF

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

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

These conditions are less intrusive and disruptive to UP operations than divestiture (which the STB has indicated it does not favor), will address the competitive issues that contributed to the service problems, and will reduce congestion on the UP system. BNSF access to Freeport traffic will grant Dow effective near-term relief from UP's chronic service failures, will help give UP the breathing room it needs to attempt to rectify its problems, and will establish a solid foundation for the type of healthy competition that can prevent similar service emergencies from recurring in the future.

The relief must be long-term to be effective. Short-term relief is tantamount to no relief because carriers will not offer attractive rates and service levels without long-term commitments of traffic, nor will carriers or shippers make necessary infrastructure investments if those investments cannot be fully amortized or are at risk of being stranded in the short term. Furthermore, traffic from a large shipper the size of Dow may be necessary to "prime the pump" for new infrastructure investments. Therefore, Dow requests that its first condition be permanent unless the second condition also is granted, in which case the first condition could be an interim step until construction of a build-out. This will ensure that Dow and BNSF are able to economically amortize the proposed investments.

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

Respectfully submitted,

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July 8, 1998

Attorneys for The Dow Chemical Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

- Control And Merger -

Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. And The Denver And Rio Grande Western Railroad Company

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VERIFIED STATEMENT OF WILLIAM L. GEBO

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VERIFIED STATEMENT OF
WILLIAM L. GEBO

I. INTRODUCTION

My name is William L. Gebo and I am Manager, North American Rail Services Procurement for The Dow Chemical Company. My business address is 2020 Dow Center, Midland, Michigan 48674. I have been employed by Dow in various capacities since 1968.

In my current position with Dow, I am responsible for railroad and rail car related services for Dow North America. These services include the negotiation of rail freight contracts; leasing, purchasing and selling of railcars; contracting with rail car maintenance shops; and arranging fleet administration support service contracts. I have held this position since July 1993.

I joined Dow as an engineer in 1968 after completing my MBA at the University of Michigan. I worked in Dow's marine transportation function as a marine economic evaluator from 1970 to 1973. During that time, I also was involved in the ship loading operations at Dow's Bay City, Michigan terminal. In 1973, I was named a chartering specialist for chemical intermediate products. Later, my responsibilities were expanded to include managing and sub-chartering time chartered LPG vessels. In 1975, I helped to set up our marine office in Houston. A year later, I moved to Brazil as Marine Transportation Manager to set up Dow's marine office in Brazil. My responsibilities included training personnel and arranging the acquisition and operation of vessels. I returned to Houston in 1980 where I spent a year as fleet manager for Dow's offshore shipping company, managing several time chartered vessels. In 1981, I was appointed crude oil transportation manager and had responsibility for the operation of two Dow-owned vessels as well as chartered-in vessels. In 1982, I was named manager of International Marine Transportation, combining the crude oil transport activities with the operation and chartering of vessels for other Dow export requirements. In February 1990, I relocated to Antwerp, Belgium as Marine Transportation Manager for Dow Europe. Later that year, I also assumed responsibility for distribution purchasing (which involved trucking, rail and terminal requirements) in addition to marine transportation. In July 1993, I returned to Dow's headquarters in Midland to take up my present position as Rail Services Procurement Manager.

I am submitting this verified statement in support of Dow's "Request for Additional Conditions". In particular, I will describe Dow's facilities at Freeport, Texas; its rail traffic flows; and the impact upon Dow of the UP service crisis.

II. DESCRIPTION OF DOW'S OPERATIONS

The Dow Chemical Company, headquartered in Midland, Michigan, is engaged in the manufacture and sale of chemicals, plastic materials, hydrocarbons, and a variety of consumer specialties. By far, Dow's two largest domestic chemicals and plastics production facilities are located on the Gulf Coast near Freeport, Texas and Plaquemine, Louisiana. Both facilities are captive to the merged Union Pacific ("UP") and Southern Pacific ("SP") Railroads (collectively referred to as "UP" except in a pre-merger context) and both have suffered the extreme effects of the on-going UP service crisis. My statement is focused upon the Freeport facility, which has suffered the greater problems of the two plants with no substantial and sustainable signs of improvement.

Dow's Texas operations at Freeport, constitute Dow's largest chemical and plastics production complex in the world. Freeport produces approximately fifteen (15) billion pounds of product annually, encompassing several hundred different chemicals and plastics. It is comprised of three separate plants located within seven miles of one another. Freeport is located approximately 40 miles southwest of Galveston and 55 miles south of Houston.

Dow ships bulk chemicals, plastics and other commodities from Freeport to points all across the United States. These bulk products move by rail, truck, barge and ocean tanker. Freeport generates over outbound carloads of bulk rail traffic per year. Approximately of this traffic is terminated by the UP. The remaining Freeport traffic is interchanged by UP at five principal gateways UP provides rail service to Freeport exclusively and accesses all three plants via a branch line that extends 17 miles from Angleton, Texas to Freeport. At Angleton, the branch line joins the UP mainline which runs from Houston to Brownsville, Texas.

III. THE IMPACT OF THE SERVICE CRISIS UPON FREEPORT.

Freeport, due to its proximity to Houston, has suffered the greatest adverse effects of any UP served Dow facility. However, because it is captive to the UP, Freeport has had no realistic alternatives other than to shift traffic to more expensive motor carrier transportation or, where possible, to slower marine transport. These adverse effects continue to this day and are reflected in a variety of measurements.

On-time delivery is one measure of how the service crisis has effected Dow at Freeport. Exhibit [illegible] to my statement, which measures UP's on-time delivery performance across strategic traffic corridors, illustrates these effects. The strategic corridor index data used to derive this exhibit was provided to Dow by UP as part of the monitoring process in place between the two companies. UP's contractual target for on-time delivery is of all carloads tendered across these corridors. UP met or exceeded this target throughout 1996. During the first six months of 1997, prior to the major service meltdowns that first became readily apparent in July 1997, average on-time performance was approximately . Beginning in July and continuing through October, on-time performance plummeted to a low, up until that time, of approximately . UP showed slight improvements in November and December, but still never rose above the mark. This was followed by the most precipitous drop in on-time performance yet in January and February 1998 to a new all-time low of approximately . This was only of UP's average on-time performance for the first six months of 1997 and less than of its 1996 average.

Another measure of performance used by Dow is the number of jeopardized cars at any point in time. This data is reflected in Exhibit 5. A "jeopardized car" is a term used internally by Dow to refer to railcars that are behind schedule and in jeopardy of arriving later than the planned arrival. Dow continually monitors jeopardized cars to determine which cars Dow needs to bring to the railroad's attention. Dow regularly generates reports that measure the number of jeopardized cars. For the first six months of 1997, the number of jeopardized cars hovered around , with occasional spikes as high as and as low as . However, beginning in July, there was a steady upward trend to a peak of over cars. For the remainder of 1997, the number of jeopardized cars fluctuated wildly but never dropped below until mid-November. Since then, the fluctuations have been less extreme but the overall number of jeopardized cars has remained at an unacceptably high level around the mark.

UP's abysmal service also has been reflected in transit cycle times. Exhibit 3 illustrates this fact by comparing transit cycle times for the four most recent quarters with their comparable quarter in the preceding year. The comparable quarters pre-date the service crisis. The increase for each quarter ranged from , with an average cycle time increase of over all four quarters.

Consistent transit cycle times are essential to the optimization of Dow's fleet of rail cars. As transit cycle times increase, Dow is forced to acquire additional railcars in order to ensure that the Freeport plants can continue to produce at capacity. Because transit cycle times over the last year are almost longer than pre-crisis transit cycle times, Dow must lease more railcars to handle the same volume of traffic. Ironically, the acquisition of additional railcars can contribute to the congestion, which can contribute to further service degradations and the need to acquire even more railcars. This is a vicious circle that becomes increasingly more difficult to break.

Exhibit 4 provides yet another perspective on the effects of the UP service crisis upon Dow at Freeport. This exhibit illustrates the erratic return of empty railcars to Freeport by plotting the number of empty railcars returned to

Freeport on a daily basis from January 1997 to mid-June 1998. Although never consistently smooth, the number of returned empties was clustered in a narrower range during the first six months of 1997, prior to the first major signs of the developing service crisis. These ranges are indicated by the solid lines, which plot the standard deviation (at 2 sigma) for pre-crisis and post-crisis data. Without a consistent and steady stream of empty railcars, Dow would have to curtail or shutdown production at Freeport as the railcar supply ran low. On the other hand, too many empty railcars at one time causes congestion within the production complex.

While Exhibit 1 shows some improvement in UP's performance in April, May and June of this year, this improvement was not accomplished at full, pre-crisis traffic levels. Firstly, UP, in an April 1998 agreement with Dow and BNSF, agreed to short-haul itself on one of its most congested strategic traffic corridors, so that it interchanges Dow traffic with BNSF at now rather than at , a more distant interchange point. Secondly, Dow began to ship significant quantities of styrene monomer, which normally made up a large percentage of this strategic corridor volume, by marine vessel. With these routing changes, much of the corridor traffic was removed from the measurement index. Since the removal of this traffic from the measurement index, UP's on-time delivery performance on the remaining traffic over the corridor for May and June has been below . Thus, much of the apparent performance improvements since April are more a result of no longer counting traffic in that congested UP corridor rather than as a result of actual service improvements by UP.

In addition, as illustrated by Exhibit 2, Dow still is tendering significantly greater amounts of traffic to motor carriers because of UP's poor on-time performance. Thus, the performance improvement shown for the last couple of months is due in part to the fact that Dow is tendering less traffic to UP in the measured strategic corridors than it did prior to the service crisis, and even in the months prior to April 1998. If Dow was tendering traffic at pre-crisis levels over the measured traffic lanes, the recently measured service improvements likely would be reduced.

IV. SOLUTIONS FOR DOW AT FREEPORT

Dow is asking the STB to impose additional conditions upon the UP/SP merger that (1) would help rectify the competitive deficiencies that have contributed to the UP service crisis and (2) would help to alleviate the severe service impacts upon Dow at Freeport. These conditions could encourage new infrastructure investments by BNSF, which the Board has indicated is highly desirable.

UP has identified Angleton, Texas as "the primary choke point" on its Brownsville Subdivision. Angleton is the point where the Freeport Spur joins the UP mainline between Houston and Brownsville. Thus, Dow's Freeport traffic is directly affected by this "choke point." In its Infrastructure Report to the Board, UP has proposed to construct a new yard near Angleton and to doubletrack the mainline in the area of the existing yard at a cost of approximately \$37.0-\$44.0 million. UP does not commit to a precise time frame for such construction. Moreover, this is only one of numerous costly projects that UP has proposed.

I am concerned that this project, if constructed at all, is many years down the road. Contrary to its proposal in the Infrastructure Report, UP told Dow and other chemical and plastics shippers at a meeting on March 25, 1998, that it would <u>not</u> construct a yard at Angleton. At the very least, this suggests that the Angleton project is not a priority among UP's laundry list of similar projects. In contrast, Dow and BNSF are prepared to make similar infrastructure investments almost immediately if Dow's conditions are granted. This, in turn, would permit UP to shift some of its limited capital to other infrastructure projects in the region.

In the UP/SP merger proceeding, the Board directed BNSF to compete with UP but permitted BNSF to do so primarily by providing service over trackage rights to shippers previously served by both UP and SP. However, almost the entire SP infrastructure became part of the merged UP/SP system. BNSF had very little infrastructure of its own to serve chemical and plastics shippers. Although competitive service may be provided over trackage rights, the unprecedented distances involved here likely made BNSF particularly vulnerable to UP's congestion problems. Thus, when the service crisis erupted on the UP system, it unavoidably effected BNSF operations too.

In the pre-merger environment where UP and SP competed over independent facilities, a service crisis on one would have allowed some shippers to shift their traffic to the other. The net effect would have been to decrease congestion on the problem carrier, giving it breathing room to clear out its system and address the underlying problems. The shippers who were captive to the problem carrier would get some relief from the reduced congestion and they would see a quicker recovery. None of this was able to occur on the UP system.

Dow has entered into an agreement with BNSF in which both companies commit to significant infrastructure investments if Dow's conditions are granted. I have attached a copy of this agreement as Exhibit 6. This infrastructure could support other plastics and chemicals shippers served by BNSF in addition to Dow. The scope of these investments is discussed in more detail in the Verified Statement of Ernest L. Hord, which Dow also has submitted as part of its Request for Additional Conditions.

Dow's Freeport traffic would be a substantial incentive for infrastructure investments and it could be accessed by BNSF with minimal reliance upon trackage rights over UP. Of Freeport's annual carloads, approximately could be potentially divertible to BNSF. Of this potentially divertible volume of traffic, approximately carloads would be new traffic and carloads would be extended hauls on traffic currently interchanged by BNSF. The extended hauls are mostly traffic that typically is interchanged at Sweetwater, Texas and Chicago, Illinois.

Dow's requested conditions propose to make the Freeport traffic available to BNSF by haulage rights and/or build-out rights. BNSF then could have access to a sizable traffic source over only a short distance of UP trackage. To access this traffic, BNSF and Dow would invest in additional infrastructure in the region, thereby further reducing BNSF's reliance upon the UP system. While the haulage rights requested by Dow's first condition would promote needed infrastructure investment, a build-out, as proposed in the second condition, would create potential for even greater levels of investment and it would result in even less reliance upon the UP system.

This would provide BNSF with a source of traffic that would not be overly dependent upon the UP system.

VI. REQUEST FOR RELIEF

Dow requests that the following additional remedial conditions be imposed upon the UP/SP merger:

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

EXHIBIT 1

REDACTED

EXHIBIT 2

REDACTED

EXHIBIT 3

REDACTED

EXHIBIT 4

REDACTED

Exhibit 5

REDACTED

EXHIBIT 6

REDACTED

VERIFICATION

STATE OF MICHIGAN :
: ss:
COUNTY OF MIDLAND :

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

William L. Gebo
William L. Gebo

Subscribed and sworn to before me, a Notary Public, this 7th day of July, 1998.

Jolene S. Kaufman
Notary Public

My Commission expires: 10-16-2001

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

VERIFIED STATEMENT
OF
ERNEST L. HORD

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

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

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

The purpose of the Verified Statement is to provide the operational plan as to how BNSF would serve Dow's complex at Freeport, TX were the Board to grant Dow's request for BNSF to have the right to handle traffic from that complex.

Dow's request is based on the delay, congestion, and other problems it has been having and continues to experience with UP's service at its Freeport complex. Dow's filing details UP's deterioration in service at its Freeport complex including the increase in cycle times for railcars, the erratic nature of railcar availability, less regular service and the plummeting of on-time service. In light of these UP service failures, Dow requests the Board to grant BNSF permanent haulage rights on the Freeport Industrial Spur between UP's Algoa-Brownsville main line (hereinafter "UP's Algoa line") at Angleton and Dow's Freeport complex, including: (i) the right for Dow and/or BNSF to construct and interconnect a storage and gathering yard with UP's Algoa line in the Angleton area; (ii) a requirement that UP interchange Dow's traffic with BNSF at Angleton or at another point where Dow and/or BNSF constructs such an interchange and gathering yard; and (iii) the establishment of haulage rates and terms consistent with the Settlement Agreement between UP and BNSF. In addition, Dow requests that the Board grant BNSF the right to build in to Dow's Freeport complex from a point north of Angleton on UP's Algoa line.

Were the Board to grant the relief sought by Dow, BNSF would be able to provide service to Dow as follows.

Haulage Operations By UP With Interchange At Angleton. As a condition of the UP/SP merger, BNSF received trackage rights over UP's line between Algoa and Brownsville. This line passes through Angleton 23 miles south of Algoa. Were BNSF granted permission to serve Dow operating over this line, BNSF would operate a local daily train from its South Yard facility to pick up Dow traffic at interchange tracks to be newly constructed at an agreed upon location in the Angleton area. BNSF would work with Dow and UP to construct such interchange and gathering tracks as expeditiously as possible. It is anticipated that such interchange and gathering tracks could be constructed and become operational in approximately 18 months once suitable property is acquired. BNSF would seek to have an operational capacity of 250 cars and a storage capacity of 500 cars at that location.

The traffic that BNSF would pick up at the Angleton interchange facility would be hauled to the facility by UP from Dow's Freeport complex. Dow has agreed that it would create separate blocks of its traffic for UP to haul from that complex which are destined for the BNSF Angleton interchange and gathering facility.

Upon completion of its work at the Angleton facility, BNSF's local would depart for South Yard to make connections with other BNSF trains as reflected in the attached schedule. The precise scheduling of this service would depend on BNSF's discussions with UP to allocate a time slot for operations that would avoid the congestion on UP's Algoa-Corpus Christi line. BNSF will adapt this local service to avoid any interference with UP's operations on the main and branch lines. UP currently runs it local trains to Angleton in the same way that BNSF is proposing to serve Dow, and BNSF is prepared to have its local train handled in the same manner as UP's.

To implement this service, BNSF would make available three 3000 HP locomotives for base traffic levels of 50 loads daily. BNSF would also provide dedicated service and sufficient crews. Dow requests that haulage compensation and terms for UP's services would be handled consistent with the terms of the Settlement Agreement between BNSF and UP.

In light of the recent shift of BNSF's Baytown Branch business to Silsbee, there is capacity for Dow traffic at South Yard of 15,000 carloads per year for Dow. In addition, a new configuration of the switching leads at South Yard will further enhance BNSF's ability to handle more cars on a daily basis. These haulage operations would provide Dow with the option of avoiding the severe UP congestion in and around the Houston area and would not adversely affect UP's operations for Dow or other customers. These proposed operations also would provide more immediate service relief to Dow and other shippers affected by UP's lack of infrastructure in the Angleton area than UP's proposal of infrastructure improvement for the area which is indefinite in terms of timing, amount of investment, and scope. Indeed, the proposed haulage operations would directly help to reduce the number of cars in UP's congested facilities at Angleton.[1]

As mentioned above, with respect to the precise scheduling of train service to Dow, BNSF would work to ensure that such operations would not harm or interfere with UP's ability to serve its customers on the main or branch lines. Under these haulage operations, Dow's traffic would bypass entirely the congestion in the Houston area by being routed to the BNSF system after Algoa and thus never reaching Houston. BNSF also will ensure that, in providing service to Dow, it will not interfere with the directional flow currently in place on UP's Algoa line. BNSF's locals would be subject to the same dispatching standard as applies to UP's, with locals having lower priority so as not to cause interference with the directional flow on the main line.

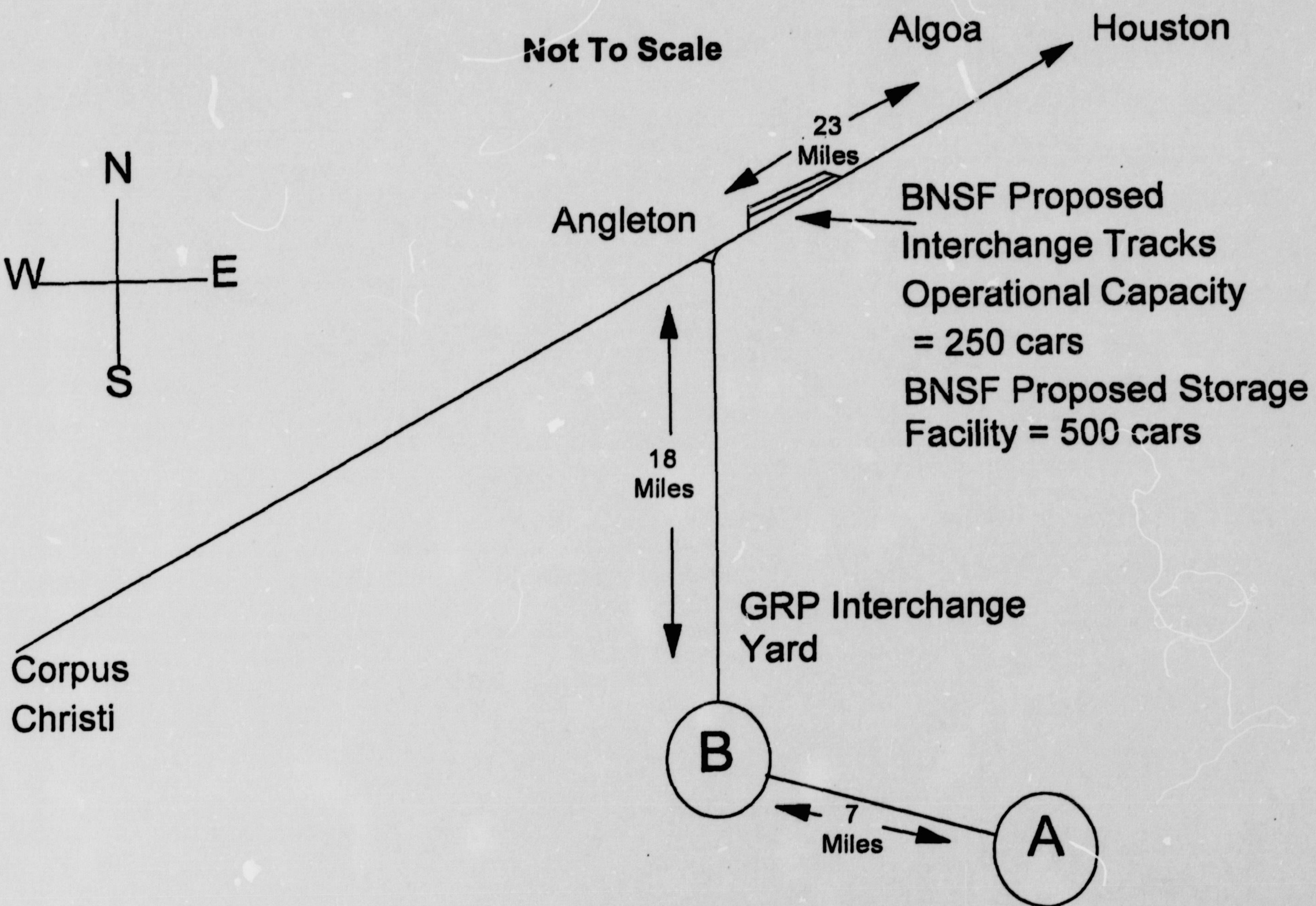
Build-in To Dow At Point North Of Angleton. In the event the Board has determined that it is appropriate to address the congestion on UP's Algoa line and that the proposed haulage operations on that line would not sufficiently lessen the burden on the line, BNSF would be prepared to work with Dow, in addition to haulage operations, to construct a build-in to Dow's Freeport complex to interconnect with a point north of Angleton on UP's Algoa line, wherever reasonably practicable, if it was granted permanent access to serve Dow from such build-in. This alternative as compared to haulage operations would have the added benefit of reducing even further the

---

[1] In its May 1, 1998, filing with the Board on infrastructure in the Houston/Gulf Coast area, UP states: "The primary choke point on the Brownsville Subdivision is at Angleton, Texas, where UP has outgrown its yard and yard activities conflict with through trains. Angleton Yard cannot be expanded because of physical constraints. In the addition, the 17-mile Freeport Branch joins the Brownsville Subdivision at Angleton. Traffic on that branch has increased by a third over the last five years and customers plan additional growth." The infrastructure proposed by Dow at Angleton would help Dow and other shippers in the area by easing the demand on UP's congested facilities. It also would reduce the need for UP to spend capital in the Angleton area, thus freeing up UP's capital to be spent elsewhere improving its system.

congestion by removing Dow's BNSF traffic off UP's branch and Algoa lines to the point of the build-in on UP's Algoa line. As a result, BNSF would utilize UP's Algoa line for its Dow traffic only from the build-in point to Algoa on its previously granted trackage rights, thereby freeing up significant capacity on the Algoa line. BNSF would plan to build yard capacity along the build-in line adjacent to UP's Algoa line at a practicable location.

This build-in option also would substantially decrease -- if not eliminate entirely -- the need for UP to make the capital infrastructure improvements it has planned for the Angleton area at some time in the future, thus making available such capital for other infrastructure improvements on the UP system.


Not To Scale
Algoa
Houston
23
Miles
N
W
E
S
Angleton
BNSF Proposed
Interchange Tracks
Operational Capacity
= 250 cars
BNSF Proposed Storage
Facility = 500 cars
18
Miles
GRP Interchange
Yard
Corpus
Christi
B
7
Miles
A

PROPOSED OPERATIONS - HAULAGE

- Best operational slot w/least congestion - UP cooperation needed
- 1600 - Dep S. Yard to Arr Angleton - 2 hrs
- 1800 - Arr Angleton Interchange deliver and receive at agreed upon location approximate proposed tracks, then Dep Angleton - 2 hrs - 2000
- 2000 - Dep Angleton to Arr S. Yard - 2 hrs - 0001
- **Goal** is Arrival at S. Yard between 0200 - 0900 to make next connection on
  - HOUMEM - 1700 Departure
  - HOUBAR - 2200 Departure
  - HOUSSB - 2130 Departure
  - HOUGAL - 0700 Departure
  - HOUTEA - 0400 Departure
- Requirements
  - Personnel - dedicated service w/sufficient crew base
  - Three 3000 HP locos (50 loads)

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

Ernest L. Hord

Subscribed and sworn before me on this 29th day of June, 1998.

Betty L. Reinert

Notary Public

My Commission expires:

BETTY REINERT
Notary Public
STATE OF TEXAS
My Comm. Exp. 04/16/2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REQUEST FOR ADDITIONAL CONDITIONS OF THE DOW CHEMICAL COMPANY has been served by first class mail, postage pre-paid, on all parties of record in this proceeding this 8th day of July, 1998.

Aimee L. DePew

Aimee L. DePew

STB FD-32760(SUB26) 7-8-98 I ID-189361

189361

DUPX-1

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

[HOUSTON/GULF COAST OVERSIGHT]

I

REQUEST FOR NEW REMEDIAL CONDITIONS
by
E. I. DUPONT DE NEMOURS AND COMPANY

William A. McCurdy, Jr.
Logistics & Commerce Counsel
DuPont Legal
D-8098-1
1007 Market Street
Wilmington, DE 19898

Frederic L. Wood
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW
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Washington, DC 20005-3934
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E-Mail: r.wood@dcwm.com

Due Date and Dated: July 8, 1998

BEFORE THE SURFACE TRANSPORTATION BOARD

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

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

[HOUSTON/GULF COAST OVERSIGHT]

REQUEST FOR NEW REMEDIAL CONDITIONS
by
E. I. DUPONT DE NEMOURS AND COMPANY

JULY 8, 1998

DuPont is a $45 billion diversified chemical and energy corporation with over 200 manufacturing sites and almost 100,000 employees worldwide. Rail transportation is critical to DuPont's domestic and export business, and is for many of our chemical products the only safe and practical mode of transportation. Each year, DuPont ships in excess of 50,000 shipments representing over $200 million in railroad freight revenue. A significant fraction of these rail shipments involve transportation-regulated materials. Moreover, these shipments represent the fundamental basis of DuPont's diverse global supply chains.

At DuPont, we believe that *safe, reliable, and efficient transportation at a competitive cost is essential to our business success*. Indeed, DuPont's principal core value is safety. Our corporate policy states that DuPont will only manufacture, distribute and transport materials and product which can be safely handled, transported, stored and used by its employees, distributors, and customers.

DuPont further believes that the best way to ensure this safe, reliable, and efficient transportation is through a fully *competitive, privately-owned and operated, market-based, and financially sound* transportation industry. Effective competition is a key driver to improved service and quality, as has been proven in countless other industries. A free marketplace gives customers choices, and the customer may choose with quality, service and safety having equal weight with cost. History has also shown that competition results in a more profitable and stable marketplace to the benefit of those both providing and receiving the goods and/or service.

However, *where failure of the system occurs, some level of government involvement may be required* to restore the competitive balance. The railroad service crisis in the Houston/Gulf Coast area over the past year - which still continues - is such a situation for DuPont.

As the Surface Transportation Board appropriately recognized in issuing, and subsequently extending twice, Service Order No. 1518, the Western U. S. railroad service crisis was caused by severe congestion on Union Pacific/Southern Pacific (UP/SP) lines in the Houston/Gulf Coast region following the UP/SP merger, and was beyond UP's capacity to handle. In acting to relieve this congestion, the Board made substantial temporary changes in how service was provided around Houston, including authorizing the Texas Mexican Railway (Tex Mex) to accept traffic from shippers switched by both the Port Terminal Railroad Association (PTRA) and the successors to the Houston Belt Terminal Railroad (HBT).

DuPont appreciates the Board's acknowledgment that the service emergency remains ongoing, and welcomes the opportunity to request additional remedial conditions under the Board's new Oversight Proceeding.

DuPont's has a major manufacturing facility at LaPorte, Texas, which produces Butanediol and Tetrahydrofuran intermediates for Lycra ™ spandex fibers, Elvanol ™ polyvinyl alcohol resins, sulfuric acid, hydrofluoric acid, and agricultural products. The facility ships over 3,000 rail cars each year, most of which are hazardous materials that have no other alternative means of transportation. This facility is located on the south side of the Houston Ship Channel. Exhibit 8.

HOW DUPONT LAPORTE IS SERVED

DuPont's LaPorte plant is located at the former Southern Pacific (SP) rail station of Strang, Texas. Historically, the plant was listed in Item 5090-Series, Section 12, Industries Open To Reciprocal Switching, Freight Tariff SP-9500-D. This Section listed industries for which SP provided reciprocal switching as well as identified the specific Switching Station (Inter-change). Exhibit 1. Item 5090-Series further identifies Strang as a part of the Houston switching station and open to reciprocal switching for *interstate traffic only*. Reciprocal Switching is defined by Item 6000-Series as "...that switching service between interchange track and loading or unloading track immediately preceding or following a linehaul movement over a connecting railroad." Exhibit 2.

Effective May 1, 1998 Freight Tariff SP 9500-D was canceled. Exhibit 3. Applicable switching provisions were renumbered and rearranged in Freight Tariff UP 8005-D. Exhibit 4. Item 1511.01-Series of Freight Tariff UP 8005-D now includes DuPont (Interstate Traffic Only) in its list of industries at Houston, designated Group S. Exhibit 5. Curiously, the application of reciprocal switching for Group S industries at Houston now only applies for the account of connections with the BNSF. Item 3360.20-B, Supplement 267, in Exhibit 6. This exclusion of connections with the Tex Mex is inexplicable and anti-competitive and we presume was done inadvertently when the provisions of Freight Tariff SP 9500-D were incorporated into Freight Tariff UP 8005-D. Both Tex Mex and DuPont have requested that the UP further amend Item 3360.20-Series to restore the unrestricted interstate traffic reciprocal switch option for DuPont.

Switching to and from the plant has been provided exclusively by the SP under terms of an October 31, 1961 multiple carrier operating agreement called the South Side Joint Track Agreement. Exhibit 7. The South Side Joint Track Agreement was subsequently approved by the Interstate Commerce Commission (ICC) in Finance Docket Numbers 21883, *Harris County Houston Ship Channel Navigation District and Southern Pacific Co.—Trackage Rights—Harris County, Texas* and 22049, *Harris County Houston Ship Channel Navigation District—Et Al. Operating Agreement—Houston, Texas,* (Decided June 28, 1962). Exhibit 8. This ICC order provided that rail service to DuPont and two other plants would continue to be provided exclusively by the Texas and New Orleans Railroad Company (an SP predecessor company). As a result of this decision, all of the other shippers in the area would be served by a neutral switching carrier, the Port Terminal Railroad Association, and its member line-haul carriers. Even though the PTRA operates over the line that passes by the DuPont LaPorte plant, PTRA and its member carriers are excluded from directly serving the DuPont LaPorte plant, The only access that other carriers have to serve the plant has been through reciprocal switching provided formerly by SP and now by UP.

SERVICE PROBLEMS DURING CRISIS

As a result of the serious service difficulties since the UP/SP merger, UP and DuPont have worked diligently for many months to direct key resources to rebuild service levels. As previously reported to the Board, UP and DuPont have conducted extended weekly conference calls on service issues. Dedicated carrier personnel were assigned to address service issues including car supply and transit time. These personnel spent significant time at DuPont Wilmington (DE) headquarters as well as DuPont Texas chemical facilities. Numerous special switches have been arranged to alleviate problems arising from UP/SP system congestion. Internal UP reroutes and new interline routings have also been developed to reduce delays to DuPont business.

Notwithstanding these efforts, DuPont found it necessary to take the extraordinary step of exercising competitive routing alternatives in order to maintain the integrity of our supply chain and serve internal and external customer requirements. A prolonged downward UP service spiral left DuPont with limited rail shipping options.

For select DuPont LaPorte shipments the decision was made to exercise our reciprocal switching alternatives. Alternative linehaul routing available via both BNSF and the Tex Mex were exercised.

During a test period of June 1-July 21, 1997, sixty-one carloads were shipped from DuPont LaPorte to the Memphis and New Orleans gateways via BNSF. While BNSF linehaul performance met expectations, the reciprocal switching performance of the UP within Houston resulted in an unsatisfactory offering. UP Houston interchange performance was inconsistent and excessive. BNSF was unable to establish reciprocal switching performance protocols or standards with the UP. Furthermore, weighing requirements as well as local operations coordination was not handled satisfactorily. With no sustainable local service improvement possible, our BNSF reciprocal switching test proved to be unsuccessful.

The Board subsequently issued Service Order No. 1518 to respond to the continuing service emergency in the Houston/Gulf Coast region. As a result of this order and the interstate reciprocal switching option at Strang, DuPont obtained access to new and expanded Tex Mex routing options. This order provided DuPont with a second opportunity to try to effectively exercise our interstate reciprocal switching option at Strang. From March through June of 1998, DuPont tendered 177 carloads to the Tex Mex. UP Houston reciprocal switching performance ranged from two to twelve days. On average, the UP required 5.19 days to move these loads from the plant to the Tex Mex interchange at Houston; *a distance of only ten miles*. Again, a DuPont reciprocal switching option failed to fully meet our expectations because of UP service shortcomings. Both Tex Mex and DuPont tried repeatedly, but unsuccessfully, to obtain switching performance improvement commitments from the UP. Although the Tex Mex line-haul performance was not significantly different than the BNSF alternative, its total offering proved to be especially valuable to DuPont during this time because of its local operations management and responsiveness to the needs of DuPont during this service crisis.

Excessive and inconsistent service performance by the UP, regardless of the ultimate linehaul carrier, presents a significant impediment for effective use of the DuPont LaPorte reciprocal switching option at Strang. UP has been unable or unwilling to permit the effective use of competitive alternatives obtained through reciprocal switching at the LaPorte plant. Direct access to the LaPorte plant is necessary to enable DuPont to obtain effective competitive alternatives.

CONCLUSIONS

DuPont's LaPorte plant needs to have an efficient and effective neutral switching carrier (such as PTRA) available at Strang to meet its safety and service requirements. This will permit DuPont to effectively exercise its reciprocal switching options. The recent rail service crisis has demonstrated that the incumbent switching railroad, Union Pacific, cannot meet DuPont expectations when switching to other carriers. Furthermore, the Union Pacific limitation on reciprocal switching application for intrastate movements appears to be a tariff anachronism that pre-dates railroad regulatory reform and intrastate preemption. Finally, the DuPont experience confirms the Board's assessment in Service Order No. 1518 that unrestricted injection of the Tex Mex into the Houston area enhances rather than interferes with Union Pacific efforts to reduce congestion in Houston.

REQUEST FOR RELIEF

Accordingly, DuPont respectfully petitions the Board for the following remedies:

1. Remove the restriction prohibiting PTRA from serving the DuPont LaPorte Plant that was approved by the ICC in 1962 under Finance Docket Nos. 21883 and 22049;
2. Order Union Pacific and PTRA to work out a mutually acceptable service plan for the facility;
3. Order Union Pacific, if not done voluntarily, to restore DuPont's unrestricted reciprocal switching options;
4. Remove both the obsolete restriction which prohibits reciprocal switching for intrastate transportation; and
5. Authorize the Tex Mex to permanently retain the right to access Houston customers served by HBT's successors, PTRA, and industries open to reciprocal switching on the UP.

Should the Board, in its wisdom, choose not to order the foregoing remedies to address DuPont's safety and service issues, DuPont then requests the Board alternatively order Union Pacific to meet with BNSF, PTRA, and Tex Mex to develop and implement a plan to efficiently, effectively and directly interchange inbound and outbound rail cars for DuPont's LaPorte Plant where a carrier other than UP has the linehaul. This should be accomplished at appropriate terminal facilities (such as Pasadena Yard) and not require flowing cars through UP's Strang and Englewood or Settegast yards. DuPont's expectation is that such interchange with another railroad or delivery to LaPorte should occur within 24 hours of receipt by Union Pacific. The Board should also direct UP, if necessary, to restore unrestricted interstate reciprocal switching for DuPont. Such a ruling would at least allow DuPont to exercise its privilege of reciprocal switching options on interstate traffic.

Respectfully submitted,

William A. McCurdy, Jr.
Logistics & Commerce Counsel
DuPont Legal
D-8098-1
1007 Market Street
Wilmington, DE 19898

Frederic L. Wood
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW
Suite 750
Washington, DC 20005-3934
Tel.: (202) 371-9500
E-Mail: r.wood@dcwm.com

Due Date and Dated: July 8, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of July, 1998, served a copy of the foregoing request for relief on all known parties of record by first-class mail, in accordance with the Rules of Practice.

Frederic L. Wood

EXHIBIT 1

SOUTHERN PACIFIC TRANSPORTATION COMPANY

3rd Revised Page............138
Cancels 2nd Revised Page....138

ICC SP 9500-D

SECTION 12 - INDUSTRIES OPEN TO RECIPROCAL SWITCHING

TEXAS (I - Z)

SWITCHING STATIONS	INDUSTRIES OPEN TO RECIPROCAL SWITCHING (ADJACENT STATION)	ITEM
HOUSTON (35800)	(PASADENA - 35745) Lamson & Sessions (Interstate Traffic Only) (9116)	5090 (Concluded)
	(PIERCE JCT - 34266) Cook Compostites & Polymers (7742)	
	(SINCO - 35735) Bayer Corporation 8701 Park Place (8940) Goodyear Tire & Rubber 2000 Goodyear Drive (8950) Mobil Chemical (Interstate Traffic Only) (8916) Texas Petrochemical (8[illegible]0)	
	(STRANG - 35800) E. I. Dupont DE Nemours (Interstate Traffic Only) (9205) (D)(A) Quantum Chemical (USI) 1515 Miller Cutoff Road (9240)	
ORANGE (37400)	(FRANCIS - 37335) Wilson Warehouse Company of Texas (2026)	5100

(Continued)

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

Issued: September 13, 1996 | Effective: October 3, 1996

Issued by: Manager - Publications
Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105

Correction 224

EXHIBIT 2

SECTION 13 - SWITCHING - RECIPROCAL	ITEM
RECIPROCAL SWITCHING DEFINITIONS Reciprocal switching is defined as that switching service between interchange track and loading or unloading track immediately preceeding or following a linehaul movement over a connecting railroad. (Notes 1, 2, & 3). NOTE 1: Non-Application of Reciprocal Switching Charges. - Except as otherwise specifically provided, reciprocal switch service, charges, rules and regulations published herein will not apply on the following: A. Traffic handled between SP public team tracks and interchange tracks with connecting carriers within the same switching limits. B. Traffic handled between industry tracks, public team tracks or yard tracks within switching limits of SP at Brownsville, TX, Calexico, CA, Eagle Pass, TX, El Paso, TX, or Nogales, AZ on one hand and the International Boundary at those locations on the other. C. Traffic to or from industries located on SP Lines, not identified as open to reciprocal switching in Items 5000-5110. NOTE 2: Reciprocal switch charges will be assumed by SP only to the connecting linehaul carrier. SP will not assume responsibility for assessing such charges to other parties in instances where the linehaul carrier does not absorb switching charges in whole or in part under terms of the linehaul rate. NOTE 3: Reciprocal switch service by SP Lines involving multiple car shipments of 3 or more cars will be performed only when SP-served customer facility at origin or destination has sufficient track capacity to accomodate cars in a single switch.	6000
RECIPROCAL SWITCH CHARGES - GENERAL APPLICATION Charges for reciprocal switching service provided by SP Lines, as defined in Item 6000 shall be $495.00 per car. (NOTES 1 & 2) NOTE 1: Reciprocal switching charges published herein will not apply where charges are specifically provided in Items 6030-6280. NOTE 2: Applies on railroad passenger equipment and dead locomotives on their own wheels when forwarded or received in linehaul service. Passenger equipment shall be defined as baggage, express, mail, parlor, sleeper, hotel, dining, private passenger coaches and cabooses.	6010

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

Issued: November 16, 1995 Effective: January 1, 1996

Issued by: Manager - Publications
Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105

EXHIBIT 3

1ST REVISED TITLE PAGE
Cancels Original Title Page

SP 9500-D

SOUTHERN PACIFIC TRANSPORTATION COMPANY
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
SPCSL CORP.

FREIGHT TARIFF SP 9500-D

CONTAINING

RULES AND PROVISIONS ON

DEMURRAGE, SWITCHING AND OTHER ACCESSORIAL SERVICES APPLYING

AT POINTS ON

SOUTHERN PACIFIC TRANSPORTATION COMPANY
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
SPCSL CORP.

♁♦▲ CANCELLATION OF TARIFF

This tariff is hereby cancelled; for applicable switching provisions see Union Pacific Railroad Company Switching and Terminal Tariff UP 8005-D. For other provisions see applicable UP publications. (DQ 3513, 3514, 3517)

♁ - Reduction.

♦ - Increase.

▲ - Denotes change in wording which results in neither increase nor reduction in charges.

ISSUED APRIL 7, 1998 **EFFECTIVE MAY 1, 1998**

ISSUED BY
G. H. OSLER
Manager-Price Simplification
UNION PACIFIC RAILROAD
1416 Dodge Street
Omaha, Nebraska 68179

(Published by Railroad Publication Services, Atlanta, GA 30335)

RDY

EXHIBIT 4

SUPPLEMENT 265 TO TARIFF UP 8005-D

LIST OF OLD AND NEW ITEM NUMBERS
(Shown for information only)
ITEM NUMBERS FORMERLY SHOWN IN TARIFF SP 9500-D HAVE BEEN RENUMBERED AND REARRANGED IN THIS TARIFF AS FOLLOWS

OLD	NEW	OLD	NEW	OLD	NEW	OLD	NEW	OLD	NEW
280	267.75	5050	1511.11	10490	1063.15	11750	1360.01	12800	1382.10
4180	3077.02	5050	1545.01	10600	1066	11770	1361	12820	1395.85
4200	3112	5050	1885.41	10630	1090.05	11780	1361.10	12850	1421.10
4230	3252.86	5060	1858.11	10650	1100.05	11800	1362.01	12890	1008.03
4250	3253.01	5060	1676.02	10660	1105.50	11810	1362.50	12910	1032
4260	3253.075	5060	1871.31	10700	1110.90	11820	1363	12920	1040.23
4275	3574	5065	1440.20	10740	1117.70	11830	1363.10	12930	1040.72
4280	3594	5070	1425.75	10800	1122	11840	1363.20	12940	1040.90
4285	3858.50	5070	1448.75	10820	1122.50	11890	1368	12990	1082.04
4290	3810.01	5070	1655.50	10830	1122.60	11910	1377	13050	1108.07
4300	3712	5070	1855.01	10880	1127.25	11940	1378.20	13080	1112.07
4310	3905.50	5070	1883.20	10890	1130.05	11950	1378.25	13130	1119.20
4320	3906.50	5080	1426.45	10960	1146.25	11960	1382.01	13140	1121.10
4330	3930.40	5080	1427.18	10990	1148.40	11990	1383.25	13170	1122.75
4340	3930.41	5080	1427.28	11010	1152.50	12000	1385.23	13190	1122.58
4350	3930.42	5080	1437.20	11030	1155.03	12080	1386.01	13200	1124.20
4610	7025.40	5080	1437.50	11090	1172	12090	1386.86	13230	1126.03
4620	7006	5080	1438.02	11100	1197.02	12100	1387.01	13300	1148.10
4630	7006.05	5080	1446.66	11110	1200.01	12150	1416.05	13310	1150.11
4640	7011.50	5080	1449.96	11120	1200.02	12170	1417.05	13320	1154.01
4650	7030	5080	1450.06	11140	1206	12220	1421.01	13350	1157.16
4660	7006.10	5090	1511.01	11160	1212.50	12230	1421.70	13405	1200.04
4670	7006.15	5100	1885.27	11190	1213.50	12240	1099	13490	1230.10
4680	7011.75	7530	5064	11200	1213.70	12270	1115.05	13550	1261.01
4720	7012	7570	5349.30	11220	1215.01	12300	1145.75	13560	1271.20
4760	7048	7700	5255.01	11230	1220.01	12310	1309	13570	1282.01
4770	7037	10020	1043.50	11240	1225.01	12330	1415.10	13600	1295.20
4775	7049	10030	1066	11260	1226.35	12360	1046.10	13640	1337.20
5000	1846.20	10050	1082.20	11280	1227.30	12390	1056.20	13660	1357.56
5010	1513.50	10130	1212.65	11340	1233.01	12400	1059	13680	1387.11
5010	1898.50	10140	1228.45	11350	1233.25	12420	1122.85	13690	1388.10
5020	1426.37	10180	1244	11380	1233.50	12430	1146.62	13720	1393
5020	1437.01	10190	1277.50	11400	1242.39	12450	1203	13730	1395.21
5020	1449.85	10210	1347.40	11410	1243	12480	1337	13760	1395.77
5020	1511.07	10220	1385.58	11460	1248.75	12490	1367.50	13790	1403
5020	1656.90	10230	1385.69	11470	1249.01	12510	1418.85	13800	1410.80
5020	1657.01	10240	1385.91	11510	1262.75	12520	1418.70	13820	1412.06
5020	1658.01	10250	1386.75	11540	1271.01	12570	1166.75	13830	1417.11
5020	1663.01	10310	1010.10	11550	1282.07	12580	1311.01	13850	1420.50
5020	1667.01	10320	1012.50	11580	1291	12590	1379	13870	1422.50
5020	1851.75	10360	1036.90	11590	1295.01	12630	1114.25	13880	1095.05
5020	1861.25	10370	1038	11600	1295.50	12700	1124.80	13900	1212.75
5020	1877.01	10380	1039	11650	1310.15	12730	1197.40	13910	1230.16
5030	1436	10390	1039.20	11660	1312	12750	1229	13920	1230.80
5030	1441.70	10400	1040.07	11680	1330.06	12760	1230.90	13930	1235.01
5030	1880.11	10410	1043	11700	1336	12770	1301	13940	1250.01
5040	1426.65	10470	1082.20	11730	1347.01	12780	1349.50	13950	1305.01
5040	1875.41	10480	1083	11740	1349.80			13960	1355.01

EXHIBIT 5

SUPPLEMENT 285 TO TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP			
ITEM	STATION	INDUSTRY	GROUP
1449.85	LIST OF INDUSTRIES AT FRESNO, CA (DO 3514)	ADM Packaged Oil Dunlop Tire Corporation Fresno Bee, The Integrated Grain & Milling (Zacky Farms) Jenson & Pilegard PPG Industries United Agri Products Company Weyerhaeuser Company	S
1449.96	LIST OF INDUSTRIES AT FORT WORTH, TX (DO 3514)	Continental Grain Company Elevator F	S
1450.06	LIST OF INDUSTRIES AT GALVESTON, TX (DO 3514)	Freeport Sulphur Company Sullivan Warehouse Texas International Terminals	S
1511.01	LIST OF INDUSTRIES AT HOUSTON, TX (DO 3514)	A J Schill Company A & A Plastic Manufacturing Amber Milling American Plant Food Company Arrow Terminal Company Azrock Industries Incorporated Bayer Corporation 8701 Park Place C & D Warehouse C & W Warehouse Carlon (Interstate Traffic Only) Cargill Steel & Wire Celotex Corporation, The Chemtrusion Incorporated Constar International Incorporated Cook Composites & Polymers Crozier-Nelson Chem & Cont Incorporated Curtiss Steel Corporation Custom Pipe Coating Incorporated Cyclops (Division of Texas-Tube) Dan-Lock Bolt & Gasket Delta Steel Incorporated 7355 Roundhouse Lane Delta Steel Incorporated 8415 Clinton Drive E. I. Dupont DE Nemours (Interstate Traffic Only) Exel Logistics 8833 City Park Loop East Exxon Energy Chemical 8230 Stedman Street Ferro Union Incorporated Flint Ink Corporation Friedman Industries Incorporated GATX Terminal (General American Transportation) General Welding Works Incorporated Glazier Foods Company 1500 Oliver Goodyear Tire & Rubber 2000 Goodyear Drive Grace Logistics Services Graham Packaging Company Hahn & Clay Hanna MA Herman Warehouse, 1040 Lockwood Drive Holnam Incorporated Houston, City of, 12555 Clinton Drive Houston Compressed Steel Corporation Houston Distributing Company Incorporated Houston Independent School District Houston Public Grain Elevator #2 Interpak Incorporated 8401 Cavalcade	S

(Continued on next page)

EXHIBIT 6

SUPPLEMENT 267 TO TARIFF UP 8005-D

SECTION 3—SWITCHING SERVICES AND CHARGES—IN DOLLARS PER CAR—EXCEPT AS NOTED				
ITEM	STATION	APPLICATION	SWITCHING PER ITEM 2066 CHARGE	SWITCHING PER ITEM 2100 CHARGE
3380.20-B (Cancels 3380.20-A and 3380.20)	HOUSTON ....TX (DQ 3520)	Between Groups M and S industries at Houston, TX and connections with BNSF.	$150.00	$280.00
		Between Houston Public Grain Elevator #2 and Interchange with the TM.	$143.56	...
		All Freight, Intra-terminal	$431.00	
3593.35-B	NEW ORLEANS ....LA (DQ 3523)	NEW ORLEANS, LA AND SUB-PORTS BETWEEN (Except at Noted): Avondale....LA; Gouldsboro....LA; Gretna....LA; Harvey....LA; Marrero....LA; New Orleans....LA; Westwego....LA AND (Except as Noted): Avondale....LA; Gouldsboro....LA; Gretna....LA; Harvey....LA; Marrero....LA; New Orleans....LA; Westwego....LA		
		Between Group M industries at New Orleans,LA and interchange with: IC .... CSXT, KCS, NS........	$390.00 $214.00	... ♦ $280.00
		NOTE - Applies on Grain, Grain Products, Seeds and related articles as described in Tariff WTL 8300-series, and only in connection with CSXT, IC, KCS, NS.	$127.00 (See Note)	
		Between Group S industries at New Orleans, LA and interchange with IC, CSXT, KCS and NS	$150.00	$280.00
		INTRA-TERMINAL MOVES BETWEEN THE FOLLOWING POINTS ON UP BETWEEN (Except at Noted): Avondale....LA; Gouldsboro....LA; Gretna....LA; Harvey....LA; Marrero....LA; New Orleans....LA; Westwego....LA AND (Except as Noted): Avondale....LA; Gouldsboro....LA; Gretna....LA; Harvey....LA; Marrero....LA; New Orleans....LA; Westwego....LA	①♦ $280.00	
		① A charge of $113.00 per car will be assessed on loaded cars from IMTT's leased tracks 37 and 38 in the yards of the UP at Avondale, LA to IMTT's plant facilities at Avondale, LA.		
3926-B	WAUSAU......WI (Includes industries at Rothschild and Schofield, WI as provided for in Item 1984 (DQ 3524)	♦ Item Cancelled; account obsolete.		

1

SOUTH SIDE JOINT TRACK

OPERATING AGREEMENT

THIS AGREEMENT made and entered into by and between HARRIS COUNTY HOUSTON SHIP CHANNEL NAVIGATION DISTRICT (hereinafter called "District"); TEXAS AND NEW ORLEANS RAILROAD COMPANY (hereinafter called "T&NO"), acting both as an individual railroad and as a member line of PORT TERMINAL RAILROAD ASSOCIATION (hereinafter called "PTRA"); and CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, FORT WORTH AND DENVER RAILWAY COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, HOUSTON BELT & TERMINAL RAILWAY COMPANY, MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, and GULF, COLORADO AND SANTA FE RAILWAY COMPANY, all of said six named railroads being and acting herein as member lines of PTRA;

W I T N E S S E T H

WHEREAS, an Agreement (hereinafter called "South Side Joint Track Agreement") has been entered into between District and T&NO whereby, subject to approval of Interstate Commerce Commission (hereinafter called "ICC"), certain rights and privileges of joint track operation have been granted by T&NO and District, each to the other and to PTRA; 5/2/61

WHEREAS, said South Side Joint Track Agreement provides that rail service to plants (as distinguished from property) of Houston Lighting & Power Company, U. S. Industrial Chemicals Company, and E. I. du Pont de Nemours & Company now provided by T&NO is to continue to be provided exclusively by T&NO; and

Quantum

WHEREAS, member lines of PTRA other than T&NO wish to join with District and T&NO in making this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises and agreements herein contained, it is contracted and agreed by and between all of the parties hereto as follows:

ARTICLE I.

(1). Subject to approval of ICC, District, PTRA, and T&NO (both individually and as a member railroad line of PTRA) shall have all of the rights and privileges provided for in South Side Joint Track Agreement (copy of which, marked Exhibit A, is attached hereto and made a part hereof) with respect to use of and joint operations over trackage of T&NO and District, built or to be built, as stipulated in Articles I and II of said South Side Joint Track Agreement.

(2). The parties agree that rail service to plants (as distinguished from property) of Houston Lighting & Power Company, U. S. Industrial Chemicals Company, and E. I. du Pont de Nemours & Company, as said plants are now located or might in the future be expanded in said locations, by trackage connected to T&NO tracks over which operating rights have been granted shall continue to be exclusive to T&NO, as an individual railroad, and that no rights to serve such plants by use of said jointly operated tracks have in any wise been granted to District, PTRA, and/or any other railroad member line of PTRA.

(3). District, PTRA, and each railroad member line of PTRA other than T&NO, agree that they will make no effort, directly or indirectly, to serve any of the plants referred to in Section (2) of this Article I [illegible] the tracks involved herein or [illegible] any track built or acquired by anyone unless they are ordered to do so by ICC under Section 1 (9) of the Interstate Commerce Act.

(4). The parties agree that joint use and operation of any trackage provided by District or T&NO in accordance with Article II of South Side

Joint Track Agreement shall be subject to the limitations expressed in Sections (2) and (3) of this Article I and the further limitations that:

(a). Nothing herein contained shall authorize District to construct, nor PTRA to use, any sidings, public freight tracks, industry tracks, or lead tracks south of State Highway 225 (La Porte Road) or south of T&NO track over which operating rights are granted by T&NO in Section (1) (d) of Article I of South Side Joint Track Agreement and east of T&NO's Engineer Station 23+01.8, other than to serve tracts of land presently owned by District adjacent to said jointly operated track or at Morgan's Point; and

(b). Any rail service that may hereafter be provided to Spillman Island and Spillman Island Fill by trackage connected to T&NO track over which operating rights are granted by T&NO in Section (1) (d) of Article I of South Side Joint Track Agreement shall be for exclusive use of PTRA.

ARTICLE II.

(1). The parties agree that valuations of existing facilities of T&NO, and of such facilities as may hereafter be provided by T&NO or District, that will be used as bases for purpose of calculating rental payments due to T&NO or District because of exercise of rights and privileges of joint operations granted by T&NO and District in said South Side Joint Track Agreement shall be in accordance with the following:

(a). Valuations of existing facilities of T&NO, including underlying land, will be ledger values of such facilities and ledger (or land report) values of land;

in the future by T&NO, including underlying land, will be actual cost of such facilities and land;

(c). Valuations of facilities of T&NO as herein established will be subject to increase by any amounts chargeable to investment accounts under ICC accounting rules for any necessary future betterments of said facilities or for assessments for public improvements made against said facilities and will be subject to decrease by any amounts representing ledger values of subsequent property retirements; and

(d). Valuations of such facilities that may be provided in the future by District will be determined as provided for in Article VI of Port Terminal Railroad Association Agreement of June 30, 1924, (hereinafter referred to as "PTRA Agreement"), as heretofore and hereafter amended.

(2). It is agreed that total rental payments due to T&NO or District because of exercise of rights and privileges of joint operation granted by T&NO and District in South Side Joint Track Agreement will be borne and prorated as follows:

(a). With respect to T&NO's existing facilities used jointly by District or PTRA and T&NO, rental payments in amount equal to two and one-half per cent (2½%) per annum on valuations of lands and facilities as established in Section (1) (a) of this Article II, payable monthly at rate of one-twelfth (1/12) of two and one-half per cent (2½%), will be borne and paid by PTRA;

(b). With respect to any additional facilities T&NO may provide in the future (or any betterments of existing facilities that T&NO finds to be necessary in the future) for use and paid by PTRA as provided in Section (2) (a) of this Article II will be increased by two and one-half per cent (2½%) per annum on actual costs of said additions (and betterments), including any underlying land required therefor; and

(c). With respect to any additional facilities District may provide in the future for use jointly by T&NO and PTRA or District, rental payments in amount equal to five per cent (5%) per annum on actual costs of said additions (including any underlying land therefor), payable monthly at rate of one-twelfth (1/12) of five per cent (5%), will be borne and paid for one-half (½) by PTRA on the one hand and one-half (½) by T&NO, as an individual railroad, on the other hand.

(d). Rental provided above shall be reduced proportionately as a result of any property retirements as provided in Section (1)(c) of this Article II.

(e). All future increases or decreases in rental provided for in Section (2) of this Article II shall be effective on the first day of the month immediately following completion of additional facilities, betterments to existing facilities, or property retirements, as the case may be.

(3). It is agreed that all taxes imposed by duly constituted authorities (other than assessments for public improvements) upon facilities of T&NO over which rights of joint use and occupancy have been granted will be borne and prorated equally between T&NO, as an individual railroad, and PTRA.

(4). Any rentals which may become due to District because of provision by District, in the future, of any additional facilities will be paid to District by PTRA in the first instance, concurrent with and in manner similar to method prevailing for payment to District of interest rental provided for in Article VI of PTRA Agreement, as amended, and PTRA and T&NO (as an individual railroad) thereafter will adjust their accounts between and among themselves in accordance with provisions of this Agreement and of PTRA Agreement, as amended.

ARTICLE III.

(1). Maintenance of facilities of T&NO and District over which rights and privileges of joint use and operations have been granted by T&NO and District in said South Side Joint Track Agreement will be performed as follows:

(a). PTRA will maintain facilities of District; and

(b). T&NO will maintain facilities of T&NO.

(2). Separate records and accounts will be kept by the parties so as to show total maintenance expenses incurred and such records and accounts shall be open and available to all parties at all reasonable times.

(3). Maintenance expenses incurred by T&NO and PTRA under provisions of Section (1) of this Article III will be borne by and prorated between T&NO (as an individual railroad) and PTRA on basis of proportions that number of cars handled by T&NO, as an individual railroad, and number of cars handled by PTRA bear to total number of cars handled over said facilities.

(4). The phrase "number of cars" as used in Section (3) of this Article III shall be interpreted to include both loaded and empty cars handled by any of the parties hereto, except that only fifty per cent (50%) of loaded and empty cars handled in intracity switching service

(5). Count of cars will be on basis that each loaded and empty car will be counted once when entering upon any of said trackage over which rights and privileges of joint operations have been granted by T&NO and District and counted once when leaving such trackage used jointly; provided, however, that intermediate moves shall not be counted and cars in work service shall not be counted.

(6). Expenses of train and switching operations incurred by T&NO (as an individual railroad) and PTRA will be borne as follows:

(a). PTRA will assume entire expense of its operations; and

(b). T&NO will assume entire expense of its operations when acting as an individual railroad.

(7). Expenses of maintenance and operations to be borne by PTRA in accordance with Sections (3) and (6) of this Article III shall be apportioned among railroad member lines of PTRA in accordance with provisions of Article X of PTRA Agreement, as amended, except that it is understood and agreed that cars handled by T&NO, while acting as an individual railroad, over trackage used jointly with PTRA shall not be counted in apportioning maintenance and operating expenses among railroad member lines of PTRA.

ARTICLE IV.

(1). Regardless of any provision herein to the contrary, PTRA may notify T&NO in writing, with copy to District, of an election not to use any track or tracks owned by T&NO and which PTRA has the right to use jointly with T&NO under provisions of said South Side Joint Track Agreement and, likewise, T&NO may notify PTRA in writing, with copy to District, of an election not to use any track or tracks owned by District and which T&NO has the right to use jointly with PTRA

(2). As of the first day of the month immediately following the expiration of one hundred eighty (180) days after such notice has been given, the party giving same shall be relieved of obligation of paying any rental on, or any maintenance expenses of, trackage involved in said notice. After an election has been made, as aforesaid, not to use trackage, the party making such election may thereafter withdraw same by notice in writing to the other party, with copy to District, and on the first day of the month immediately following the expiration of one hundred eighty (180) days after such notice has been given, said party shall again have the privilege of operating over the tracks involved in said notice and shall become liable to pay rental and maintenance expenses thereon.

ARTICLE V.

(1). As between T&NO (in its individual capacity, but not as a member of PTRA) and District, this Agreement shall inure to the benefit of and be binding upon T&NO and District, and their successors in title, forever.

(2). As between District and PTRA, and each of the railroad or railway companies hereinabove collectively designated as "PTRA" (but exclusive of T&NO in its individual capacity), the rights, powers, privileges, and remedies of PTRA as herein provided shall exist solely for duration of PTRA Agreement, as amended. The rights, powers, privileges, and remedies of District as herein provided shall be perpetual, same to be exercised, however, by PTRA and its railroad member lines so long as said PTRA exists. All rights herein provided to be exclusive to PTRA shall, as hereinbefore provided, likewise be and become those of District upon the dissolution of PTRA.

(3). Except to extent herein expressly provided to the contrary, or expressly provided to the contrary in South Side Joint Track Agreement herein referred to, all liability and obligation for and in respect of payment and apportionment of interest rental, maintenance and operating expense, and liability for injury to or death of persons or damage to or destruction of property shall be as provided in PTRA Agreement, as amended.

ARTICLE VI.

Subject to approval of ICC, this Agreement shall become effective upon the same date that said South Side Joint Track Agreement becomes effective.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 31st ~~day of October, 1961.~~

HARRIS COUNTY HOUSTON SHIP CHANNEL NAVIGATION DISTRICT

By: /s/ J. P. Turner
General Manager

ATTEST:

TEXAS AND NEW ORLEANS RAILROAD COMPANY

/s/H. D. Gray
Secretary

By: /s/ B. S. Sines
Executive Vice President
(Acting both as an individual railroad and as a member of Port Terminal Railroad Association)

ATTEST:

(Seal)

/s/ M. Z. Greenley
Secretary

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

By: /s/ O. W. Limestall
Vice President - Operations

ATTEST:

(Seal)
/s/ A. D. McLane
Ass't Secretary

FORT WORTH AND DENVER RAILWAY COMPANY

By: /s/ F. L. Kartheiser
Vice President

ATTEST:

(Seal)

/s/ J. A. Manning
Secretary

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

By: /s/ R. G. Rydin
Vice President

ATTEST:

(Seal)
/s/ K. O. Jansson
Ass't Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By: /s/ Charles T. Williams
President

ATTEST:

(Seal)
/s/ C. A. Rockwell
Secretary

MISSOURI PACIFIC RAILROAD COMPANY

By: /s/ L. A. Gregory
Vice President - Operation

ATTEST:

(Seal)
/s/ A. B. Higgins
Secretary

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

By: /s/ J. T. Alexander
President and General Manager

SERVICE DATE
JUL 3 1962

Operating Office
JUL 12 1962

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Finance Board No. 1, held at its office in Washington, D. C., on the 28th day of June, A. D. 1962.

Finance Docket No. 21883

HARRIS COUNTY HOUSTON SHIP CHANNEL NAVIGATION DISTRICT AND SOUTHERN PACIFIC CO.--TRACKAGE RIGHTS--HARRIS COUNTY, TEXAS

Finance Docket No. 22049

HARRIS COUNTY HOUSTON SHIP CHANNEL NAVIGATION DISTRICT--ET AL. OPERATING AGREEMENT--HOUSTON, TEXAS

Upon consideration of the application filed December 15, 1961, in Finance Docket No. 21883, under section 5(2) of the Interstate Commerce Act in which the Harris County Houston Ship Channel Navigation District (Navigation District) and the Southern Pacific Company (Southern Pacific) seek authority pursuant to an agreement executed May 2, 1961, for Navigation District to acquire trackage rights over portions of the line of Southern Pacific designated the HLP Lead and the Old Bay Shore Line, extending from a connection of the Navigation District's existing line with the HLP Lead to the end of the Old Bay Shore Line east of Strang, approximately 5.6 miles in Harris County, Texas, and of the application filed April 16, 1962, in Finance Docket No. 22049, under section 5(2) of the act in which the Navigation District, the Chicago, Rock Island and Pacific Railroad Company, the Fort Worth & Denver Railway Company, the Gulf, Colorado and Santa Fe Railway Company, the Houston Belt and Terminal Railway Company, the Missouri-Kansas-Texas Railroad Company, the Missouri Pacific Railroad Company, and the Southern Pacific, all as members of the Port Terminal Railroad Association (PTRA), request approval of the agreement by which the PTRA, as the tenant of the Navigation District, will operate the trackage rights acquired from the Southern Pacific by said Navigation District; and

It appearing, That operation under trackage rights will permit the PTRA to serve properties owned by the Navigation District without the construction of facilities duplicating those owned by Southern Pacific; and

It further appearing, and the Board so finds, That a hearing is not necessary in the public interest, and the interests of railway employees will be protected by the imposition of appropriate protective conditions; that the annual rental of 2½ percent of the valuation of the jointly used facilities (reported by the parties to be $215,406.32) and other terms contained in the agreements are found to be just and reasonable; that the transactions are within the scope of section 5(2) of the act; that any resulting increase in total fixed charges will not be contrary to the public interest; that the transactions will not result in the guaranty or assumption of the payment of fixed charges or dividends; that no other railroad has requested to be included in the transaction; that transportation service to the public will not be adversely affected and the transactions will be consistent with the public interest;

F. D. Nos. 21883 and 22049

<u>It is ordered</u>, That, subject to the same conditions for the protection of employees as set forth in <u>Oklahoma Ry. Co. Trustees Abandonment</u>, 257 I.C.C. 177, the acquisition by the Harris County Houston Ship Channel Navigation District of trackage rights over the lines of railroad of the Southern Pacific Company in Harris County, Texas, as hereinabove described, and the operation of said trackage rights by the Harris County Houston Ship Channel Navigation District, the Chicago, Rock Island and Pacific Railroad Company, the Fort Worth & Denver Railway Company, the Gulf, Colorado and Santa Fe Railway Company, the Houston Belt and Terminal Railway Company, the Missouri-Kansas-Texas Railroad Company, the Missouri Pacific Railroad Company, and the Southern Pacific Company, as members of the Port Terminal Railroad Association, upon the terms and conditions described herein, be, and they are hereby, approved and authorized; and

<u>It is further ordered</u>, That no changes or modifications in the terms and conditions of the trackage rights herein authorized or the further extension of Navigation District's line of railroad shall be effected without prior approval of this Commission; that this order shall become effective on the date served; and that unless the transactions herein authorized are consummated within one year from the date of service hereof, this order shall be of no further force or effect.

By the Commission, Finance Board No. 3.

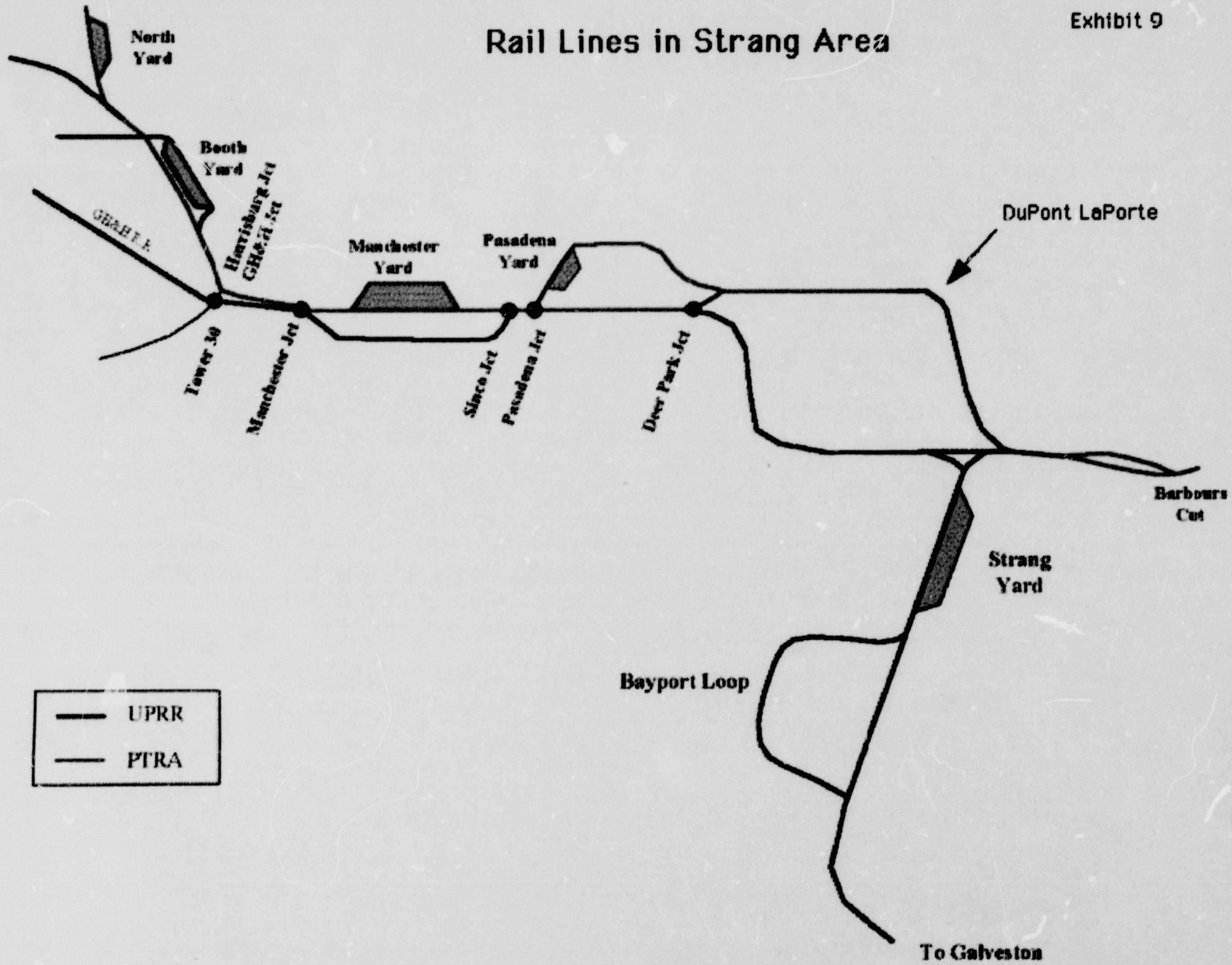
HAROLD D. McCOY,

Secretary.

(SEAL)

Exhibit 9

Rail Lines in Strang Area



STB FD-32760(SUB26) 7-8-98 I ID-189359

189359

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500 TELECOPIER: (202) 371-0900

ENTERED
Office of the Secretary

JUL 09 1998

Part of
Public Record

July 8, 1998

RECEIVED
JUL 8 1998
MAIL
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STB

Via Hand Delivery
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding and original and twenty-five (25) copies of the *Comments and Request for Remedial Conditions* submitted on behalf of The National Industrial Transportation League, which has been designated as NITL-4. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

Frederic L. Wood

Nicholas J. DiMichael
Frederic L. Wood
Attorneys for The National Indstrial
Transportation League

ENCLOSURES

cc: All Parties of Record

NITL-4

BEFORE THE SURFACE TRANSPORTATION BOARD

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

RECEIVED
JUL 8 1998
MAIL MANAGEMENT
STB

UNION PACIFIC CORPORATION, et al.
— CONTROL AND MERGER —
[SOUT]HERN PACIFIC RAIL CORPORATION, et al.
[H]OUSTON/GULF COAST OVERSIGHT]

ORIGINAL

[C]OMMENTS AND REQUEST FOR REMEDIAL CONDITIONS

submitted on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

In Decision No. 1 in this proceeding, the Board invited interested persons to file requests for new remedial conditions to the UP/SP merger for the Houston/Gulf Coast area. The National Industrial Transportation League ("League") herein responds to that request.

The League understands that a number of shippers, carriers, and other parties will be submitting specific requests for new remedial conditions. In this filing, the League is not presenting its own specific requests for conditions. However, the League desires to set forth its view that there is, first of all, a serious need for new remedial conditions in the Houston/Gulf Coast area to assist in solving the substantial competitive and service difficulties in the region; and secondly, to set forth certain general principles that the Board should use in considering the specific requests for new conditions submitted by shipper, railroad and other parties. The League will be examining the specific requests for conditions filed by parties on July 8, and will, on October 16, 1998, submit its own views as to which if any of these specific conditions should be adopted.

IDENTITY AND INTEREST OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

The National Industrial Transportation League is a voluntary organization of shippers and groups and associations of shippers conducting industrial and/or commercial enterprises in all States of the Union and internationally. It was formed in 1907. Its members include industrial and commercial enterprises both large and small, as well as commercial, trade and transportation organizations representing shippers. Many members of the League are substantial users of rail transportation. The League is the only nationwide organization representing shippers of all sizes and commodities, using all modes of transportation, to move their goods in interstate, intrastate, and international commerce. Many members of the League have been affected by the service crisis in the western United States, and particularly in the Houston/Gulf Coast area. Accordingly, the members of the League have a strong interest in this proceeding.

THE BOARD SHOULD BE COMMENDED FOR INITIATING THIS PROCEEDING

In Decision No. 1 in this proceeding,[1] the Board noted that the Union Pacific Railroad Company ("UP") has "experienced serious service difficulties since the merger [of the Union Pacific and Southern Pacific]" which has caused the agency to issue a series of orders to mitigate a rail service crisis in the western United States. Decision No. 1, p. 3. In those orders, the Board indicated that it had made substantial temporary changes to the way that service is provided

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1 Decision No. 1 in this proceeding corrected Decision No. 12 served March 31, 1998 in sub-No. 21 in the UP/SP merger proceeding, by designating a separate docket number for this Houston/Gulf Coast Oversight proceeding and a short name for the docket. Decision No. 1 was otherwise the same as Decision No. 12. In Decision No. 5, served June 1, 1998, the Board extended the procedural schedule for filing requests for remedial conditions to July 8, 1998.

in and around Houston. *Id.*, p. 4. Although the Board indicated in those orders that it did not wish to effect a permanent alteration of the rail transportation situation in the Houston region at that time, it noted that interested persons could present proposals for longer-term solutions to the service situation, including those seeking permanent structural industry changes based on service inadequacies, in subsequent formal proceedings. *Id.*

In this Houston/Gulf Coast Oversight proceeding, the Board has commendably followed through on its commitment to provide an opportunity to examine whether and what further conditions should be ordered to help remedy the serious service and competitive situation in the Houston/Gulf Coast area. The Board indicated that "given the gravity of the service situation," it should "thoroughly explore anew the legitimacy and viability of longer-term proposals for new conditions to the merger as they pertain to service and competition in the [Houston/Gulf Coast] region." *Id.*, p. 5. The League emphatically agrees, and believes that the Board has performed a signal service to the shipping public in initiating a proceeding for this purpose.

As noted below, the League strongly believes that there is a need for additional remedial conditions in the Houston/Gulf Coast area, and that the Board should closely examine the proposals being presented to it this day in order to fashion remedies that will end the serious and continuing service and competitive difficulties in that region.

In Decision No. 1, the Board noted that the "virtual shutdown of rail service in the Houston/Gulf Coast area that occurred after the UP/SP merger -- and which, after many months, has yet to be normalized -- is unprecedented," and that "[these] circumstances alone" were sufficient for the Board to commence this proceeding. *Id.* Accordingly, the Board said that it would examine "whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred here, and, if so, whether the situation should be addressed through additional remedial conditions." *Id.* As noted further below, the League believes that there is a relationship between the market power gained by the now-merged UP/SP and the failure of service in the Houston/Gulf Coast region. More importantly, the League believes that the continuing failure of the UP to remedy its service problems is exacerbated by the lack of competitive rail alternatives in the area.

Finally, in Decision No. 1, the Board cautioned that it would not impose conditions requiring UP "to divest property that would substantially change the configuration and operations of its existing network in the region in the absence of the type of presentation and evidence required for 'inconsistent applications' in a merger proceeding; *i.e.*, parties must present probative evidence that disclosed 'the full effects of their proposals.'" *Id.* "Divestiture," the Board said, is only available "'when no other less intrusive remedy will suffice,' and we will impose it only upon sufficient evidentiary justification." *Id.*, pp. 5-6. The League has carefully considered these instructions, and the principles that is suggests for helping to remedy the Houston/Gulf Coast service meltdown set forth below do not necessarily envision divestiture.

THERE IS A CLEAR NEED FOR ADDITIONAL REMEDIAL CONDITIONS IN THE HOUSTON/GULF COAST AREA

The League believes that there is a clear need for additional remedial conditions in the Houston/Gulf Coast area. There are interrelated service and competitive elements to this need.

Both the weekly reports submitted by the UP and the experiences of League members indicate that the service crisis is far from resolved. Unfortunately, the UP's weekly reports, except in a few instances, do not break out the service parameters on a geographic basis, though it appears that UP itself does keep regional or corridor statistics internally.[2] However, an examination of the UP's weekly reports indicates clearly that the railroad's operations are still far from "normal."

Examination of the UP's reports and experiences reported by League members indicates that UP's service crisis was at its most serious in the Fall of 1997 and again in March 1998. The following table compares certain of UP's statistics for the most recent four week period for which the railroad is reporting (ending June 26, 1998) with the original baseline months of December 1996 and January 1997 (or well before the service crisis began),[3] and with the average of UP's statistics for the four weeks ending October 31, 1997 as well as with the average of the four weeks ending March 27, 1998. Thus, this table shows, for key statistics reported by the carrier: "normal" operations (represented by the December 1996 and January 1997 baselines); the extent of the divergence from "normal" during the two "peaks" to the service crisis; and current operations over the last four weeks. As the following statistics indicate, the UP has rebounded from the nadir of the service disaster, but is still a considerable way from normal operations:

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2 In UP's thirty-seventh weekly report of indicators, dated June 29, 1998, UP cites detailed transit time statistics in various key corridors to and from the Texas and Louisiana Gulf Coast. See letter from J. Michael Hemmer to Vernon A. Williams dated June 29, 1998, pp. 3-4. It is clear, then, that UP keeps certain transit time statistics on a corridor basis at least for this critical origin area, and perhaps for others. These transit time statistics, however, are not part of the UP's weekly reporting. All of the cited transit time statistics in that weekly report, however, were on the basis of comparisons chosen by UP from time periods earlier in 1998, and therefore the Board and shippers do not know what the "baseline" transit time data is, and how far the UP is from normalized operations in the region.

3 The duration of the service crisis can be measured by the fact that the most recent "baseline" periods in UP's weekly reports -- the figures from the same weekly period in the prior year -- are now themselves inflated by the UP's service difficulties that commenced one year ago. Thus, "baselines" used in this filing are the original baselines submitted by the UP when it began its reporting to the Board in the fall of 1997, *i.e.*, December 1996 and January 1997.

Service Element Reported by UP	Dec. '96 Baseline	January '97 Baseline	Average Oct. 1997	Average March 1998	Average for Four Weeks ending 6/26/98
Car Inventory (Total)	310,616	308,624	347,438	343,796	331,464
Car Inventory (TX/LA)	Not Available	Not Available	105,087	106,216	99,509
Car Terminal Dwell	34.7	33.6	42.0	42.7	40.2
System Train Speed	17.7	17.9	12.8	12.4	14.1
Coal Cycle Days	6.0	6.1	6.6	7.0	6.6
Sidings Blocked (System Total)	Not Available	Not Available	137	171.3	102
Trains Held for Congestion	5 1/	10	80	83.5	42
GTM's per HP Day	117.2	121.2	107.1	100.2	107.2
Interchange Cars offered by UP and refused	200	83	155.2	235	204
Interchange Cars offered to UP and refused	176	80	436.3	424	375

1/ Data for February 1997 -- first baseline data available

The above table indicates that in most instances UP has rebounded by perhaps 20% to 30% of the difference between the baseline and the figures that were recorded at the depths of the service crisis. For example, car terminal dwell increased by 9.1 hours between the January 1997 baseline and UP's March 1998 average. The most recent figures show that UP has improved 2.5 hours, or about 27% of that difference, but it still has the remaining 73% to go. System train speed suffered a huge decline from 17.9 mph to 12.4 mph (or 5.5 mph) between the January 1997 baseline and March 1998. The most recent figures show that UP has since made up 1.7 mph, or about 31% of that difference, but still has about 60% of the difference to go. Gross ton-miles per horsepower day (a key measure of productivity) fell from 121.2 between the January 1997 baseline to 100.2 in March 1998. UP has since made up 5.0 points of that 21.0 point difference, or about 24%, with about 76% still to go.

What is perhaps more distressing than a "snapshot" comparison of the most recent statistics averaged for the last month with the established baselines is an examination of the recent trends. The following table sets forth these same statistics each week for the past two months:

Service Element	Week ending 5/8	Week ending 5/15	Week ending 5/22	Week ending 5/29	Week ending 6/5	Week ending 6/12	Week ending 6/19	Week ending 6/26
Car Inventory (Total)	327,185	326,158	328,123	329,044	330,312	330,551	331,477	333,516
Car Inventory (TX/LA)	99,467	98,701	99,145	99,435	99,999	99,887	100,296	97,854
Car Terminal Dwell	39.7	40.0	39.9	41.3	39.1	39.5	41.2	41.1
System Train Speed	14.6	14.5	13.9	14.0	14.1	14.1	14.4	13.7
Coal Cycle Days	6.7	6.6	7.4	7.4	6.4	6.6	6.5	6.8
Sidings Blocked (System Total)	77	87	107	111	103	90	111	105
Trains Held for Congestion	38	62	45	39	48	35	36	48
GTM's per HP Day	117.3	112.2	105.1	105.3	107.2	109.7	107.7	104.3
Interchange Cars offered <u>by</u> UP and refused	230	160	271	165	190	147	218	261
Interchange Cars offered <u>to</u> UP and refused	345	342	387	381	357	304	342	497

In none of these key statistical categories can there be said to be any sustained improvement over the past two months. Indeed, almost all of these figures can be extended back for another month and would still show little change. In fact, a number of key figures, such as car terminal dwell, system train speed, sidings blocked, trains held for congestion, GTM's per HP day, and interchanges refused, are worse in the most recent week than they were two months ago.

The service categories reported to the Board, then, show that UP has apparently "settled in" to a service level that is measurably below the service offered prior to the merger of the UP and SP. League members with Gulf Coast facilities, suppliers or customers report experiences that are consistent with the figures shown in the railroad's submissions to the Board: a rebound from the depths of the service crisis, but still significantly below the level of UP service pre-merger. Unlike six months ago, when UP was heralding "directional running" as the answer to its service problems, there appears to be no "magic bullet" that will quickly pull the UP back to the service level that it offered just 18 months ago. Thus, there are clear indications that the carrier's service deficiencies are unfortunately likely to last for a significant period of time as UP attempts a long, slow process of building more facilities and hiring and training more people to try to pull itself out of the service mess that it has created, with no guarantees of success. Moreover, in the meantime the railroad is clearly more vulnerable to "shocks" to its system (derailments, difficult weather, unexpectedly large grain harvest, etc.) that could result in additional service deterioration from the current inadequate level.

UP service deficiencies in the Houston/Gulf Coast region are also detailed in the July 1, 1998 Quarterly Progress Report of the Burlington Northern and Santa Fe Railway Company ("BNSF"): "the Algoa to Corpus Christi route is heavily congested" (p. 9); UP is offering "extremely poor haulage service" to and from Brownsville, TX (p. 12); there is "heavy congestion" in UP's Conroe subdivision between Temple and Taylor, TX (p. 14); there is UP "congestion" on the Baytown Branch near Houston (p. 18); "UP congestion" continues between Houston and East St. Louis (p. 20). BNSF summarizes:

> UP's problems are continuing and are likely to persist. BNSF, other carriers and Houston area shippers are now experiencing alternating cycles of several days of sporadic improvement in UP service followed by a number of days when service returns to near crisis levels.

BNSF July 1, 1998 Quarterly Report, p. 10. Thus, it seems clear that there are continuing serious service deficiencies in the Houston/Gulf Coast region.

THERE ARE SIGNIFICANT LINKS BETWEEN THE COMPETITIVE SITUATION AND THE CONTINUING SERVICE PROBLEMS IN THE HOUSTON/GULF COAST REGION

As noted above, in Decision No. 1 the Board asked "whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred [in the Houston/Gulf Coast region] . . . ." The League believes that there are at least three links between the non-competitive situation in the Houston/Gulf Coast area and the failure of service that has occurred.

First of all, if shippers had truly independent and competitive options, they would not have had to continue tendering traffic to the UP in massive amounts. Though UP has suffered a traffic decline overall as shippers with modal options have transported their goods via motor carrier or barge, it has continued to transport huge volumes of goods. Indeed, the extent of the UP's market dominance can be seen in the railroad's repeated efforts to shift traffic to other rail carriers during the depths of the service crisis. In a truly competitive market, UP would not need to <u>try</u> to shed traffic: large volumes of goods would not have been tendered to the UP at all, allowing the carrier to quickly clear out its system and giving it breathing room to fix its most serious problems. As it is, the lack of competitive options continues to aggravate the service crisis. Moreover, the fact that so much of the "competitive" transportation provided by BNSF must utilize UP's own congested lines for substantial distances via the trackage rights granted by the Board, rather than utilizing an independent infrastructure, does little to solve UP's service mess.

Second, in the merger proceeding, BNSF was given access to certain traffic in the Houston/Gulf Coast region via trackage rights over the lines of the merged UP/SP. However, this was primarily traffic at so-called "2-to-1" points. But SP had its <u>own</u> traffic base <u>over and above</u> traffic at points at which it was directly competitive with UP. Thus, BNSF's actual and potential traffic base in the region is a relatively small percentage of the traffic that was formerly available to SP before the merger.

What this means is that BNSF -- the presumptive competitor -- has relatively little cause to <u>invest</u> in the region: it simply does not have enough potential traffic to justify large levels of investment. Although throughout its system BNSF is spending millions of dollars on new capital projects, one is struck by the relative paucity of capital projects being undertaken by BNSF in the Houston/Gulf Coast region as detailed in that railroad's most recent quarterly report. The BNSF's July 1, 1998 Quarterly Report suggests that the total number of capital projects completed or being undertaken by BNSF between October 1997 and October 1998 are only the following: a crossover at Avondale, TX; two 9,000 foot tracks at Dayton, TX; a storage track at Eagle Pass, TX; a new track connection at Longview, TX; and various track upgrades and installation of CTC near Iowa Jct., LA. See, BNSF July 1 Quarterly Report, pp. 44-46. In other words, at a time when UP's strongest "competitor" could be planning for and acting on massive investments in the region, to capture increased market share of high-volume and high-value traffic while its competition is vulnerable, BNSF's investments are relatively minor. But if BNSF were granted access to more traffic in the region, it would have more incentive to invest in the region, thus contributing to solving the infrastructure problem. As it is, the only substantial source for investment funds for rail transportation in the region under the present market structure is the UP.

Third, UP's service deficiencies directly contribute to the failure of the BNSF to be a viable and effective competitor to the UP. As set forth in detail in BNSF's July 1, 1998 quarterly report, because of UP's service failures, "BNSF's ability to provide shippers with reliable, dependable and consistent service over the UP/SP lines is continuing to be thwarted by certain structural deficiencies in the rights BNSF received in the UP/SP merger proceeding particularly . . . in the Houston and Gulf Coast area." BNSF July 1, 1998 Quarterly Report, p. 2. In other words, as long as UP's service failures continue, BNSF will not be able to provide a truly competitive option even for those relatively few shippers in the region with access to BNSF service. Moreover, BNSF's problems in acting as a strong competitor appear to be aggravated by limitations in the trackage rights granted and by UP's operational control of the trackage rights lines. *Id.* Thus, because of the UP's service difficulties and other structural deficiencies, the replacement for competition by the SP in the region envisioned by the Board in its decision -- the BNSF -- is simply not able to play the crucial role planned for it in insuring that the merger of the UP and SP railroads would not have an adverse effect upon competition among rail carriers in the affected region. See, 49 U.S.C. § 11324(b)(5).

UP will claim that additional potential competition in the Houston/Gulf Coast area will discourage needed investment by the UP. Nothing could be further from the truth. Across the economy and in the rail industry itself, it is not monopolies that invest in needed infrastructure: it is competitors who do so in order to protect their own market share and/or who are trying to wrest market share from others.[4]

For example, after the Interstate Commerce Commission permitted the CNW access to the Powder River Basin in 1984, investment by the monopoly incumbent BN in facilities for its coal traffic did not dry up: on the contrary, it increased. With competition in the PRB came investment in coal transportation by three companies: BN, CNW, and UP, which was CNW's friendly connection. In the decade after CNW was granted rights in the PRB, coal traffic from the area more than doubled, and is today transported over a hugely-expanded infrastructure in the region. Millions of dollars of additional investment by both BNSF and UP are planned in and for coal traffic from the PRB.[5]

Similarly, over the past decade the rail industry has invested tens of millions of dollars in investment in facilities devoted to intermodal transportation.[6] This traffic is, by its very nature, competitive. If competition discouraged investment, these expenditures would have made no sense. But competition spurs parties to figure out how to do things better, faster, cheaper: investment moneys flow to these quality ideas. The League believes that the same process of increased investments in infrastructure will occur if additional competition is brought to the Houston/Gulf Coast area.

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4 For a more developed analysis, see "The Impact of Increased Railroad Competition on Railroad Infrastructure Investment," by Joseph J. Plaistow, Christena Adams of Snavely King Majoros O'Connor and Lee, and Dr. Curtis Grimm, Professor and Chair of Transportation, Business and Public Policy, University of Maryland, May 26, 1998, report commissioned by the Alliance for Rail Competition ("Railroad Competition and Investment")

5 Railroad Competition and Investment, pp. 7-12.

6 *Id.*, pp. 13-15.

Thus, in view of these continuing service problems, the League believes that the Board must act to preserve and broaden rail-to-rail competitive opportunities for shippers in the region. The question now is, how should the Board evaluate the specific proposals that various shippers, carriers and other parties that the League understands will be submitted in this proceeding? It is to that subject that we now turn.

PRINCIPLES FOR EVALUATING ADDITIONAL REMEDIAL CONDITIONS FOR THE HOUSTON/GULF COAST AREA

As the Board considers and evaluates the requests for remedial conditions that will be submitted to it in this proceeding, the League believes that the Board should examine these filings in light of the following four principles. Additional remedial conditions that are founded on these principles, the League believes, would result in positive service and competitive benefits in the Houston/Gulf Coast region.

1. The Establishment of Neutral Switching Is a Sound and Proven Way of Ensuring Efficient, Competitive and Non-Discriminatory Rail Service in an Area

The League is aware that there has been much discussion regarding the benefits of neutral switching arrangements in the Houston/Gulf Coast area as a way of contributing to the solution of the interrelated service and competitive problems in the region. The League looks favorably on neutral switching arrangements to promote and insure competitive, efficient, and non-discriminatory rail service in a region. Neutral switching has been used in major urban and other areas for many years, and has provided efficient and effective rail service without discrimination among carriers present in a region. Such neutral switching arrangements can take a number of forms, including the use of an existing carrier not affiliated with the major carriers in the area; the establishment of a carrier jointly and equally controlled by the major carriers in the area; or other arrangements to insure efficient and neutral operations. The League urges the Board to carefully consider neutral switching arrangements as part of an overall plan to assist in the recovery of Houston/Gulf Coast rail transportation.

2. <u>The Authority Currently Granted the Tex-Mex/KCS in the Houston-Gulf Coast Region Should Be Made Permanent and Such Additional Authority Should Be Granted So As to Enable the Tex-Mex/KCS to Operate Effectively in the Area</u>

In Decision No. 1 in this proceeding, the Board indicated that in issuing a series of orders under Section 11123 in order to alleviate the service crisis, it had made "substantial temporary changes to the way in which service is provided in and around Houston." Decision no. 1, slip op at 4 (footnote omitted). These changes included directing UP to permit Tex Mex to modify its operations over the UP's lines to minimize congestion over UP's "Sunset Line," in order to move traffic around Houston rather than going through it; lifting the restriction in the UP/SP merger decision limiting Tex Mex trackage rights in the Houston area to the transportation of freight having a prior or subsequent movement on Tex Mex, in order to permit Houston shippers to access alternate routing options; and, granting Tex Mex full access to UP's Spring, TX dispatching facility as a neutral observer.

The League is of the view that the temporary actions taken by the Board have generally had a positive effect on the situation in the Houston/Gulf Coast area. The League believes that the Board should strongly consider making these changes permanent, in order to afford shippers increased access and options in the Houston area. Additionally, the Board should also consider additional grants of authority to Tex Mex to enable it to operate more effectively in the area.

3. <u>Overhead Trackage Rights Should Be Expanded Both to Permit Access to Additional Shippers and Short Lines and for More Efficient Operations</u>

In the UP/SP merger proceeding, the agency granted BNSF, Tex Mex and other carriers trackage rights over the lines of the UP in order the replicate the service previously provided by the SP, particularly at "2-to-1" points. The League believes that the Board needs to seriously consider lifting some of the restrictions on service to local industries in the Houston/Gulf Coast area, and broadening of trackage rights in order to provide for more efficient service by the involved trackage rights carriers.

Lifting of restrictions on service to local industries and short lines in the Houston/Gulf Coast area by carriers with existing trackage rights over the UP would immediately stimulate, the League believes, substantial new investment in the area by the carriers afforded a potentially increased traffic base. As the Board has recognized, "a key factor in bringing about the service emergency was the inadequate rail facilities and infrastructure in the [Houston/Gulf Coast] region . . . ." Decision No. 1, slip op. at 4. It would be wrong for the Board to rely <u>solely</u> on UP for the massive infrastructure improvements needs, particularly as it has become clear that UP's existing service problems are not likely to be solved any time soon.

If the Houston/Gulf Coast area is not to become permanently mired in a depressing cycle of increased infrastructure investments by the UP alone that chase -- but never quite catch up to -- the needs of increasing traffic from the region, then the Board must do all it can <u>now</u> to stimulate increased infrastructure investments by <u>all</u> railroads serving the area. Increased infrastructure investments on the scale required will not happen, the League strongly believes, if only <u>one</u> carrier -- the UP -- can serve the large majority of traffic in the area. Other carriers will not invest if they have little to gain in terms of increased traffic. The Board can provide such incentive by providing access to additional traffic, by judiciously lifting existing restrictions on service to local industries and short lines.

Moreover, the Board should also carefully consider targeted expansions of trackage rights in the Houston/Gulf Coast area in order to facilitate efficient operations by carriers with trackage rights over existing lines. For example, as discussed in BNSF's July 1, 1998 Quarterly Report, in some areas broadened trackage rights may be useful to redistribute traffic to less congested, lower density routes or otherwise improve efficiency. See, *e.g.*, BNSF July 1, 1998 Quarterly Report, p. 11.

4. <u>The Board Should Particularly Encourage Plans that Provide for Increased Infrastructure in the Houston/Gulf Coast Area</u>

As noted above, the Board has identified inadequate rail facilities and infrastructure as a key factor in bringing about the service emergency. In these Comments, the League has noted the close connection between the willingness of a carrier to invest in infrastructure and the access that carrier has to potential traffic in order to make the infrastructure investment worthwhile. The League strongly believes that the Board can advance or retard the likelihood of bringing increased infrastructure to the region through a decision to grant or not to grant increased access to rail transportation business in the region.

In view of the critical need to encourage increased rail investment in the Houston/Gulf Coast region, the League believes that the Board should look particularly favorably on plans presented by carriers, shippers or other parties that envision increased investments in infrastructure, even if these plans also envision an expansion of access to shippers in the area. Indeed, the Board must recognize that, if it is to expect other carriers in particular to bring investment dollars to the area, it must give those other carriers the opportunity to earn a return on that investment by affording them the opportunity to compete with the UP for the business of shippers in the area.

CONCLUSION

The League respectfully requests the Board to consider the above comments, and to analyze specific requests for remedial conditions submitted by other parties in this proceeding in order to alleviate the significant service and competitive rail transportation problems in the Houston/Gulf Coast area.

Respectfully submitted,

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July 8, 1998

Certificate of Service

I hereby certify that I have this 8th day of July, 1998, served copies of the foregoing Comments and Request for Remedial Conditions on all known parties of record by first-class mail in accordance with the rules of practice.

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July 6, 1998

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

Dear Judge Grossman:

On June 22, we wrote on behalf of Union Pacific Railroad Company ("UP") regarding the status of KCS/Tex Mex's responses to UP's First Set of Requests for the Production of Documents in the above-referenced docket, which were served on May 13, 1998. In that letter, we explained that only a handful of discovery disputes had yet crystallized because KCS/Tex Mex had not yet produced any documents in response to the vast majority of UP's requests, despite promises to do so, and had not yet provided any identification of documents withheld on the basis of privilege claims.

Unfortunately, essentially no progress has been made since our June 22 letter. KCS/Tex Mex have produced no additional documents during the past several weeks and still have not supplied any identification of documents withheld on the basis of privilege. In a letter dated June 24, however, KCS/Tex Mex have confirmed the existence of disputes with regard to several specific UP requests. Accordingly, we are bringing those specific disputes before Your Honor for resolution at a hearing this Thursday, July 9. At that hearing, we also intend to seek an order compelling the completion of KCS/Tex Mex's production of responsive documents and identification of any documents withheld on the basis of privilege claims.

As of this Thursday, KCS/Tex Mex will have filed their supplemental evidentiary submission in support of additional conditions, pursuant to the schedule adopted by the Board in Decision No. 5, served June 1, 1998. UP has only ten weeks to prepare its response. UP therefore urgently needs to begin the process of responding to that submission, and it is entitled to discovery in order to do so. The need for prompt production of documents and identification of privileged documents is magnified by the need to identify any remaining disputes regarding the adequacy of KCS/Tex Mex's production so that they can be brought before Your Honor in time to permit a supplemental production of documents in time for UP to make effective use of them within the Board's procedural schedule. UP therefore asks that Your Honor order KCS/Tex Mex to complete their production of responsive documents, together with an identification of any documents withheld on privileged grounds, by next Friday, July 17, which will be a full nine-and-one-half weeks from when UP's requests were served on KCS/Tex Mex.

Turning to the specific disputes UP is asking Your Honor to resolve, they are as follows:

Request No. 4:

UP's request and KCS/Tex Mex's response were as follows:

> "4. All documents pertaining to the KCS-Tex Mex joint venture relationship, including but not limited to (a) the 'implementing agreements' referred to in the letter from Mr. Haverty to Mr. Krebs dated March 9, 1998; and (b) KCS-Tex Mex divisions agreements.
>
> Subject to the general objections, Tex Mex/KCS responds as follows: Tex Mex/KCS object to this request on the ground that there is no 'KCS-Tex Mex joint venture relationship.' The 'joint venture relationship' is between Kansas City Southern Industries ('KCSI') and Transportacion Maritima Mexicana ('TMM'), and Tex Mex/KCS presume that that is the relationship to which UP intended to refer. Subject to that presumption, Tex Mex responds that it has no responsive documents. Additional responsive documents, if any, will be placed in the Depository."

KCS/Tex Mex's intention to limit these responses to the formal "KCSI-TMM joint venture" was confirmed in a July 24 letter, which explained that Tex Mex and KCS agreed to respond to this requests . . . as if the request correctly reflected the facts (that the request sought information pertaining to the KCSI-TMM joint venture, as it relates to Tex Mex and KCS)." See Letter from Scott M. Zimmerman and Sandra L. Brown to David L. Meyer, June 24, 1998, p. 2 (attached hereto as Exhibit 1).[1/]

KCS/Tex Mex should not be permitted to limit their response solely to the formal "KCSI-TMM" joint venture relationship. Documents relating to that relationship, which involves the joint ownership by KCSI, KCS's parent, and TMM of 100% of the stock of Tex Mex, are certainly called for by this request, but the request is plainly broader. It encompasses the less-formal joint venture relationship between the KCS and Tex Mex railroads with respect to such matters as their joint participation in interline traffic opportunities. KCS/Tex Mex's apparent attempt to deny the existence of any such relationship is bizarre. KCS has presented its rail system to the world as the "NAFTA Railroad," which encompasses both KCS and Tex Mex. At the June 1 hearing before Your Honor, KCS' counsel, Bill Mullins, described Tex Mex's trackage rights as allowing Tex Mex to operate "over Beaumont, Texas, where they connect with us [KCS], their joint venture partner." Tr., pp. 8-9.

The documents sought by this request are of obvious relevance to the issues raised by KCS/Tex Mex in this proceeding. KCS/Tex Mex complain that the conditions granted by the Board in the merger case are inadequate to allow the development of the KCS/Tex Mex route as a competitive alternative for traffic to and from Mexico and Houston, or to preserve the economic viability of Tex Mex. Documents relating to Tex Mex's joint venture relationship with KCS will, inter alia, allow UP to probe the accuracy of KCS/Tex Mex's assertions. For example, such documents may reveal the extent of KCS's commitment to the viability of Tex Mex and to cooperation with Tex Mex in order to compete for traffic opportunities. KCS/Tex Mex have identified no undue burden associated with responding to this request as it was written, and they should be compelled to do so.

[1/] The position taken in KCS/Tex Mex's June 24 letter diverged form that set forth at the June 8 meeting among counsel for UP, KCS and Tex Mex to discuss UP's discovery requests. See Letter from David L. Meyer to Sandra L. Brown and Scott M. Zimmerman, July 6, 1998 (Exhibit 2 hereto).

Requests Nos. 8 & 19:

KCS/Tex Mex's responses and objections to these requests raise the same issue and thus are dealt with together. Request No. 8 and KCS/Tex Mex's response were as follows:

> "8. All documents relating to actual or proposed cooperation between Tex Mex and BNSF for traffic to or from Mexico.
>
> Tex Mex/KCS object to this request on the grounds that it is vague, ambiguous and overbroad. Tex Mex/KCS further object to the request to the extent that it seeks documents pertaining to 'proposed' cooperation on the ground that it is irrelevant in that it pertains to a hypothetical situation which may never occur. With regard to information pertaining to 'actual cooperation,' Tex Mex responds that, subject to a reasonable construction of the term 'cooperation,' documents reflecting 'actual cooperation,' if any, will be placed in the Depository."

Request No. 19 and KCS/Tex Mex's response were as follows:

> "19. KCS business plans relating to traffic handled by Tex Mex or other actual or potential cooperation between Tex Mex and KCS.
>
> Tex Mex/KCS object to this request on the grounds that is vague, ambiguous and overbroad. In addition, Tex Mex/KCS object to the request to the extent it seeks information not limited to this proceeding and Tex Mex/KCS objects to the request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Tex Mex/KCS further object to the request to the extent that it seeks documents pertaining to 'potential' cooperation, on the ground that it is irrelevant, in that it pertains to a hypothetical situation which may never

occur. Subject to these objections and the general objections, Tex Mex/KCS responds as follows: Responsive documents, if any, will be placed in the Depository."

With respect to both of these requests, KCS/Tex Mex have confirmed that they intend to withhold any documents relating to "potential cooperation," which KCS/Tex Mex have explained means cooperative steps that are not the subject of a formal implementation agreement between Tex Mex and BNSF (in the case of Request No. 8), or between Tex Mex and KCS (in the case of Request No. 19). See Letter from David L. Meyer to Sandra L. Brown and Scott M. Zimmerman, June 10, 1998, p. 3 (Exhibit 3 hereto). Such a limitation is wholly unwarranted. Documents discussing or analyzing potential cooperation between Tex Mex and BNSF or KCS are every bit as relevant as those involving "actual" cooperation. Those documents will reveal Tex Mex's plans and expectations, and will also reflect Tex Mex's (and KCS's) own true perceptions of the competitive and economic opportunities presented to Tex Mex by the Board's grant of trackage rights in the merger case. Even if some of those opportunities have not yet been formally agreed upon between Tex Mex and either BNSF or KCS, and thus remain contingent, UP is entitled to discovery of this information. The fact that such cooperative opportunities have been reduced to writing in documents in KCS/Tex Mex's files is itself a strong indication that they do not involve pure "hypothetical" speculation. KCS/Tex Mex's self-imposed limitation would shield from production documents of salient relevance in this case. For example, it would allow KCS/Tex Mex to withhold from production KCS business plans that recount the numerous traffic opportunities and economic benefits likely to be realized by the KCS-Tex Mex "NAFTA Railroad" as a result of the grant of trackage rights to Tex Mex, based on the assertion that all the steps necessary to implement this cooperation had not been formally "agreed to" between Tex Mex and KCS. This position is unsustainable.

Moreover, there is no burden associated with complying with these requests as written. No burdensomeness objection was asserted by KCS/Tex Mex. At a meeting among counsel for UP, KCS, and Tex Mex on June 8, KCS/Tex Mex counsel explained that they would be searching for all documents responsive to those requests, and then subsequently withholding from production those that relate only to "potential" cooperation. See Exhibit 3, p. 3. KCS/Tex Mex's subsequent correspondence stated that they had changed their position on this issue, and would not search for documents relating to "potential" cooperation, but even then acknowledged that they would be willing to supplement their production to the extent any "potential" cooperation subsequently became "actual" cooperation. See Exhibit 1, p. 3.[2] As a result, KCS/Tex Mex have acknowledged that there is no obstacle to their search for and production of all of the documents called for by these requests, other than their own desire to shield this material from review by UP. KCS/Tex Mex should be compelled to produce all non-privileged documents responsive to these requests.

Respectfully submitted,

David L. Meyer

Attorney for Union Pacific Railroad Company

Attachments

cc: Hon. Vernon A. Williams (by hand)
William A. Mullins, Esq. (by hand)
Richard A. Allen, Esq. (by hand)
Erika Z. Jones, Esq. (by hand)

---

[2] The position taken on KCS/Tex Mex's June 24 letter was directly contrary to KCS/Tex Mex's statement at the June 8 meeting among counsel that KCS/Tex Mex would be searching for all such documents, see Exhibit 2 hereto, but that quarrel is inconsequential to Your Honor's resolution of this dispute.

EXHIBIT 1

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June 24, 1998

VIA HAND DELIVERY

David L. Meyer, Esq.
Covington & Burling
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Washington, D.C. 20004-7566

Re: Finance Docket No. 32760 (Sub-No. 26)
Your Letter of June 10, 1998

Dear David:

As we discussed in our letter of June 11, 1998, we write in response to your letter of June 10, 1998. We are in receipt of your letter of June 22, 1998 to Judge Grossman, which necessarily precedes this promised response, and we have copied all the recipients of that letter.

The general sentiment of your letter that Tex Mex and KCS are searching for documents in response to your discovery requests, and will produce responsive documents as set forth in TM-4/KCS-4, is accurate. As you know, Tex Mex and KCS have been producing documents on a rolling basis, and to date have produced more than 7,000 pages of documents, as well as Tex Mex traffic tapes, in response to UP's requests (see index, attached). You are correct, as well, that Tex Mex and KCS have not placed limitations on the document searches, with the exceptions noted below, based upon the general or specific objections set forth in TM-4/KCS-4. We take this opportunity, however, to explain Tex Mex's and KCS's position further, particularly where it differs from UP's as set forth in your letter.

Tex Mex and KCS stand by the general objections set forth in TM-4/KCS-4. As a result, Tex Mex and KCS will not produce, for example, documents subject to the attorney-client privilege, the work product doctrine and/or the joint or common interest privilege (General Objection 1), and will not produce settlement documents (General Objection 2) or drafts of verified statements or other submissions (General Objection 4). The other General Objections not mentioned in the previous statement still apply.

Tex Mex and KCS also stand by the specific objections set forth in TM-4/KCS-4. For example, in response to Request No. 5, Tex Mex and KCS objected to the request on the ground that the request is vague, ambiguous, overbroad and unduly burdensome. That specific objection stands, but as is clearly set forth in TM-4/KCS-4, and as discussed on June 8, Tex Mex and KCS will attempt, within their understanding of the request, to produce responsive documents.

In light of the previous two paragraphs, then, we are sure you will agree that your letter of June 10, 1998 is in error with regard to the statement that the Tex Mex and KCS general and specific "objections will not affect the scope of your search and you will only withhold privileged documents." Although, with the exceptions noted below, the general and specific objections do not affect the scope of the search, Tex Mex and KCS will not be producing documents subject to a proper objection, such as settlement agreements, documents on the public file at the STB or SEC, or documents already in the possession of UP.

In your letter, you also refer to our discussions concerning several specific requests. We are sure that you will agree that the following more closely represents those discussions.

With regard to Request No. 4, you are in error that KCS and Tex Mex will search for "documents pertaining to <u>any</u> KCS-Tex Mex joint venture relationship, including the specific materials referenced in the request, and will produce any that are not privileged." (Emphasis added.) Again, the specific and general objections apply to the Tex Mex/KCS response to this discovery request. Further, Tex Mex and KCS agreed to respond to the request, subject to the general and specific objections, as if the request correctly reflected the facts (that the request sought information pertaining to the KCSI-TMM joint venture, as it relates to Tex Mex and KCS).

With regard to Request No. 7, Tex Mex and KCS again stand by their specific and general objections. Tex Mex and KCS will be producing all responsive documents not covered by those objections, not just train delay reports. You are correct that with regard to the Tex Mex train delay reports, Tex Mex will only be producing reports for delays in the Houston area -- that is, for trains crewed by crews based in Houston, not Laredo.

With regard to Request No. 11, Tex Mex and KCS will respond as set forth in TM-4/KCS-4, including the specific and general objections. The response to Request No. 11 set forth in TM-4/KCS-4 states, in part, that "Additional responsive documents, if any, will be placed in the Depository." Tex Mex and KCS are not taking the position that all communications otherwise responsive to this request are presumptively privileged.

With regard to Request No. 12, Tex Mex and KCS stand by their specific and general objections, including the objection that the request is premature to the extent it inquires as to requested conditions set forth in the anticipated July 8 filing. Tex Mex and KCS are in the process of responding with regard to conditions requested in the March 30 Tex Mex/KCS filing, and will respond after July 8 with regard to conditions requested in the July 8 filing. We have not asked our clients to begin searching for responsive documents regarding conditions that will be requested on July 8 because Tex Mex and KCS are not required to make a final determination regarding the nature and extent of such requested conditions until July 8.

With regard to Request No. 15, Tex Mex and KCS agreed not to withhold any documents based on the specific objections set forth in TM-4/KCS-4.

With regard to Request Nos. 8 and 19, Tex Mex and KCS stand by the specific and general objections, and responses, set forth in TM-4/KCS-4. Tex Mex and KCS are not searching for documents regarding "potential" cooperation. We agree that Tex Mex and KCS are under a duty to supplement responses as set forth in the Board's rules, and that this would cover, for purposes of these two requests, to respond with regard to "cooperation" that at one time was "potential" but which subsequently becomes "actual."

With regard to any documents withheld on the grounds of privilege, to the extent that Tex Mex or KCS identify otherwise responsive documents subject to one or more privileges, we will raise those issues in an appropriate manner with UP as they arise. We understand from you that to date UP has not withheld responsive documents as a result of a privilege, but we expect that when UP identifies otherwise responsive documents subject to one or more privileges, UP will raise that with Tex Mex and KCS as well.

If you have any questions, please call.

Regards,

Scott M. Zimmerman/ave — Sandra L. Brown/ave

Scott M. Zimmerman

for The Texas Mexican
Railway Company

Sandra L. Brown

for The Kansas City Southern
Railway Company

cc: Hon. Vernon A. Williams (by hand)
Hon. Stephen Grossman (by hand)
Erika Z. Jones, Esq. (by hand)
Arvid E. Roach II, Esq. (by hand)
John V. Edwards, Esq.

TM/KCS'S DOCUMENT DEPOSITORY INDEX
For FD No. 32760 (Sub-No. 26)

PUBLIC DOCUMENTS

KCS-1-P-00001-00019	Workpapers of Joseph J. Plaistow
KCS-1-P-00020-00381	Workpapers of Harlan Ritter
KCS-1-P-00382-00393	Workpapers of Paul L. Broussard
KCS-1-P-00394-00395	Workpapers of George C. Woodward
KCS-1-P-00397-00407	Workpapers of David W. Brookings
TM-2-P-00001-05906	Houston train delay reports
TM-4-P-00001-00218	Workpapers of Patrick L. Watts

CONFIDENTIAL DOCUMENTS

KCS-1-CO-00001-00019	Workpapers of Harlan Ritter
KCS-1-CO-00020-00023	Workpapers of Joseph J. Plaistow
KCS-1-CO-00024-00029	Workpapers of George C. Woodward and Michael H. Rogers
KCS-1-CO-00030-00053	Workpapers of David W. Brookings

HIGHLY CONFIDENTIAL DOCUMENTS

KCS-1-HC-00001-00019	Workpapers of George C. Woodward and Michael H. Rogers
KCS-1-HC-00020-00638	Workpapers of Joseph J. Plaistow
TM-3-HC-00001-00002	Tex Mex traffic tapes
TM-3-HC-00003-00004	Field layouts for Tex Mex traffic tapes

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EXHIBIT 2

July 6, 1998

BY FACSIMILE & FIRST CLASS MAIL

Sandra L. Brown, Esq.
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1300 I Street, N.W.
Suite 500 East
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Scott M. Zimmerman, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
Suite 600
888 Seventeenth Street, N.W.
Washington, D.C. 20006-3939

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

Dear Sandra and Scott:

This responds to your joint letter of June 24, 1998. This response has been delayed by my absence from the office during the past week. Although I do not necessarily agree that everything in your letter accurately reflects our discussion on June 8 regarding KCS/Tex Mex's response to UP's first set of discovery, in the interests of avoiding a prolonged letter-writing campaign I will limit my comments to two specific misstatements in your letter.

First, regarding Request No. 4, I stand by the summary of our discussion set forth in my letter of June 10. On June 8, you did say that KCS and Tex Mex would be searching (or had searched) for documents relating to joint ventures between KCS and Tex Mex (not just the formal KCSI-TMM venture referenced in your response and your June 24 letter). Indeed, I specifically pointed out that Bill Mullins had described Tex Mex as KCS's "joint venture partner" at the June 1 hearing before ALJ Grossman. Tr., p. 9. The position set forth in your June 24 letter, therefore, reflects a change from that stated on June 8.

Second, regarding Requests Nos. 8 and 19, your letter of June 24, 1998 stated (at p. 3) that Tex Mex and KCS are "not searching for documents regarding 'potential' cooperation." This is directly contrary to your representations on June 8. During our June 8 discussion, in response to my direct question whether you would be searching for these materials and then withholding them if they related only to "potential" cooperation, you made clear that your search would encompass these materials. The position on this issue set forth in your June 24 letter thus also reflects a change from that stated on June 8.

Sincerely,

David L. Meyer

David L. Meyer

EXHIBIT 3

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June 10, 1998

BY FACSIMILE & FIRST CLASS MAIL

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

Dear Sandra and Scott:

This memorializes our discussion on Monday afternoon, June 8, of KCS/Tex Mex's Responses and Objections to UP's First Requests for the Production of Documents (TM-4/KCS-4).

With regard to several of UP's requests -- including Request Nos. 1, 2, 3, 5, 6, 9, 10, 13, 14, 16, 17, 18, 20, 21, 23, 24, 25 -- you explained that, notwithstanding your general and specific objections, KCS and Tex Mex are searching for all responsive documents and will be producing all such documents that are not privileged. In other words, your objections will not affect the scope of your search and you will only withhold privileged documents. For example:

Request No. 2: You explained that KCS and Tex Mex will be producing all workpapers. You noted that none exist for Larry Fields.

Request No. 3: You explained that your response to this request should have referred to KCS/Tex Mex filings in Ex Parte No. 573, in addition to the March 30 joint filing in this proceeding. Further, you explained that KCS and Tex Mex are searching for all responsive documents other than the materials referred to in your response and will produce any that exist and are not privileged.

Request No. 6: You explained that, even though your response did not indicate that anything would be produced in response to this request, KCS and Tex Mex are searching for all responsive documents and will produce any that are not privileged.

Request No. 23: You explained that KCS and Tex Mex are searching for all responsive documents and will produce any that are not privileged. In particular, you stated that KCS and Tex Mex would not withhold as privileged any responsive studies performed by KCS or Tex Mex businesspeople outside the context of KCS/Tex Mex's preparation of submissions to the Board in this proceeding.

The following memorializes our discussion of UP's other requests:

Request No. 4: You explained that, notwithstanding your response, which denied the existence of a "KCS-Tex Mex joint venture relationship" and referred to the relationship between KCSI and TMM, KCS and Tex Mex have searched or are searching for documents pertaining to any KCS-Tex Mex joint venture relationship, including the specific materials referenced in the request, and will produce any that are not privileged. You stated that Tex Mex has already conducted such a search and has determined that it does not have any implementing agreements, divisions agreements relating to traffic interchanged between Tex Mex and KCS or other responsive documents.

Request No. 7: You explained that you will be producing all non-privileged documents responsive to Request No. 7, not just train delay reports. The only limitation on your production is that, with respect to those responsive documents that are Tex Mex Train Delay Reports, you would only be producing reports for delays in the "Houston area." You agreed to provide a definition of the "Houston area" for this purpose. The Houston-area limitation, however, does not apply to any other documents responsive to this request, which KCS and Tex Mex will be producing (unless privileged).

Request No. 11: You explained that you believe that this request calls for categories of documents that are presumptively privileged. I explained that, whether or not some of the documents within the scope of this request might be privileged, the request also calls for documents that are not privileged, including communications between Tex Mex and KCS businesspeople about the commercial rights -- e.g., access to Booth Yard -- that are the subject of KCS/Tex Mex's condition requests. You agreed to inquire whether KCS or Tex Mex have any responsive documents that are not privileged. You will also inform us of any documents withheld on the basis of a privilege claim, as set forth below.

Request No. 12: You indicated that KCS and Tex Mex are searching for all documents responsive to this request and will be producing any that are not privileged, but will withhold all such documents until July 8, even if the documents relate to conditions that KCS/Tex Mex requested in their joint filing herein on March 30, 1998.

Request No. 15: You indicated that KCS and Tex Mex are searching for all responsive documents relating to KCS/Tex Mex's service to Corpus Christi since the UP/SP merger, and will be producing any that are not privileged. I agreed to limit this request to documents relating to KCS/Tex Mex's service to Corpus Christi.

Request Nos. 8 & 19: You explained that KCS and Tex Mex are searching for all documents responsive to these requests, including documents that pertain to "potential" cooperation. However, KCS and Tex Mex will be producing only those documents that relate to cooperation that has already been agreed to between the parties and will withhold any documents that relate to "potential" cooperation. Thus, for example, if there exists a KCS business plan analyzing the benefits to KCS and Tex Mex of future initiatives between the two railroads to develop Mexican (or other) traffic (which would be responsive to Request No. 19), you will withhold that document from production unless KCS and Tex Mex have already formally agreed to undertake the cooperation.

Request No. 22: You stated that the only responsive documents thus far are BNSF's traffic tapes, which have been supplied to KCS/Tex Mex. I indicated that UP would informally request a copy of these tapes from BNSF directly, and would look to you for a copy only if that effort proves unsuccessful.

With regard to any documents that KCS and Tex Mex withhold on grounds of privilege, you agreed that you would either (1) provide UP with a log identifying the document and the basis on which it was withheld or (2) notify us that you have withheld categories of responsive documents and provide a description of such categories sufficient to allow us to assess (and dispute, if necessary) the appropriateness of the privilege claim.

UP reserves the right to challenge (1) KCS/Tex Mex's refusal to produce all documents responsive to UP's requests, (2) the adequacy of your descriptions of documents withheld on grounds of privilege and the validity of any of KCS's or Tex Mex's privilege claims, and (3), based on our review of the documents produced by KCS/Tex Mex, the adequacy of your search for and/or production of responsive documents.

Sincerely,

David

David L. Meyer

STB FD-32760(SUB26) 6-3-98 I ID-188062

Mac A. Fleming
President

William E. LaRue
Secretary-Treasurer

188062

Brotherhood of Maintenance of Way Employes
Affiliated with the A.F.L.-C.I.O. and C.L.C.

RECEIVED
JUN 3 1998
MAIL MANAGEMENT
STB

June 1, 1998

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

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

Dear Secretary Williams:

Enclosed for filing with the Board are the original and 25 copies of the Brotherhood of Maintenance of Way Employes' (BMWE) notice of intervention in the above proceeding. BMWE intends to participate as a party of record in this proceeding. Also enclosed is a diskette copy of BMWE's pleading in WordPerfect 7 format.

Please stamp the extra enclosed copy as received and return it to me in the enclosed, self-addressed, postage prepaid envelope.

ENTERED
Office of the Secretary
JUN 04 1998
Part of
Public Record

Respectfully submitted,

Donald F. Griffin

Asst. General Counsel

enclosures

cc: M. A. Fleming
W. A. Bon

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26555 Evergreen Rd., Suite 200
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BMWE-1

BEFORE THE SURFACE TRANSPORTATION BOARD

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JUN 9 1998
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STB Finance Docket No. 32760 (Sub-No. 26)

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

HOUSTON/GULF COAST OVERSIGHT

NOTICE OF INTERVENTION

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Attorneys for Brotherhood of
Maintenance of Way Employes

Dated: June 1, 1998

NOTICE OF INTERVENTION

The Brotherhood of Maintenance of Way Employes ("BMWE") respectfully presents notice to the Board, pursuant to its Decision and Order served March 31, 1998, as corrected May 19, 1998, of BMWE's intervention as a party of record in the above proceeding. The BMWE represents, for collective bargaining purposes under the Railway Labor Act, 45 U.S.C. §151, *et seq.*, maintenance of way employees on the nation's Class I railroads, including the Union Pacific Railroad Company, Burlington Northern Santa Fe Railway Company, Kansas City Southern Railroad Company and Texas Mexican Railroad Company.

Service of all decisions of the Board and the other parties' filings should be made upon the following:

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Respectfully submitted,

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