

STB

FD-32760 (SUB26)

8-25-98

J

TD-190740



STATE OF LOUISIANA
HOUSE OF REPRESENTATIVES

190740

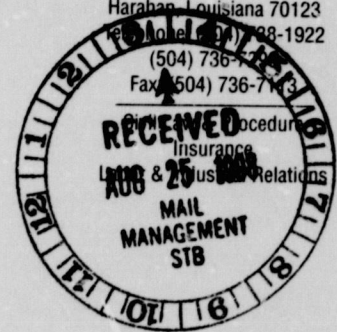
SHIRLEY D. BOWLER
District 78
August 20, 1998

ENTERED
Office of the Secretary

AUG 27 1998

Part of
Public Record

1939 Hickory Ave., Suite 10
Harahan, Louisiana 70123
Telephone (504) 736-7123
(504) 736-7123
Fax (504) 736-7123



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

RE: Houston/Gulf Coast Oversight Proceeding, Finance Docket #32760 (Sub # 26)

Dear Secretary Williams:

Union Pacific made an enormous investment when it acquired Southern Pacific Railroad in 1996. It was entirely appropriate for the Transportation Board to grant temporary access to the company's acquired properties as Union Pacific executed the transition.

I have been informed that Union Pacific, at this time, has completed their transition work in Texas, but the other railroads have pursued changing their temporary access to permanent access, nonetheless.

While there are many factors you must weigh in reaching a decision on this matter, I sincerely request that you give the highest consideration to the following factors: Railroad transportation is a heavily regulated industry. The sale of Southern Pacific to Union Pacific was an approved transaction and a costly investment. Union Pacific's competitors were permitted access to UP's properties during the transition period to maintain acceptable levels of rail service. Temporary access does not create a permanent privilege.

In my humble opinion, it is important that government officials maintain the highest regard for private property rights which are as important to American life today as they were when our country was founded. I sincerely request that you do not sacrifice this basic American principle when you make your decision in this matter.

Your decision in this matter can affect the viability of rail commerce across the entire Gulf Coast. Thank you for your consideration.

Sincerely yours,

Shirley D. Bowler
State Representative

STB FD-32760 (SUB26) 8-25-98 J ID-190739

190739

DEEDEE CORRADINI
MAYOR

SALT LAKE CITY CORPORATION

OFFICE OF THE MAYOR

August 14, 1998

ENTERED
Office of the Secretary

AUG 27 1998

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Public Record



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

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

Dear Secretary Williams:

This letter is to express support for Union Pacific Railroad Company's position before the Surface Transportation Board opposing the requests filed by several interests to impose additional UP/SP merger conditions in the Gulf Coast area. There appears to be no basis to support additional conditions from either a competitive or service standpoint.

When the UP/SP merger was announced there were many in Utah that expressed concern that there might be a loss of rail competition in the State with the loss of the SP as a competitor to UP. These concerns were never realized. The BNSF was granted trackage rights and has been serving rail shippers in Utah on a regular and increasing basis. Utah Railway's trackage rights were also expanded as a condition of the UP/SP merger. Rail competition has not only survived since the UP/SP merger, but has flourished. In part as a result of UP's congestion problems arising in Texas, BNSF has made serious inroads into UP's market share in Utah and elsewhere.

Requests that would further erode UP's traffic base and complicate its operation could seriously jeopardize its recovery efforts at the very time when recovery is complete in most key areas. Granting additional rights over UP's tracks could permanently damage rail competition, not only in Texas, but throughout the west, including Utah. Utah officials repeatedly stated during the merger that it was absolutely essential to the interests of Utah shippers to have strong rail competition in this State. The petitioners' efforts to have the STB impose additional merger conditions could result in a shift in that competitive balance that would be difficult for UP to overcome and leave it in a weakened condition, unable to perform the needed repairs and expansion of SP's infrastructure which had left the SP in a debilitated condition. It would be bad policy to weaken UP at the time it is fighting back from its service problems. Competition and rail service will be served best by a strong UP that can make needed investments and compete effectively with BNSF.

Please consider this letter in support of Union Pacific's position in your deliberations and deny the petitioners' requests for additional conditions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deedee Corradini".

Deedee Corradini
Mayor

STB

FL-32760 (SUB26)

8-25-98

J

ID-190733

Wyoming State Legislature

213 State Capitol / Cheyenne, Wyoming 82002 / Telephone 307 / 777-7881

190733



ENTERED
Office of the Secretary

August 19, 1998

AUG 27 1998

Part of
Public Record

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

SENATOR VINCENT V. PICARD
Senate District 13, Albany County
1402 Steele
Laramie, Wyoming 82070
Committees:
Agriculture, Forestry, and Wildlife
Travel, Recreation, and Culture
and Cultural Resources



FD 32760-SUB 26

Dear Secretary Williams,

It is my understanding that the Surface Transportation Board will commence oversight proceedings to decide whether to impose additional conditions on the Union Pacific/Southern Pacific merger in the Houston and Gulf Coast area. I am writing to urge the Board not to impose additional conditions.

Additional conditions placed on the Union Pacific would severely weaken Union Pacific at a time when it has already suffered extensive financial and traffic losses due to its service crisis over the past year. Any additional conditions placed on the Union Pacific would further hinder Union Pacific's financial position by costing well over half a billion dollars in annual gross revenues. The best way to deal with the problems facing Union Pacific is to let them work their way back. Significant headway has been made by Union Pacific in the past few months. There is no basis from either a competitive or a service-related standpoint to impose additional conditions.

Union Pacific Railroad is an important part of Wyoming's economy. Weakening the Union Pacific's ability to effectively compete and provide service will have negative consequences throughout its system, including Wyoming. Again, I urge the Board not to impose additional conditions. Thank you for your time and consideration.

Sincerely,

Vincent V. Picard
State Senator

STB

FD_-32760 (SUB26)

8-25-98

J

ID-190731



VILLAGE
OF
ELMWOOD
PARK

ENTERED,
Office of the Secretary

AUG 27 1998

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Public Record



OFFICE OF THE VILLAGE PRESIDENT • 11 Conti Parkway • Elmwood Park, IL 60707 • (808) 452-7300

August 18, 1998

PETER N. SILVESTRI
Village President

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

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

Dear Secretary Williams:

As President of the Village of Elmwood Park, a suburban community adjacent to the City of Chicago, good rail transportation and a sound Union Pacific is important to our local economy and provides jobs to many of my constituents.

The financial strength of the Union Pacific is vitally important to our region due to the size of its operation in the area. The Union Pacific Railroad has five rail lines entering the City of Chicago and three major intermodal terminals in the City. In order to keep our industries competitive in the global economy, I am opposed to the proposals to impose new conditions on Union Pacific operations in Texas and the Gulf Coast area.

The U.P.'s service has improved markedly in recent months. This progress should not be hindered by the imposition of new conditions that will harm UP, our communities and others around the country. UP has increased its hiring in the Chicago area, which provides an opportunity to my constituents, as well as the additional industrial base it supports. Chicago is the rail hub of America and I do not want changes made in Texas that will adversely affect Chicago's status and Union Pacific's ability to grow and help our community.

Very truly yours,

Peter N. Silvestri
Village President

cc: Honorable Rod Blagojevich, U. S. Representative, Illinois District 5
Honorable Danny K. Davis, U. S. Representative, Illinois District 7

STB FD 32760 (Sub 26) 8-13-98 J 190516



190516

David L. Owen
Mayor

OFFICE OF THE MAYOR
SOUTH CHICAGO HEIGHTS, ILLINOIS 60411

Phone 708/755-1880
Fax 708/755-1881

August, 1998

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

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

ENTERED
Office of the Secretary

AUG 13 1998

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Public Record



Dear Secretary Williams:

I am David Owen, Mayor of the Village of South Chicago Heights. The District I represent is in the Chicago metropolitan area. Good rail transportation, and a sound Union Pacific, is important to the Chicago region's economy.

The financial strength of the Union Pacific is vitally important to the Chicago region. The Union Pacific Railroad has four major lines entering the Chicago region. The Union Pacific has plans to improve safety and efficiency on these lines. Proposals to impose new conditions on Union Pacific operations in Texas and the Gulf Coast area could result in the delay or cancellation of improvements to these lines. I do not feel my constituents should pay the price. In order to keep Illinois industries competitive in our global economy, I am opposed to the proposals to impose new conditions on Union Pacific operations in Texas and the Gulf Coast area.

The UP's service has improved markedly in recent months. This progress should not be hindered by the imposition of new conditions that will harm UP, our community and others around the country. UP has increased its hiring in the Chicago area, which provides an opportunity to my constituents, as well as the additional industrial base it supports. The Chicago region is the rail hub of America, and I don't want changes made in Texas that will adversely affect the Chicago region's status and UP's ability to grow and help our community.

Sincerely,

David L. Owen
Mayor

STB FD 32760 (Sub 26) 8-12-98 J 190504



TAYLOR FORGE ENGINEERED SYSTEMS, INC.

208 N. Iron • Paola, Kansas 66071
Tel: 913-294-5331 • Fax: 913-294-5337
E-mail: engineered@tfes.com



ENTERED
Office of the Secretary

AUG 13 1998

Part of
Public Record

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



Re: Houston/Gulf Coast Overnight Proceeding
Fincance Docket No. 32760 (Sub-No. 26)

Dear Secretary Williams:

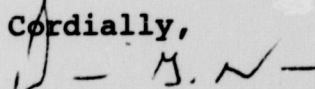
I am Manager of Estimating at Taylor Forge Engineered Systems Inc. in Paola, Kansas. We manufacture large pressure vessels for the petro-chemical industry, among other things.

I get involved in rail transportation issues involving the transportation of pressure vessels all over the country. I was here when the UP took over the MP, and I was very happy with the new rates that they imposed in their UP-3435-D which were about half the MP's rates. The UP's reasonable rates have been instrumental in our success in projects all over the world. They help us compensate for being land locked.

However, the continuation of reasonable rates is dependent upon the financial health of the UP, and I am afraid that if further restrictions are placed on the UP in the Houston-Gulf Coast region that that financial health may be endangered. I believe that the restrictions that the STB placed on the UP/SP merger have worked well, and that no further restrictions are necessary.

I encourage the STB not to burden the UP with further restrictions and to allow it to finish the job of absorbing the SP. Just as I was delighted with the transition from the MP to the UP years ago, I'll bet that many former SP customers will soon be delighted, too!

Cordially,


Dennis G. Norris
Manager of Estimating

STB FD 32760 (Sub 26) 8-11-98 J 190481

190481



"Voice of the Western Slope, since 1953"
A coalition of counties, communities, businesses & individuals

970 / 242-3264 ★ FAX 970 / 245-8300

P.O. Box 550

Grand Junction, Colorado 81502-0550

<http://www.it12.net/club20/>

email: club20@it12.net



August 1, 1998

ENTERED
Office of the Secretary

AUG 12 1998

Part of
Public Record

Mr. Vernon Williams, Secretary
 Surface Transportation Board
 Department of Transportation
 1925 K Street, N.W., Suite 700
 Washington, D.C. 20423

Dear Secretary Williams:

FD 32760 - SUB 26

We are writing to offer the comments of Western Colorado communities on issues related to the UP-SP merger, specifically Union Pacific's progress on implementing the agreements in Western Colorado, and the current STB consideration of new regulatory conditions in Texas.

CLUB 20 represents the communities of Western Colorado, and is in its 46th year as the collective voice of our region. Our members include 20 counties, 75 towns, 41 chambers of commerce, several dozen non-profits and special districts, and hundreds of businesses and individuals concerned about the economic future of the Western Slope. These comments are made on behalf of all those members.

As you may recall, Western Colorado was concerned about the economic impacts of this merger on our communities and on our regional industries. Northwestern Colorado had already lost over 700 jobs in the coal mining industry before the merger, and area leaders were concerned that rumored increases in shipping rates would destroy what remains of that industry in the region. That has not been the case, and coal continues to be shipped from that area by UP, whose rates remain competitive and whose service levels are still increasing. We were also fearful because one of the lines originally proposed for abandonment by SP, south of Grand Junction, provides the only shipping available for coal from the Somerset and Paonia areas. Again, that fear has not been realized and there is no longer any talk of abandonment in those communities. Union Pacific continues to be a positive player in those areas.

The greatest concern in Colorado was related to the abandonment of Tennessee Pass. We had expressed a fear that the vast quantity of construction supplies for this region formerly shipped over the Tennessee Pass line could result in an unacceptable increase in truck traffic on Interstate 70. That has definitely not turned out to be true. In fact, the use of the Moffat line by BN-SF has resulted in greater competition and shipping on that line has continued unabated. In fact, the rapid expansion of BN-SF's presence in Grand Junction has been an extremely positive outcome of the mergers. Numerous employees laid off by SP have been picked up by BN-SF and the community has seen not only continued heavy train traffic, but also positive increases in the employment base.

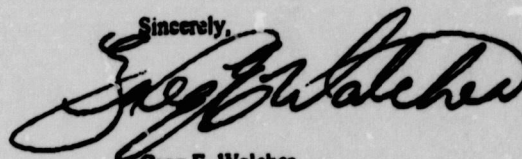
The future potential of some of these rail corridors for passenger service remains a question, and we continue to work with Union Pacific officials on such issues of mutual interest. The company has lived up to its commitments in Western Colorado and has become a positive force in this region. We now understand that because of political pressure from the State of Texas and others, STB is considering new oversight proceedings to determine if additional regulatory measures are needed in Texas and the Gulf Coast region. Such a decision would be much to the disadvantage of Colorado and other western states, and we strongly urge STB not to do so.

August 1, 1998
Surface Transportation Board
Page 2

Union Pacific is already financially and operationally weakened from measures taken to resolve the freight service crisis in that region. Resources needed here and elsewhere were transferred to the south for that reason and this area still needs more service, not less. In fact, over the next few years UP will have to make significant investments in system-wide infrastructure upgrades. The resources for those improvements will need to be generated from a system-wide traffic base. Imposition of additional federal regulatory conditions in Texas will shift much of this burden to shippers in places like Colorado, which is contrary to the national interest. We understand why Texas might push for such a policy, but it is clearly not in the national interest for STB to agree to that. It would be unfair to the rest of the West, and would impede UP's ability to continue to make needed improvements in service and traffic movement. Such future investments are vital to Colorado and other Western States.

We strongly encourage you to consider the overall national interest before imposing further regulatory burdens designed to help one state at the expense of others. We appreciate your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Greg E. Walcher", written in a cursive style.

Greg E. Walcher
President

STB FD 32760 (Sub 26) 8-11-98 J 190480

Brent Overson, Chairman
Salt Lake County
Commission

Mindy Nielsen
Administrative Assistant

ENTERED
Office of the Secretary

AUG 12 1998

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Public Record



SALT LAKE COUNTY
GOVERNMENT CENTER
2001 S. State Street
Suite N2100
Salt Lake City
Utah 84190-1000
Tel (801) 468-3351
Fax (801) 468-3535

August 6, 1998

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

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

Dear Secretary Williams:

This letter is to express support for Union Pacific Railroad Company's position before the Surface Transportation Board opposing the requests filed by several interests to impose additional UP/SP merger conditions in the Gulf Coast area. There appears to be no basis to support additional conditions from either a competitive or service standpoint.

When the UP/SP merger was announced there were many in Utah that expressed concern that there might be a loss of rail competition in the State with the loss of the SP as a competitor to UP. These concerns were never realized. The BNSF was granted trackage rights and has been serving rail shippers in Utah on a regular and increasing basis. Utah Railway's trackage rights were also expanded as a condition of the UP/SP merger. Rail competition has not only survived since the UP/SP merger, but has flourished. In part as a result of UP's congestion problems arising in Texas, BNSF has made serious inroads into UP's market share in Utah and elsewhere.

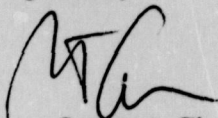
Requests that would further erode UP's traffic base and complicate its operation could seriously jeopardize its recovery efforts at the very time when recovery is complete in most key areas. Granting additional rights over UP's tracks could permanently damage rail competition, not only in Texas, but throughout the west, including Utah. Utah officials repeatedly stated during the merger debate that it was absolutely essential to the interests of Utah shippers to have strong rail competition in this state. The petitioners' efforts to have the STB impose additional merger conditions could result in a shift in that competitive balance that would be difficult for UP to overcome and leave it in a weakened condition, unable to perform the needed repairs and expansion of SP's infrastructure which had left the SP in a debilitated condition. It would be bad

Vernon A. Williams
August 6, 1998
Page 2

policy to weaken UP at the time it is fighting back from its service problems. Competition and rail service will be served best by a strong UP that can make needed investments and compete effectively with BNSF.


Please consider this letter in support of Union Pacific's position in your deliberations and deny the petitioners' requests for additional conditions.

Respectfully,

A handwritten signature in dark ink, appearing to read 'B. Overson', is written above the printed name.

Brent Overson, Chair
Salt Lake County Commission

STB FD 32760 (Sub 26) 8-5-98 J 190402


Rocky Mountain Steel Mills
TRAFFIC/SHIPPING
PO BOX 316
PUEBLO, CO 81002

190402

ENTERED
Office of the Secretary

AUG - 6 1998

Part of
Public Record



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

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

Dear Secretary Williams:

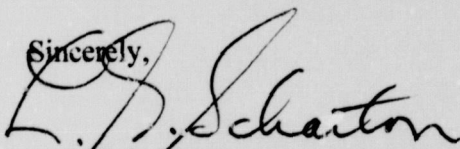
My name is Larry Scharton, and I am the Manager Traffic/Shipping for Rocky Mountain Steel Mills, an Oregon Steel Mills Company doing business at 1612 E. Abriendo Street, Pueblo, Colorado 81004. I am submitting this verified statement in support of The Burlington Northern and Santa Fe Railway Company's (BNSF) request for permanent overhead trackage rights between San Antonio and Laredo, Texas.

RMSM is currently shipping 10 to 12 carloads of Flue Dust per month via Laredo. RMSM does yearly ship over 100 cars via Laredo and some of the other gateways. Laredo because of the destination of shipments would be our primary choice of gateways.

The UP/SP merger and the privatization of Mexico's railroads has resulted in a significant reduction in competition of rail services for our company and other shippers over the Mexican gateways. Because RMSM must rely on rail transportation to and from Mexico, and the fact that the majority of its rail traffic must move via the Laredo gateway due to customers's requirements and final destination of shipments. RMSM has been directly impacted by the lack of competitive service under the conditions the Board imposed in the UP/SP merger proceeding.

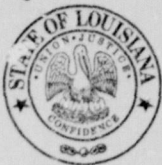
BNSF is hampered from providing RMSM with competitive service over the Laredo gateway for several reasons. First, the congestion problems associated with shipping traffic via BNSF over the Laredo gateway cause us great concern. Our traffic does not need to go through the Houston or Gulf Coast areas. However, since BNSF's only access to the Laredo gateway is by connecting with the Tex Mex via the heavily congested Alcoa-Corpus Christi line, our traffic is subject to considerable delay and congestion. In addition, the reluctance of Tex Mex to enter into any long-term agreement with BNSF prevents BNSF from offering rates competitive to UP.

Sincerely,


L. G. Scharton

LGS

STB FD 32760 (Sub 26) 8-5-98 J 190386

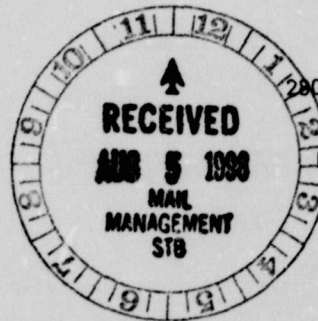


SENATE.
STATE OF LOUISIANA

KEN HOLLIS
State Senator
District 9
Parish of Jefferson

190386

July 31, 1998



2800 Veterans Memorial Blvd.
Suite 365
Metairie, LA 70002
Phone: (504) 828-9300
Fax: (504) 828-9355

COMMITTEES:
Commerce—Chairman
Finance
Judiciary B

Vernon A. Williams, Secretary
Surface Transportation Board
Room 711
1925 K Street, N.W.
Washington, D.C. 2043-0001

ENTERED
Office of the Secretary

AUG 05 1998

Part of
Public Record

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

Dear Mr. Williams,

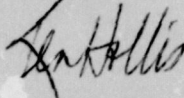
As Chairman of the Senate Commerce Committee I am informed that oversight hearings will be held on the approved Pacific-Southern Pacific merger. It is also my understanding that you have received several filings from Texas interests that could affect Union Pacific's railroad and the viability of operations here.

As the state's largest rail carrier Union Pacific Railroad is a major employer and investor in Louisiana. Recently, the company built a large new railroad yard facility in Louisiana which benefits its Louisiana customers and facilitates car distribution nationwide. I am informed of the operational problems which immediately followed Union Pacific's merger and resulted in service disruptions and rail congestion in our Gulf Coast area; but, it appears that Union Pacific has risen to the challenge and is succeeding. It has taken financial resources, additional employment and capacity improvements of Union Pacific to improve their transportation reliability. Union Pacific has proven it can overcome difficult circumstances and to provide again, dependable service.

The willingness of Union Pacific to invest its capital to support our Louisiana shippers with more efficient transportation services is a testament to their commitment to this state. More investments are planned, but if certain competitor interests are served and special operating rights are granted over Union Pacific lines in Texas, their customer revenues will suffer. This problem, in addition to the recent operating losses Union Pacific has incurred as they resolved their service problems, would only serve to further handicap a recovering company, and certainly wouldn't be in the public interest.

I can see no rationale for creating a new burden for Union Pacific when they have recently produced such positive results. A strong and healthy Union Pacific is good for Louisiana and I urge your opposition to the granting of operating rights to others. This would weaken Union Pacific's ability to restore consistent quality rail transportation in Louisiana. I appreciate this opportunity to express my views to the board in this matter.

Sincerely,

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

Ken Hollis
State Senator

KH:bjm

STB

FD

32760 (Sub 26)

7-29-98

J



NISSAN NORTH AMERICA, INC.

Mailing Address:
P.O. Box 2814
Torrance, CA 90509-2814
Telephone: (310) 768-3700
FAX: (310) 327-2272

July 27, 1998

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

↑
RECEIVED
JUL 29 1998
MAIL
MANAGEMENT
SEC

Dear Secretary Williams:

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

My name is Robert A. Frinier. I am the Vice President, Logistics of Nissan North America, Inc. Our company is located at 990 West 190th Street, Torrance, CA 90502. I am submitting this statement in support of the request of The Burlington Northern and Santa Fe Railway Company for permanent overhead trackage rights between San Antonio and Laredo.

Nissan has a wholly-owned subsidiary located in Aguascalientes, Mexico. That plant manufactures Nissan Sentra passenger vehicles. Production is increasing at that facility and it is expected that production at that plant will eventually be the sole source of Nissan's Sentra passenger vehicles for the United States and Canadian markets. In 1998, Nissan anticipates shipping 1,830 tri-levels from Aguascalientes to destinations in the United States and Canada. Of this total, 1,525 tri-levels will move via Eagle Pass, TX primarily to Smyrna, TN. The Laredo gateway is used on shipments to Jacksonville, FL and to Eastern Canada.

It is anticipated that Nissan will be increasing shipments from Aguascalientes to more destinations in the United States and Canada. We forecast that within a year we will ship over 4,200 tri-levels to points in the United States and Canada. This total is expected to almost double again the following year. With this increased volume, Nissan is evaluating new marketing destinations in the United States. Our company has sought rate quotations for rail transportation services from our plant in Mexico to Seattle, WA, Portland, OR, Albuquerque, NM, Denver, CO, St. Paul, MN and Naperville, IL via both the Laredo and Eagle Pass interchanges.

July 27, 1998

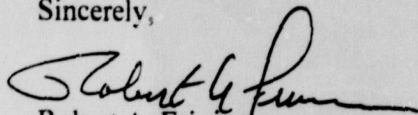
Page 2

Based on our evaluation of our transportation options over the Laredo gateway, we have determined it is more expensive to ship vehicles from Aguascalientes over the Eagle Pass gateway (because it is a longer route to most of our destinations) than it is to ship over Laredo gateway. However, it has also become apparent that BNSF's rail services over the Laredo gateway are not competitive. The BNSF advises that the primary reason for their lack of competitiveness is that they must interchange traffic with the Tex Mex and route such traffic through the longer and currently congested Houston area via UP's Alcoa-Corpus Christi line.

In addition to the outbound rail transportation needs from Mexico, our subsidiary anticipates that it will have a need for auto parts to be shipped inbound to Aguascalientes from the U.S. in order to meet increased vehicle production expectations. Currently, Nissan ships these auto parts via truck from Smyrna, TN to Aguascalientes. We would, however, consider diverting this traffic to intermodal service if sufficient production is realized. Were this to occur, we would have more demand for competitive rail service over the Laredo.

For all of the reasons discussed in this verified statement, it is important to Nissan that there be competitive service both inbound and outbound over the Laredo gateway. However, it appears that under present rights BNSF has under the Board's decision in the UP/SP merger proceeding, BNSF is not able to provide effective competition for us at the Laredo gateway. It is, therefore, Nissan's recommendation that the Board should grant BNSF's request for permanent overhead trackage rights on UP's line between San Antonio and Laredo.

Sincerely,



Robert A. Frinier

Vice President, Logistics

July 27, 1998

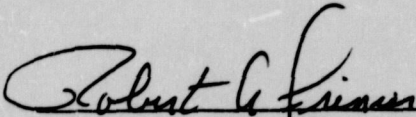
Page 3

VERIFICATION

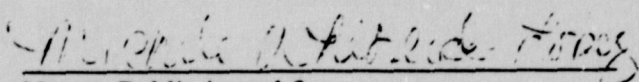
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Robert Frinier, being duly sworn, deposes and says I have read the foregoing statements, know the contents thereof, and that the same are true as stated.


ROBERT A. FRINIER

Subscribed and sworn to before me this 21 day of July, 1998.


Notary Public in and for
the State of California

My Commission Expires: 3/26/2002



STB FD 32760

(Sub 26)

7-29-98

1



NISSAN NORTH AMERICA, INC.

Mailing Address:
P.O. Box 2814
Torrance, CA 90509-2814
Telephone: (310) 768-3700
FAX: (310) 327-2272

July 27, 1998

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



Dear Secretary Williams:

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

My name is Robert A. Frinier. I am the Vice President, Logistics of Nissan North America, Inc. Our company is located at 990 West 190th Street, Torrance, CA 90502. I am submitting this statement in support of the request of The Burlington Northern and Santa Fe Railway Company for permanent overhead trackage rights between San Antonio and Laredo.

Nissan has a wholly-owned subsidiary located in Aguascalientes, Mexico. That plant manufactures Nissan Sentra passenger vehicles. Production is increasing at that facility and it is expected that production at that plant will eventually be the sole source of Nissan's Sentra passenger vehicles for the United States and Canadian markets. In 1998, Nissan anticipates shipping 1,830 tri-levels from Aguascalientes to destinations in the United States and Canada. Of this total, 1,525 tri-levels will move via Eagle Pass, TX primarily to Smyrna, TN. The Laredo gateway is used on shipments to Jacksonville, FL and to Eastern Canada.

It is anticipated that Nissan will be increasing shipments from Aguascalientes to more destinations in the United States and Canada. We forecast that within a year we will ship over 4,200 tri-levels to points in the United States and Canada. This total is expected to almost double again the following year. With this increased volume, Nissan is evaluating new marketing destinations in the United States. Our company has sought rate quotations for rail transportation services from our plant in Mexico to Seattle, WA, Portland, OR, Albuquerque, NM, Denver, CO, St. Paul, MN and Naperville, IL via both the Laredo and Eagle Pass interchanges.

July 27, 1998

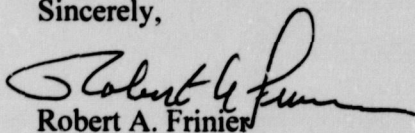
Page 2

Based on our evaluation of our transportation options over the Laredo gateway, we have determined it is more expensive to ship vehicles from Aguascalientes over the Eagle Pass gateway (because it is a longer route to most of our destinations) than it is to ship over Laredo gateway. However, it has also become apparent that BNSF's rail services over the Laredo gateway are not competitive. The BNSF advises that the primary reason for their lack of competitiveness is that they must interchange traffic with the Tex Mex and route such traffic through the longer and currently congested Houston area via UP's Alcoa-Corpus Christi line.

In addition to the outbound rail transportation needs from Mexico, our subsidiary anticipates that it will have a need for auto parts to be shipped inbound to Aguascalientes from the U.S. in order to meet increased vehicle production expectations. Currently, Nissan ships these auto parts via truck from Smyrna, TN to Aguascalientes. We would, however, consider diverting this traffic to intermodal service if sufficient production is realized. Were this to occur, we would have more demand for competitive rail service over the Laredo.

For all of the reasons discussed in this verified statement, it is important to Nissan that there be competitive service both inbound and outbound over the Laredo gateway. However, it appears that under present rights BNSF has under the Board's decision in the UP/SP merger proceeding, BNSF is not able to provide effective competition for us at the Laredo gateway. It is, therefore, Nissan's recommendation that the Board should grant BNSF's request for permanent overhead trackage rights on UP's line between San Antonio and Laredo.

Sincerely,



Robert A. Frinier
Vice President, Logistics

July 27, 1998

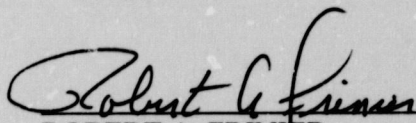
Page 3

VERIFICATION

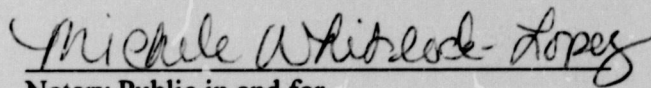
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Robert Frinier, being duly sworn, deposes and says I have read the foregoing statements, know the contents thereof, and that the same are true as stated.


ROBERT A. FRINIER

Subscribed and sworn to before me this 27 day of July, 1998.


Notary Public in and for
the State of California

My Commission Expires: 3/26/02



STB FD 32760 (Sub 26) 7-28-98 J



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



July 28, 1998

VIA FAX

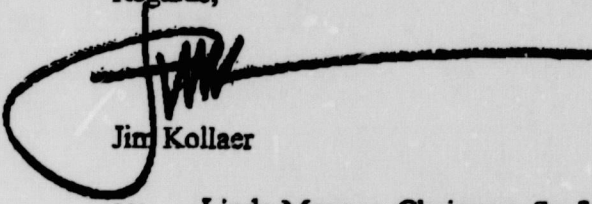
The Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Dear Secretary Williams:

The Greater Houston Partnership expresses its support of the joint petition of The National Industrial Transportation League, Chemical Manufacturers Association and The Society of the Plastics Industry, Inc. calling on the STB to continue the effect of the current emergency service order issued in Service Order No. 1518 as amended, until such time as the STB decides the issues in the Finance Docket No. 32760 (Sub-No. 26).

In its resolution to the STB on July 8, the Partnership Board of Directors asked the STB to allow permanent rights if it is determined that service has improved or can reasonably be expected to improve as a result of the additional service afforded the Houston-Gulf Coast area. As the STB has yet to rule on this or any other related issue in Docket 32760, the Partnership suggests that the most prudent course of action would be to continue the effect of the current emergency service order until such time as the issue is fully resolved.

Regards,



Jim Kollaer

cc: Linda Morgan, Chairman, Surface Transportation Board
Gus Owen, Vice Chairman, Surface Transportation Board
Thomas E. Schick, Counsel for Chemical Manufacturers Association
Nicholas J. DiMichael & Frederic L. Wood, Counsel for The National Industrial Transportation League
Martin W. Bercovici, Counsel for The Society of the Plastics Industry, Inc.
Arvid E. Roach II, Covington & Burling



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

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

Dear Secretary Williams:

My name is Kevin Kaufman. I am Vice President for Louis Dreyfus Corporation. This verified statement is being submitted in support of the request of the Burlington Northern and Santa Fe Railway Company's ("BNSF") request for the Surface Transportation Board to add PTRAs service for the Clinton Branch in Houston.

Our company is in the business of trading and exporting grain and other bulk commodities. Our grain shipments are transported by BNSF and UP to the Houston Public Elevator from various origins in the Midwestern part of the United States.

We are concerned about BNSF's ability to provide timely, reliable and competitive service to the Houston Public Elevator. This is because in order to service the Houston Public Elevator, BNSF must deliver cars to UP's North Yard on the Clinton Branch. UP then delivers these cars to the Houston Public Elevator. Congestion in and around the Houston terminal has hampered service to all grain customers using the Houston Public Elevator.

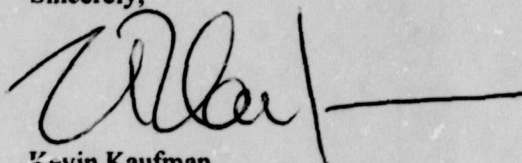
Recent events illustrate the service problems experienced on the Clinton Branch. For example, BNSF was forced to place the Houston Public Elevator under an embargo from September 17, 1997 until December 11, 1997 (totaling 85 days) and again on March 2, 1998 until the present time (120 days). Although grain was allowed in on a permit basis, a significant volume of business was not allowed to ship and was forced to other markets or other elevators. During the same period, the Cargill Houston elevator, served by PTRAs had to be embargoed for 42 days, from October 30, 1997 to December 12, 1997. We believe that service by PTRAs allowed Cargill's elevator to function with much greater efficiency than the Houston Public Elevator.

Grain shippers are harmed financially by these service delays. They are either forced to hold cars on origin demurrage to wait for a permit or must choose to ship to other markets. This may result in higher execution costs and negative trading margins.

BNSF's request provides a possible solution for the service problems that shippers are experiencing. We believe that the PTRa is in the best position to supervise and regulate the flows of traffic on this branch. PTRa should be able to more efficiently supervise the switching of traffic on the Clinton Branch which we would expect to result in more competitive service for the Port of Houston.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 7th day of July, 1998.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kevin Kaufman', followed by a horizontal line extending to the right.

Kevin Kaufman

STB

FD

32760

(Sub 26)

7-28-98

J

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



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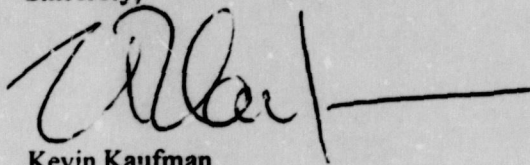
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I certify under penalty of perjury that the foregoing is true and correct. Executed this 7th day of July, 1998.

Sincerely,

A handwritten signature in dark ink, appearing to read 'K Kaufman', followed by a horizontal line extending to the right.

Kevin Kaufman

STB

FD

32760

(Sub 26)

7-28-98

J



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



July 28, 1998

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

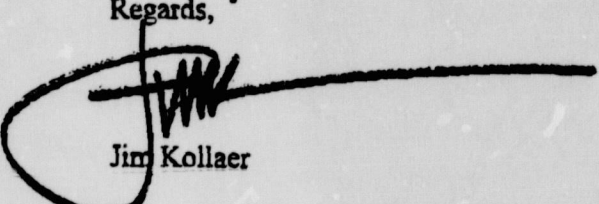
VIA FAX

Dear Secretary Williams:

The Greater Houston Partnership expresses its support of the joint petition of The National Industrial Transportation League, Chemical Manufacturers Association and The Society of the Plastics Industry, Inc. calling on the STB to continue the effect of the current emergency service order issued in Service Order No. 1518 as amended, until such time as the STB decides the issues in the Finance Docket No. 32760 (Sub-No. 2G).

In its resolution to the STB on July 8, the Partnership Board of Directors asked the STB to allow permanent rights if it is determined that service has improved or can reasonably be expected to improve as a result of the additional service afforded the Houston-Gulf Coast area. As the STB has yet to rule on this or any other related issue in Docket 32760, the Partnership suggests that the most prudent course of action would be to continue the effect of the current emergency service order until such time as the issue is fully resolved.

Regards,


Jim Kollaer

cc: Linda Morgan, Chairman, Surface Transportation Board
Gus Owen, Vice Chairman, Surface Transportation Board
Thomas E. Schick, Counsel for Chemical Manufacturers Association
Nicholas J. DiMichael & Frederic L. Wood, Counsel for The National Industrial Transportation League
Martin W. Bercovici, Counsel for The Society of the Plastics Industry, Inc.
Arvid E. Roach II, Covington & Burling

STB FD 32760 (Sub 26) 7-22-98 J



Office of the Chairman

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

FILE IN DOCKET

July 22, 1998

70-32760
(Sub-26)

Mr. Jack Steele
Houston-Galveston Area Council
P.O. Box 22777
3555 Timmons
Houston, TX 77227-2777

Re: Resolution from the Houston-Galveston Area Council

Dear Mr. Steele:

Thank you for your letter transmitting the resolution from the Houston-Galveston Area Council (Council) suggesting that the Board take a variety of actions to address railroad issues in the Houston-Galveston area. Among other things, the resolution would have the Board direct additional neutral dispatching and support neutral switching operations in the Houston area.

As I am sure you know, on April 1, 1998, the Board initiated a proceeding to consider, as part of our oversight of the UP/SP merger, suggestions of the sort that the resolution has raised for how rail services in the Houston-Gulf Coast area should be operated. Some of the proposals that have been filed before the Board request the neutral switching and dispatching that the Council has suggested. Consistent with the time frames suggested by the parties, we will be receiving public comments and responses on the proposals through the middle of October. We will issue a decision in the matter shortly after all of the relevant information has been received and reviewed.

I am aware of the importance of good rail service to our national economy, and I assure you that any decision we reach will be designed to produce the best rail system possible for businesses in Texas and throughout the United States. As our proceeding is a formal, on-the-record adjudication, and I will be serving as an adjudicator, however, it would not be appropriate for me to comment further on the issues that you have raised in your letter, or that the Council has raised in its resolution. I am placing your letter and this reply in the public docket in the Houston oversight proceeding.

I appreciate your interest in this matter. Please do not hesitate to contact me if I can be of assistance in the future.

Sincerely,

Linda J. Morgan
Linda J. Morgan



FILE IN DOCKET

Houston-Galveston Area Council

Office of the Executive Director

PO Box 22777 • 3555 Timmons • Houston, Texas 77227-2777 • 713/627-3200

May 20, 1998

Ms. Linda J. Morgan, Chairman
Surface Transportation Board
The Mercury Building
1925 K Street, N.W.
Washington, DC 20423

RECEIVED
SURFACE TRANSPORTATION
BOARD
MAY 29 5 52 PM '98
OFFICE OF
CHAIRMAN MORGAN

Dear Chairman Morgan:

Enclosed is a resolution from the Houston-Galveston Area Council, the local government association of the Gulf Coast area.

The resolution calls on the Surface Transportation Board to take additional action to resolve the many railroad-related problems in the Houston-Galveston area. While there have been efforts to address freight rail delay issues, these efforts have not been successful.

Freight delays are having a major adverse impact on the area economy. A conservative estimate of economic losses to date would total over \$1 billion.

While we believe there are certain short-term, emergency steps which are mandatory to achieve a basically satisfactory level of service, we also believe that long-term solutions involve a significant level of planning, coordination, and service improvement.

We hope you will give the position of the area's local governments, which is similar to that of most major private sector groups, careful consideration. We would be pleased to meet with you and provide further information on the urgency and severity of railroad problems, in our area.

Thank you for your consideration of these views,

Sincerely,

Jack Steele

JS/mw

Enclosure

cc: Mr. Gus A. Owen, Vice Chairman
Mr. William Clyburn, Jr., Member-Designate





RESOLUTION

A RESOLUTION CALLING ON THE FEDERAL SURFACE TRANSPORTATION BOARD TO EXPEDITIOUSLY RESOLVE HOUSTON-GALVESTON AREA RAILROAD PROBLEMS.

WHEREAS, beginning in the Summer of 1997 and continuing into 1998, problems associated with railroad traffic have had serious detrimental effects on the Houston-Galveston regional economy, the public safety of the citizenry and the quality of life in the community at large; and

WHEREAS, the negative economic impact for Texas has been estimated at \$100 million per month in the cost of freight rail delays and lost production reaching a total of over \$1 billion with no immediate end in sight; and

WHEREAS, the petrochemical industry, located primarily on the Gulf Coast of Texas, has experienced increased monthly costs from service disruption of an estimated \$60 million, totaling \$500 million over the period; and

WHEREAS, the rail congestion in the Houston-Galveston area and the resulting blockage of traffic intersections, which includes the nuisance of idling trains near neighborhoods, poses a significant threat to the public safety, health and welfare of all the citizens of the Houston-Galveston region; and

WHEREAS, rail congestion and shipping delays have had a negative impact on the region's ports--the Port of Houston, the Port of Galveston, Port of Texas City and the Port of Freeport--adversely affecting regional goods movement and the ports' economic competitiveness; and

WHEREAS, it has been estimated that an investment of approximately one billion dollars is needed in railroad infrastructure, locomotives, crews, and capacity in order to ensure the Houston-Galveston region's competitive position as a regional and international economic center; and

WHEREAS, current National Rail Transportation Policy includes expectations to ensure effective competition among rail carriers and the fostering of sound economic conditions in transportation.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSTON-GALVESTON AREA COUNCIL BOARD OF DIRECTORS: That the Federal Surface Transportation Board continue to issue emergency orders as necessary and take the following short term actions to address these concerns:

I.

- Eliminate rail congestion through the immediate implementation of a neutral rail dispatching system for both long haul and short haul lines with original and emergency trackage rights;
- Support the continuance of the neutral switching operation of the Port Terminal Railroad;
- Ensure the immediate adequacy of railroad operating capacity provided by the railroads to move trains expeditiously, in a lawful manner, into, out of, and through the Houston-Galveston region to minimize further economic damage, threats to public safety, and nuisance to neighborhoods;

- Closely monitor the results of the emergency order to determine whether successful provision of the necessary rail service levels in the Houston-Galveston region are being achieved.

II. The Federal Surface Transportation Board take the following long term steps to ensure that the rail system in the Houston-Galveston region can accommodate anticipated industrial and business growth in the area:

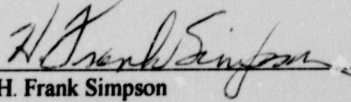
- Mandate a master rail plan for the Houston-Galveston region to address capacities needed for mainline tracks, yard tracks, new yards, overpasses, locomotives, possible cooperative commuter rail lines and take steps to ensure railroad investments are made to implement the master plan over the next three years;
- Mandate that all railroads operating in the Houston-Galveston region work together for the region;
- Work with the railroads to ensure that the rail system in the Houston-Galveston region is designed in a manner that will attract the needed capital for additional rail capacity and will result in an economical and efficient competitive rail system as the region grows;
- Assure that the master plan addresses safety issues including coordination of response with affected local governments in the event of a derailment; and
- Review the issue of rail freight competition in the Houston Gulf Coast area to ensure that adequate incentives for customer service improvements are fostered and maintained during the current rail crisis and in future years as the local economy continues to expand.

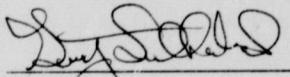
III. That the region's Congressional delegation are respectfully requested to conduct appropriate legislative oversight of the Federal Surface Transportation Board in its responses to concerns expressed in Sections 1 and 2 above.

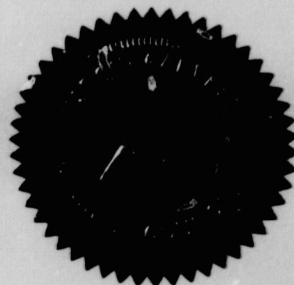
PASSED AND APPROVED this 21st day of April 1998, at a regularly called meeting of the Houston-Galveston Area Council Board of Directors.

ATTEST:

APPROVED:


H. Frank Simpson
H-GAC President
Commissioner, City of Texas City


Guy Sutherland
H-GAC Secretary-Treasurer
Councilman, City of La Porte



Officers and Staff

President
John R. Martin, GA

Vice President
Leif Erik Lange, CA

Secretary
Robert W. Glover, CA

Treasurer
Joseph F. Horning Jr., DC

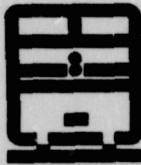
Executive Director
Ross B. Capon

Assistant Director
Scott Leonard

Membership Director
Jane L. Colgrove

Board of Directors

Robert P. Abraham, PA
Stuart N. Adams, WA
Paul D. Arden, IN
George Armet, NY
Frank Barry, NY
Gregory Bender, NJ
George W. Billmyer III, VA
Ronald P. Boardman, Jr., IL
Douglas J. Bowen, NJ
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Dorcas Briggs, CA
Ken Burbach, WI
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Mark D. Carlson, OH
George Chilson, AZ
James R. Churchill, VA
James D. Ciacciarelli, NJ
Wayne E. Davis, ME
John A. Dawson, PA
James A. Dingus Jr., OH
Dino Drudi, DC
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George Gacke, CA
Alan J. Gebauer, MI
Tim Geeslin, TX
Ross M. Goddard, Jr., GA
Kevin J. Gregoire, MA
N. Terry Hall, CT
Susan Hamilton, MA
James Hamre, WA
J. Howard Harding, OH
Paul R. Hart, PA
John Heffner, VA
Lewie M. Hoppe, NY
David O. Jones, CT
Jay Jones, CO
Lawrence T. Joyce, PA
John H. Kirkwood, CA
Richard Kulla, NY
Bob LaPrelle, TX
Edward P. Leight, WI
Robert Lenz, NY
Ernest L. Lester, IA
Daniel B. Lovegren, CA
Dan Lutz, NE
George McCallum, PA
Michael S. McGrath, MO
John A. Mills, KS
Robert W. Moen, MN
Hans S. Mueller, WA
Steven H. Musen, RI
Greg Nazarov, NH
John D. Parkyn, WI
Keith Perry, KY
Arthur Poole, OR
John W. Porco, MD
Robert A. Ramsay, CA
David Randall, IL
Donald P. Robinson, IL
John A. Ross, NY
Stephen J. Salatti, NY
Sharon Shneyer, PA
M. Paul Shore, VA
Richard L. Silver, CA
John S. Smith, Jr., LA
Eugene K. Skoropowski, FL
Jim Stevenson, OH
Donald M. Stewart, Jr., NC
David Tomzik, IL
Stephen von Bonin, DE
Edmund J. Von Nordeck, CA
Mike Weber, OH
William B. Weeks, WA
Jerome Wolff, GA
Alan M. Yorker, GA



900 Second Street, N.E.

Suite 308

Washington, DC

20002-3557

Phone 202-408-8362

Fax 202-408-8287

E-mail narp@narprail.org

Web www.narprail.org

National Association of Railroad Passengers

August 14, 1998

The Honorable Vernon A. Williams,
Secretary
Case Control Unit,
ATTN: STB Finance Docket No. 32760 (Sub-No. 26)
Surface Transportation Board
1925 K St., NW
Washington, DC 02423-0001



RE: 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 Company (HOUSTON/GULF COAST OVERSIGHT]

Dear Secretary Williams:

This is to indicate the intent of the National Association of Railroad Passengers to participate as a party of record. Our representative will be:

Ross B. Capon, Executive Director
National Association of Railroad Passengers
900 Second St., NE, Suite 308
Washington, DC 20002-3557

Enclosed please find 25 copies of this notice of intent to participate and the accompanying Certificate of Service.

Sincerely,

Ross B. Capon
Executive Director

ENTERED
Office of the Secretary

AUG 17 1998

Part of
Public Record

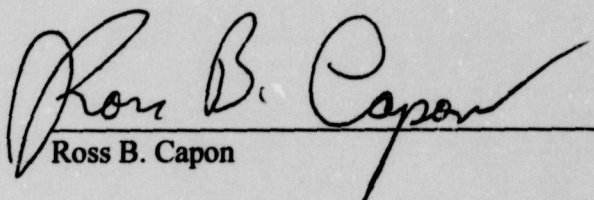
CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of this letter was served on the following persons by United States First Class Mail:

Arvid E. Roach II Esq.
Covington & Burling
1201 Pennsylvania Ave., NW
PO Box 7566
Washington, DC 20044

Administrative Law Judge Stephen Grossman
Federal Energy Regulatory Commission
888 First St., NE, Suite 11F
Washington, DC 20426

Dated: August 14, 1998



Ross B. Capon

STB

FD-32760 (SUB26)

7-20-98

J

ID-190077

190077



July 17, 1998

ENTERED
Office of the Secretary

JUL 22 1998

Part of
Public Record

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

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

Dear Secretary Williams:

My name is Dan Curran, and I am Manager for Distribution and Customer Services for Penford Products. Our company has production facilities located in Cedar Rapids, Iowa as well as Idaho Falls, Idaho and is a manufacturer of specialty starches for the paper industry. Our facility is one of the major employers in the area and has been in business for over 100 years. We have a fleet of approximately 500 rail cars, which moves almost 75% of our finished product.

Penford is currently shipping about 100 boxcars per year of its product from Cedar Rapids to customers in Mexico over the El Paso gateway via the Burlington Northern and Santa Fe Railway Company. Our company is actively looking to expanding its market in Mexico and is concerned about the ability to have efficient and competitive service to all the Mexican gateways and South Texas.

We have been directly impacted by the congestion on UP lines in and around Houston and South Texas. Because of UP's unreliability and erratic transit times, we have had to supplement our rail shipments with truck shipments of raw materials coming out of Freeport, TX.



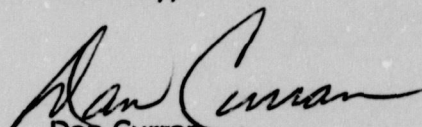
PENFORD
PRODUCTS CO.

Based on our recent problems with rail services, we are supporting the requests of BNSF for: (i) permanent bi-directional overhead trackage rights on UP's Caldwell-Flatonia -San Antonio and Caldwell-Flatonia-Placedo lines; and (ii) overhead trackage rights on UP's San Antonio-Laredo line. It is our position that were the Board to grant BNSF's requests, S.T.B. would help to diminish the congestion on UP in and around Houston and South Texas as well as preserve competition as the Board originally envisioned in its decision approving the UP/SP merger.

If I can be of further assistance in this matter, please contact me directly at 319-298-3248.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Sincerely,


Dan Curran

STB

FD-32760 (SUB26)

7-20-98

J

ID-190076

180076

HONDA

AMERICAN HONDA MOTOR CO., INC.

1919 Torrance Boulevard • Torrance, CA 90501-2746

(310) 783-2000



July 14, 1998

ENTERED
Office of the Secretary

JUL 22 1998

Part of
Public Record

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

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

Dear Secretary Williams:

I am filing this verified statement on behalf of American Honda Motor Co., Inc. (Honda) in support of the request of The Burlington Northern and Santa Fe Railway Company for permanent overhead trackage rights between San Antonio and Laredo. My name is Richard D. Frick, and I am Manager, Automobile Logistics.

Our company headquarters in the United States is located at 1919 Torrance Boulevard, Torrance, California 90501. We also have a wholly owned subsidiary in El Salto, Mexico where we manufacture automobiles, motorcycles and automotive parts. It is expected that production at that facility will be increasing particularly over the next four to five year period and that we will need efficient and competitive rail services, both for inbound and outbound traffic to/from our plant, to and from points in the United States and Canada. We anticipate our needs will include shipping tri-levels and double-stack containers over the gateways of Laredo, Brownsville and Eagle Pass.

We are concerned that BNSF's current rail services over the Laredo gateway are not as competitive as the Board anticipated during the UP/SP merger proceeding because of the delays that often result when BNSF interchanges traffic with the Tex Mex and routes such traffic through the congested Houston area via UP's Alcoa-Corpus Christi line. Were Honda to ship over the Laredo gateway, Honda's traffic would not need to go through the Houston or Gulf Coast areas. However, since BNSF's only access to the Laredo gateway is by connecting with the Tex Mex via the heavily congested Alcoa-Corpus Christi line, our traffic would be unnecessarily subject to considerable delay and congestion with that routing.

Because of Honda's anticipated rail transportation needs to/from Canada and the United States, the Board should evaluate long-term solutions which will ensure efficient and competitive service over the Mexican gateways. Honda is concerned that BNSF's ability to compete vigorously at the Laredo gateway has been impeded in ways not anticipated by the Board in the UP/SP merger proceeding. The lack of a long-term divisional agreement with

Tex-Mex and BNSF's limited trackage rights for Laredo gateway traffic, forcing it through the congested Houston and Gulf Coast areas, are important issues for the Board to evaluate in this proceeding.

In Honda's view, under the current conditions imposed by the Board, BNSF is hampered from providing the competition to UP that SP did in the Houston and Gulf Coast regions. The Board should, therefore, grant BNSF's request for overhead trackage rights on UP's line between San Antonio and Laredo.

Under penalty of perjury, this statement is true and correct to the best of my belief and knowledge.

Sincerely,



Richard D. Frick
Manager Automobile Logistics
AMERICAN HONDA MOTOR CO., INC.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 16th DAY OF JULY, 1998,

BY Oraetta R. Minor

NOTARY PUBLIC



STB FD 32760 (Sub 26) 7-17-98 J



Office of the Chairman

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

FILE IN DOCKET

July 17, 1998

78-32760
(Sub-26)

D.C. Battle, President
Brotherhood of Locomotive Engineers
Division 366
2614 Tyler Lane
Deer Park, TX 77536

Dear President Battle:

Thank you for your letters regarding the rail service problems in the Houston, Texas area. You specifically express concerns about proposals to divest Union Pacific (UP) of former Southern Pacific (SP) lines in that area, and about the negative impact of such proposals on affected employees.

I certainly appreciate your giving me your perspective, and I assure you that we at the Surface Transportation Board (Board) share your concern over the impact on employees of any action the Board may take to help further resolve rail problems in the Houston area. You and your fellow workers are to be commended for the tireless efforts and tremendous sacrifices that you continue to make to help bring an end to the rail service problems on the UP/SP system. The Board has instituted a proceeding at the request of shipper and other rail interests to consider additional conditions to the UP/SP merger for the Houston area, and the Board welcomes your participation and input in that proceeding, which is docketed as STB Finance Docket No. 32760 (Sub-No. 26). Notices of intent to participate in the proceeding must be filed at the Board by August 28, 1998. You may contact the Board's Office of Congressional and Public Services, at (202) 565-1592, for assistance if you wish to participate formally in that proceeding. As a participant, you would receive all Board decisions in the case, including any announcement of hearing dates, if any are scheduled, and procedures for witnesses testifying at those hearings. Because this matter is pending before the Board, it would be inappropriate for me to discuss further the merits of the case.

I appreciate your interest in this matter, and as you have suggested, I hope to personally meet you someday. I will have your letters and my response made a part of the public docket for this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan
Linda J. Morgan

D.C. BATTLE

2614 TYLER LN DEER PARK, TX 77536

FILE IN DOCKET

CERTIFIED MAIL RR Z684427047

June 26, 1998

The Honorable Linda J. Morgan - Chairperson
Surface Transportation Board
Washington D C.

From: D.C. Battle - Engineer - Union Pacific Railroad, Houston Tx

Subject: Possibility of Divestiture of Portions of Houston Hub - Union Pacific and how it
will affect us - the Employee

Dear Madam Chairperson,

I write you this letter from the perspective of an employee of Union Pacific working
at Englewood Yard - Houston, Tx as well as on behalf of the over 230 members comprising
the former SP Lines T&NO Seniority District - Houston Hub Zone 2, comprising of:

Houston-Lafayette, La
Houston-Lavonia, La
Dayton, Mont Belview, Baytown, and Strang, Tx
Englewood Yard - Houston, Tx.

As you can see, my fellow employees and I are right in the center of the one "hot
spot" at Union Pacific that is creating a nightmare - both for UP and your agency. Rumors,
inuendo and rhetoric abound as to what should be done to solve these problems, which,
unfortunately, has placed you in "the middle" so to speak.

We are concerned. We are concerned about what is to become of the Houston Hub as
it currently exists. We are concerned about our future. No doubt you are aware of the
efforts of various groups in the Houston area that are trying to get you and the other
members of the STB to force UP to divest, for practicable purposes, all of the former SP
Lines - Houston - Beaumont, Dayton, Mont Belview and Strang.

Madam Chairperson, there is a lot of misinformation and falsehoods being told to you
and it is time for all of this to stop.

When a business is having difficulty, the "wolves" often come calling. However, in
this case the "wolves" are hiding a much larger agenda - one of "takeover by proxy", that is
- defeat your opponent not by head to head competition but by riding the coattails of others -
in this case, the Texas Railroad Commission, Houston Port Authority, the Chemical Shippers
Association and other shippers only out for a "rate break" at the expense of UP's service

OFFICE OF
CHAIRMAN MORGAN

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problems. Don't you find it ironic that all these entities plus Tex-Mex, KCS, PTR A and BNSF meet privately in Pasadena, Tx without giving UP an opportunity to defend itself? That they call a press conference attacking UP for everything that is practically wrong with America? That they constantly whine to your agency about not being allowed by UP to get their trains through the Houston Terminals?

Please allow me to expose these people for who and what they are - opportunists with a distorted agenda:

1. As an Engineer on the Crest at Englewood Yard - the "birthplace" of problems for UP, we are aware - in a letter sent to you in December, 1997 - of attempts by BNSF to cripple UP by placing an MOFW "window" at Iowa Jct; thus "plugging" the pipe and not allowing UP traffic to flow. Now, as "co-owners" with UP of the former SP Lines - Houston - Lafayette and thanks to joint train dispatching, traffic flows much better now.
2. As a Houston Terminal Pilot, I can personally attest to the fact that UP has given BNSF, KCS, and Tex-Mex absolute priority over its own trains within the greater Houston Area to the point of allowing its own crews to "die" on the hours of service so their trains can move.
3. The two major terminals - Englewood Yard and Settegast are much more "fluid" now than six months ago - as indicated by the improved transit times and reduced "recrew" stats for road crews.
4. These players constantly "inflame" the news media concerning Union Pacific - to the point that one local TV station started boarding UP trains in the Houston Area and conduct interviews in the cab of the locomotive without any authorization from UP; thus placing the train crews and the public's safety at risk. It has come to the point that when the driver of an "18 wheeler" ran around the gates at an intersection recently resulting in a collision with a UP train, the news media reported the instance as follows - "this incident is yet another in a series of crashes for Union Pacific".

Madam Chairperson, please allow me to be blunt about this entire situation. While Union Pacific made many mistakes from the outset almost two years ago concerning the merger with Southern Pacific in the Houston Area, there has been significant progress concerning service to its customers - to the extent that Phillips Petroleum and Dow Chemical Corp have switched significant business from BNSF back to UP.

In addition, KCS and Tex-Mex simply do not have NOT the ability, either in expertise or resources, to have a positive impact on customer service levels in the Houston Area. To grant KCS, Tex-Mex, and PTR A part, all, or a combination of the former SP Lines as described in this letter will do two things:

1. Absolutely devastate the seniority, working conditions, earnings capability, and "Quality of Life" for us - the employees, our spouses, and children. Please hear me when I tell you of the tremendous upheaval in our lives when the merger took place some two years ago. Now, we face the possibility of a disaster of unprecedented proportions if the STB allows either

KCS, Tex-Mex, or the PTR A to take over operations of the former SP Lines they propose to do.

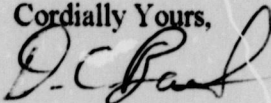
2. Cause customer service to deteriorate way below pre UP-SP merger levels due to direct confrontation of terminal routing between rivals continuously at each other's "throats" over territory.

Madam Chairperson, I ask you to do the right thing. Give the distortion, misinformation, lies, rhetoric, and attempts of corporate sabotage by BNSF, KCS, Tex-Mex, PTR A, the Texas Railroad Commission, the Houston Port Authority, and the various shippers groups involved in this clandestine operation their "just deserts" - NOTHING!

It is not only the fair thing to do - but the right thing as well! I would appreciate the opportunity to testify before your panel to address these as well as any other issues you may wish to discuss.

Thanking you in advance for your time and consideration in these matters, I am

Cordially Yours,

A handwritten signature in dark ink, appearing to read "D.C. Battle", written in a cursive style.

D.C. Battle

Brotherhood of Locomotive Engineers



DIVISION 366

D.C. BATTLE
PRESIDENT

J.W. CLAIBORNE
VICE-PRESIDENT

**REPRESENTING ENGINEERS, HOSTLERS, AND TRAINMEN IN THE HOUSTON
HUB - UNION PACIFIC RAILROAD**

R.J. STUTES - CHAIRMAN, LOCAL COMMITTEE OF ADJUSTMENT

April 14, 1998

Fax 1-202-565-9015

The Honorable Linda J. Morgan - Chairperson
Surface Transportation Board
Washington D.C.

OFFICE OF
CHAIRMAN MORGAN

APR 14 5 23 PM '98

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SURFACE TRANSPORTATION
BOARD

Subject: Request to Testify, at Your Convenience, Before the Surface Transportation Board

Dear Madam Chairperson,

This letter is sent to you from me on behalf of the over 210 members who work at Union Pacific RR Houston Hub Zone 2, comprising of:

Houston-Lafayette, La
Houston-Lavonia, La
Dayton, Mont Belvieu, Baytown, and Strang, Tx
and Zone 5 Englewood Yard - Houston, Tx.

As you can see, we are right in the center of the one "hot spot" at Union Pacific that is creating a nightmare - both for UP and your agency. Rumors, innuendo and rhetoric abound as to what should be done to solve these problems, which, unfortunately, has placed you in "the middle" so to speak.

Because of this scenario, we are concerned. We are concerned about what is to become of the Houston Hub as it currently exists. We are concerned about our future. With this in mind, we respectfully request that myself and R.J. Stutes - Local Chairman, Local Chairman - Division 366 be allowed to testify before you and the rest of the STB at a time of your choosing.

Division 366/STB Testimony - Page 2

Our reasons are clear. The various plans submitted by several state and local entities as well as UP's competitors in the Houston Area will directly affect us in the most adverse manner should the STB take action. Division 366 - BLE represents over 99% of the engineers comprising the former T&NO Seniority District - Houston-Lafayette, Dayton, Mont Belvieu, Strang, and we represent the overwhelming majority of engineers working at Englewood Yard. In addition, we represent hostlers and switchmen/trainmen that work in these areas, so as you can see, any action taken that affects the current makeup of the Houston Hub - UPRR will have a dramatic effect on us - the ones who try to make it all work.

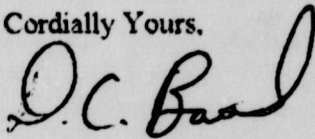
Mr. Stutes and I would like to address your board in order to give you a perspective you are not probably hearing; one from the employee on the "front line" in this "battle" as to who will reign in the Houston Area. No rhetoric, no promises, just facts. In addition, Mr. Stutes and I wish to personally address you and ask the Board to remember, in the area of protection and who is the best qualified to take over operations of the affected areas, the one group of individuals who ARE trying to "make it work" and who will be impacted the most of any divestiture from UP of former SP lines in the Houston area - the members of Division 366, BLE and their families.

Both Mr. Stutes and I would greatly appreciate the opportunity to meet you and I thank you personally for "doing your best in an almost impossible situation."

You may contact me at my 24 hr fax number, 281-476-0078. My home phone number is 281-476-5365. You may contact Mr. Stutes at 281-350-4518 and/or his fax number at 281-678-0062.

Appreciating your consideration of this matter and thanking you in advance for your assistance, I am

Cordially Yours,



D.C. Battle - President, Division 366 - BLE

STB FD 32760 (Sub 26) 7-15-98 J 189901

189701



Division Aceros Tubulares



July 6, 1998

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

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Office of the Secretary

JUL 17 1998

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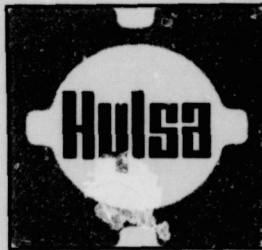
Subject: Docket No. 32760
Sub-No. 26

Hylsa Division Aceros Tubulares serves commercial, industrial and consumer markets with steel pipe products such as: standard pipe for gas and water conduction, conduit pipe for electrical purposes, structural pipe, etc... **Hylsa Division Aceros Tubulares** is currently based in Monterrey, Mexico; it was founded in 1954 and employs over 500 people.

Our traffic department handles about 150,000 Tons/year using several types of freight, and our rail traffic corresponds to approximately 12,000 tons/year or 8% of our total traffic.

The commodities currently shipped into the USA are basically: Square and rectangular structural pipe, conduit pipe and API line pipe (petroleum applications), and the major destinations are: Los Angeles, Cal., Brewster, Ohio, Vancouver, B.C., Calgary, Edmonton, and Winnipeg, Canada.

Lately, or better said since the merger of UP/SP we have experiencing delays in our business towards the USA mainly because of the lack of competitiveness on rail transportation over the Laredo, Tx. / Nuevo Laredo, Tamps. border.



Division Aceros Tubulares



Such delays as we all know have been caused by the improper handling of our shipments as a result of the UP/SP merger to the extension that it is jeopardizing our current international business.

Our company strongly believes that the UP/SP merger has not given us the opportunity of an "alternate competition" on rail transportation services through the mentioned border as the STB envisioned it when approved the UP/SP merger.

Therefore, and for the benefit of the parties involved, we kindly request that the BNSF should be given overhead trackage rights over UP's San Antonio - Laredo line, as well as permanent bi-directional trackage rights on UP's Caldwell - Flatonia - San Antonio as well as Caldwell - Flatonia - Placedo lines which are currently in place on a temporary basis.

We do not think that the BNSF-Tex Mex via Laredo could be considered an option because the congestion along the Alcoa-Corpus Christi route prevents the BNSF-Tex Mex from offering a timely, efficient and reliable service.

We believe that by approving these trackage rights, all parties involved, including the UP/SP will benefit from it since it will allow a more fluid traffic and hardly incur in a congestion as it happened in the previous months; moreover we think that the inclusion of another railroad will enforce both companies to become more efficient as they seek to participate in the market.

Thanking you in advance for your kindly attention to our request, I should remain yours.

Sincerely yours.

Jaime Treviño.

Export Sales Manager.

HYLSA DIVISION ACEROS TUBULARES.

STB

FD-32760 (SUB26)

7-13-98

J

ID-189713

TAMCO



P. O. BOX 325 · RANCHO CUCAMONGA, CA 91739-0325

ENTREPRENEUR
Office of the Secretary

JUL 14 1998

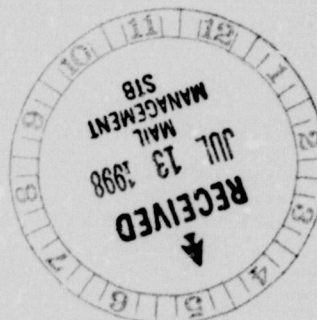
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July 7, 1998

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



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

Dear Secretary Williams:

My name is Luke M. Pietrok, and I am Vice President, Purchasing for TAMCO, located at 12459 Arrow Highway, Rancho Cucamonga, California. I am submitting this verified statement in support of The Burlington Northern and Santa Fe Railway Company's ("BNSF") request for permanent overhead trackage rights between San Antonio and Laredo, Texas.

TAMCO is a steel mill, presently the only existing mill located in the state of California, with melting capabilities. In our manufacturing operations, it is necessary for us to extract the solids from the emissions that are generated in our melting process, in order to meet or exceed the state and federal air standards. These solids are classified as hazardous waste by the EPA, and must be shipped to a qualified recycling facility. We generate approximately 500,000 lbs. per month of waste that is shipped and routed through the Laredo gateway in Texas. It is therefore essential, that we have an efficient railway system in order for us to have a continuity of railcars, and at an economical cost. Being located in the west, we are already at a cost disadvantage when you consider the distance we are required to ship this waste, compared to other steel mills that are located in the Midwest.

The UP/SP merger and the privatization of Mexico's railroads have resulted in a significant reduction in competition of rail services for our company and other shippers over the Mexican gateways. Because TAMCO must rely on rail transportation, and the fact that all of our rail traffic to and from Mexico must move via the Laredo gateway due to this being the only authorized crossing point into Mexico, TAMCO has been directly impacted by the lack of competitive service under the conditions the Board imposed in the UP/SP merger proceeding.



(909) 899-0444



FAX: (909) 899-1310 (ADMINISTRATION)



FAX: (909) 899-4293 (SALES)

July 8, 1998

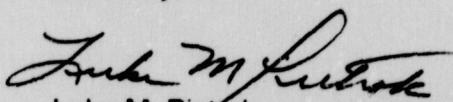
BNSF is hampered from providing TAMCO with competitive service over the Laredo gateway for several reasons. First, the congestion problems associated with shipping traffic via BNSF over the Laredo gateway causes us great concern. Our traffic does not need to go through Houston or Gulf Coast areas. However, since BNSF's only access to the Laredo gateway is by connecting with the Tex Mex Railroad via the heavily congested Algoa-Corpus Christi line, our traffic is subject to considerable delay and congestion. In addition, the reluctance of Tex Mex to enter into any long term agreement with BNSF, prevents BNSF from offering rates that are competitive to UP Rail.

In addition, the privatization of Mexico's railroad system (the FNM) has provided less than anticipated competition within Mexico, preventing shippers from realizing competitive service at the Laredo gateway.

Although UP/SP's service has shown some improvement recently, TAMCO continues to experience delays in service, lack of equipment, increased dwell times, and inefficient routing. If the Board were to grant BNSF's request, it would permit BNSF to provide effective competition for us and other shippers at the Laredo gateway as a replacement for SP, as was anticipated by the Board. It is the only long-term solution to address the service and competition problems that have, and continue to affect inbound and outbound traffic over the Mexican gateway.

Thank you for taking into consideration TAMCO's views on this important issue.

Sincerely,



Luke M. Pietrok.

Vice President, Purchasing

Cc: Patrick LeClaire - BNSF

STB FD 32760 (Sub 26) 7-13-98 J 189701

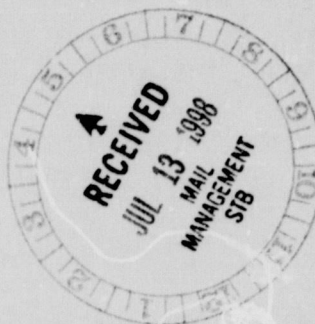
nucor steel

A Division of NUCOR Corporation

Post Office Box 126 Jewett, Texas 75846 Telephone 903/626-4461

189701

July 9, 1998



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

ENTERED
Office of the Secretary

JUL 14 1998

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Public Record

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

Secretary Williams,

My name is Kenneth Huff, and I am the General Manager of Nucor Steel - Texas and a Vice President of Nucor Corporation. I am submitting this statement in support of The Burlington Northern and Santa Fe Railway Company's (BNSF) request for permanent overhead trackage rights between San Antonio and Laredo, Texas.

In 1997, this facility shipped 11,490 tons of K061 (Electric Arc Furnace Dust) for the recycling of zinc and other metals through the Laredo gateway. In addition to this material, we shipped more than 2000 tons of structural steel to customers in Mexico through Laredo, Texas by truck and rail.

The Union Pacific Railroad and Southern Pacific Railroad (UP/SP) merger and the privatization of Mexico's railroads has affected the competition and quality of rail services for our company over the Mexican gateways. Because Nucor Steel - Texas must rely on rail transportation to and from Mexico, and the fact that the majority of its rail traffic is best served through the Laredo gateway (access to end users and the expediting of paperwork through brokers located in Laredo, Texas), we have been directly impacted by service under the conditions the Board imposed in the UP/SP merger proceeding.

In statements from the BNSF, they are hampered from providing Nucor Steel - Texas with the most competitive service possible over the Laredo gateway for several reasons. First, the congestion problems associated with shipping traffic via BNSF over the Laredo gateway are a source of concern. Second, our traffic does not need to go through the Houston or Gulf Coast areas. Since BNSF's

page 2.

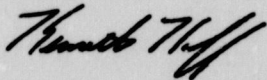
July 9, 1998

Mr. Vernon A. Williams

only access to the Laredo gateway is by connecting with the Tex Mex via the heavily congested Alcoa-Corpus Christi line, our traffic is subject to considerable delay and congestion. Third, the reluctance of Tex Mex to enter into any long term agreement with BNSF prevents BNSF from offering rates competitive to UP/SP. Finally, the privatization of Mexico's railroad system (FNM) has provided less than anticipated competition within Mexico, preventing shippers from realizing competitive service at the Laredo gateway.

If the Board were to consider BNSF's request, it could permit BNSF the opportunity to provide effective and competitive service for us and other shippers at the Laredo gateway. Nucor Corporation has always been a strong supporter and participant in the competitive market. We support any solution that allows Nucor Steel - Texas to provide better service to our customers and to optimize our costs through competitive shipping.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kenneth Huff", with a stylized flourish at the end.

Kenneth Huff
Vice President and General Manager

STB FD 32760 (Sub 26) 7-7-98 J 189298

189298

**PHILLIPS PETROLEUM COMPANY**

BARTLESVILLE, OKLAHOMA 74004

918 661-6600

TRANSPORTATION SERVICES

FD 32760-26 July 1, 1998



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

ENTERED
Office of the Secretary

JUL 08 1998

Part of
Public Record

**RE: Overnight Proceedings To Consider
New Remedial Conditions to UP/SP
Merger for the Houston, TX/Gulf
Coast Region.**

Dear Secretary Williams:

Phillips Petroleum Company has major facilities located in the Texas Gulf Coast region. Specifically, Phillips ships in excess of 10,000 rail cars of plastic resins from its plant located in Pasadena, TX near Houston. Reliable, cost effective rail service must be available in order for this plant to remain economically viable in the face of both foreign and domestic competition.

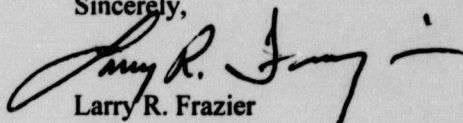
For the past year, rail service for our shipments leaving Houston has been totally unacceptable. Contract service commitments by the Union Pacific (UP) have failed to be met month after month. The Burlington Northern Santa Fe's (BNSF) service has likewise, been below historically expected performance levels. Both carriers are working to remedy the problems, but the fact remains that in the Houston area transit times are unpredictable and storage of loaded cars (S.I.T.) is in disorder. Although, many factors go into a decision to build a major new facility, certainly the out of control rail service on the Gulf Coast played a part in Phillips' recent announcement to build additional plastics resin capacity in Canada, not the U.S.

Some ideas for addressing the Gulf Coast service problems have surfaced in the past few weeks that are interesting and sincere. But, when considering the various ideas, Phillips believes only actions that address true service issues should be entertained by the STB in this proceeding. For this reason, Phillips would offer the following suggestions for remedial action:

1. Lift the restrictions placed on the Tex Mex in STB decision No. 44. This action would allow the Tex Mex/KCS rail infrastructure to become a factor in helping solve the Gulf Coast rail service issues. The present temporary authority (ESO No. 1518) does very little for plastics shippers like Phillips since large amounts of rail storage is needed to handle hopper car inventories. Shippers cannot risk having hundreds of cars stranded at a temporary storage location. Likewise, the Tex Mex/KCS cannot afford to invest capital in major storage facilities when their authority is only temporary. As Mr. Krebs (BNSF) stated in a March news release (#980), "...the problems are caused by insufficient rail capacity that can only be remedied by continued substantial investment in infrastructure." Railway Age (June '98) has quoted the Union Pacific as stating "its whole laundry list of projects would take five years." "Deliveries of rail, which might have required only 30 days a year ago, have stretched to six months or more." Permanent authority will bring the badly needed and already available rail infrastructure of the Tex Mex/KCS to bear on the Gulf Coast rail crisis in a reasonable time frame.
2. The BNSF restrictions on the use of the Dayton, TX storage facility should be lifted. S.I.T. storage in the Houston area is in worse shape than it's been all year. Carriers are arbitrarily storing loaded cars in Louisiana, Arkansas, Oklahoma and Texas, which is causing further service problems for shippers. The restrictions on the use of the Dayton facility by the BNSF does nothing to address the known infrastructure problems on the Gulf Coast.
3. The Port Terminal Railroad (PTRA) in Houston has done a reasonably good job under the circumstances. An expanded Houston neutral switching zone in the Houston area has been proposed by some. Phillips does not support this idea since we see it more closely aligned with pricing issues than service issues. We would encourage the STB to take a conservative stand on this matter so as to not create havoc with the PTRA's current service and to not commingle pricing and service issues.
4. Lastly, we do see merit in having the Tex Mex as a full voting member on the PTRA board as well as restoring the Port of Houston to the board. The economic importance of the PTRA is without question and a balanced board of directors is the right thing to do.

It is clear the status quo is no longer acceptable if the rail service problems are to be corrected soon. All industries are affected and future economic decisions are now factoring in the rail system crisis. A strong commitment by the STB to take the necessary remedial actions is crucial.

Sincerely,



Larry R. Frazier
Manager, Corporate Transportation

LRF:ts

STB

FD-32760 (SUB26)

7-9-98

J

D.M. Rothman Co, Inc.
106-109 Row A
Hunts Point Terminal Market
Bronx, NY 10474

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

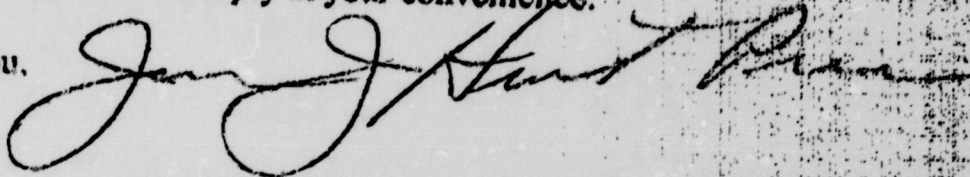
We are filing this communication related to finance docket 32760 (sub-number 26) regarding rail service in the west. The Union Pacific railroad has not been handling our cars properly. We are listing below our cars and average transit times.

| Origin | Car # | Sent-Placed | Transit Days |
|--------|-------------|--------------|--------------|
| Idaho | UPFE 462683 | 6/23 - 7/1 | 8 |
| Idaho | SPFE 459746 | 6/12 - 6/23 | 11 |
| Idaho | VCY 25014 | 5/30 - 6/11 | 12 |
| Idaho | VCY 25020 | 5/16 - 5/28 | 9 |
| Idaho | UPFE 461781 | 4/22 - 5/1 | 9 |
| Idaho | UPFE 457799 | 4/2 - 4/13 | 11 |
| Idaho | UPFE 458573 | 3/18 - 3/30 | 12 |
| Idaho | UPFE 458524 | 3/3 - 3/16 | 13 |
| Idaho | UPFE 461488 | 2/18 - 2/26 | 10 |
| Idaho | UPFE 461908 | 2/4 - 2/13 | 9 |
| Idaho | UPFE 461806 | 1/20 - 2/1 | 13 |
| Idaho | UPFE 463001 | 1/8 - 1/18 | 10 |
| Idaho | UPFE 462936 | 11/19 - 12/2 | 13 |

Please take appropriate action to see that reasonable, efficient and economical service is restored.

We would appreciate a reply at your convenience.

Thank You,



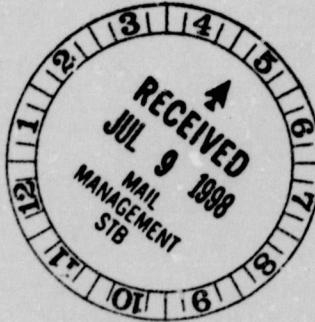
OFFICE OF COMPLAINT
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 9 7 20 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

STB FD 32760 (Sub 26) 7-9-98 J

WEEKLEY PROPERTIES



July 7, 1998

Mr. Eddy Handley
General Manager
Union Pacific Railroad
24125 Aldine-Westfield Road
Spring, Texas 77373

Dear Ed:

Thank you for your speedy resolution of the blockage of San Felipe and Westheimer by Union Pacific trains. It seems as if the solution to stack only one train, rather than two trains, going in to the Englewood Yards will resolve the issue.

Your prompt attention to this problem to Houston commuters is very much appreciated.

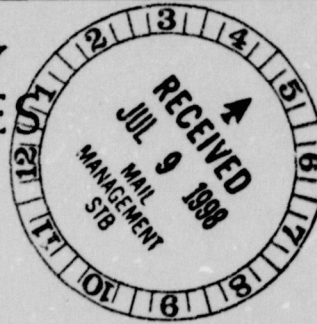
Sincerely,

Richard W. Weekley

RWW/cs

cc: Mr. Jerry King, Director, Public Works Department, City of Houston
Mr. Rob Todd, Houston City Council
Mr. Vernon A. Williams, Secretary, Surface Transportation Board
Ms. Linda Morgan, Chairman, Surface Transportation Board
Mr. Ned Holmes, Chairman, Greater Houston Partnership

WEEKLEY PROPERTIES



June 16, 1998

Mr. Ed Handley
General Manager
Union Pacific Railroad
24125 Aldine-Westfield Road
Spring, Texas 77373

Dear Mr. Handley:

Two days of this week I have tried to cross the railroad tracks at San Felipe just inside Loop 610 and have found the road blocked by a stopped train. I also found the road blocked at the tracks at Westheimer. It is outrageous that your company is unable to keep from blocking major thoroughfares in Houston at any time during the day, but especially at key times of the morning, at noon and at evening rush hour.

I would appreciate a response as to how you propose to eliminate this major congestion for Houston commuters.

Sincerely,

Richard W. Weekley

RWW/cs

Cc: Mr. Jerry King, Director, Public Works Department, City of Houston
Mr. Rob Todd, Houston City Council
Mr. Vernon A. Williams, Secretary, Surface Transportation Board
1925 K Street, NW, Room 711
Washington, D.C. 20423-0001
Ms. Linda Morgan, Chairman, Surface Transportation Board
Washington, D.C.

STB FD 32760

(Sub 26)

7-8-98

J

BALL BROKERAGE COMPANY
PHILIP L. CUTLER BUILDING
600 SOUTH STATE STREET
CLARKS SUMMIT, PA. 18411
PHONE: (717)-586-5700 FAX: (717)-586-5858

FACSIMILE TRANSMISSION SHEETDATE: 7-8-98

TIME: _____

TO: SURFACE TRANS. BOARD
(COMPANY NAME)202-565-9011

(FAX NUMBER)

VERNON WILLIAMS

(ATTENTION)

MESSAGE: CAN YOU HELP US!?2 - PAGES, EXCLUDING COVER SHEET.OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 12 00 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

FROM: HARRIS CUTLER AND STAFF.

** PLEASE INFORM US IMMEDIATELY IF YOU DO NOT RECEIVE FAX IN FULL.

TROUBLE CAR SHEET**Car Number: VCY 26013****Ship Date: 6/24/98****Buyer: MORRIS OKUN****Shipper: PINTO CREEK****Ball #: 23128****UP-DATE:**

6/25 ARRIVED MESA, AZ 4:00 PM - SHARON PUT A LOG ON THIS CAR.
6/29 STEVE SAID THIS CAR IS TO PULL TODAY! WE WILL CALL THIS AFTERNOON FOR AN UP-DATE!
6/25 CAR BAD ORDERED IN RITTENHOUSE, AZ 4:00 PM. (MECH. REFRIGERATION)
6/26 CAR OKAY-BAD ORDERED
6/30 ROGER GRANT, THE YARD MASTER AT PHOENIX, SAID THIS CAR WILL PULL TODAY. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE ON THIS CAR!!
6/30 RECEIVED IN MCQUEEN, AZ 3:00 PM - ETD 7/1 AM - TO CR 7/3 AM
7/2 CAR IN MCQUEEN, AZ - ETD 7/2 AM - TO CR 7/10 AM
7/6 ARRIVED TUCSON, AZ 7:30 AM - ETD 7/6 3 PM- TO CR 7/10 AM
7/6 BAD ORDERED IN TUCSON, AZ 12:16 PM (MECH. REFRIGERATION)
7/7 CAR BAD ORDERED IN TUCSON, AZ (MECH. REFRIGERATION)
7/7 PLACED ON REPAIR TRACK 4:10 AM. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE!

7/8 CAR PLACED ON REPAIR TRACK IN TUCSON, AZ 2:43 AM
WE WILL CALL THIS AFTERNOON FOR AN UP-DATE!

RR CONTACTS:

SHARON @ UP 800-243-3228
STEVE KNOTT 402-271-3376

STEVE KNOTT 402-271-3376
SHARON @ UP 800-243-3228

SHARON @ UP 800-243-3228
SHARON @ UP 800-243-3228
SHARON @ UP 800-243-3228
SHARON @ UP 800-243-3228

SHARON @ UP 800-243-3228

SHARON @ UP 800-243-3228

CC: † UNION PACIFIC**† GARY GUNNELS (800-827-3036) PROBLEM LOG #100****† THOM WOLLARD (FAX 402-271-6971)***Call me right now*

**WE SUGGEST A U.S.D.A. INSPECTION BE TAKEN ON THIS CAR WHEN IT PLACES
A CLAIM CANNOT BE FILED WITHOUT ONE**

TROUBLE CAR SHEET

Car Number: UPFE 461561

Buyer: MORRIS OKUN

Ship Date: 6/22/98

Shipper: PINTO CREEK

Ball #: 23127

UP-DATE:**RR CONTACTS:**

6/26 ARRIVED TUCSON, AZ 9:00 AM. SHARON PUT A LOG ON THIS CAR. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! SHARON @ UP 800-243-3228

6/29 DEBBIE AT PROBLEM RESOLUTIONS SAID THIS CAR IS CALLED FOR 8 AM TOMORROW MORNING. WE WILL CHECK ON THIS CAR TOMORROW MORNING! SHARON @ UP 800-243-3228

6/29 ARRIVED TUCSON, AZ 1:00 PM. THE COMPUTERS WERE GIVING ERRORS IN THE RECORDS THAT WE RECEIVED THE LAST FEW DAYS. THIS CAR DOES HAVE A PROBLEM LOG ON IT. NO ETD AT THIS TIME. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! STEVE KNOTT @ 402-271-3376

6/30 RECEIVED IN INTERCHANGE IN TUCSON, AZ 3:00 PM - ETD 7/2 9 AM SHARON @ UP 800-243-3228

7/2 CAR IN TUCSON, AZ. ETD 7/3 12 PM - TO CR 7/6 AM SHARON @ UP 800-243-3228

SHARON UP-DATED THE LOG ON THIS CAR. STEVE SAID HE IS GOING TO UP-DATE THIS LOG HIMSELF TO GIVE AN EXTRA PUSH. STEVE IS GOING TO CONTINUE TO WATCH THIS CAR FOR US! HE IS GOING TO SEND A NOTE TO THE MECH. DEPT. ALSO! WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! STEVE KNOTT

7/6 ARRIVED ARMOURDAL, KS 6:30 PM - ETD 7/7 7 PM - TO CR 7/8 AM SHARON @ UP 800-243-3228

7/7 CAR IN ARMOURDAL, KS - ETD 7/9 7 PM - TO CR 7/10 AM. SHARON SAID THIS TRAIN DOES NOT RUN WEDNESDAY. SHE UP-DATED THIS LOG. ASKING FOR A QUICKER DEPARTURE. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! SHARON @ UP 800-243-3228

7/8 CAR IN ARMOURDAL, KS - ETD 7/9 7 PM. SHARON SAID THIS TRAIN RUNS SUN, TUE, & THURS. THIS CAR WASN'T SWITCHED IN TIME TO MAKE THE TUESDAY NIGHT TRAIN. THERE IS A LOG ON THIS CAR. SHARON IS WATCHING IT FOR US. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! SHARON @ UP 800-243-3228

CC: UNION PACIFIC

GARY GUNNELS (800-527-3036) PROBLEM LOG #107

THOM WOLLARD (FAX 402-271-6971)

Call me right now

WE SUGGEST A U.S.D.A. INSPECTION BE TAKEN ON THIS CAR WHEN IT PLACES
 A CLAIM CANNOT BE FILED WITHOUT ONE

STB FD 32760 (Sub 26)

7-8-98

J

Joseph Fierman and Son, Inc.
247 - 252 Hunts Point Terminal Market
Bronx, NY 10474

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 11 58 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

Dear Mr. Williams,

We are filing this communication related to finance docket 32760 (sub-number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars properly. We are listing below our cars and average transit times.

| <u>Shipper</u> | <u>Car #</u> | <u>Sent-Placed</u> | <u>Transit Days</u> |
|----------------|--------------|--------------------|---------------------|
| Idaho | SPFE 457043 | 6/16 - 6/26 | 10 |
| Idaho | SPFE 459605 | 6/8 - 6/17 | 9 |
| Idaho | VCY 25038 | 6/3 - 6/12 | 9 |
| Idaho | UPFE 467047 | 5/21 - 6/2 | 12 |
| Idaho | SPFE 459678 | 5/11 - 5/24 | 14 |
| Idaho | SPFE 461815 | 5/14 - 5/26 | 12 |
| Idaho | UPFE 455737 | 5/6 - 5/17 | 11 |
| Idaho | UPFE 463183 | 4/21 - 5/5 | 14 |
| Idaho | UPFE 463114 | 4/16 - 4/27 | 11 |
| Idaho | UPFE 458209 | 4/6 - 4/19 | 14 |
| Idaho | SPFE 459825 | 4/1 - 4/13 | 12 |
| Idaho | UPFE 462136 | 3/20 - 3/30 | 10 |
| Idaho | UPFE 466035 | 3/17 - 3/30 | 13 |
| Idaho | UPFE 457901 | 3/12 - 3/27 | 15 |
| Idaho | UPFE 462864 | 3/3 - 3/16 | 13 |
| Idaho | UPFE 12874 | 2/27 - 3/8 | 9 |
| Idaho | UPFE 462217 | 2/17 - 2/26 | 9 |
| Idaho | SPFE 459620 | 2/6 - 2/17 | 11 |
| Idaho | UPFE 455687 | 2/2 - 2/11 | 9 |
| Idaho | UPFE 463009 | 1/27 - 2/6 | 10 |
| Idaho | UPFE 455647 | 1/16 - 1/25 | 9 |

Joseph Fierman and Son, Inc.
247 - 252 Hunts Point Terminal Market
Bronx, NY 10474

| | | | |
|---------|-------------|---------------|----|
| ARIZONA | UPFE 457987 | 6/10 - 7/2- | 22 |
| Idaho | VCY 25022 | 1/6 - 1/15 | 9 |
| Idaho | UPFE 462823 | 12/10 - 12/20 | 10 |
| Idaho | UPFE 458432 | 11/18 - 12/1 | 13 |
| Idaho | UPFE 466255 | 11/13 - 11/26 | 13 |
| ARIZONA | UPFE 12732 | 5/11 - 6/11 | 31 |
| ARIZONA | SPFE 458725 | 5/19 - 6/18 | 30 |

Please take appropriate action to see that reasonable, efficient
and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

Jul 8 11 58 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

STB FD 32760

(Sub 26)

7-8-98

J

Gold Ribbon Potato Company
PO Box 178
Arvin, CA 93203

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket 32760 (sub-number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars properly. We are listing below our cars and average transit times.

| Destination | Car # | Sent-Placed | Transit Days |
|------------------|-------------|-------------|--------------|
| Chicago, IL | UPFE 481535 | 6/1 - 6/19 | 18 |
| Chicago, IL | UPFE 462191 | 6/5 - 6/16 | 11 |
| Philadelphia, PA | UPFE 466309 | 6/2 - 6/26 | 24 |
| Philadelphia, PA | UPFE 462920 | 6/2 - 6/22 | 20 |
| Philadelphia, PA | UPFE 461886 | 5/28 - 6/13 | 16 |

Please take appropriate action to see that reasonable, efficient and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 3 34 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

STB FD 32760

(Sub 26)

7-8-98

J

1518

Mid-State Fresh
203 E Terrace Drive
Plant City, FL 33565-9015

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 12 46 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

July 8, 1998

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket 32760 (sub-number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars properly. We are listing below our cars and average transit times.

| <u>Origin</u> | <u>Car #</u> | <u>Sent-Placed</u> | <u>Transit Days</u> |
|---------------|--------------|--------------------|---------------------|
| Idaho | SPFE 458784 | 6/17 - 7/1 | 14 |
| Idaho | UPFE 481673 | 8/10 - 8/23 | 13 |
| Idaho | UPFE 484252 | 6/3 - 6/15 | 12 |
| Idaho | UPFE 467138 | 5/28 - 6/12 | 15 |
| Idaho | SPFE 457424 | 5/15 - 5/28 | 13 |
| Idaho | SPFE 459589 | 5/8 - 5/22 | 18 |
| Idaho | UPFE 461053 | 4/24 - 5/8 | 14 |
| Idaho | SPFE 459831 | 4/2 - 4/14 | 12 |
| Idaho | UPFE 466166 | 3/13 - 3/30 | 17 |
| Idaho | UPFE 464219 | 3/10 - 3/26 | 18 |
| Idaho | SPFE 458742 | 2/18 - 3/4 | 14 |

Please take appropriate action to see that reasonable, efficient and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.

STB FD 32760 (Sub 26) 7-8-98 J

G&T Terminal Packaging Company, Inc.
266-268 Row B
Hunts Point Terminal Market
Bronx, NY 10474

JUL 8 1998

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket
32760 (sub number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars
properly. We are listing below our cars and average transit times.

| <u>Origin</u> | <u>Car #</u> | <u>Sent-Placed</u> | <u>Transit Days</u> |
|---------------|--------------|--------------------|---------------------|
| California | UPFE 481125 | 8/10 - 8/28 | 18 |
| Idaho | SPFE 458793 | 2/17 - 3/13 | 24 |
| Idaho | UPFE 12803 | 2/17 - 2/26 | 9 |
| Idaho | UPFE 455281 | 12/23 - 1/5 | 13 |
| Idaho | UPFE 462878 | 12/22 - 1/5 | 14 |
| East Idaho | UPFE 484313 | 12/29 - 1/7 | 9 |
| Idaho | SPFE 457228 | 12/23 - 1/5 | 13 |
| East Idaho | VCY 25304 | 12/17 - 1/7 | 21 |
| East Idaho | UPFE 455511 | 12/15 - 12/30 | 15 |

Please take appropriate action to see that reasonable, efficient
and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.

Anthony Spindale

DIRECTOR'S OFFICE
AND ENFORCEMENT
OFFICE OF COMPLIANCE

JUL 8 11 58 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

STB FD 32760

(Sub 26)

7-8-98

J

G&P Fresh
5881 Court Street Road
PO Box 670
Syracuse, NY 13206

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket
32760 (sub-number 26) regarding rail service in the west.

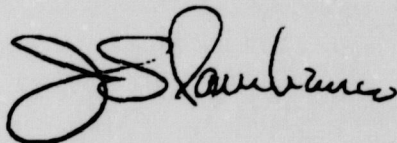
The Union Pacific railroad has not been handling our cars
properly. We are listing below our cars and average transit times.

| <u>Shipper</u> | <u>Car #</u> | <u>Sent-Placed</u> | <u>Transit Days</u> |
|----------------|--------------|--------------------|---------------------|
| California | SPFE 459640 | 6/11 - 6/29 | 18 |
| Idaho | UPFE 455632 | 3/9 - 3/23 | 14 |
| Idaho | UPFE 482098 | 2/18 - 2/27 | 9 |
| Idaho | SPFE 458765 | 1/22 - 2/2 | 11 |
| Idaho | SPFE 457331 | 1/21 - 2/2 | 12 |

Please take appropriate action to see that reasonable, efficient
and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.



OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 11 58 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

STB FD-32760 (SUB26)

7-8-98

J

BALL BROKERAGE COMPANY
PHILIP L. CUTLER BUILDING
600 SOUTH STATE STREET
CLARKS SUMMIT, PA. 18411
PHONE: (717)-586-5700 FAX: (717)-586-5858

FACSIMILE TRANSMISSION SHEETDATE: 7-8-98

TIME: _____

TO: SURFACE TRANS. BOARD
(COMPANY NAME)202-565-9011

(FAX NUMBER)

VERNON WILLIAMS

(ATTENTION)

MESSAGE: CAN YOU HELP US!?2 - PAGES, EXCLUDING COVER SHEET.OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 12 00 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

FROM: HARRIS CUTLER AND STAFF.

** PLEASE INFORM US IMMEDIATELY IF YOU DO NOT RECEIVE FAX IN FULL.

TROUBLE CAR SHEET**Car Number:** VCY 28013**Buyer:** MORRIS OKUN**Ship Date:** 6/24/98**Shipper:** PINTO CREEK**Ball #:** 23128**UP-DATE:**

6/28 ARRIVED MESA, AZ 4:00 PM - SHARON PUT A LOG ON THIS CAR
6/29 STEVE SAID THIS CAR IS TO PULL TODAY! WE WILL CALL THIS AFTERNOON FOR AN UP-DATE!
6/28 CAR BAD ORDERED IN BITTENHOUSE, AZ 4:00 PM. (MECH. REFRIGERATION)
6/26 CAR OKAY-BAD ORDERED
6/30 ROGER GRANT, THE YARD MASTER AT PHOENIX, SAID THIS CAR WILL PULL TODAY. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE ON THIS CAR!!
6/30 RECEIVED IN MCQUEEN, AZ 3:00 PM - ETD 7/1 AM - TO CR 7/8 AM
7/2 CAR IN MCQUEEN, AZ - ETD 7/2 AM - TO CR 7/10 AM
7/8 ARRIVED TUCSON, AZ 7:30 AM - ETD 7/6 3 PM- TO CR 7/10 AM
7/6 BAD ORDERED IN TUCSON, AZ 12:16 PM (MECH. REFRIGERATION)
7/7 CAR BAD ORDERED IN TUCSON, AZ. (MECH. REFRIGERATION)
7/7 PLACED ON REPAIR TRACK 4:10 AM. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE!

RR CONTACTS:

SHARON @ UP 800-243-3228
STEVE KNOTT 402-271-3376

STEVE KNOTT 402-271-3376
SHARON @ UP 800-243-3228

SHARON @ UP 800-243-3228
SHARON @ UP 800-243-3228
SHARON @ UP 800-243-3228
SHARON @ UP 800-243-3228

SHARON @ UP 800-243-3228

7/8 CAR PLACED ON REPAIR TRACK IN TUCSON, AZ 8:43 AM
WE WILL CALL THIS AFTERNOON FOR AN UP-DATE!

SHARON @ UP 800-243-3228

CC: † UNION PACIFIC

† GARY GUNNELS (800-827-3036) PROBLEM LOG #100

† THOM WOLLARD (FAX 402-271-6971)

Call me right now

WE SUGGEST A U.S.D.A. INSPECTION BE TAKEN ON THIS CAR WHEN IT PLACES
A CLAIM CANNOT BE FILED WITHOUT ONE

TROUBLE CAR SHEET

Car Number: UPFE 461561

Buyer: ⁷ MORRIS OKUN

Ship Date: 6/22/98

Shipper: PINTO CREEK

Ball #: 23127

UP-DATE:**RR CONTACTS:**

| | | |
|------|--|--|
| 6/26 | ARRIVED TUCSON, AZ 9:00 AM. SHARON PUT A LOG ON THIS CAR. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! | SHARON @ UP 800-243-3228 |
| 6/29 | DEBBIE AT PROBLEM RESOLUTIONS SAID THIS CAR IS CALLED FOR 6 AM TOMORROW MORNING. WE'LL CHECK ON THIS CAR TOMORROW MORNING! | SHARON @ UP 800-243-3228 |
| 6/29 | ARRIVED TUCSON, AZ 1:00 PM. THE COMPUTERS WERE GIVING ERRORS IN THE RECORDS THAT WE RECEIVED THE LAST FEW DAYS. THIS CAR DOES HAVE A PROBLEM LOG ON IT. NO ETD AT THIS TIME. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! | STEVE KNOTT @ 402-271-3376 SHARON @ UP 800-243-3228 |
| 6/30 | RECEIVED IN INTERCHANGE IN TUCSON, AZ 3:00 PM - ETD 7/2 9 AM | SHARON @ UP 800-243-3228 |
| 7/2 | CAR IN TUCSON, AZ. ETD 7/3 12 PM - TO CR 7/6 AM SHARON UP-DATED THE LOG ON THIS CAR. STEVE SAID HE IS GOING TO UP-DATE THIS LOG HIMSELF TO GIVE AN EXTRA PUSH. STEVE IS GOING TO CONTINUE TO WATCH THIS CAR FOR US! HE IS GOING TO SEND A NOTE TO THE MECH. DEPT. ALSO! WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! | SHARON @ UP 800-243-3228 STEVE KNOTT |
| 7/5 | ARRIVED ARMOURDAL, KS 6:30 PM - ETD 7/7 7 PM - TO CR 7/8 AM | SHARON @ UP 800-243-3228 |
| 7/7 | CAR IN ARMOURDAL, KS - ETD 7/9 7 PM - TO CR 7/10 AM. SHARON SAID THIS TRAIN DOES NOT RUN WEDNESDAY. SHE UP-DATED THIS LOG, ASKING FOR A QUICKER DEPARTURE. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! | SHARON @ UP 800-243-3228 |
| 7/8 | CAR IN ARMOURDAL, KS - ETD 7/9 7 PM. SHARON SAID THIS TRAIN RUNS SUN, TUES, & THURS. THIS CAR WASN'T SWITCHED IN TIME TO MAKE THE TUESDAY NIGHT TRAIN. THERE IS A LOG ON THIS CAR. SHARON IS WATCHING IT FOR US. WE WILL CALL THIS AFTERNOON FOR AN UP-DATE! | SHARON @ UP 800-243-3228 |

CC: ⁷ UNION PACIFIC⁷ GARY GUNNELS (800-827-3036) PROBLEM LOG #107⁷ THOM WOLLARD (FAX 402-271-6971)*Call me right now*

WE SUGGEST A U.S.D.A. INSPECTION BE TAKEN ON THIS CAR WHEN IT PLACES
 A CLAIM CANNOT BE FILED WITHOUT ONE

STB

FD-32760 (SUB26)

7-8-98

J

Joseph Fierman and Son, Inc.
247 - 252 Hunts Point Terminal Market
Bronx, NY 10474

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 11 58 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

Dear Mr. Williams,

We are filing this communication related to finance docket
32760 (sub-number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars
properly. We are listing below our cars and average transit times.

| <u>Shipper</u> | <u>Car #</u> | <u>Sent-Placed</u> | <u>Transit Days</u> |
|----------------|--------------|--------------------|---------------------|
| Idaho | SPFE 457043 | 6/16 - 6/26 | 10 |
| Idaho | SPFE 459605 | 6/8 - 6/17 | 9 |
| Idaho | VCY 25038 | 6/3 - 6/12 | 9 |
| Idaho | UPFE 467047 | 5/21 - 6/2 | 12 |
| Idaho | SPFE 459678 | 5/11 - 5/24 | 14 |
| Idaho | SPFE 461815 | 5/14 - 5/26 | 12 |
| Idaho | UPFE 455737 | 5/6 - 5/17 | 11 |
| Idaho | UPFE 465183 | 4/21 - 5/5 | 14 |
| Idaho | UPFE 463114 | 4/16 - 4/27 | 11 |
| Idaho | UPFE 458209 | 4/6 - 4/19 | 14 |
| Idaho | SPFE 459825 | 4/1 - 4/13 | 12 |
| Idaho | UPFE 462136 | 3/20 - 3/30 | 10 |
| Idaho | UPFE 466035 | 3/17 - 3/30 | 13 |
| Idaho | UPFE 457901 | 3/12 - 3/27 | 15 |
| Idaho | UPFE 462864 | 3/3 - 3/16 | 13 |
| Idaho | UPFE 12874 | 2/27 - 3/8 | 9 |
| Idaho | UPFE 462217 | 2/17 - 2/26 | 9 |
| Idaho | SPFE 459620 | 2/6 - 2/17 | 11 |
| Idaho | UPFE 455687 | 2/2 - 2/11 | 9 |
| Idaho | UPFE 463009 | 1/27 - 2/6 | 10 |
| Idaho | UPFE 455647 | 1/10 - 1/25 | 9 |

Joseph Fierman and Son, Inc.
247 - 252 Hunts Point Terminal Market
Bronx, NY 10474

| | | | |
|---------|-------------|---------------|----|
| ARIZONA | UPFE 457987 | 6/10 - 7/10 | 22 |
| Idaho | VCY 25022 | 1/5 - 1/15 | 9 |
| Idaho | UPFE 462823 | 12/10 - 12/20 | 10 |
| Idaho | UPFE 458432 | 11/18 - 12/1 | 13 |
| Idaho | UPFE 466255 | 11/13 - 11/26 | 13 |
| ARIZONA | UPFE 12732 | 5/11 - 6/11 | 31 |
| ARIZONA | SPFE 458125 | 5/11 - 6/11 | 30 |

Please take appropriate action to see that reasonable, efficient and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

Jul 8 11 58 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

STB

FD-32760 (SUB26)

7-8-98

J

Gold Ribbon Potato Company
PO Box 178
Arvin, CA 93203

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket 32760 (sub-number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars properly. We are listing below our cars and average transit times.

| Destination | Car # | Sent-Placed | Transit Days |
|--------------------|--------------|--------------------|---------------------|
| Chicago, IL | UPFE 481535 | 6/1 - 6/19 | 18 |
| Chicago, IL | UPFE 462191 | 6/5 - 6/16 | 11 |
| Philadelphia, PA | UPFE 466309 | 6/2 - 6/26 | 24 |
| Philadelphia, PA | UPFE 462920 | 6/2 - 6/22 | 20 |
| Philadelphia, PA | UPFE 461886 | 5/28 - 6/13 | 16 |

Please take appropriate action to see that reasonable, efficient and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.

**OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE**

JUL 8 3 34 PM '98

**RECEIVED
SURFACE TRANSPORTATION
BOARD**

STB

FD-32760 (SUB26)

7-8-98

J

1518

Mid-State Fresh
203 E Terrace Drive
Plant City, FL 33565-9015

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 12 46 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

July 8, 1998

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket 32760 (sub-number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars properly. We are listing below our cars and average transit times.

| <u>Origin</u> | <u>Car #</u> | <u>Sent-Placed</u> | <u>Transit Days</u> |
|---------------|--------------|--------------------|---------------------|
| Idaho | SPFE 458764 | 6/17 - 7/1 | 14 |
| Idaho | UPFE 461673 | 6/10 - 6/23 | 13 |
| Idaho | UPFE 464252 | 6/3 - 6/15 | 12 |
| Idaho | UPFE 467138 | 5/28 - 6/12 | 15 |
| Idaho | SPFE 457424 | 5/15 - 5/28 | 13 |
| Idaho | SPFE 459589 | 5/8 - 5/22 | 18 |
| Idaho | UPFE 461053 | 4/24 - 5/8 | 14 |
| Idaho | SPFE 459831 | 4/2 - 4/14 | 12 |
| Idaho | UPFE 466166 | 3/13 - 3/30 | 17 |
| Idaho | UPFE 464219 | 3/10 - 3/26 | 18 |
| Idaho | SPFE 458742 | 2/18 - 3/4 | 14 |

Please take appropriate action to see that reasonable, efficient and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.

STB

FD-32760 (SUB26)

7-8-98

J

G&T Terminal Packaging Company, Inc.
266-268 Row B
Hunts Point Terminal Market
Bronx, NY 10474

JUL 8 1998

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket 32760 (sub-number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars properly. We are listing below our cars and average transit times.

| <u>Origin</u> | <u>Car #</u> | <u>Sent-Placed</u> | <u>Transit Days</u> |
|---------------|--------------|--------------------|---------------------|
| California | UPFE 461125 | 8/10 - 8/28 | 18 |
| Idaho | SPFE 458793 | 2/17 - 3/13 | 24 |
| Idaho | UPFE 12603 | 2/17 - 2/26 | 9 |
| Idaho | UPFE 455261 | 12/23 - 1/5 | 13 |
| Idaho | UPFE 462878 | 12/22 - 1/5 | 14 |
| East Idaho | UPFE 464313 | 12/29 - 1/7 | 9 |
| Idaho | SPFE 457228 | 12/23 - 1/5 | 13 |
| East Idaho | VCY 25304 | 12/17 - 1/7 | 21 |
| East Idaho | UPFE 455511 | 12/15 - 12/30 | 15 |

Please take appropriate action to see that reasonable, efficient and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.

Anthony Spindale

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 11 58 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

STB

FD-32760 (SUB26)

7-8-98

J

G&P Fresh
5881 Court Street Road
PO Box 670
Syracuse, NY 13206

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket
32760 (sub-number 26) regarding rail service in the west.

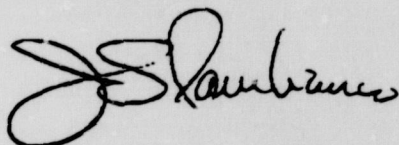
The Union Pacific railroad has not been handling our cars
properly. We are listing below our cars and average transit times.

| Shipper | Car # | Sent-Placed | Transit Days |
|------------|-------------|-------------|--------------|
| California | SPFE 459640 | 6/11 - 6/29 | 18 |
| Idaho | UPFE 455632 | 3/9 - 3/23 | 14 |
| Idaho | UPFE 482098 | 2/18 - 2/27 | 9 |
| Idaho | SPFE 458765 | 1/22 - 2/2 | 11 |
| Idaho | SPFE 457331 | 1/21 - 2/2 | 12 |

Please take appropriate action to see that reasonable, efficient
and economical service is restored.

We would appreciate a reply at your convenience.

Thank You.



OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 11 56 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

STB

FD-32760 (SUB26)

7-8-98

J

East Coast Fruit Company, Inc.
PO Box 2457
Jacksonville, FL 32203

Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attn: Vernon Williams, Secretary

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 11 58 AM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

Dear Mr. Williams,

We are filing this communication related to finance docket 32760 (sub-number 26) regarding rail service in the west.

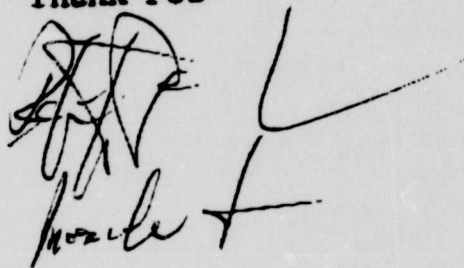
The Union Pacific railroad has not been handling our cars properly. We are listing below our cars and average transit times.

| <u>Shipper</u> | <u>Car #</u> | <u>Se. Placed</u> | <u>Transit Days</u> |
|----------------|--------------|-------------------|---------------------|
| Idaho | UPFE 462709 | 5/7 - 5/22 | 15 |
| Idaho | VCY 25377 | 4/7 - 4/22 | 15 |
| East Idaho | SPFE 457074 | 3/8 - 3/22 | 16 |
| Idaho | UPFE 455549 | 1/30 - 2/17 | 18 |
| Idaho | UPFE 463855 | 1/11 - 2/3 | 19 |

Please take appropriate action to see that reasonable, efficient and economical service is restored.

We would appreciate a reply at your convenience.

Thank You



STB

CF-32760 (SUB26)

7-8-98

J

Morris Okun Inc.
Tomato House Of New York
Fruit & Vegetable
205-220 New York City Terminal Bldg
Bronx, New York 10474

Fax Cover Sheet

Fax Number (718) 528-6143
Office Number (718) 589-7700

Client & Matter _____

Date: 7-8-98

Please Deliver The Following Pages Immediately To:

Name: _____

Firm: Surface Transp. Board

City & State: _____

Fax Phone Number: _____

From: MORRIS Okun Inc.

Fax Operator: _____

Message: See attached

Total number of pages 5 including this fax cover sheet

IF YOU DO NOT RECEIVE ALL THE PAGES PLEASE CALL BACK AS
SOON AS POSSIBLE AND ASK TO SPEAK TO THE FAX OPERATOR NAMED
ABOVE.



OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

JUL 8 2 09 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

BALL BROKERAGE

Fax:17175865858

Jul 8 '98

9:41

P.03/06

Morris Okun, Inc.
205-220 Hunts Point Terminal Mkt.
Bronx, NY 10474

Surface Transportation Board
 1925 K Street NW
 Washington, DC 20423

Attn: Vernon Williams, Secretary

Dear Mr. Williams,

We are filing this communication related to finance docket 32760
 (sub-number 26) regarding rail service in the west.

The Union Pacific railroad has not been handling our cars properly. We
 are listing below our cars and average transit times. All cars are shipped from
 Idaho.

| <u>Shipper</u> | <u>Car #</u> | <u>Sent - Placed</u> | <u>Transit Days</u> |
|----------------|--------------|----------------------|---------------------|
| East Idaho | UPFE 461070 | 6/22 - 7/1 | 9 |
| Idaho | UPFE 12581 | 6/24 - 7/3 | 9 |
| Idaho | UPFE 468171 | 6/12 - 6/30 | 18 |
| East Idaho | VCY 25176 | 6/17 - 6/28 | 11 |
| Idaho | UPFE 465276 | 6/18 - 6/30 | 12 |
| Idaho | SPFE 457450 | 6/19 - 6/30 | 11 |
| East Idaho | UPFE 462267 | 6/19 - 6/28 | 9 |
| East Idaho | UPFE 12658 | 6/18 - 6/28 | 10 |
| Idaho | UPFE 466012 | 6/16 - 6/28 | 12 |
| East Idaho | UPFE 455703 | 6/19 - 6/28 | 9 |
| East Idaho | UPFE 12862 | 6/12 - 6/26 | 14 |
| East Idaho | UPFE 462260 | 6/15 - 6/26 | 11 |
| East Idaho | SPFE 459771 | 6/12 - 6/23 | 11 |
| East Idaho | UPFE 457881 | 6/9 - 6/19 | 10 |
| East Idaho | SPFE 459807 | 6/10 - 6/21 | 11 |
| Idaho | UPFE 455617 | 6/9 - 6/19 | 10 |
| East Idaho | VCY 25066 | 6/2 - 6/12 | 10 |
| East Idaho | UPFE 467193 | 6/5 - 6/16 | 11 |
| East Idaho | UPFE 466136 | 6/4 - 6/14 | 10 |
| Idaho | UPFE 463076 | 6/5 - 6/14 | 9 |
| East Idaho | UPFE 466284 | 6/3 - 6/12 | 9 |
| Idaho | SPFE 457291 | 6/3 - 6/14 | 11 |
| East Idaho | UPFE 467133 | 6/1 - 6/11 | 10 |
| East Idaho | UPFE 467099 | 5/29 - 6/7 | 9 |
| East Idaho | UPFE 461434 | 5/27 - 6/7 | 12 |
| Idaho | UPFE 466242 | 5/27 - 6/6 | 10 |
| East Idaho | SPFE 457053 | 5/28 - 6/6 | 9 |

OFFICE OF COMPLIANCE
 AND ENFORCEMENT
 DIRECTOR'S OFFICE

JUL 8 2 10 PM '98

RECEIVED
 SURFACE TRANSPORTATION
 BOARD

BALL BROKERAGE

Fax:17175865858

Jul 8 '98

9:41

P.04/06

Morris Okun, Inc.
205-220 Hunts Point Terminal Mkt.
Bronx, NY 10474

| | | | |
|------------|-------------|-------------|----|
| East Idaho | UPFE 461434 | 5/27 - 6/9 | 13 |
| Idaho | UPFE 458322 | 5/26 - 6/6 | 11 |
| East Idaho | UPFE 462234 | 5/26 - 6/6 | 11 |
| East Idaho | UPFE 465146 | 5/21 - 5/31 | 10 |
| East Idaho | UPFE 462292 | 5/20 - 5/29 | 9 |
| Idaho | UPFE 461440 | 5/20 - 5/29 | 9 |
| Idaho | SPFE 459652 | 5/14 - 5/27 | 13 |
| East Idaho | UPFE 461380 | 5/15 - 5/26 | 9 |
| Idaho | UPFE 462291 | 5/13 - 5/29 | 16 |
| East Idaho | UPFE 467086 | 5/13 - 5/24 | 11 |
| East Idaho | UPFE 458246 | 5/12 - 5/24 | 12 |
| East Idaho | UPFE 464058 | 5/11 - 5/21 | 10 |
| Idaho | UPFE 461083 | 5/6 - 5/20 | 14 |
| East Idaho | UPFE 457553 | 5/8 - 5/19 | 11 |
| Idaho | SPFE 459683 | 4/30 - 5/17 | 17 |
| East Idaho | UPFE 455175 | 5/4 - 5/13 | 9 |
| Idaho | UPFE 458304 | 4/28 - 5/7 | 9 |
| East Idaho | UPFE 463117 | 5/1 - 5/10 | 9 |
| East Idaho | UPFE 12581 | 5/1 - 5/10 | 9 |
| East Idaho | SPFE 456173 | 4/27 - 5/11 | 14 |
| East Idaho | UPFE 457947 | 4/29 - 5/8 | 9 |
| Idaho | UPFE 461003 | 4/28 - 5/7 | 9 |
| Idaho | UPFE 465122 | 4/24 - 5/4 | 10 |
| East Idaho | SPFE 459759 | 4/21 - 5/1 | 10 |
| Idaho | UPFE 463121 | 4/21 - 5/1 | 10 |
| East Idaho | UPFE 462608 | 4/22 - 5/2 | 10 |
| Idaho | UPFE 462682 | 4/16 - 4/26 | 10 |
| East Idaho | UPFE 467257 | 4/16 - 4/26 | 10 |
| Idaho | UPFE 462519 | 4/16 - 4/26 | 10 |
| Idaho | SPFE 459553 | 4/15 - 4/25 | 10 |
| East Idaho | UPFE 467186 | 4/16 - 4/25 | 9 |
| Idaho | UPFE 457711 | 4/13 - 4/22 | 9 |
| East Idaho | UPFE 462076 | 4/13 - 4/22 | 9 |
| East Idaho | UPFE 458238 | 4/10 - 4/20 | 10 |
| Idaho | SPFE 457087 | 4/10 - 4/20 | 10 |
| Idaho | UPFE 467242 | 4/6 - 4/15 | 9 |
| East Idaho | SPFE 459531 | 4/2 - 4/13 | 11 |
| Idaho | UPFE 458170 | 4/2 - 4/13 | 11 |
| East Idaho | UPFE 462340 | 4/1 - 4/10 | 9 |
| East Idaho | UPFE 455687 | 3/27 - 4/6 | 10 |
| Idaho | UPFE 461505 | 3/26 - 4/4 | 9 |
| East Idaho | UPFE 458107 | 3/24 - 4/3 | 10 |
| East Idaho | UPFE 467054 | 3/25 - 4/3 | 9 |
| Idaho | UPFE 462075 | 3/25 - 4/3 | 9 |
| East Idaho | SPFE 459549 | 3/20 - 3/30 | 10 |

BALL BROKERAGE

Fax:17175865858

Jul 9 '98

9:42

P.05/06

Morris Okun, Inc.
205-220 Hunts Point Terminal Mkt.
Bronx, NY 10474

| | | | |
|------------|-------------|-------------|----|
| East Idaho | VCY 25040 | 3/19 - 3/30 | 11 |
| Idaho | VCY 25150 | 3/17 - 3/30 | 13 |
| East Idaho | UPFE 465289 | 3/18 - 3/30 | 12 |
| Idaho | UPFE 465043 | 3/19 - 3/30 | 11 |
| Idaho | UPFE 455723 | 3/18 - 3/30 | 12 |
| East Idaho | UPFE 12662 | 3/16 - 3/26 | 10 |
| East Idaho | UPFE 457562 | 3/11 - 3/22 | 11 |
| East Idaho | UPFE 467036 | 3/12 - 3/22 | 10 |
| Idaho | UPFE 464023 | 3/13 - 3/23 | 10 |
| Idaho | UPFE 464103 | 3/9 - 3/19 | 10 |
| East Idaho | UPFE 462516 | 3/9 - 3/19 | 10 |
| East Idaho | UPFE 462282 | 3/3 - 3/16 | 13 |
| East Idaho | UPFE 465110 | 3/3 - 3/16 | 13 |
| East Idaho | UPFE 464157 | 3/4 - 3/16 | 12 |
| Idaho | UPFE 12635 | 3/5 - 3/16 | 11 |
| Idaho | VCY 25369 | 3/27 - 4/8 | 9 |
| Idaho | SPFE 459799 | 2/26 - 3/8 | 10 |
| Idaho | SPFE 459323 | 2/27 - 3/8 | 10 |
| East Idaho | UPFE 466141 | 2/20 - 3/2 | 10 |
| Idaho | UPFE 457527 | 2/18 - 3/2 | 12 |
| East Idaho | UPFE 458225 | 2/16 - 2/27 | 11 |
| East Idaho | UPFE 461903 | 2/17 - 2/27 | 10 |
| Idaho | UPFE 12699 | 2/17 - 2/26 | 9 |
| East Idaho | UPFE 462166 | 2/18 - 2/27 | 9 |
| Idaho | UPFE 458292 | 2/12 - 2/22 | 10 |
| East Idaho | UPFE 455653 | 2/13 - 2/22 | 9 |
| East Idaho | UPFE 458116 | 2/13 - 2/22 | 9 |
| Idaho | SPFE 456999 | 2/11 - 2/20 | 9 |
| Idaho | UPFE 457592 | 2/5 - 2/19 | 14 |
| Idaho | UPFE 457592 | 2/5 - 2/19 | 14 |
| East Idaho | UPFE 463036 | 2/10 - 2/19 | 9 |
| East Idaho | UPFE 462046 | 2/2 - 2/13 | 11 |
| East Idaho | UPFE 463113 | 2/3 - 2/13 | 10 |
| Idaho | UPFE 458494 | 2/3 - 2/13 | 10 |
| Idaho | UPFE 461934 | 1/30 - 2/9 | 10 |
| East Idaho | UPFE 467123 | 1/28 - 2/6 | 9 |
| East Idaho | UPFE 462070 | 1/30 - 2/9 | 10 |
| Idaho | SPFE 457330 | 1/21 - 2/6 | 16 |
| East Idaho | UPFE 462886 | 1/22 - 2/1 | 10 |
| Idaho | UPFE 458152 | 1/26 - 2/4 | 9 |
| East Idaho | UPFE 461639 | 1/21 - 1/30 | 9 |
| East Idaho | UPFE 463010 | 1/22 - 2/1 | 10 |
| East Idaho | SPFE 457259 | 1/20 - 1/30 | 10 |
| Idaho | UPFE 458646 | 1/20 - 2/1 | 12 |
| Idaho | UPFE 461254 | 1/15 - 1/26 | 11 |

BALL BROKERAGE

Fax:17175865858

Jul 8 '98

9:42

P.06/06

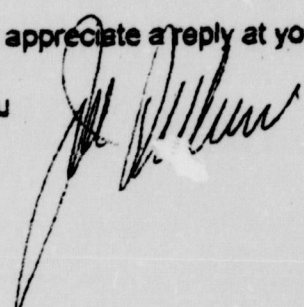
Morris Okun, Inc.
205-220 Hunts Point Terminal Mkt.
Bronx, NY 10474

| | | | |
|------------|-------------|---------------|----|
| East Idaho | SPFE 459680 | 1/16 - 1/25 | 9 |
| East Idaho | UPFE 462234 | 1/15 - 1/25 | 10 |
| East Idaho | UPFE 462044 | 1/12 - 1/21 | 9 |
| West Idaho | UPFE 461144 | 1/13 - 1/22 | 9 |
| East Idaho | UPFE 457998 | 1/8 - 1/18 | 10 |
| East Idaho | UPFE 455210 | 1/8 - 1/18 | 10 |
| East Idaho | UPFE 464259 | 1/5 - 1/15 | 10 |
| East Idaho | UPFE 455460 | 1/6 - 1/15 | 9 |
| East Idaho | SPFE 457183 | 12/31 - 1/11 | 11 |
| East Idaho | UPFE 463087 | 1/2 - 1/11 | 9 |
| West Idaho | UPFE 462952 | 12/29 - 1/9 | 11 |
| Idaho | UPFE 455397 | 12/30 - 1/11 | 12 |
| West Idaho | UPFE 12860 | 12/30 - 1/9 | 10 |
| West Idaho | SPFE 459772 | 12/18 - 1/3 | 16 |
| East Idaho | UPFE 458656 | 12/23 - 1/6 | 14 |
| West Idaho | UPFE 460473 | 12/26 - 1/4 | 9 |
| West Idaho | SPFE 456485 | 12/15 - 12/28 | 13 |
| East Idaho | UPFE 461081 | 12/17 - 12/27 | 10 |
| East Idaho | UPFE 461091 | 12/18 - 12/28 | 10 |
| Idaho | UPFE 456625 | 12/18 - 12/29 | 11 |
| Oregon | UPFE 12637 | 12/20 - 1/3 | 14 |
| West Idaho | UPFE 466318 | 12/22 - 1/4 | 13 |
| East Idaho | UPFE 464228 | 12/22 - 1/6 | 15 |
| Oregon | UPFE 465194 | 12/26 - 1/4 | 9 |
| Oregon | SPFE 457297 | 12/23 - 1/4 | 12 |
| Champion | UPFE 455462 | 12/24 - 1/4 | 11 |
| East Idaho | SPFE 457418 | 12/16 - 12/26 | 10 |
| West Idaho | SPFE 457308 | 12/16 - 12/28 | 12 |
| Oregon | UPFE 12757 | 12/16 - 12/28 | 12 |
| East Idaho | VCY 25362 | 12/16 - 12/30 | 14 |
| East Idaho | SPFE 458763 | 12/4 - 12/17 | 13 |

Please take appropriate action to see that reasonable, efficient and economical service is restored. Normal transportation time should be eight days.

We would appreciate a reply at your convenience.

Thank You



STB

FD-32760 (SUB26)

7-6-98

J

ID-189215

189215

ENTERED
Office of the Secretary

JUL - 7 1998

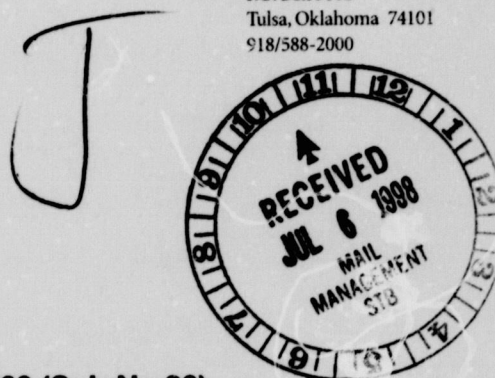
Part of
Public Record

July 2, 1998



Energy Services
One Williams Center
P.O. Box 3102
Tulsa, Oklahoma 74101
918/588-2000

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



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

Dear Mr. Williams:

This verified statement is being submitted in support of the request of the request of the Burlington Northern and Santa Fe Railway Company's ("BNSF") request that the Surface Transportation Board establish neutral switching supervision on the Baytown Branch.

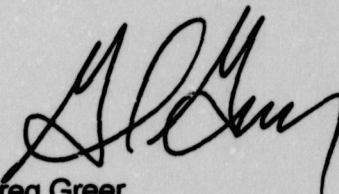
My name is Greg Greer. I am the Manager of Rail Transportation with the Williams Energy Company. Williams Energy in Memphis, TN manufactures propylene, a petrochemical product, at its plant in Memphis. We have our own fleet of rail cars for shipping our product. Currently, we ship 10 cars per day of propylene via BNSF to Ultramar Diamond Shamrock at Mont Belvieu, Texas, which is located on the Baytown Branch.

Our support of BNSF's request for a neutral switching supervision on the Baytown Branch is based principally on our need for improved turnaround times for our cars. Under current operations, BNSF brings 10 cars to the customer and holds approximately 10 other cars for delivery at least every other day. If a neutral supervising switcher were installed, we believe that our company cars could be turned around more quickly so that 10 cars could be delivered every day, instead of 20 cars every other day. The advantage to Williams Energy of improved turnaround times is simple: our company could put our cars to more efficient use and save costs associated with cars being held for delivery to customers.

July 2, 1998

It is also our view that with only one neutral switcher on the branch, there would be less overall activity on the branch and generally less congestion for all rail activities on the branch. This will lead to improved service for all customers on the branch.

I certify under penalty of perjury that the foregoing statement is true and accurate to the best of my belief.



Greg Greer

STB FD 32760 (Sub 26) 6-16-98 J

Eddy Handley
General Manager

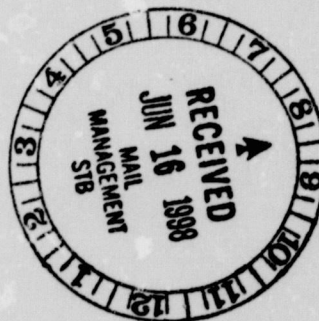
UNION PACIFIC RAILROAD COMPANY



24125 Aldine Westfield Road
Spring, Texas 77373-9015
(281) 350-7505

June 5, 1998

Councilman Rob Todd
Houston City Council
District E
City Hall Annex - 900 Bagby
P.O. Box 1562
Houston, Tx 77251-1562



Dear Councilman Todd:

We are writing to keep you advised of the status of the rail traffic situation in the Houston area.

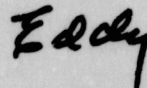
1. Joint dispatching by BNSF and UP of that area from New Orleans to Houston and the Houston Terminal area has been instituted at Spring and has operated successfully for the past 10 weeks. It has proven itself in improvement of traffic flows in the region. TexMex Railroad has been invited to participate, has sent an observer, but has declined, to date, to invest in the hardware necessary to dispatch from that location. A neutral supervisor is present to insure fairness and no one has been excluded. Our competitor, BNSF, has termed this dispatch center in public statements "a tremendous success".
2. Velocity of traffic flow has increased dramatically in the area in the past month. Trains are no longer forced to wait to get into yards, which have also been free-flowing and normal for the same period giving indication that our congestion crisis has ended. Our job is now one of improving service by reducing cycle times, making deliveries more reliable, and rebuilding customer confidence.
3. BNSF has established itself as a strong competitor in Houston. The latest traffic statistics show that BNSF now has a clear majority of traffic into and out of the Ship Channel. Shippers have always had a choice of carriers there and they have shifted to greater reliance on our competitor providing clear proof that UP has no monopoly power nor competitive dominance. You will recall that the Surface Transportation Board approved the UP/SP merger upon the condition that BNSF have

expanded rights, which it is now exercising and thereby providing service which SP would have been unable to give. For that reason, it is fair to say that the competitive situation for shippers in the Houston area who were competitively served before the merger has been improved.

4. Insufficient rail capacity may have contributed to congestion problems, according to independent experts engaged to study the Houston area. They considered the existing needs for rail service and also those which will result from the growth of shippers in the vibrant Houston economy. The potential capital improvements will require the investment of hundreds of millions of dollars, which must be justified by the expected returns. Critical connections have already been budgeted and planned but additional expenditures will be required to upgrade yards, track and other facilities. While some have suggested we could share our railroad with a new entrant into the marketplace, that would discourage rather than create an incentive for needed investment.
5. Capital investments and changes in operations and routings of railroad traffic in Houston are anticipated to reduce the number of hours per month the time that rail crossing are impacted in Houston, according to work of those same experts on capital expenditures. Some of the necessary work underway, permits have been requested for other elements, and investment issued are under consideration for additional projects.

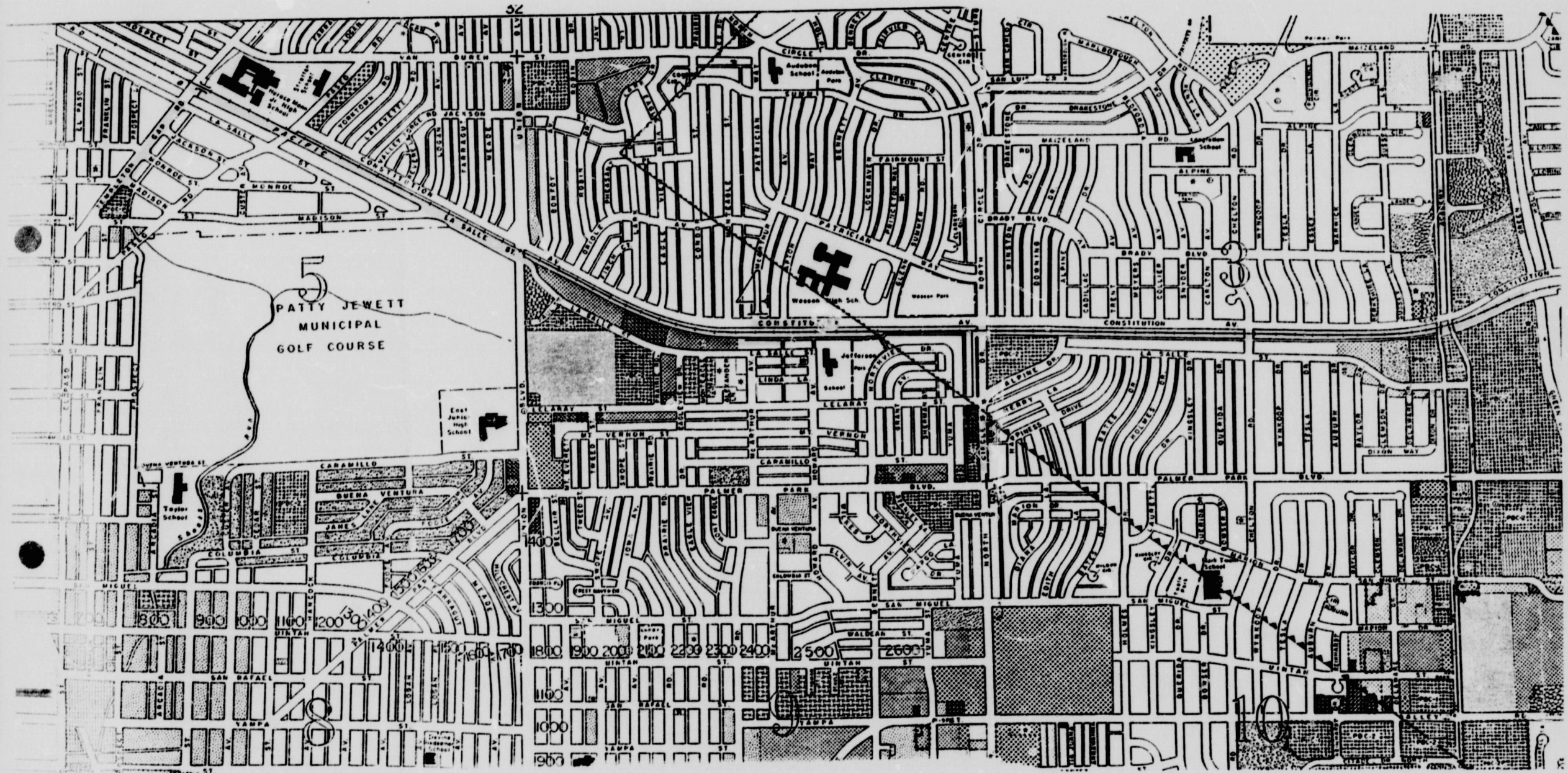
If you have any questions regarding the current status of our rail operations, or the experts results and need for capital expenditures, please call me at 281-350-7505. In order to make this information general available, we shall disseminate it appropriately.

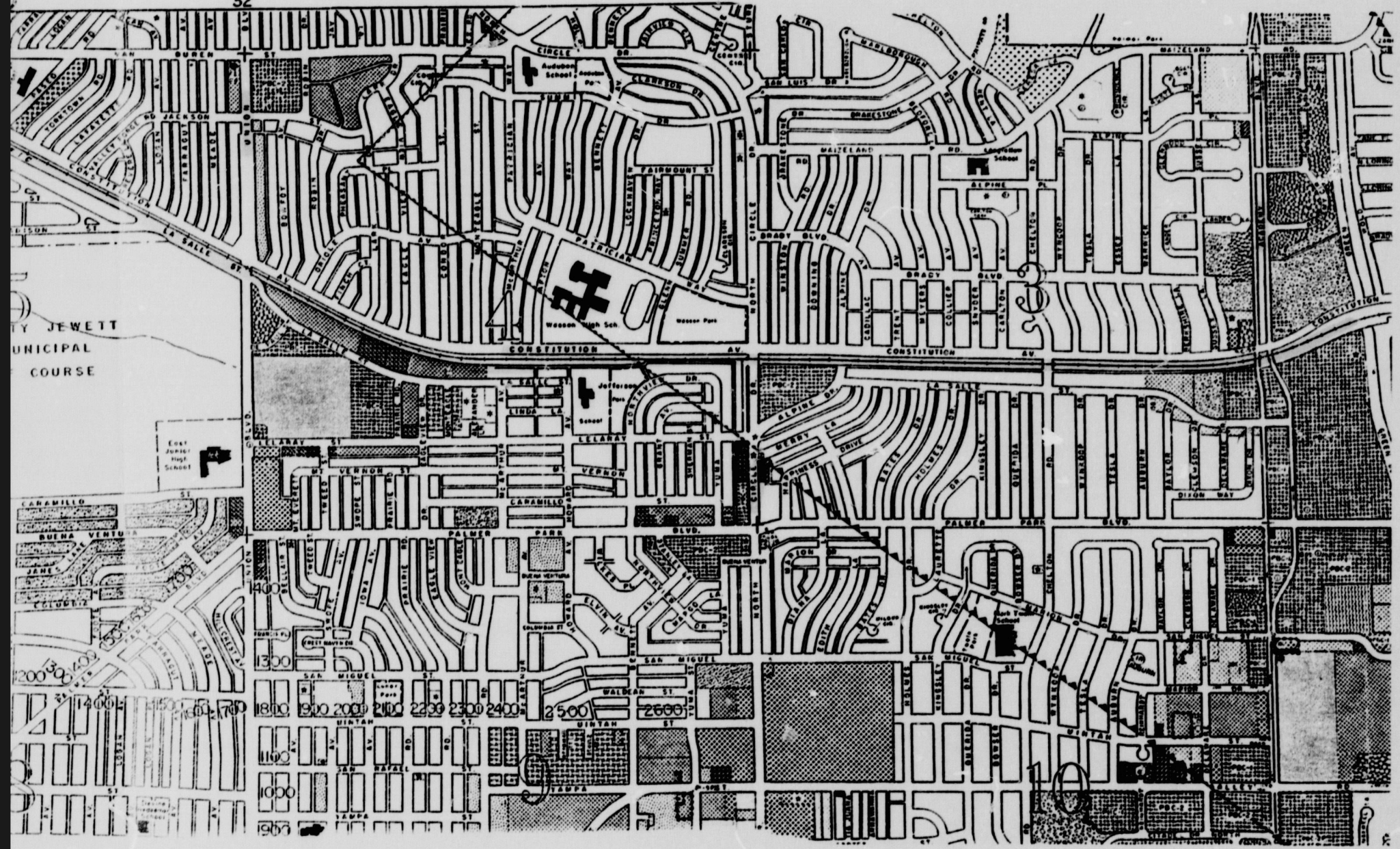
Sincerely,



Eddy Handley
General Manager

HEH/rt

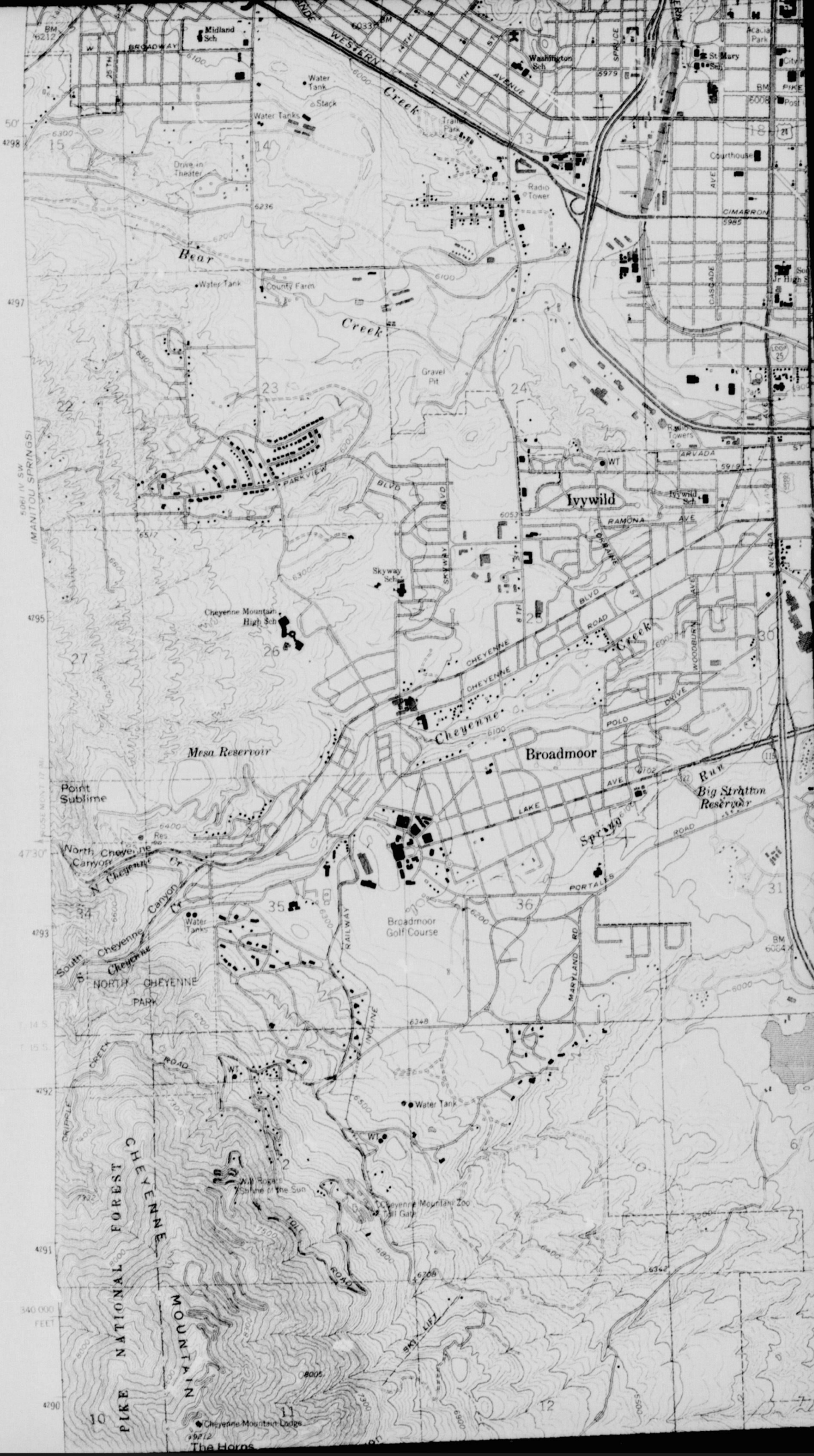




4299









Mapped, edited, and published by the Geological Survey
in cooperation with U. S. Corps of Engineers

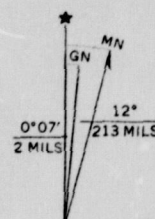
Control by USGS and NOS/NOAA

Topography by photogrammetric methods from aerial photographs
taken 1947. Field checked 1948. Revised from aerial photographs
taken 1960. Field checked 1961

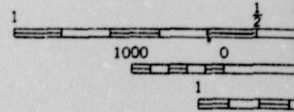
Polyconic projection. 1927 North American datum
10,000-foot grid based on Colorado coordinate system, central zone
1000-meter Universal Transverse Mercator grid ticks,
zone 13, shown in blue

Red tint indicates areas in which only landmark buildings are shown

Fine red dashed lines indicate selected fence and field lines where
generally visible on aerial photographs. This information is unchecked



UTM GRID AND 1975 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET



Revisions shown in purple compiled from aerial photographs
taken 1969 and 1975. This information not field checked

Purple tint indicates extension of urban areas

THIS MAP CO
FOR SALE BY U. S. GEOLOGIC
A FOLDER DESCRIBING



COLORADO SPRINGS

Papeton

PALMER PARK

Hotchkiss Jr High Sch

Saratton Sch

Longfellow Sch

Patty Jewett

Municipal Golf Course

East Jr High Sch

Taylor Sch

Pikes Peak Jr Academy

North Jr High Sch

Mark Twain Sch

Queen Palmer Sch

Ent Air Force Base

Knob Hill

Franklin Sch

State Deaf and Blind School

Lutheran Sch

St Francis Hospital

Memorial Park

Prospect Lake

Hugh Sch

Peak View Golf Course

Creek

Evergreen Cemetery

Radio Tower

Spring

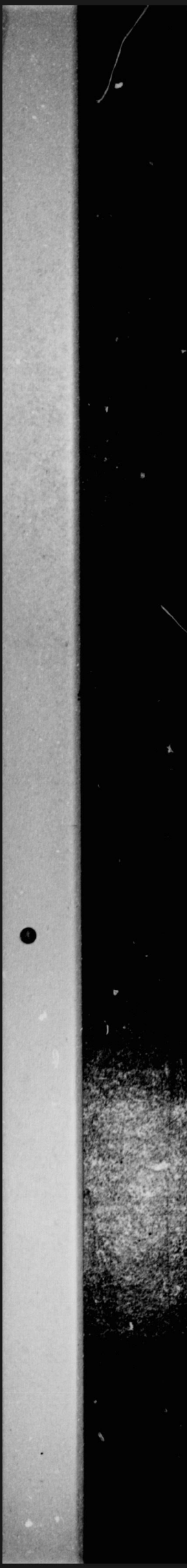
Colorado Memorial Shrine

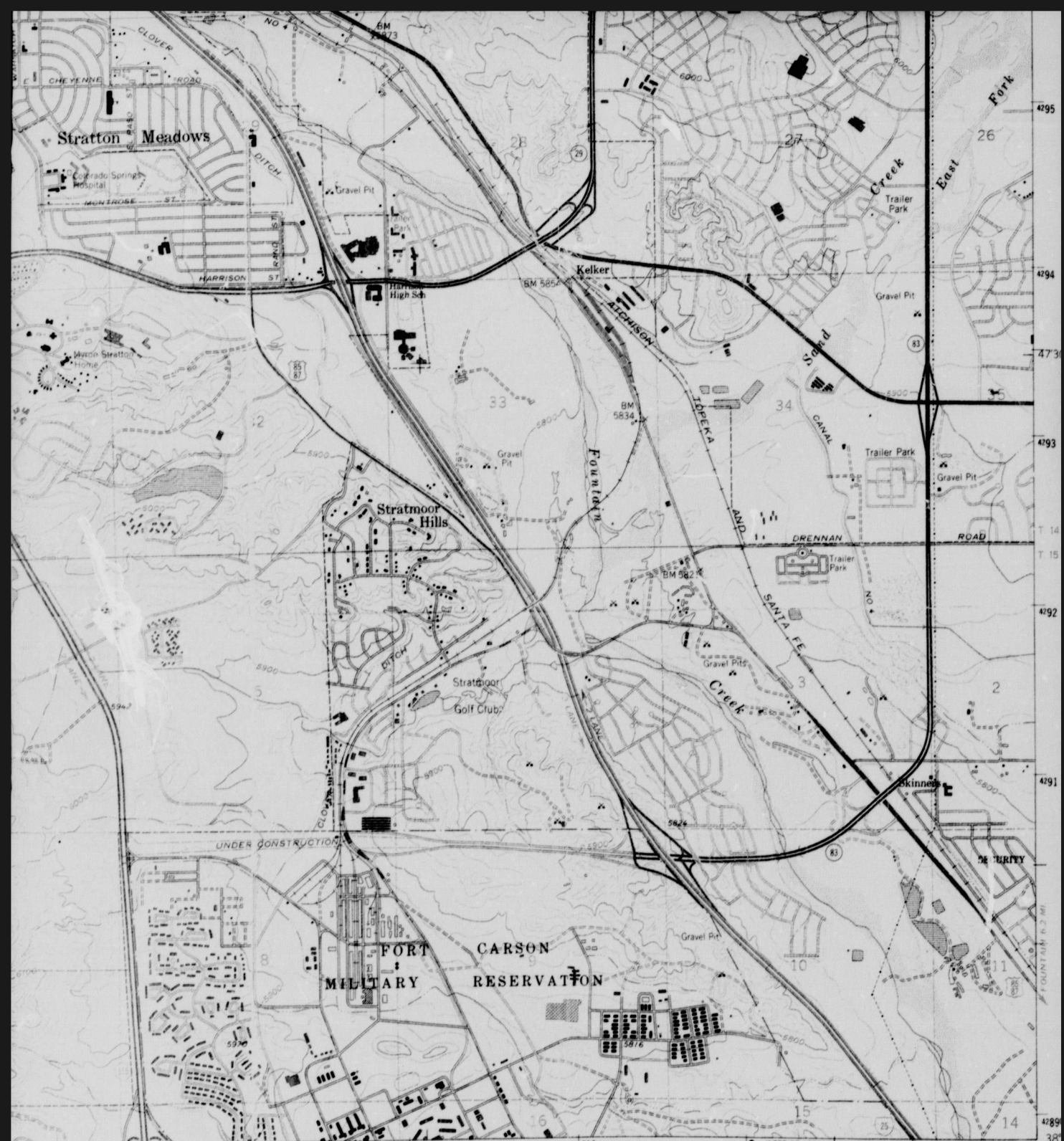
Stratton Meadows

Trailer Park

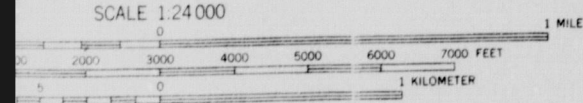
East Fork

(ELSMERE) 5061 SW





CHEYENNE MOUNTAIN 5061 M NE PENROSE 28 MI LARCH CITY 46 MI
 518 4730' 519 4730' 520000 E PUEBLO 36 MI 104°45' 38"



CONTOUR INTERVAL 20 FEET

NAI GEODETIC VERTICAL DATUM OF 1929



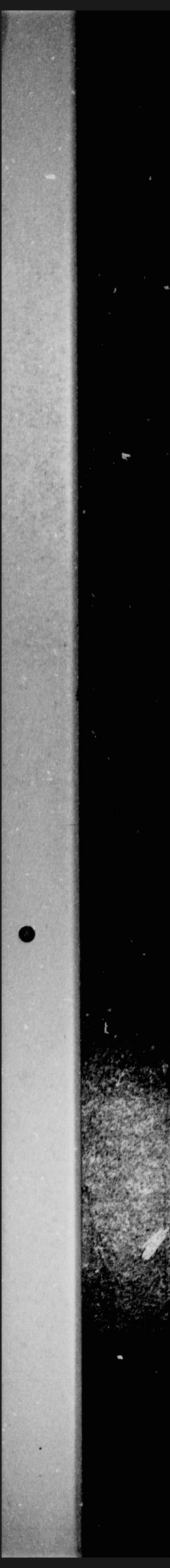
ROAD CLASSIFICATION

| | |
|------------------|-----------------|
| Heavy-duty | Light-duty |
| Medium-duty | Unimproved dirt |
| Interstate Route | U.S. Route |
| | State Route |

COLORADO SPRINGS, COLO.

PLIES WITH NATIONAL MAP ACCURACY STANDARDS
 SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092
 TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

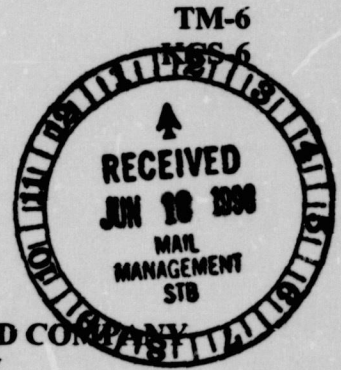
N3845-W10445/7 5
 1961
 PHOTOREVISED 1969 AND 1975
 AMS 5061 IV CE-SERIES V877



STB FD 32760 (Sub 26) 6-18-98 J

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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



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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

**THIRD SET OF DISCOVERY DIRECTED TO UNION
PACIFIC RAILROAD COMPANY**

**Richard P. Bruening
Robert K. Dreiling
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 983-1392
Fax: (816) 983-1227**

**Richard A. Allen
John V. Edwards
Scott M. Zimmerman
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**Attorneys for The Texas Mexican Railway
Company**

**William A. Mullins
Sandra L. Brown
TROUTMAN SANDERS LLP
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005-3314
Tel: (202) 274-2950
Fax: (202) 274-2994**

**Attorneys for The Kansas City Southern
Railway Company**

June 16, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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



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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

**THIRD SET OF DISCOVERY DIRECTED TO UNION
PACIFIC RAILROAD COMPANY**

Pursuant to 49 C.F.R. §§ 1114.21 — 1114.31, The Kansas City Southern Railway Company ("KCS") and The Texas Mexican Railway Company ("Tex Mex") direct the following document request to Union Pacific Railroad Company.

THE RAILROAD ENTITIES

1. "BNSF" means The Burlington Northern and Santa Fe Railway Company.
2. "HBT" means Houston Belt & Terminal Railway Company.
3. "KCS" means The Kansas City Southern Railway Company.
4. "Tex Mex" means The Texas Mexican Railway Company.
5. "The Undersigned Parties" means The Texas Mexican Railway Company and The Kansas City Southern Railway Company.

6. "UP" means Union Pacific Railroad Company and its predecessors, including but not limited to Missouri Pacific Railroad Company, Southern Pacific Rail Corporation and Southern Pacific Transportation Company, individually and collectively.

DEFINITIONS

1. "Board" or "STB" means the Surface Transportation Board (or its predecessor agency, the Interstate Commerce Commission, if applicable).

2. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

3. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs, charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records and workpapers and worksheets. Further the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from original version, including notes.

4. "Houston area" means the 35 mile radius extending from the BT Union Station in downtown Houston located at 501 Crawford Street.

5. "Identify,"

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;
- c. when used in relation to a document, means to:
 - (1) state the type of document (*e.g.*, letter, memorandum, report, chart);
 - (2) identify the author, each addressee, and each recipient; and
 - (3) state the number of pages, title, and date of the document;
- d. when used in relation to an oral communication or statement, means to:
 - (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - (2) state the date and place of the communication or statement;
 - (3) describe in detail the contents of the communication or statement; and
 - (4) identify all documents that refer to, relate to or evidence the communication or statement;

- e. when used in any other context means to describe or explain in detail.
6. "Including" means including without limitation.
7. "Person" means an individual, company, partnership, or other entity of any kind.
8. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.
9. "Produce" means to make available to the Undersigned Parties for copying and viewing.
10. "Relating to" a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.
11. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.
12. "Studies, analyses and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.
13. References to railroads, shippers, and other companies (including BNSF) include: subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities.
14. References to the "former SP line" includes any part of or all of the rail line extending in a southwesternly direction from Rosenberg, Texas to Victoria, Texas, including, but not limited to the land, rights of way, ballast, ties, switches, signals, signage, and grade crossing warnings.
14. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

INSTRUCTIONS

1. Any delay in production of requested documents is certain to prejudice the Undersigned Parties' ability to present to the Board the type of evidence sought by the Board in the new oversight proceeding. Accordingly, responsive documents should be produced to the undersigned counsel at Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005-3314, not later than fifteen (15) days after the date of service. Serial production of relevant documents during that fifteen-day period is encouraged and requested. Objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.

2. UP should contact William A. Mullins or Sandra L. Brown at (202) 274-2950 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these discovery requests cover the period beginning June 1, 1997 and ending with the date of the response.

4. If UP has information that would permit a partial answer to any document request, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that request, and if the burden of conducting such special study would be greater for UP than for KCS or Tex Mex:

- a. state that fact;
- b. provide the partial answer that may be made with information available to UP;
- c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and

- d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer.
5. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,
 - a. identify the information or document (in the manner provided in Definition 5 *supra*); and
 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
6. Pursuant to 49 C.F.R. § 1114.29, UP is under a duty to seasonably supplement its responses with respect to any question, including if UP knows or later learns that its response to any document request is incorrect.

INTERROGATORIES

1. Are there any agreements in existence between UP and BNSF which might in any way prohibit or restrict BNSF from supporting any request for new remedial conditions to the UP/SP merger: (a) by Tex Mex/KCS as set forth in their filing dated March 30, 1998; and (b) by Tex Mex/KCS or any other party? If the answer to this interrogatory is in the affirmative, for each such agreement, please identify all documents which reflect, discuss, analyze, show, or refer to the agreement.
2. Has UP contractually bound itself to make, or has it made, an exclusive grant to another railroad of any rights and/or facilities which Tex Mex/KCS are seeking as part of their additional remedial conditions as set forth in their March 30, 1998 filing in this proceeding? If the answer to this interrogatory is in the affirmative, please identify all documents which reflect, discuss, analyze, show, or refer to: (1) whom the exclusive grant was made; and (2) what rights and/or facilities are affected.

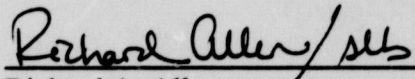
DOCUMENT REQUESTS

Request No. 1: Produce all documents identified, or which should be identified, in response to Interrogatories Nos. 1-2.

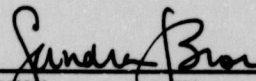
Request No. 2: Produce all documents (including, but not limited to, agreements, contracts, memorandums of understanding, correspondence or documents reflecting communications) that reflect, discuss, analyze, show, or refer to, the ownership "swap", of the Houston-Iowa Junction and Iowa Junction-Avondale lines, as referenced in UP's February 18, 1998 letter to the Board regarding Service Order No. 1518.

Respectfully submitted this 16th day of June, 1998.

Richard P. Bruening
Robert K. Dreiling
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 983-1392
Fax: (816) 983-1227


Richard A. Allen
John V. Edwards
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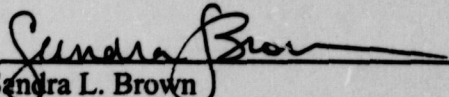
Attorneys for The Texas
Mexican Railway Company


William A. Mullins
Sandra L. Brown
TROUTMAN SANDERS LLP
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005-3314
Tel: (202) 274-2950
Fax: (202) 274-2994

Attorneys for The Kansas City Southern
Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Third Set of Discovery Directed To Union Pacific Railroad Company" was served this 16th day of June, 1998, by hand delivery to counsel for Union Pacific and The Honorable Stephen Grossman, and by first class mail upon other parties of record.


Sandra L. Brown
Attorney for The Kansas City Southern
Railway Company

STB FD 32760

(Sub 26)

6-22-98

J

WEEKLEY PROPERTIES



June 16, 1998

Mr. Ed Handley
General Manager
Union Pacific Railroad
24125 Aldine-Westfield Road
Spring, Texas 77373

Dear Mr. Handley:

Two days of this week I have tried to cross the railroad tracks at San Felipe just inside Loop 610 and have found the road blocked by a stopped train. I also found the road blocked at the tracks at Westheimer. It is outrageous that your company is unable to keep from blocking major thoroughfares in Houston at any time during the day, but especially at key times of the morning, at noon and at evening rush hour.

I would appreciate a response as to how you propose to eliminate this major congestion for Houston commuters.

Sincerely,

Richard W. Weekley

RWW/cs

Cc: Mr. Jerry King, Director, Public Works Department, City of Houston
Mr. Rob Todd, Houston City Council
Mr. Vernon A. Williams, Secretary, Surface Transportation Board
1925 K Street, NW, Room 711
Washington, D.C. 20423-0001
Ms. Linda Morgan, Chairman, Surface Transportation Board
Washington, D.C.

STB FD 32760 (Sub 26) 6-24-98 J

LAW OFFICES
ZUCKERT, SCOUTT & RASENBERGER, L.L.P.
888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE : (202) 298-8660
FACSIMILES: (202) 342-0683
(202) 342-1316

June 24, 1998

VIA HAND DELIVERY

David L. Meyer, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
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

David L. Meyer, Esq.

June 24, 1998

Page 2

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 any 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

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

David L. Meyer, Esq.

June 24, 1998

Page 3

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

Scott M. Zimmerman

for The Texas Mexican
Railway Company

Sandra L. Brown

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 |

STB FD 32760 (Sub 26) 6-26-98 J

UNION PACIFIC RAILROAD COMPANY

LAW DEPARTMENT

808 Travis — Suite 620
Houston, Texas 77002
Fax: (713) 220-3215



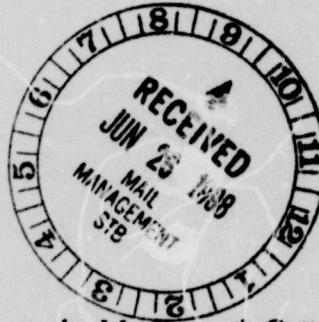
NORMA G. DAVENPORT
GENERAL SOLICITOR
(713) 220-3201

June 25, 1998

VIA UPS NEXT DAY AIR

The Honorable Linda Morgan
Chair, Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423

Dear Chairman Morgan:



ALICE A. BROWN
(713) 220-3206
PAMELA FULBRIGHT-SCHEYER
(713) 220-3228
JOANN LEE
(713) 220-3208
DAVID G. WADE
(713) 220-3227
CAREN E. WALKER
(713) 220-3226
KIM E. WHITTINGTON
(713) 220-3224
DAVID P. YOUNG
(713) 220-3216

I am writing to respond to the letter sent to you by Mr. Kenneth Cotton on behalf of the "Houston and Gulf Coast Railroad." In his letter, Mr. Cotton states that his "business is threatened and almost destroyed" by Union Pacific Railroad Company's ("Union Pacific") "anti-competitive, racist management." Mr. Cotton's inability to obtain business from Union Pacific is not a result of racism or anti-competitive conduct. To the contrary, an examination of the facts reveals that Mr. Cotton's charges are totally unfounded.

As a threshold matter, while Mr. Cotton proposed two business schemes to Union Pacific, he never demonstrated that he had the resources to deliver on his plans. Union Pacific has been unable to locate any information indicating Mr. Cotton is running a viable business capable of performing the contracts he proposes. In conversations with Union Pacific's representative, Jack Patton, Mr. Cotton indicated the Houston and Gulf Coast Railroad operated out of a spare bedroom of his apartment.

In the first scheme Mr. Cotton proposed to Union Pacific, he made a series of "offers" to purchase or lease Union Pacific's right of way between Houston and Galveston and Eureka Yard to operate a commuter rail line (Exhibit "A"). Mr. Cotton's offers contained no details on how he could finance the transaction. Id. Union Pacific declined these offers (Exhibit "B").

Mr. Cotton subsequently filed suit against Union Pacific and others for forty million dollars in a suit styled: Cause No. C.A. No. H-94-4268, Kenneth Cotton vs. Metropolitan Transit Authority, Union Pacific Railroad, Southern Pacific Railroad, Burlington Northern Railroad, and Houston Belt & Terminal Railroad, in the United States District Court for the Southern District of Texas, Houston Division (Exhibit "C"). In this suit, Mr. Cotton alleged the Metropolitan Transit Authority and the railroad defendants monopolized commuter rail in Houston and colluded to prevent him from opening a commuter rail system because of his race. Id. Mr. Cotton's complaint was dismissed with prejudice by the United States District Court as a matter of law (Exhibit "D"). In its opinion the

The Honorable Linda Morgan
Page 2
June 25, 1998

Court found that Mr. Cotton had failed to produce any evidence that he was "capable of financing a commuter rail line, that he made any contracts in furtherance of a commuter rail line, or that he has the background and experience in the commuter rail industry." Id. at 15. This dismissal was upheld on appeal by the United States Court of Appeals for the Fifth Circuit (Exhibit "E").

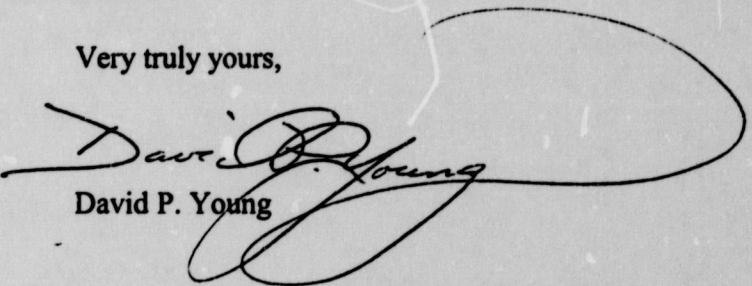
Mr. Cotton even took his proposal for a commuter rail operation to the Interstate Commerce Commission ("ICC"). In December, 1994, Mr. Cotton filed a Feeder Line Application with the ICC again seeking sale of Union Pacific's trackage between Houston and Galveston (Exhibit "F"). Mr. Cotton's Feeder Line Application, however, was apparently never processed because he did not pay the required filing fee (Exhibit "G").

As we understand Mr. Cotton's latest scheme for doing business with Union Pacific, he proposes to store cars near Wharton, Texas. The proposed storage site is an abandoned sulphur mill located near Cane Junction (the "Site"). Mr. Cotton has told Union Pacific that he does not own the Site but that he could obtain rights to use it if Union Pacific enters into a long-term contract with his company. Even assuming Mr. Cotton could obtain the Site, Mr. Cotton's proposal is unfeasible from an operational standpoint and would impede fluid operations in this area. Moreover, Mr. Cotton has proposed that Union Pacific pay an exorbitant price for storage. Union Pacific has notified Mr. Cotton that it is not interested in pursuing his latest proposal (Exhibit "H").

Union Pacific takes strong exception to Mr. Cotton's allegation that its management is either racist or anti-competitive. Union Pacific is an Equal Opportunity Employer and maintains affirmative action programs which promote minority business enterprises. The only reason Mr. Cotton's proposals have failed is that they are technically and economically unfeasible. Furthermore, Mr. Cotton has no apparent resources to perform his obligations under the proposals. Union Pacific has no obligation to conduct business with everyone who makes a proposal.

If you need additional information, please contact us.

Very truly yours,


David P. Young

DPY:klh

Attachments 8

The Honorable Linda Morgan
Page 3
June 25, 1998

copy: **Mr. Vernon A. Williams**
Secretary, Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423
VIA UPS NEXT DAY AIR

Mr. Kenneth B. Cotton
3203 Areba
Houston, TX 77091
VIA UPS NEXT DAY AIR

Kenneth B. Cotton
3203 Areba
Houston Texas 77091
June 19, 1991

Mr. Mike Walsh, Chairman
Union Pacific Railroad
1416 Dodge Street
Omaha, Nebraska 68179

Dear Mr. Walsh:

Recently I was informed that due to drastically reduced carloadings, the portion of your railroad known as the G.H. & H., or Galveston, Houston and Henderson Railroad, will be sold. I stand ready to acquire and operate this trackage as soon as possible.

I suggest that we consummate this deal while the opportunity and the climate are conducive to success for both parties.

Sincerely,

Kenneth B. Cotton

EXHIBIT

A



ANBEL CORPORATION

R. B. P.
MAY 25 1992

May 22, 1992

Mr. Dick Peterson, Sr. Dir. Interline Mktg.
UNION PACIFIC RAILROAD
1416 Dodge Street
Omaha, NE 68179

Dear Mr. Peterson:

We are trying to ascertain the fee the UNION PACIFIC RAILROAD would charge for allowing us to operate our commuter trains on UNION PACIFIC trackage between Webster (Clear Lake, Texas), the AMTRAK Station (down town Houston) and Katy, Texas.

We anticipate operating daily between 4:30 hours and 12:00 hours then between 16:00 hours and 19:30 hours.

Thank you for your consideration on this matter.

Respectfully,

ANBEL CORPORATION

Kenneth B. Cotton
Operations Manager

GENERAL OFFICE: 2323 SOUTH VOSS ROAD - SUITE 450 - HOUSTON, TEXAS 77057 - USA
TELEPHONE 713/977-9737 - TELEX 211920 ANBEL HOU UR

FACTORY OFFICE: HIGHWAY 48 EAST AT MARINE WAY - BROWNSVILLE NAVIGATION DISTRICT
P.O. BOX 5420 - BROWNSVILLE, TEXAS 78520 - USA - TELEPHONE 512/831-8308

Kenneth Cotton
General Manager
Houston Gulf Coast R R
3203 Areba
Houston, TX 77091

1992

Warren C. Wilson
Senior Manager
Rail Line Planning
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

Dear Mr. Wilson,

In May 1992, we contacted your office in reference to the operation of commuter rail service over your trackage between Houston and Clear Lake.

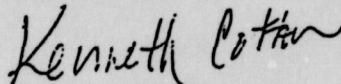
After careful consideration, it is our desire to purchase the portion of your railroad known as the Galveston, Houston and Henderson Railroad from M.P. 178.5 to end of track at M.P. 233.0 for the sum of three (3) million dollars. This price includes all existing tracks, buildings, yards and other existing property necessary for railroad operation.

As part of our proposal, we would;

- a. Grant trackage rights where applicable.
- b. Move cars from Texas City Terminal to Eureka Yard via flat rate charge.
- c. Lease or purchase locomotives, cabooses and cars from U.P.
- d. Make other arrangements as deemed necessary.

Should the U.P. choose to commence negotiations, all financial information will be provided after a letter of intent has been received by this office.

Sincerely,



Kenneth Cotton
General Manager

KC/jd

MARKETING SERVICES

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

R. B. P.
JUL 18 1991
CK
JJH-*file*



July 1, 1991

File: DYE - GH&H

**FILE
COPY**

Mr. Kenneth B. Cotton
3203 Areba
Houston, TX 77091

Dear Mr. Cotton:

This refers to your letter of June 19 concerning the GH&H between Houston and Galveston.

We consider the GH&H as part of our core system and have no interest in sale of this line.

Very truly yours,

WARREN C. WILSON
Senior Manager
Rail Line Planning



UNION PACIFIC RAILROAD COMPANY

MARKETING SERVICES

1416 DODGE STREET
OMAHA, NEBRASKA 68179



June 1, 1992

Mr. Kenneth B. Cotton
Anbel Corporation
2323 South Voss Road - Suite 450
Houston, TX 77057

FILE
COPY

Dear Mr. Cotton:

Your letter of May 22 to Dick Peterson concerning our line between Clear Lake, Houston, and Katy has been referred to me for reply.

As you probably know, the Houston railroads have a proposal pending with METRO to initiate commuter rail in the Houston area. If this effort is successful, the service over U.P. tracks would be operated by Union Pacific and we therefore have no interest in allowing a third party operation.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Warren C. Wilson". The signature is fluid and cursive, with a long horizontal stroke at the end.

WARREN C. WILSON
Senior Manager
Rail Line Planning

cc: Dick Peterson, Union Pacific Railroad, Omaha, NE

MARKETING SERVICES

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179



November 17, 1992

File: DYK - RR: Houston Gulf
Coast

Mr. Kenneth Cotton
General Manager
Houston Gulf Coast Railroad
3203 Areba
Houston, TX 77091

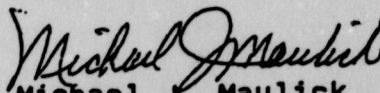
Dear Mr. Cotton:

Thank you for your letter of November 10, 1992 to Mr. Warren Wilson offering to purchase a portion of our railroad between Houston and Clear Lake, TX.

At this time we have not made any decisions regarding the disposition of this line. Should we decide in the future to put this line up for bid as a potential candidate for sale or lease, you may be assured we will consider you as a potential candidate to receive our bid package.

If you have any questions or I can be of further assistance, please feel free to contact me at (402) 271-4415

Yours very truly,


Michael J. Maulick
Project Coordinator
Rail Line Planning

bcc: Jim Hanrahan

UNION PACIFIC RAILROAD COMPANY

MARKETING SERVICES

1416 DODGE STREET
OMAHA, NEBRASKA 68179



January 4, 1993

File: DYK - RR - Houston
Gulf Coast


Mr. Kenneth Cotton
General Manager
Houston Gulf Coast Railroad
3203 Areba
Houston, TX 77091

Dear Mr. Cotton:

This refers to prior exchanges concerning disposition of trackage between Houston and Galveston, TX.

As stated in my letter of November 17, 1992, we have no intentions to sell or lease this trackage at this time or at any time in the near future. Consequently, we see no need to meet to discuss a potential transaction.

Yours very truly,


Michael J. Maulick
Project Coordinator -
Rail Line Planning

bcc: Warren Wilson
Jim Hanrahan

Clerk, U.S. District Court
Southern District of Texas
FILED

DEC 16 1994 Appendix B

Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
_____ DIVISION

Kenneth B. Cotton

§

H-94-4268

VERSUS

§

CIVIL ACTION No. _____

§

Metropolitan Transit Authority

§

Union Pacific Railroad

§

Southern Pacific Railroad

§

Burlington Northern Railroad

§

Houston, Belt & Terminal Railroad

ORIGINAL COMPLAINT

This court has precedence because these entities receive federal funds, and are bound by the Civil Rights Act and the Sherman Anti-Trust Act.

The defendants listed above:

1. Colluded to prevent plaintiff from entering commuter rail project because of race.
2. MTA, failed to prevent racial discrimination by the railroads after being notified of said discrimination.
3. MTA approved contracts with the railroads knowing that there would be no minority participation.
4. The railroads refused to negotiate trackage rights agreements with me, even though they have granted such rights to other carriers, before and since that time.
5. The railroads have prevented me from entering short-line railroad business by refusal to negotiate or provide information to submit appropriate bid.
6. MTA refused my proposal even though it was a lower cost than the railroads.
7. Have prevented me from entering my chosen field by these tactics.

For these reasons, I am seeking a \$40 million judgement against each defendant in this case.

Kenneth Cotton
3203 Areba
Houston, Texas 77091
713 682-8458
713 686-4532

EXHIBIT

C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Kenneth B. Cotton,

Plaintiff,

VS.

Metropolitan Transit Authority,
Union Pacific Railroad,
Southern Pacific Railroad,
Burlington Northern Railroad,
and Houston Belt & Terminal
Railroad,

Defendants.

§
§
§
§
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CIVIL ACTION NO. H-94-4268

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

JUN 20 1995

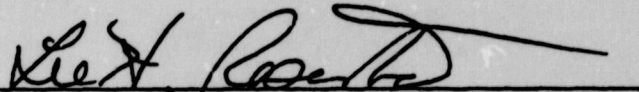
Michael N. Milby, Clerk

FINAL JUDGMENT

In accordance with the Court's Order of even date, this
action is DISMISSED with PREJUDICE.

THIS IS A FINAL JUDGMENT.

SIGNED on June 16, 1995, at Houston, Texas.



Lee H. Rosenthal
United States District Judge



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

18

KENNETH B. COTTON,

Plaintiff,

VS.

CIVIL ACTION NO. H-94-4268

METROPOLITAN TRANSIT AUTHORITY,
UNION PACIFIC RAILROAD,
SOUTHERN PACIFIC RAILROAD,
BURLINGTON NORTHERN RAILROAD,
AND HOUSTON BELT & TERMINAL
RAILROAD,

Defendants.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

JUN 20 1995

Michael N. Milby, Clerk

MEMORANDUM AND OPINION

Plaintiff Kenneth B. Cotton ("Cotton") alleges antitrust and civil rights violations stemming from his lack of participation in potential commuter rail projects in the Houston area. Each defendant filed motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (Docket Entry Nos. 3, 4, 5, 7, and 9). On March 17, 1995, this court gave notice to the parties that it would treat the motions to dismiss as motions for summary judgment. (Docket Entry No. 12).

Pending before this court are a motion for summary judgment by defendant Metropolitan Transit Authority ("Metro") (Docket Entry No. 15); a joint motion for summary judgment by defendants Union Pacific Railroad ("Union"), Southern Pacific Railroad ("Southern"), Burlington Northern Railroad ("Burlington"), and Houston Belt & Terminal Railroad ("Houston Belt") (Docket Entry No. 13); and a motion by Cotton for summary judgment (Docket Entry No.

16). For the reasons stated below, this court GRANTS defendants' motions for summary judgment and DENIES plaintiff's motion for summary judgment.

I. Background

Defendant Metro provides public transportation through the operation of transit buses. (Docket Entry No. 15 at 2). Pursuant to 1991 Metro Board Resolution 92-20, Metro adopted a revised transit plan that included determining the feasibility of commuter rail through track-sharing arrangements with area railroads. (*Id.* at 3). Although Metro applied for federal funding from the United States Department of Transportation for the operation of a demonstration commuter rail line, the application was denied. (Docket Entry No. 15 at 4). Metro did not enter into contracts with any railroads for the operation of a commuter rail service. (*Id.*)

Plaintiff Cotton, an African-American, alleges that the defendants discriminated against him on the basis of race by refusing to negotiate with him or to allow him to participate in commuter rail project. Cotton also alleges that the defendants hold a monopoly over the commuter rail traffic in the Houston area, in violation of the antitrust laws.

The parties have filed motions for summary judgment.

II. Standard of Review for Summary Judgment

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R.

Civ. P. 56(c). A fact is "material" if its resolution in favor of one party might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Under Fed. R. Civ. P. 56(c), the moving party bears the initial burden of "informing the district court of the basis for its motions, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue for trial." *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Leonard v. Dixie Well Serv. & Supply, Inc.*, 828 F.2d 291, 294 (5th Cir. 1987). The moving party must demonstrate the absence of a genuine issue of material fact, but need not negate the elements of the nonmovant's case. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994).

If the moving party has met its Rule 56(c) burden, the nonmovant must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita*, 475 U.S. at 586-87 (quoting Fed. R. Civ. P. 56(e)); *Celotex Corp. v. Cartrett*, 477 U.S. 317, 322-23 (1986); *Leonard*, 828 F.2d at 294. In deciding a summary judgment motion, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255. If reasonable minds can differ regarding a genuine issue of material fact, summary judgment should not be granted. *Anderson*, 477 U.S. at 250-51.

In deciding a motion for summary judgment, the court must resolve factual controversies in favor of the nonmoving party, but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts. *Little*, 37 F.3d at 1075. The court does not, "in the absence of any proof, assume that the nonmoving party could or would prove the necessary facts." *Id.*

III. Civil Rights Claims

Cotton alleges that defendants' actions violate the Civil Rights Act. (Docket Entry No. 8 at 5). While Cotton does not allege a violation of a specific civil rights statute, the applicable statutes are 42 U.S.C. §§ 1981, 1982, 1983, and 1985.¹

A. Claims under 42 U.S.C. § 1981

Section 1981 provides that all citizens shall have the same right to "make and enforce contracts." *Patterson v. McLean Credit Union*, 491 U.S. 164, 176 (1989). A claim under 42 U.S.C. § 1981 requires the plaintiff to show that the defendant intentionally discriminated against him on the basis of race. *See General Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 389-91 (1982); *Green v. State Bar of Texas*, 27 F.3d 1083, 1086 (5th Cir. 1994). First, a plaintiff must establish, by a preponderance of the evidence, a prima facie case of discrimination by demonstrating that: (1) he is a member of a minority group; (2)

¹ Cotton does not allege discrimination as to an employment relationship. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) does not apply.

he submitted an application or bid which met the requirements for an available contract; (3) his application or bid was ultimately rejected; and (4) the defendant eventually gave the contract to an individual who is not a member of the minority class. *Patterson*, 491 U.S. at 186-87; *Green*, 27 F.3d at 1086.

Metro submits uncontroverted evidence that Cotton did not submit an application or bid for the proposed commuter rail project. (Docket Entry No. 15, Burge Aff. at ¶ 8). Cotton stated at a February 27, 1992 meeting of Metro's Board of Directors that he would submit a proposal for a commuter rail operation between Houston and Clear Lake. (Docket Entry No. 15, Attachment No. 3 at 3, ¶ 13). Although Cotton was associated with a joint venture that did submit a proposal, there is no summary judgment evidence that Cotton submitted his own proposal. (Docket Entry No. 15, Burge Aff. at ¶ 8).

Cotton alleges that he was not given a contract for a commuter rail line. (Docket Entry No. 8, ¶ 9, 10, 22, 23). Metro invited railroad companies to submit proposals for a commuter rail project using existing railroad tracks, which were reviewed and analyzed by Metro staff members and by experts retained by Metro. (Docket Entry No. 15, Burge Aff. at ¶¶ 6, 9). The summary judgment evidence shows that Metro did not have an available contract because Metro never received funding for a commuter rail line. (*Id.* at ¶ 10). Moreover, although Metro periodically reviews future commuter rail opportunities, no available contracts for commuter rail exist. (*Id.*)

There is no summary judgment evidence that Metro gave an available contract to anyone, including anyone outside the protected minority class. *See Patterson*, 491 U.S. at 187-88. Metro provides uncontroverted proof that "no contracts have been executed between Metro and any railroad companies...for commuter rail service." (Docket Entry No. 15, Burge Aff. at ¶ 11). Each of the four defendant railroads provided evidence that Metro did not execute a contract with them or anybody else. (Docket Entry No. 13, Mitchell Aff., Ex. A at 2, ¶2; Ritter Aff., Ex. B at 2, ¶ 3; McCulley Aff., Ex. C at 2, ¶ 3; Wilson Aff., Ex. D at 2, ¶ 4).

Cotton fails to establish a *prima facie* claim of discrimination under section 1981. Cotton also fails to present facts that create a disputed issue as to whether the defendants acted with discriminatory intent. *See Brown*, 939 F.2d at 949. Defendants' motions for summary judgment as to the section 1981 claims are granted.

B. Claims under 42 U.S.C. § 1982

42 U.S.C. § 1982 protects against discrimination in the sale or rental of property. The only possible section 1982 claim Cotton has concerns defendant Union. Cotton contends that Union offered one of its lines for sale but did not give Cotton an opportunity to purchase it. (Docket Entry No. 8 at 1, ¶ 3).

Under section 1982, a plaintiff must establish a *prima facie* case of discrimination by a preponderance of the evidence by demonstrating: (1) that he

is a member of a racial minority; (2) that he applied for and was qualified to rent or purchase certain property; (3) that he was rejected; and (4) that the purchase or rental opportunity remained available thereafter. *Bell v. Mike Ford Realty Co.*, 857 F. Supp. 1550, 1557 (S.D. Ala. 1994); *Cho v. Itco, Inc.*, 782 F. Supp. 1186, 1187 (E.D. Tex. 1991).

Cotton alleges that he applied to, and was qualified to, purchase Union's trackage between Houston and Clear Lake. Cotton points to his letter to Union dated November 10, 1992, which offered "to purchase the portion of your railroad...for the sum of three (3) million dollars." (Docket Entry No. 16, Ex. F).

Union does not dispute that Cotton attempted to purchase the trackage between Houston and Clear Lake. However, Union offers summary judgment proof that the trackage that Cotton offered to purchase was not for sale. Union's senior manager for rail line planning stated that Union has "not offered to sell this line to any other freight operator ... nor ... have we ever offered to sell the line to any other entity." (Docket Entry No. 13, Wilson Aff., Ex. D at 2, ¶ 5). Union repeatedly informed Cotton that it did not intend to sell the trackage Cotton offered to buy.² Cotton was not a qualified purchaser because he did not offer to

² On July 1, 1991, Union responded to Cotton's queries about the Houston to Galveston line: "We consider the [line] part of our core system and have no interest in sale of this line." (Docket Entry No. 13, Attachment 1). On November 17, 1992, Union thanked Cotton for his offer to purchase the line between Houston and Clear Lake, but informed him that "[a]t this time we have not made any decisions regarding the disposition of this line. Should we decide in the future to put this line up for bid as a potential candidate for sale or lease, you may be assured we will consider you as a potential candidate to receive our bid package." (*Id.* at Attachment 2). On January 4, 1993, Union again informed Cotton that "we have no intentions to sell or lease this trackage at this time or at any time

buy trackage that was available to be purchased. *Compare Bell*, 857 F. Supp. at 1558 (plaintiff was not "qualified" to purchase the property because he did not offer the specified sales price).

Cotton alleges that Union "would not negotiate a trackage rights agreement with the Plaintiff" and that "Plaintiff, an African American, knows of no trackage agreements or line sales to African Americans by Union Pacific or its affiliates." (Docket Entry No. 16 at 5).

Union provides evidence that Cotton's offer was refused because the trackage was not for sale. Union told Cotton that if it decided to sell the trackage, it would consider Cotton as a potential candidate. (Docket Entry No. 13, Attachment 2). Cotton presents no controverting evidence. Cotton's conclusory allegations that he should have been able to purchase the trackage are insufficient to support a section 1982 claim. (Docket Entry No. 16 at 6). This court grants defendants' summary judgment motion as to the section 1982 claims.

C. Claims under 42 U.S.C. § 1983

To state a cause of action under section 1983, the plaintiff must allege that a person, acting under the color of state law, has deprived the plaintiff of a federal right. *Green v. State Bar of Texas*, 27 F.3d 1083, 1088 (5th Cir. 1994).

in the near future. Consequently, we see no need to meet or discuss a potential transaction." (*Id.* at Attachment 3).

Cotton fails to identify a specific federal right of which defendants' actions have deprived him. To state a claim for a denial of due process, a plaintiff must demonstrate that he has been deprived of a cognizable property right or liberty interest. The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person *has already acquired* in specific benefits. *Board of Regents v. Roth*, 408 U.S. 564, 576 (1972) (emphasis added). A plaintiff must have "more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents*, 408 U.S. at 577. Property interests are created by existing rules or understandings that stem from an independent source, such as state law. (*Id.*) Cotton fails to point to any summary judgment evidence that he had a cognizable property interest in either negotiating or executing trackage rights agreements with the defendants.³ See *Board of Regents*, 408 U.S. at 564. Metro provides summary judgment proof that it has not executed any contracts concerning a commuter line. (Docket Entry No. 15, Burge Aff. at ¶ 11).

Cotton alleges that Union breached a "contract" with him that required Union to consider him if Union ever wanted to sell its trackage. (Docket Entry

³ Cotton merely alleges that "there is no reason for the Houston Belt to not negotiate a trackage rights agreement with the Plaintiff, since the Houston Belt has trackage rights agreements with every other railroad in the Houston area." (Docket Entry No. 16 at 4). "Southern ... has trackage right agreements with other railroads in the Houston area. Since this is true, the question is why didn't Southern negotiate a trackage right agreement with the Plaintiff?" (*Id.* at 5).

No. 16 at 5; Docket Entry No. 13, Attachment 2). However, Union's letter to Cotton dated November 17, 1992, states that Union would consider Cotton as a "potential candidate to receive [Union's] bid package," but does not assure Cotton of a sale or lease agreement in the future. (Docket Entry No. 13, Attachment 2). There is no summary judgment evidence that Union made a contract with Cotton to negotiate the sale of Union's trackage, or that Union has ever contemplated such a sale to anyone.

Cotton also fails to show that the defendants denied him equal protection. To state a claim for a violation of equal protection based on race, Cotton must show that the defendants purposefully or intentionally discriminated against him on the basis of his race. *See Washington v. Davis*, 426 U.S. 229, 240 (1976).

Cotton alleges that Burlington, Southern, Union, and Houston Belt are "insensitive to African-American rail operators. The Defendants have no African-Americans in positions of authority (vice-prsidnets [sic] or above), nor have ever had one in this position." (Docket Entry No. 8 at 3, ¶ 14). However, Cotton fails to point to specific evidence showing the defendants purposefully or intentionally discriminated against him because he is African-American. *See Griffin*, 403 U.S. at 103-04. The four railroad defendants submitted affidavits stating that purposeful or intentional discrimination based on race played no part in the alleged relations that existed between them and Cotton. (Docket Entry No. 13, Mitchell Aff., Ex.

A at 2, ¶ 4; Ritter Aff., Ex. B at 2, ¶ 7; McCulley Aff., Ex. C at 2-3, ¶ 6; Wilson Aff., Ex. D at 2-3, ¶ 6). There is no summary judgment evidence creating a genuine issue of fact as to whether defendants violated Cotton's right to equal protection.

As to the railroad defendants, Cotton also fails to establish that the defendants' actions constitute state action. A private party acts under color of state law if the party is a "willful participant in joint activity with the state or its agents." *Green*, 27 F.3d at 1088 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970)). The defendant railroads provide evidence that in their discussions with Metro, they acted in their private capacities.⁴ In fact, Cotton acknowledges that the Houston Belt acts as a privately owned railroad. (Docket Entry No. 16 at 4). Cotton states, "while he is correct in stating that the Houston Belt is a privately owned railroad, [Mr. Ritter] neglects to mention that [there is a] monopoly power over rail traffic in the Houston area." (*Id.*) This unsupported allegation fails to create a question of fact as to whether the railroad defendants acted under color of state law.

D. Claims under 42 U.S.C. § 1985

Cotton alleges that the defendant railroads conspired to exclude him from the railroad business because he was African-American. (Docket Entry No.

⁴ D.J. Mitchell, executive assistant to the chairman for Burlington, states that Burlington "acted as a private railroad in its discussions with Metro." (Docket Entry No. 13, Mitchell Aff., Ex. A at 1, ¶ 2). The executives of Houston Belt, and Southern made similar statements. (Docket Entry No. 13, Ritter Aff., Ex. B at 1, ¶ 2; McCulley Aff., Ex. C at 2, ¶ 3).

16 at 2-5). A claim under 42 U.S.C. § 1985 requires a showing of a conspiracy to deprive the plaintiff of equal protection of the laws. *Griffin v. Breckenridge*, 403 U.S. 88, 96 (1971). In order to prove a section 1985 conspiracy, a plaintiff must show that: (1) the defendant had an agreement with at least one other person and participated or caused something to be done in furtherance of the agreement; (2) the agreement was to deprive the plaintiff of a protected right; (3) the defendants were motivated by a dislike or hateful attitude toward a specific class of people of which the plaintiff was a member; and (4) the conspiracy caused deprivation or injury to the plaintiff. *Id.* at 103-04.

As to the first element of a section 1985 conspiracy, the four railroad defendants provide summary judgment proof that no conspiracy or agreement existed among the railroads.⁵ Cotton argues that the "HB&T group" conspired to exclude him from the railroad business, and points to a letter from Houston Belt to Metro that uses the term "HB&T group" to refer to the four defendant railroads. (Docket Entry No. 16, Ex. A at 1). However, Cotton points to no evidence showing that any of the railroad defendants had an agreement to exclude him from the railroad business, or that these railroads participated in or did anything in furtherance of any agreement to exclude Cotton from the railroad business.

⁵ For example, D.J. Mitchell, Executive Assistant to the Chairman of Burlington, states that Burlington "has not made any agreement with Metro or any other railroad related to Mr. Cotton. [Burlington] has not conspired or agreed with Metro or any other railroad to prevent Mr. Cotton from involvement in any commuter rail project or in the railroad business generally." (Docket Entry No. 13, Mitchell Aff., Ex. A at 2, ¶ 3). Executives from Houston Belt, Southern, and Union made similar statements. (Docket Entry No. 13, Ritter Aff., Ex. B at 2, ¶ 5; McCulley Aff., Ex. C at 2, ¶ 4; Wilson Aff., Ex. D at 3, ¶ 6).

Cotton also fails to establish the third element of a section 1985 conspiracy claim, which requires that the defendants have been motivated by a dislike or hateful attitude toward a specific class of people and that the plaintiff was a member of that class. *See Griffin*, 403 U.S. at 103-04. Cotton makes broad allegations that African-Americans have been excluded from the railroad business,⁶ but fails to point to specific evidence that shows the defendants were motivated by a dislike or hateful attitude toward African-Americans. *See Griffin*, 403 U.S. at 103-04. The defendant railroads provide summary judgment evidence that their actions were not motivated by any class-based or racially discriminatory animus.⁷ Cotton points to no evidence controverting defendants' proof. Defendants' motions for summary judgment as to the section 1985 conspiracy claims are granted.

IV. Antitrust Claims

Cotton alleges that the four railroad defendants prevented him from entering the short-line railroad business by collusion. (Docket Entry No. 1, ¶¶ 1, 5). Although Cotton does not specifically allege that Metro violated the Sherman

⁶ "The top officials of the [Southern] trains are white." (Docket Entry No. 16 at 6). "The Plaintiff, an African-American, knows of no trackage agreements or line sales to African-Americans by [Union] or its affiliates." (*Id.*) "The Defendants...are insensitive to African-American rail operators. [They] have no African-Americans in positions of authority." (*Id.* at 3, ¶ 14).

⁷ For example, Mitchell states that Burlington "was not motivated by any racial animus in relation to Mr. Cotton. [Burlington] did not discriminate against or refuse to deal with Mr. Cotton based on his race." (Docket Entry No. 13, Mitchell Aff., Ex. A at 2, ¶ 4). Executives from the other three railroads made similar statements. (Docket Entry No. 13, Ritter Aff., Ex. B at 2, ¶ 7; McCulley Aff., Ex. C at 2, ¶ 6; Wilson Aff., Ex. D at 2, ¶ 6).

Act, he alleges that Metro engaged in anti-competitive acts. (Docket Entry No. 8 at 5).

Section 1 of the Sherman Act proscribes "[e]very contract, combinations... or conspiracy[] in restraint of trade or commerce..." 15 U.S.C. § 1. Section 2 prohibits persons from monopolizing, or attempting to monopolize, any part of trade or commerce. 15 U.S.C. § 2. Section 4 of the Clayton Act provides the private right of action to enforce the Sherman Act. 15 U.S.C. § 15(a); *Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 961 F.2d 1148, 1159 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1046 (1993).

A. 15 U.S.C. § 15

To bring a private suit under the antitrust laws, a plaintiff must show he has standing under Section 4 of the Clayton Act, 15 U.S.C. § 15. *Jayco Systems v. Savin Business Machines Corp.*, 777 F.2d 306, 313 (5th Cir. 1985), *cert. denied*, 479 U.S. 816 (1986). If the plaintiff is attempting to enter a new business, standing requires the plaintiff to show (1) an intent to enter the business and (2) a preparedness to enter the business. *Hayes v. Solomon*, 597 F.2d 958, 973 (5th Cir. 1979), *cert. denied*, 444 U.S. 1078 (1980). A showing of preparedness to enter the business has four elements: (1) the ability to finance the business and to purchase the necessary facilities and equipment; (2) the consummation of contracts by the plaintiff; (3) affirmative action by plaintiff to enter the business; and (4) the background and experience of plaintiff in the

prospective business. (*Id.* citing *Martin v. Phillips Petroleum Co.*, 365 F.2d 629, 633-34 (5th Cir.), *cert. denied*, 385 U.S. 991 (1966)).

Cotton alleges that he is prepared to enter the railroad business because he is certified as a Minority/Disadvantaged Business Enterprise with the City of Houston and because he has his own equipment, which he can use in the rail service. (Docket Entry No. 16 at 3, ¶ 3; Ex. B; Docket Entry No. 11 at ¶ 3). Although Cotton contends that he can "produce evidence and documents to prove his ability to enter the business," the summary judgment record fails to show that Cotton was capable of financing a commuter rail line, that he made any contracts in furtherance of a commuter rail line, or that he has the background and experience in the commuter rail industry.

The standing requirement of section 4 of the Clayton Act also requires that antitrust plaintiffs "prove antitrust injury, which is to say injury of the type the antitrust laws were intended to prevent." *Multiflex, Inc. v. Samuel Moore & Co.*, 709 F.2d 980, 993-994 (5th Cir. 1983), *cert. denied*, 465 U.S. 1100 (1984). There is no violation unless the agreement is intended to or actually does harm competition in the relevant market. *Re-Alco v. National Center for Health Educ.*, 812 F. Supp. 387, 392 (S.D.N.Y. 1993). Antitrust laws "were enacted for the protection of competition, not competitors." (*Id.* citing *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977)). In *Re-Alco*, the court stated that "[e]ven if there were a conspiracy to shut out Re-Alco, there would not necessarily

be an antitrust violation absent an anticompetitive effect on the industry as a whole." *Re-Alco*, 812 F. Supp. at 392.

Defendants provide summary judgment evidence that there is "vigorous competition among the major railroads that serve the Houston area" and that the commuter rail industry is not burdened with any anticompetitive effects. (Docket Entry No. 13, Mitchell Aff., Ex. A at 2, ¶ 4; Ritter Aff., Ex. B at 2, ¶ 6; McCulley Aff., Ex. C at 2, ¶ 5). Cotton states that the defendants "have engaged in anti-competitive acts ... that in essence may destroy competition." (Docket Entry No. 8 at 5). Cotton fails to show evidence directly connecting the barriers the defendants allegedly created between him and the railroad industry and an anticompetitive effect on the industry as a whole. Cotton has not pleaded an anticompetitive effect on the industry and fails to present evidence showing any anticompetitive effect.

This court finds that Cotton has failed to create a question of fact as to the threshold standing requirements for suit under the Clayton Act. However, in an abundance of caution, this court will address the merits of Cotton's antitrust claims.

B. 15 U.S.C. § 1

A claim under 15 U.S.C. § 1 requires a showing of (1) a conspiracy that (2) affects interstate commerce and that (3) imposes an "unreasonable" restraint on trade. *Dillard*, 961 F.2d at 1158 (citing *White & White v. Am. Hosp.*

Supply Corp., 723 F.2d 495, 504 (6th Cir. 1983). A conspiracy requires that two or more persons act in concert. *Laurel Sand & Gravel, Inc. v. CSX Transp., Inc.*, 924 F.2d 539, 542 (4th Cir.), *cert. denied*, 502 U.S. 814 (1991).

An agreement or conspiracy to restrain trade may be inferred from other conduct. *Laurel Sand*, 924 F.2d at 542 (citing *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984)). When such conduct is ambiguous, there are two possible judicial interpretations. First, the suspect agreement may be found consistent with independent conduct or a legitimate business purpose. (*Id.*) Second, it may be consistent with the illegal agreement. (*Id.*) To survive a motion for summary judgment, a plaintiff seeking damages for a violation of [15 U.S.C.] section 1 must present evidence "that tends to exclude the possibility" that the alleged conspirators acted independently. *Id.* at 543 (citing *Matsushita*, 475 U.S. at 588).

The defendant railroads provide summary judgment evidence that no conspiracy existed.⁸ However, Cotton contends that, "In reality, the defendant railroads constitute a monopoly." (Docket Entry No. 16 at 3, ¶ 1). Cotton argues that because Burlington, Union, and Houston Belt identify themselves as the "HB&T group" and the group controls over 60 percent of the rail traffic in the

* D.J. Mitchell, Burlington's Executive Assistant to the Chairman, states in his affidavit that Burlington did not "conspire or agree with Metro or any other railroad to deprive Mr. Cotton of exercising his rights or to interfere with Mr. Cotton's efforts, if any, to obtain contracts with Metro for a commuter rail project." (Docket Entry No. 13, Mitchell Aff., Ex. A at 2-3, ¶ 4). Executives from Houston Belt, Southern, and Union make similar statements. (Docket Entry No. 13, Ritter Aff., Ex. B at 3, ¶ 7; McCulley Aff., Ex. C at 3, ¶ 6; Wilson Aff., Ex. D at 3, ¶ 6).

Houston area, they are a monopoly. (*Id.* at ¶ 2; Docket Entry No. 16, Ex. A at 1). Cotton argues both that the HB&T group has excluded Cotton from the railroad business in general and that the group's power in rail transportation extends to the potential, but nonexistent, commuter rail lines. (*Id.* at 4).

Cotton presents no summary judgment evidence "that tends to exclude the possibility" that the alleged conspirators acted independently or for legitimate business reasons with respect to the railroad business in general. See *Laurel Sand*, 924 F.2d at 543 (citing *Matsushita*, 475 U.S. at 588). It is undisputed that Houston Belt owns the tracks and yards that are used by Burlington and Union, and Houston Belt performs switching and transfer duties for Burlington and Union. (Docket Entry No. 16 at 3, ¶ 2). Because of these agreements, Union and Burlington are included in the HB&T group. (*Id.* at 1). Cotton claims that because Burlington and Union own part of the Houston Belt, and because Burlington, Union, and Houston Belt "control the majority of rail traffic and the trackage they operate on," a monopoly exists in the railroad business. (*Id.* at 3, ¶ 2). Cotton fails to present summary judgment evidence that there is no competition in the railroad business. Defendants provide summary judgment proof that vigorous competition in the railroad business does exist. (Docket Entry No. 13, Mitchell Aff., Ex. A at 2, ¶ 4; Ritter Aff., Ex. B at 2, ¶ 6; McCulley Aff., Ex. C at 2, ¶ 5).

Cotton also presents no evidence tending to "exclude the possibility" of independent or legitimate behavior concerning the proposed commuter rail industry. *See Laurel Sand*, 924 F.2d at 543 (citing *Matsushita*, 475 U.S. at 588). Cotton relies on a letter from Houston Belt to the Assistant General Manager of Metro to support his monopoly claim. (See Docket Entry No. 16, Ex. A). The letter specifically states that Metro requested that the Houston railroads submit a joint proposal. The letter also indicates that Southern chose to proceed on its own, rather than join the other railroads' joint proposal. (*Id.*) Nowhere in that letter do the members of the HB&T group mention or suggest that the HB&T group was the only party able to negotiate with Metro concerning commuter rail. (*Id.*)

Cotton was allowed to submit his own proposal, but the summary judgment record shows that he did not do so. (Docket Entry No. 15, Burge Aff. at ¶ 8). Cotton has not submitted evidence tending to exclude the possibility that the HB&T group has acted for legitimate business purposes in their proposals and dealings concerning the commuter rail project.

Plaintiff must also prove that the alleged conspiracy imposed an unreasonable restraint on trade. *See Dillard*, 961 F.2d at 1158; *Jackson v. Radcliffe*, 795 F. Supp. 197, 204 (S.D. Tex. 1992); *Mosby v. American Medical Int'l, Inc.*, 656 F. Supp. 601, 607 (S.D. Tex. 1987). An agreement can be *per se* illegal or illegal by a "rule of reason" analysis. *Mosby*, 656 F. Supp. at 607. An agreement whose nature and effect is "plainly anticompetitive" is illegal *per se*

under 15 U.S.C. § 1. (*Id.*) The "rule of reason" applies if the effect on competition can be evaluated only by analyzing facts peculiar to the business, the purpose of the act, and the intent behind the act. (*Id.* at 608). In analyzing a claim of restraint of trade under the rule of reason analysis, the fact finder weighs all of the procompetitive benefits against the anticompetitive effects of the challenged activity to determine whether that activity is an unreasonable restraint. (*Id.* citing *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49 (1977)).

Cotton does not allege a specific act that restrained competition. Instead, he focuses on the cohesiveness of the HB&T group as the reason he has been "denied" access to the railroad business. The defendants provide summary judgment proof that the HB&T group has no anticompetitive effects. "In addition to HB&T, there are at least four other major railroads that operate in the Houston area. There is vigorous competition among the major railroads that serve the Houston area." (Docket Entry No. 13, Ritter Aff., Ex. B at 2, ¶ 6). Executives from Burlington and Southern make similar statements. (Docket Entry No. 13, Mitchell Aff., Ex. A at 2, ¶ 4; McCulley Aff., Ex. C at 2, ¶ 5).

Cotton presents no controverting evidence that the HB&T group's agreement to share rails and switching duties is plainly anticompetitive. The summary judgment record shows no evidence that the HB&T group's existence has any anticompetitive effects. Cotton states only that the defendants' anticompetitive acts "may destroy competition." (Docket Entry No. 8 at 5). Cotton fails to show

the existence of anticompetitive effects or that those effects outweigh the procompetitive effects of the challenged acts. Defendants' motions for summary judgment as to the 15 U.S.C. § 1 claims are granted.

C. 15 U.S.C. § 2

A claim under 15 U.S.C. § 2 requires the plaintiff to show (1) that the defendants possessed a monopoly power in the relevant market and (2) that the defendants engaged in exclusionary conduct to maintain, use, or extend that power. *Laurel Sand*, 924 F.2d at 544.

Cotton alleges that the HB&T group controls over 60 percent of the rail traffic in the Houston area. (Docket Entry No. 16 at 3, ¶ 2; Ex. A at 1). Cotton states that "because [the HB&T group] control[s] the majority of rail traffic and the trackage they operate on, this is clearly a monopolistic position." (*Id.* at 3, ¶ 2). The summary judgment record shows that the HB&T group does not have a monopoly power over rail transportation in the Houston area, and that there is vigorous competition.⁹ As to the commuter rail project, the defendants provide evidence that the project was not pursued and that no railroad or group of railroads has a monopoly in the Houston commuter rail industry. Metro's Chairman of the Board of Directors, William F. Burge, states that Metro evaluated the commuter

⁹ Hugh L. McCulley, a representative for Southern, states in his affidavit that "in addition to Southern, there are at least four other major railroads that operate in the Houston area. None operates a commuter rail line in the Houston area. There is vigorous competition among the major railroads that serve the Houston area. Southern does not have monopoly power over rail transportation in the Houston area." (Docket Entry No. 13, McCulley Aff., Ex. C at 2, ¶ 5). Executives from the other railroads make similar statements. (Docket Entry No. 13, Mitchell Aff., Ex. A at 2, ¶ 4; Ritter Aff., Ex. B at 2, ¶ 6).

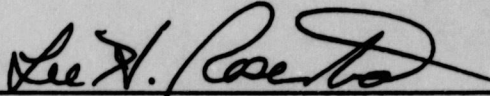
rail alternative but decided not to proceed, in part because federal funding for a demonstration project was not granted. (Docket Entry No. 15, Burge Aff., ¶¶ 4, 9, 10). The four railroad defendants provide similar evidence. (Docket Entry No. 13, Mitchell Aff., Ex. A at 1-2, ¶ 2; Ritter Aff., Ex. B at 1-2, ¶ 3; McCulley Aff., Ex. C at 2, ¶ 3). There is no commuter rail business in the Houston area. There is no summary judgment proof that a monopoly over commuter rail business exists.

The second element of a claim under 15 U.S.C. § 2 requires that the defendants engage in exclusionary conduct to maintain, use, or extend their monopoly power. *See Laurel Sand*, 924 F.2d at 544. Defendants provided evidence that they did not engage in exclusionary conduct. Cotton points to no summary judgment evidence that defendants have engaged in exclusionary conduct, either as to the railroad business or as to the commuter rail business. Burge stated in his affidavit that Metro "invited railroad companies" to submit proposals. (Docket Entry No. 15, Burge Aff. at ¶ 6). Metro did not exclude any potential applicants. Cotton does not dispute that he had the opportunity to submit his own proposal. The summary judgment record shows no genuine issue of disputed fact as to whether the defendants engaged in exclusionary conduct to maintain, use, or extend their monopoly power. Defendants' motion for summary judgment as to 15 U.S.C. § 2 claims are granted.

V. Conclusion

This court GRANTS defendants' motions for summary judgment and
DENIES plaintiff's motion for summary judgment.

Signed on June 16, 1995, at Houston, Texas.

A handwritten signature in dark ink, appearing to read "Lee H. Rosenthal", is written over a horizontal line.

Lee H. Rosenthal
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

No. 95-20570
Summary Calendar

FEB 05 1996

CHARLES R. FULBRUGE III
CLERK

KENNETH B. COTTON,

Plaintiff-Appellant,

versus

THE METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY, TEXAS; UNION PACIFIC
RAILROAD CO.; SOUTHERN PACIFIC RAILROAD CO.;
BURLINGTON NORTHERN RAILROAD; HOUSTON
BELT & TERMINAL RAILWAY CO.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-94-4268
- - - - -

Before DAVIS, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:*

Kenneth B. Cotton appeals the district court's grant of summary judgment for the Metropolitan Transit Authority of Harris County, Texas, and the defendant railroad companies. Cotton's attempted arguments fail to challenge the district court's order. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993). In light of the well-reasoned memorandum opinion by the district

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

EXHIBIT

E

court, see Cotton v. Metropolitan Transit Auth., No. H-94-4268

(S.D. Tex. June 20, 1995), we AFFIRM.

LAW DEPT

DEC 22 1994

REC'D 1128P

Kenneth Cotton, and the Houston Gulf Coast Railroad, in accordance with 49 CFR U.S.C 10910, am seeking a finding by the Commission that the public convenience and necessity permit or require aquisition of the trackage described herein:

The jointly owned Missouri Pacific- Missouri Kansas Texas Railroad trackage between M.P. 180.0 to M.P. 233.0. This trackage was known as the Galveston, Houston and Henderson Railroad; the railroads listed above have been merged into the Union Pacific Railroad.

A copy of the application may be viewed by writing:

Houston and Gulf Coast Railroad
3203 Areba
Houston, Texas 77091
713-682-8458

EXHIBIT

F

Kenneth Cotton, and the Houston and Gulf Coast Railroad in accordance with 49 CFR U.S.C. 10910, am seeking a finding by the Commission that the public convenience and necessity permit or require aquisition of the trackage describe herein:

The Union Pacific Railroad trackage between M.P. 178.5 to M.P. 233.0. The trackage from M.P. 184..0 to M.P. 233.0 was jointly owned by the Missouri Pacific and Missouri, Kansas, Texas railroads and was known as the Galveston, Houston, and Henderson Railroad. The above carriers were merged into the Union Pacific Railroad. This line originates at Eureka Yard in Houston, Texas and terminates in Galveston, Texas (M.P. 233.0). It passes through the counties of Harris and Galveston, and the towns of South Houston, Clear Lake, Webster, League City, LaMarque, Texas City before terminating in Galveston, Texas.

As part of this action I will allow Union Pacific trackage rights between M.P. 178.5 and M.P. 190.0 and access to Eureka Yard. The may contine to use Eureka Yard to make up westbound trains and set out and pick up cars, but under Houston and Gulf Coast Railroad control. I will also grant Southern Pacific Railroad trackage rights between M.P. 184.0 to M.P. 222.0.

I am requesting trackage rights over the Southern Pacific Railroad between Eureka Junction (S.P. M.P. 5.7) and the Imperial Sugar facility in Sugar Land, Texas; these rights are to move sugar from Galveston to Sugarland for processing. Currently, UP uses trackage rights from T &NO Junction to Sugarland for this traffic. I am also requesting trackage rights over the Galveston causeway (M.P. 226.7 to M.P. 228.7).

To prove that the public necessity and convenience requires that sale of the Houston-Galveston trackage, I offer this as evidence:

A. In 1992, the Metropolitan Transit Authority of Houston, Texas began to study the feasibility of commuter rail operations. One of the candidates was the Union Pacific Railroads' Houston-Clear Lake segment of the Houston-Galveston line. This company, in partnership with Anbel, Inc. proposed to the Metropolitan Transit Authority to provide the operations and equipment, Metro instructed us to negotiate an agreement with the railroads involved. The Union Pacific stated in a letter that they would operate the service themselves. This is clearly an anti-competitive, anti-trust action, since Union Pacific has not operated a regularly scheduled passenger train of any kind since 1971, the inception of Amtrak. In other locations, that are looking at commuter rail, the agencies will operate the service and provide the equipment.

In September 1993, the Metropolitan Transit Authority, citing high railroad costs, dropped commuter rail. The Houston and Gulf Coast Railroad did indeed offer a lower cost alternative, but without Union Pacific co-operation, negotiations stalled.

B. The Union Pacific's operation of service over this trackage could be much improved over current levels. Currently, the Union Pacific operates one through freight in each direction, plus one Houston-Texas City local. Unit trains of grain and potash also operate, but on sporadic schedules. Cars sit as long as two days, waiting to be moved. The night train moves mostly sugar to Houston then another train moves the sugar to Sugarland. This traffic is 150-200 cars per week.

The Union Pacific has proven they cannot operate a passenger train in an expeditious manner. The late Texas Limited, an excursion train operating between Houston and Galveston on U.P. tracks, has suffered the following problems;

1. July 10, 1992 - No crew available
2. February 1992 - No orders were issued to authorized the train to move, canceling the run.
3. In late 1992, on its first run from its new terminal, the train was delayed by a yard move.
4. Summer 1994 - Texas Limited more than two hours' late due to a train not releasing its track warrant to allow the Texas Limited to proceed.
5. September 1992 - Union Pacific resists Texas Limited request to add stop at League City (see article).
6. Late summer 1994 - Texas Limited shuts down due to financial losses partly stemmed from the inability to operate in a manner conducive to profitability.

C. The sale of this line will not have adverse financial effect on the Union Pacific due to these reasons:

1. The trackage involved is only 1.15% of the total mileage of the Union Pacific.
2. This line handled around 20,000 cars last year, less than .8% of Union Pacific's total carloads for 1993 (2,618,469) according to AAR;
3. Most of the traffic on this line is terminated on this line; however, outbound loads are generated primarily at Texas City refineries.

D. Operationally, the sale of this line would allow the Union Pacific to release three crews, plus several maintenance-of-way personnel, to perform other duties on Union Pacific. Crews and equipment would be more effectively utilized by the U.P. to move trains across their system.

E. From a marketing standpoint, the sale of this line would result in improved rail service for present shippers and provide safe, on time service for commuters and all new shippers this new carrier would attract.

As an example of this customer-driven rationale, cars destined to and from Imperial Sugar would operate as a unit train. The train would operate with one crew, instead of two with the U.P. Not only would this tighten delivery schedules, it would improve equipment utilization.

Another strategy is to run a scheduled through freight and a local, round trip. Shippers are then able to plan for the delivery of their cars with a measure of reliability and flexibility uncommon to Class One railroads. Interchanges with other carriers will take place in Eureka Yard at night; cars would be delivered the next day.

Widen the customer base. The predominant traffic on this line is limestone, sugar, grain, cotton and chemicals. Since most of this traffic terminates on-line, significant effort would be mounted to originate more traffic to interchange with the Union Pacific and other carriers.

Strengthen relations with the Port of Galveston. This port, which offers a two hour sailing time to the Gulf of Mexico, compared to the Port of Houston, which has an eight hour sailing time to the Gulf. By using the Port of Galveston ship owners save extra time and expense by being closer to the Gulf and are able to get under way more quickly than from the Port of Houston.

The going concern value (GCV) of this trackage is \$4,022,675.26 (1992 figure the value was obtained from sources in the industry. The scrap value of this trackage is \$2,455,000.00. If approved, I will pay the GCV for this line.

The tariff for this trackage will be 350.00 per car. Car storage will be offered in Galveston at the rate of 25.00 per day, plus tariff.

My financial ability to own and operate this trackage will be submitted at a later date.

F. I believe the sale of this line will result in improved service for present shippers, and I will diligently work to attract new shippers, whether they are passengers or shippers of freight.

In conclusion, I have shown that the Union Pacific Railroad has not provided the services needed by its shippers and the public, and that they willingly and knowingly thwarted an attempt to provide needed service over

this line. They have used anti-competitive tactics to block entry into this market. For these reasons, the Commission must find that this line must be sold to the Houston and Gulf Coast Railroad.

Thank you for your consideration

Sincerely,

Kenneth B. Cotton
Chief Operations Officer
Houston and Gulf Coast Railroad

ADDENDUM

As part of this application , we are asking for discovery on these itmes:

1. Going concern value (GCV) for the Houston - Galveston trackage;
2. Carload traffic for the Houston-Galveston trackage for 1993;
3. A complete list including addresses, and phone numbers of all shippers using this line in the past year.

We are also asking the Commission for an oral hearing on this matter.

Thank you for your consideration.

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610



February 15, 1995

Vernon Williams
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, DC 20423

Re: **Feeder Line Application of Kenneth Cotton
and Houston Gulf Coast Railroad Company**

Dear Mr. Williams:

I am enclosing a copy of a Feeder Line Application which has been filed by Kenneth Cotton and Houston Gulf Coast Railroad purportedly in accordance with 49 U.S.C. §10910. This Application requests a Commission order requiring sale of Missouri Pacific Railroad Company's Houston-Galveston, Texas Line.

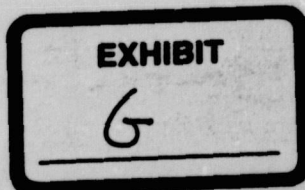
As a result of my discussion this morning with a representative of the Commission's Applications section, I understand that this Application is being returned to Applicants because of a failure to pay the necessary filing fee. If the Application should be refiled, I request that Mr. Cotton forward a copy of the refiled Application directly to me concurrently with any filing at the Commission.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Anthofer". The signature is fluid and cursive, with the first name being particularly prominent.

Joseph D. Anthofer
General Attorney
402/271-4315

c: Kenneth Cotton (w/cy)
3203 Areba
Houston, TX 77091



June 19, 1998

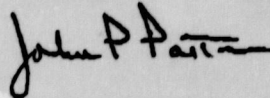
Mr. Kenneth B. Cotton
Houston and Gulf Coast Railroad
3203 Areba
Houston, Texas 77091

Dear Mr. Cotton:

After reviewing your proposal to store cars on the Houston and Gulf Coast Railroad, we have decided to decline your offer. We believe your proposal is both technically and economically unfeasible.

Union Pacific Railroad Company is not interested in any further negotiations at this time.

Sincerely yours,



Jack P. Patton

JPP:klh

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EXHIBIT

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STB

FD-32760 (SUB26)

6-22-98

J

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June 19, 1998

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BY FACSIMILE AND FIRST CLASS MAIL

Richard A. Allen, 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 Dick:

This is in response to your letter of Wednesday afternoon, June 17, which was also signed by Bill Mullins on behalf of KCS. Your letter takes issue with the last paragraph of my letter to you of June 10, which underscored UP's commitment to treat Tex Mex trains fairly and reiterated UP's invitation to Tex Mex to become a full participant in the Consolidated Dispatching Center in Spring, Texas. You assert that all Tex Mex can do at the Spring Dispatching Center is "sit there and watch its trains be discriminated against."

This assertion, as you well know, is manifestly untrue. Your letter continues KCS/Tex Mex's campaign of non-cooperation and baseless accusation in order to seek additional Board-imposed rights. Month after month, Tex Mex has chosen not to cooperate with efforts to improve Houston area rail operations, ignored opportunities to help improve the operation of its own trains, and portrayed itself as a helpless victim of non-existent discrimination. Tex Mex has extensive rights with respect to the dispatching of its trackage rights trains, but it has chosen not to avail itself of those rights in order to pursue a strategy of inventing disputes to bring before the Board as a supposed basis for granting additional conditions in favor of KCS/Tex Mex.

Tex Mex should devote its energies to cooperating with UP to operate Tex Mex's trackage rights trains more efficiently. It should begin by taking responsible action to exercise its existing rights:

Richard A. Allen, Esq.

June 19, 1998

Page 2

- The UP-Tex Mex trackage rights agreement provides for the establishment of a Joint Service Committee, comprised of the chief transportation officers of UP and Tex Mex, which is to meet regularly and be responsible for "establishing rules and standards as appropriate to ensure equitable and non-discriminatory treatment." Agreement, Exh. B, § 2.5. Although UP and Tex Mex representatives have met on occasion to discuss service issues, Tex Mex has never availed itself of the Joint Service Committee process. It should do so.
- The Dispatching Protocols agreed to between UP and Tex Mex give Tex Mex extensive rights with respect to the dispatching of its trains. For example, Tex Mex has the right to be admitted to UP's dispatching facilities and have access to personnel responsible for dispatching to review the handling of UP and Tex Mex trains on joint trackage. Dispatching Protocols, § 10. Tex Mex did not even put an observer into the Spring Dispatching Center until a few months ago, and that observer is present only a few hours a day. If Tex Mex were sincerely concerned about the handling of its trains, it should give its trains more attention.
- Contrary to your assertion, Tex Mex's observer is not restricted to "sitting and watching" the dispatching of Tex Mex's trains.^{1/} Tex Mex has the contractual right to raise with UP "questions, disagreements, concerns or disputes." UP-Tex Mex Dispatching Protocols, § 13. If such disputes cannot be resolved amicably by relevant operating personnel or the Joint Service Committee, Tex Mex is entitled to have them resolved promptly (within fourteen days) by binding arbitration. *Id.* Tex Mex has inquired with UP's General Director-Trackage Rights, Thom Williams, about a handful of dispatching episodes, which UP has investigated thoroughly and determined did not involve discrimination against Tex Mex. Tex Mex has apparently been satisfied with those

^{1/} Your implication that Tex Mex's observer has "sat and watched" while its trains were discriminated against is ludicrous. Tex Mex's observer has not brought any instances of perceived discrimination to UP's attention, with the exception of the one instance addressed in my June 10 letter, which Tex Mex chose to assert before ALJ Grossman rather than discussing it on the scene. As you know, Tex Mex completely misunderstood the situation.

Richard A. Allen, Esq.
June 19, 1998
Page 3

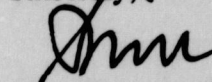
determinations, because it has never sought to have any dispute resolved by the Joint Service Committee or arbitration.

- UP has for several months been urging Tex Mex to move its own dispatchers and supervisors into the Spring Dispatching Center so that they can participate in the coordinated dispatching of Houston/Gulf lines. Such participation would make a positive contribution toward improving the efficiency of dispatching decisions in the region, and would also have the benefit of giving Tex Mex a 24-hour-a-day presence at the facility. Tex Mex should do this without further delay.

I have attached Steve Barkley's response to the questions posed by Mr. Fields in his June 5 letter, a copy of which you attached to your letter. Mr. Barkley has repeatedly explained to Tex Mex the expanded role it would have at the Spring Dispatching Center were it to accept UP's invitation to expand its participation there.

Were Tex Mex sincerely concerned about the handling of its trains or interested in helping to improve railroad operations in the Houston/Gulf Coast region, it would long ago have taken advantage of its contractual rights and joined in cooperative initiatives with UP. Instead, your letter is only the most recent manifestation of what appears to be a strategy of disavowing Tex Mex's commercial rights in favor of falsely portraying Tex Mex as a helpless victim of UP discrimination in litigation before the Board. If Tex Mex believes its trains are discriminated against, it should pursue its contractual rights to remedy that discrimination. Continual sniping before the Board is not productive and reveals the disingenuous nature of Tex Mex's discrimination claims.

Sincerely, .



Arvid E. Roach II

Attachment

cc: William A. Mullins, Esq.
Hon. Stephen Grossman
Hon. Vernon A. Williams

STEVE BARLEY
Vice-President Transportation

UNION PACIFIC RAILROAD COMPANY



24126 Address Westfield Rd.
Spring, Texas 77373
(281) 388-7281

June 18, 1998

Larry D. Fields
President & Chief Executive Officer
The Texas Mexican Railway Company
P.O. Box 419
Laredo, Texas 78402-0419

Re: Consolidated Dispatching Center

Dear Larry:

I am encouraged that we are finally discussing seriously the possibility of Tex Mex's becoming more active in the Consolidated Dispatching Center in Spring, Texas. Let me correct one misconception at the outset. It is not correct that UP and BNSF failed to respond to a request from Pat Watts for Tex Mex to participate as a member of a Joint Service Standards Committee. As Pat recalled in a meeting yesterday, I had discussed that with him months ago, but Tex Mex never got back to us.

Let's put that behind us now and try to move forward constructively. Here are answers to your questions about the Joint Service Standards Committee in which we have been urging Tex Mex to participate:

1) What is the specific role of the Committee in overseeing dispatching of all of its lines?

Answer: The powers of the Committee are defined in the General Conditions of the UP-Tex Mex and UP-BNSF trackage rights agreements:

"2.5 A Joint Service Committee ('Committee'), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules and standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet on a regular basis The agreement goes on to say that the Committee will resolve disputes and identify "ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider."

For reasons that are unclear to us, although there have been informal meetings in Omaha and Houston, Tex Mex has never availed itself of the rights set forth in this provision. Participating in a formal committee would ensure that issues receive the attention of top operating officers on a regular basis.

2) What authorities does a member of the Committee have in settling disputes over dispatching?

Answer: An important overall objective of the Committee is to address concerns jointly and cooperatively. When one railroad raises a concern about dispatching that is not resolved at the time, as most of them are, we look into the concern jointly and discuss it at the next meeting. We find ways for both railroads to study the facts and measure train and dispatching performance. In our experience with BNSF, once we have assembled the facts and data, we have been able to resolve all concerns amicably. If we were unable to do that, the dispute would go to binding arbitration before a neutral arbitrator, as provided in paragraph 13 of the UP-Tex Mex and UP-BNSF dispatching protocols.

3) What do you envision the Tex Mex's role in "co-equal responsibility for overseeing dispatching on all Gulf Coast lines that Tex Mex uses in and beyond Houston"?

Answer: The goal, of course, is for all trains of all railroads to be handled equally by class of train. We envision Tex Mex having equal rights as a joint participant in the oversight of operations on all lines on which it operates. Tex Mex would be a co-equal participant in a joint UP-BNSF-Tex Mex Joint Service Standards Committee (or, if BNSF does not assent to Tex Mex's participation in such a committee, a joint UP-Tex Mex Joint Service Standards Committee). For those lines on which it operates, Tex Mex, like BNSF, would have methods of measuring dispatching performance and resolving any disputes about performance and would have an equal voice in determining dispatching policies and ensuring that personnel in the Center carry out those policies.

4) Would you please elaborate on exactly what rights Tex Mex would have "to exercise oversight and exert direct influence over the handling of its trains as a working participant at the CDC" ?

Answer: My answers to the prior questions answer this question fully, I think. Tex Mex would have the same rights as BNSF with respect to these matters, and I can assure you that BNSF is unwilling to take an inferior position to UP. Tex Mex would have effective rights to ensure that its trains get equal handling.

Tex Mex needs to help itself in several important ways, and the time to do that is long past:

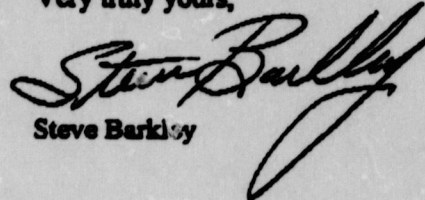
First, Tex Mex should join us in a Joint Service Standards Committee now.

Second, Tex Mex should move its dispatchers and corridor managers to the Consolidated Dispatching Center. Today, Tex Mex has chosen to maintain a presence in the Center for only a few hours a day. If it moves its dispatching supervisors to Houston, it will have a 24-hour presence and will be able to monitor its trains on a real-time basis, instead of raising complaints after the fact. It will also be able to coordinate with other dispatching supervisors to ensure that trains move more effectively. We think KCS should join us, too, with dispatchers and dispatching supervisors for the Beaumont-De Quincy line.

Third, Tex Mex needs to resume providing UP with basic information about its trackage rights trains via electronic data exchange. UP supplied personnel to assist KCS and Tex Mex in setting up an EDI system in Kansas City at UP's expense, we trained Tex Mex people to use it at our expense, and Tex Mex used it for a few weeks. Then Tex Mex stopped using it early this year. We have made numerous requests to Tex Mex for train information that have gone unanswered. Tex Mex needs to resume EDI, because it will help UP handle Tex Mex trains and allow both railroads to improve the measurement of performance and identification of any mishandling of Tex Mex trains.

I hope that these responses give you a better understanding of the role Tex Mex would have in the Consolidated Dispatching Center. We again urge Tex Mex to accept our offer of more extensive participation in the Center.

Very truly yours,


Steve Barkley

STB FD 32760 (Sub 26) 5-21-98 J 187672

187672

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ERIKA Z. JONES

DIRECT DIAL (202) 778-0642

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ENTERED
Office of the Secretary

MAY 22 1998

May 21, 1998

By Hand

**Part of
Public Record**

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

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

Dear Secretary Williams:

As counsel for The Burlington Northern and Santa Fe Railway Company ("BNSF"), we have received a copy of the Motion for Extension of Time filed on May 20, 1998, on behalf of The Chemical Manufacturers Association, The Society of Plastics Industry, Inc., The Railroad Commission of Texas, The Texas Chemical Council, The Texas Mexican Railway, and The Kansas City Southern Railway Company in this proceeding. BNSF has no objection to the requested extension of time until July 8, 1998, for the filing in this proceeding of requests for, and evidence supporting, the imposition of additional remedial conditions to the UP/SP merger, and believes that such an extension could facilitate discussions among the interested parties. BNSF believes, however, that, if any such extension of time is to be granted to the parties which filed the Motion, the due date for the filing of such requests and evidence should be similarly extended for all parties to this proceeding and that the remainder of the procedural schedule should be adjusted accordingly for all parties.

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

Sincerely,

Erika Z. Jones/dls

Erika Z. Jones

cc: The Honorable Stephen J. Grossman
All Parties of Record

CHICAGO BERLIN COLOGNE HOUSTON LONDON LOS ANGELES NEW YORK WASHINGTON
INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS
INDEPENDENT PARIS CORRESPONDENT: LAMBERT ARMENIADES & LEE

