STB FD 32760 (Sub 27) 9-29-98 A 191391

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SCOTT M. ZIMMERMAN

DIRECT DIAL (202) 973-7929

September 29, 1998

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BY HAND

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SEP 30 1998
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Public Record

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

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding is the original and 25 copies of TM-19, "Errata to the Consensus Plan." Also enclosed is a computer disk containing the text of this pleading in WordPerfect 5.0.

Please date-stamp and return with our messenger the additional enclosed three copies of this pleading.

Sincerely,

Scott M. Zimmerman

Enclosures

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TM-19

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-Nos. 26-32)

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

HOUSTON/GULF COAST OVERSIGHT

ERRATA TO THE CONSENSUS PLAN

Tex Mex hereby submits the following errata to the Consensus Plan (TM-2, KCS-2, et al.) filed on July 8, 1998 by the Consensus Partners (the Chemical Manufacturers Association, the Society of the Plastics Industry, Inc., the Railroad Commission of Texas, the Texas Chemical Council, the Kansas City Southern Railway Company, and Tex Mex) in the Houston/Gulf Coast Oversight proceeding.

In preparing TM-17, Tex Mex's response and objections to the application for additional remedial conditions sought by the Burlington Northern and Santa Fe Railway Company, it was discovered that certain trackage rights car miles between Corpus Christi and Houston inadvertently were excluded from the rail traffic data from which the Base Case and Consensus Plan economic scenarios were derived. This omission caused a slight increase in the costs reflected under the Base Case, which in turn required a slight adjustment to the Consensus Plan economic evaluation. These adjustments were incorporated in the Base Case and Consensus

Plan economic data in the verified statement of Joseph J. Plaistow in TM-17, filed on September 18, 1998.[1]

The following errata incorporate the same adjustments in the July 8, 1998 Consensus Plan filing.[2] These errata do not change, in any substantive way, the conclusions or analysis set forth in the Consensus Plan.

ERRATA

Page 257, Table 1	In the "1996 to Base Case" line, replace "**$4,389**" with "**$4,863**", and replace "**$4,384**" with "**$3,910**";
	In the "Base Case to Consensus Plan" line, replace "39,551" with "39,083", and replace "15,793" with "15,325";
Page 259, Table 3	In the "1996 to Base Case" line, replace "$4,389" with "$4,863", and replace "$4,384" with "$3,910";
	In the "Base Case to Consensus Plan" line, replace "**39,551**" with "**39,083**", and replace "**15,793**" with "**15,325**";
Page 274	Replace Exhibit No. JJP-3 with the attached revised Exhibit No. JJP-3;
Page 275	Replace Exhibit No. JJP-4 with the attached revised Exhibit No. JJP-4;

[1] *See* TM-17, Plaistow V.S. at 5, n.1. Hence, the exhibits to Mr. Plaistow's verified statement in TM-17 refer to the "revised" Base Case and Consensus Plan.

[2] Corresponding adjustments also would have been necessary to the Base Case economic data presented by Mr. Plaistow in TM-7/KCS-7, the Joint Petition of Tex Mex and KCS for the imposition of additional remedial conditions, filed on March 30, 1998 in Finance Docket No. 32760 (Sub-No. 21) (The "March 30 request"). However, formal errata to the Base Case numbers in Mr. Plaistow's testimony in that filing, and the recalculations that would be required to incorporate those revised Base Case numbers into Mr. Plaistow's economic analysis of the March 30 request, have been rendered moot, insofar as the economic analysis in the July 8 Consensus Plan supercedes that of the March 30 request.

Page 276	Replace Exhibit No. JJP-5 with the attached revised Exhibit JJP-5;
Page 277	Replace Exhibit No. JJP-6 with the attached revised Exhibit No. JJP-6;
Page 278	Replace Exhibit No. JJP-7 with the attached revised Exhibit No. JJP-7;
Page 279	Replace Exhibit No. JJP-8 with the attached revised Exhibit No. JJP-8.

Respectfully submitted,

Richard A. Allen
Scott M Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 600
Washington, D.C. 20006
(202) 298-8660

Attorneys for the Texas Mexican Railway Company

Dated: September 29, 1998

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Errata to the Consensus Plan" was served this 29th day of September, 1998, by hand delivery upon The Honorable Stephen Grossman, by hand delivery upon the below-named counsel for Burlington Northern Santa Fe and Union Pacific, respectively:

Erika Z. Jones
Adrian L. Steel, Jr.
Kathryn A Kusske
Kelley E. O'Brien
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Arvid E. Roach II
J. Michael Hemmer
David L. Meyer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

and by first class mail upon all other parties of record in the Houston/Gulf Coast Oversight proceeding, Finance Docket No. 32760 (Sub-No. 26 *et al.*).

Scott M. Zimmerman
Attorney for the Texas Mexican Railway Company

Base Case
Balance Sheet
(Revised)

Exhibit No. JJP-3
July 8, 1998

The Texas Mexican Railway Company

	Description	December 31, 1996 Audited (000s) (a)	Adjustment Amount (000s) (b)	Adjusted Base Period Amount (000s) (c)
	Assets			
	Current Assets:			
1	Cash and cash equivalents	$ 392	$ 1,679	$ 2,071
2	Investments	572		572
3	Net Accounts and Notes Receivable	6,663	168	6,831
4	Inventory	1,562		1,562
5	Due from Parent and Other related parties	912		912
6	Current deferred income taxes	984		984
7	Other	590		590
8	Total Current Assets	$ 11,675	$ 1,847	$ 13,522
	Properties:			
9	Equipment	23,481		23,481
10	Land, Buildings & improvements	18,931	13,643	32,574
11	Less accumulated depreciation	(17,870)	(222)	(18,092)
12	Net Properties	$ 24,542	$ 13,421	$ 37,963
	Other Assets:			
13	Investments in other partnership	3,889		3,889
14	Net other assets	1,099		1,099
15	Total Other Assets	$ 4,988	$ -	$ 4,988
16	**Total Assets**	**$ 41,205**	**$ 15,268**	**$ 56,473**
	Liabilities & Equities			
17	Accounts Payable	$ 1,912	$ 487	$ 2,399
18	Due to Parent and other related parties	410		410
19	Other accrued liabilities	4,344	1,034	5,378
20	Total current liabilities	$ 6,666	$ 1,521	$ 8,187
21	Long Term Debt	3,800	11,524	15,324
22	Deferred Income Taxes	5,203		5,203
23	Total liabilities	$ 15,669	$ 13,046	$ 28,715
	Stockholder's equity:			
24	Common Stock	2,500		2,500
25	Additional paid in capital	981		981
26	Retained earnings	22,055	2,223	24,278
27	Total Stockholder's equity	$ 25,536	$ 2,223	$ 27,759
28	**Total Liabilities & Equity**	**$ 41,205**	**$ 15,268**	**$ 56,473**

Base Case
Income Statement
(Revised)

Exhibit No. JJP-4
July 8, 1998

The Texas Mexican Railway Company

Description	December 31, 1996 Audited (000s) (c)	Adjustment Amount (000s) (d)	Adjusted Base Period Amount (000s) (e)
Operating Revenues:			
1 Freight	$ 18,107	9,032	$ 27,139
2 Switching	554	276	830
3 Demurrage	550	274	824
4 Incidental	603	301	904
5 Uncollectible Accounts	(480)	(239)	(719)
6 Total Operating Revenues	19,334	9,644	28,978
Operating Expenses:			
7 Maintenance of Way & Structures	2,294	-	2,294
8 Maintenance of Equipment	1,720	931	2,651
9 Transportation	9,403	3,994	13,397
10 General & Administrative	3,343	388	3,731
11 Depreciation Expense	1,577	222	1,799
12 Loss (Gain) On Sale of Fixed Assets	25	(25)	-
13 Total Operating Expenses	$ 18,362	$ 5,510	$ 23,872
14 **Income (Loss) From Operations**	**$ 972**	**$ 4,135**	**$ 5,107**
15 Other Income & Expense Net	636	(878)	$ (242)
16 Income (Loss) before Income Taxes	1,608	3,256	4,864
17 Income Tax Rate			34%
18 Income Taxes	620	1,034	1,654
19 **Net Income (Loss)**	**$ 988**	**$ 2,223**	**$ 3,210**

Base Case
Sources and Applications of Funds
(Revised)

Exhibit No. JJP-5
July 8, 1998

The Texas Mexican Railway Company

Description	December 31, 1996 Audited (000s) (a)	Adjustment Amount (000s) (b)	Base Period Adjusted (000s) (c)
From Operating Activities:			
1 Net Income (Loss)	$ 988	2,223	3,210
2 Depreciation	1,577	222	1,799
3 Deferred Income Taxes	620	-	620
4 Equity Earnings - Partnership Investment	(477)		(477)
5 Dividend Distribution - Partnership Investment	556		556
6 Change in current assets - (Increase) or Decrease	(899)	(168)	(1,067)
7 Change in current liabilities - Increase or (Decrease)	(988)	1,521	533
8 Change in amounts due to/from parent and other related parties -Increase or (Decrease)	498		498
9 **Net Cash Provided by Operating Activities**	1,875	3,797	$ 5,672
From Investing Activities:			
10 Purchases of Equipment & Improvements, net of gain or loss on disposition of fixed assets	(2,011)	(13,643)	$ (15,654)
11 Proceeds from sale of investments	1,224		1,224
12 Investment in Long Term Assets	(1,099)		(1,099)
13 **Net Cash Used by Investing Activities**	$ (1,886)	$ (13,643)	$ (15,529)
From Financing Activities:			
14 Long Term Debt Borrowings	-	11,524	11,524
15 **Net Cash Provided by Financing Activities**	-	$ 11,524	$ 11,524
16 Increase (Decrease) in Cash & Cash Equivalents	$ (11)	$ 1,679	$ 1,668
17 Cash & Cash Equivalents at Beginning of Year	403		403
18 Cash & Cash Equivalents at End of Year	**$ 392**	**$ 1,679**	**$ 2,071**

The Texas Mexican Railway Company

Consensus Plan
Balance Sheet
(Revised)

Exhibit No. JJP-6
July 8, 1998

Description	Adjusted Base Period Amount (000s)	Adjustment Amount (000s)	Year 1 After Change in Operations (000s)	Adjustment Amount (000s)	Year 2 After Change in Operations (000s)	Adjustment Amount (000s)	Year 3 After Change in Operations (000s)	Adjustment Amount (000s)	Normal Year After Change in Operations (000s)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Assets									
Current Assets:									
1 Cash and cash equivalents	$ 2,071	$ (1,719)	$ 353	$ 13,454	$ 13,807	$ 9,770	$ 23,577	$ 12,749	$ 36,325
2 Investments	572		572		572		572		572
3 Net Accounts and Notes Receivable	6,831	155	6,986	775	7,761	103	7,864	-	7,864
4 Inventory	1,562		1,562		1,562		1,562		1,562
5 Due from Parent and Other related parties	912		912		912		912		912
6 Current deferred income taxes	984		984		984		984		984
7 Other	590		590		590		590		590
8 Total Current Assets	$ 13,522	$ (1,564)	$ 11,959	$ 14,229	$ 26,188	$ 9,873	$ 36,061	$ 12,749	$ 48,809
Properties:									
9 Equipment	23,481		23,481		23,481		23,481		23,481
10 Land, Buildings & improvements	32,574	129,462	162,036	-	162,036	-	162,036	-	162,036
11 Less accumulated depreciation	(18,092)	(3,772)	(21,863)	(5,744)	(27,608)	(5,744)	(33,352)	(5,744)	(39,096)
12 Net Properties	$ 37,963	$ 125,691	$ 163,653	$ (5,744)	$ 157,909	$ (5,744)	$ 152,165	$ (5,744)	$ 146,421
Other Assets:									
13 Investments in other partnership	3,889		3,889		3,889		3,889		3,889
14 Net other assets	1,099		1,099		1,099		1,099		1,099
15 Total Other Assets	$ 4,988	$ -	$ 4,988	$ -	$ 4,988	$ -	$ 4,988	$ -	$ 4,988
16 **Total Assets**	**$ 56,473**	**$ 124,127**	**$ 180,600**	**$ 8,485**	**$ 189,085**	**$ 4,129**	**$ 193,214**	**$ 7,004**	**$ 200,218**
Liabilities & Equities									
17 Accounts Payable	$ 2,399	$ 610	$ 3,009	$ 2,881	$ 5,891	$ 376	$ 6,266	$ (282)	$ 5,984
18 Due to Parent and other related parties	410	2,000	2,410	(1,000)	1,410	(1,000)	410		410
19 Other accrued liabilities	5,378	(3,371)	2,007	3,834	5,841	712	6,553	1,112	7,665
20 Total current liabilities	$ 8,187	$ (761)	$ 7,426	$ 5,716	$ 13,142	$ 87	$ 13,230	$ 830	$ 14,059
21 Long Term Debt	15,324	128,221	143,546	(1,342)	142,204	(1,450)	140,753	(1,475)	139,278
22 Deferred Income Taxes	5,203		5,203		5,203		5,203		5,203
23 Total liabilities	$ 28,715	$ 127,460	$ 156,175	$ 4,374	$ 160,549	$ (1,363)	$ 159,186	$ (646)	$ 158,540
Stockholder's equity:									
24 Common Stock	2,500		2,500		2,500		2,500		2,500
25 Additional paid in capital	981		981		981		981		981
26 Retained earnings	24,278	(3,333)	20,945	4,110	25,055	5,492	30,547	7,650	38,197
27 Total Stockholder's equity	$ 27,759	$ (3,333)	$ 24,426	$ 4,110	$ 28,536	$ 5,492	$ 34,028	$ 7,650	$ 41,678
28 **Total Liabilities & Equity**	**$ 56,473**	**$ 124,127**	**$ 180,600**	**$ 8,485**	**$ 189,085**	**$ 4,129**	**$ 193,214**	**$ 7,004**	**$ 200,218**

Consensus Plan
Income Statement
(Revised)

Exhibit No. JJP-7
July 8, 1998

The Texas Mexican Railway Company

Description	Adjusted Base Period Amount (000s) (a)	Adjustment Amount (000s) (b)	Year 1 After Change in Operations (000s) (c)	Adjustment Amount (000s) (d)	Year 2 After Change in Operations (000s) (e)	Adjustment Amount (000s) (f)	Year 3 After Change in Operations (000s) (g)	Adjustment Amount (000s) (h)	Normal Year After Change in Operations (000s) (i)
Operating Revenues:									
1 Freight	$ 27,139	$ 8,302	$ 35,441	$ 41,508	$ 76,948	$ 5,534	$ 82,483	$ -	$ 82,483
2 Switching	830	254	1,084	1,270	2,354	169	2,524	-	2,524
3 Demurrage	824	252	1,077	1,261	2,337	168	2,505	-	2,505
4 Incidental	904	276	1,180	1,382	2,563	184	2,747	-	2,747
5 Uncollectible Accounts	(719)	(201)	(921)	(1,006)	(1,926)	(134)	(2,060)	-	(2,060)
6 Total Operating Revenues	28,978	8,883	37,861	44,415	82,277	5,922	88,199	-	88,199
Operating Expenses:									
7 Maintenance of Way & Structures	2,294	384	2,678	491	3,169	-	3,169	-	3,169
8 Maintenance of Equipment	2,651	931	3,581	4,654	8,235	621	8,856	-	8,856
9 Transportation	13,397	5,204	18,601	25,460	44,061	3,347	47,407	(3,075)	44,332
10 General & Administrative	3,731	129	3,861	809	4,670	129	4,799	-	4,799
11 Depreciation Expense	1,799	1,973	3,772	1,973	5,744	-	5,744	-	5,744
12 Loss (Gain) On Sale of Fixed Assets	-	-	-	-	-	-	-	-	-
13 Total Operating Expenses	$ 23,872	$ 8,621	$ 32,493	$ 33,386	$ 65,879	$ 4,096	$ 69,975	$ (3,075)	$ 66,900
14 **Income (Loss) From Operations**	**$ 5,107**	**$ 262**	**$ 5,369**	**$ 11,029**	**$ 16,398**	**$ 1,826**	**$ 18,223**	**$ 3,075**	**$ 21,298**
15 Other Income & Expense Net	$ (242)	$ (10,176)	$ (10,419)	$ 249	$ (10,170)	$ 267	$ (9,902)	$ 195	$ (9,707)
16 Income (Loss) before Income Taxes	4,864	(9,914)	(5,050)	11,278	6,228	2,093	8,321	3,270	11,591
17 Income Tax Rate	34%		34%		34%		34%		34%
18 Income Taxes	1,654	(3,371)	(1,717)	3,834	2,117	712	2,829	1,112	3,941
19 **Net Income (Loss)**	**$ 3,210**	**$ (6,543)**	**$ (3,333)**	**$ 7,443**	**$ 4,110**	**$ 1,381**	**$ 5,492**	**$ 2,158**	**$ 7,650**

Consensus Plan
Sources and Applications of Funds
(Revised)

Exhibit No. JJP-8
July 8, 1998

The Texas Mexican Railway Company

Description	Base Period Adjusted (000s) (a)	Year 1 After Change in Operations (000s) (b)	Year 2 After Change in Operations (000s) (c)	Year 3 After Change in Operations (000s) (d)	Normal Year After Change in Operations (000s) (e)
From Operating Activities:					
1 Net Income (Loss)	3,210	(3,333)	4,110	5,492	7,650
2 Depreciation	1,799	3,772	5,744	5,744	5,744
3 Deferred Income Taxes	620	-	-	-	-
4 Equity Earnings - Partnership Investment	(477)	-	-	-	-
5 Dividend Distribution - Partnership Investment	556	-	-	-	-
6 Change in current assets - (Increase) or Decrease	(1,067)	(155)	(775)	(103)	-
7 Change in current liabilities - Increase or (Decrease)	533	(2,761)	6,716	1,087	830
8 Change in amounts due to/from parent and other related parties -Increase or (Decrease)	498	2,000	(1,000)	(1,000)	-
9 **Net Cash Provided by Operating Activities**	$ 5,672	$ (477)	$ 14,796	$ 11,220	$ 14,224
From Investing Activities:					
10 Purchases of Equipment & Improvements, net of gain or loss on disposition of fixed assets	$ (15,654)	$ (129,462)	$ -	$ -	$ -
11 Proceeds from sale of investments	1,224	-	-	-	-
12 Investment in Long Term Assets	(1,099)	-	-	-	-
13 **Net Cash Used by Investing Activities**	$ (15,529)	$ (129,462)	$ -	$ -	$ -
From Financing Activities:					
14 Long Term Debt Borrowings	11,524	128,221	(1,342)	(1,450)	(1,475)
15 **Net Cash Provided by Financing Activities**	$ 11,524	$ 128,221	$ (1,342)	$ (1,450)	$ (1,475)
16 Increase (Decrease) in Cash & Cash Equivalents	$ 1,668	$ (1,719)	$ 13,454	$ 9,770	$ 12,749
17 Cash & Cash Equivalents at Beginning of Year	403	2,071	352	13,807	23,576
18 Cash & Cash Equivalents at End of Year	**$ 2,071**	**$ 352**	**$ 13,807**	**$ 23,576**	**$ 36,325**

STB FD-~~33568~~ 3-30-98 A ID-186754 1 OF 6

32760 Sub 27

6/11

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW

A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
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William A. Mullins

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FD 33568

HAND DELIVERY
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, D.C. 20423

RE: Finance Docket No. 32760 (Sub-No. 21)
Joint Petition Of The Texas Mexican Railway Company And The Kansas City Southern Railway Company For Imposition Of Additional Remedial Conditions Pursuant To The Board's Retained Oversight Jurisdiction

Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding are the original and twenty-six copies of the Evidentiary Submission of The Texas Mexican Railway Company and The Kansas City Southern Railway Company in support of their Joint Petition for Remedial Conditions that was filed on February 12, 1998.

The Evidentiary Submission also includes a related Petition for Exemption from 49 U.S.C. § 10901 in Finance Docket No. 33568 for Tex Mex's construction and operation of a rail line between Rosenberg and Victoria, TX. A check in the amount of $48,300.00 is attached for the filing fee for that petition.

Please date and time stamp one copy of the Evidentiary Submission enclosed herewith and return it to the courier for return to our offices. Included with this filing is a 3.5-inch diskette with the text of the submission and related petition.

Sincerely yours,

William A. Mullins
Attorney for The Kansas City Southern
Railway Company

cc: Parties of Record

FEE RECEIVED
MAR 30 1998

TABLE OF CONTENTS

RELATED PETITIONS - FINANCE DOCKET NO. 33568

TM-7
KCS-7

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

Unless Tex Mex is provided a better route through Houston and is able to generate sufficient revenues to build additional infrastructure, the trackage rights granted to Tex Mex in the UP/SP merger to preserve competition for NAFTA traffic will have failed.

Larry Fields, President
Texas Mexican Railway Company

So said Mr. Fields as he reflected upon the continuing rail crisis in Texas. It was these concerns that prompted Texas Mexican Railway Company ("Tex Mex") and The Kansas City Southern Railway Company ("KCS") (jointly, "Tex Mex/KCS") to file, on February 12, a joint petition setting forth a proposed plan to improve Tex Mex's trackage rights conditions in order to allow Tex Mex to become the effective alternative to UP that the Board envisioned it to become when it granted Tex Mex certain limited trackage rights in the UP/SP merger decision. Correspondingly, the Tex Mex/KCS plan will provide NAFTA and Texas shippers with an adequate permanent alternative to their existing service by UP. While the February 12 petition set forth the basic elements of the proposed plan, this submission is intended to provide the Board with the necessary "traffic studies, operating plan, and pro forma financial statements" that the Board has stated are necessary before it could even consider a major restructuring plan to change the operations in and through Houston. *Joint Petition For Service Order*, STB Service Order No. 1518 at 15 (STB served Feb. 17, 1998).[1]

SUMMARY OF ARGUMENT

In the UP/SP merger decision, the Board granted Tex Mex certain limited access to Houston shippers and certain limited trackage rights so as to ensure effective competition for Houston and NAFTA traffic and to ensure the continued provision of essential rail services provided by Tex Mex to Texas shippers. *See* Decision No. 44, at 147-151; UP/SP Merger Voting Conference Transcript, July 3, 1996 at 20-21, 73-74, 96-99. While the Board intended these conditions to provide Houston and NAFTA shippers with a competitive alternative, the rail crisis has shown that Tex Mex cannot adequately provide that alternative. Tex Mex's trackage rights depend upon dispatching practices not under its control, upon UP's and BNSF's control of Houston switching operations, upon existing infrastructure entirely controlled by UP or BNSF, and are too circuitous to provide an efficient north/south routing.

To avoid such dependence upon UP and BNSF and to provide a truly competitive alternative to UP for Houston and NAFTA traffic, Tex Mex needs yard space, neutral switching, neutral dispatching, and additional infrastructure. Tex Mex and KCS are willing to commit to invest in additional infrastructure for Houston and NAFTA shippers, but with the current

---

[1] Interestingly, UP has never been required, as part of this oversight proceeding or as part of the Emergency Service Order, to provide any such similar studies, which are expensive and burdensome, to justify any of UP's numerous Service Recovery Plans, their operations in and through Houston, or their dissolution of the Houston Belt and Terminal Railway Co.

limitations placed upon Tex Mex's trackage rights, Tex Mex/KCS cannot generate sufficient traffic densities to justify such additional infrastructure investment.

The crisis has shown that nearly total dependence upon UP is not conducive to the development of adequate transportation service. While UP is not entirely to blame for the rail service crisis, UP's management practices greatly exacerbated that crisis. UP's Service Recovery Plans have failed to solve the problem, and other than publicly stating that it intends to make certain capital investments in Texas and Louisiana, UP has not provided this Board or the public with the details of those capital spending plans nor set forth a plan that will prevent such a rail service crisis in the future. UP's actions have clearly established that Houston and NAFTA shippers need routing alternatives in order to avoid continued service failures in the future.

The Tex Mex/KCS proposal set forth herein can be implemented within one year, provides additional rail capacity in the Houston terminal area, increases operating efficiencies, relieves congestion, and provides Houston and NAFTA shippers with an effective competitive alternative. As such, the plan will ensure that the Board's intent in granting trackage rights through Houston to the Tex Mex in the UP/SP merger will be fully achieved.[2]

As stated above, the Board has expressed their view that traffic studies, operating plans, and pro forma financial statements are necessary before the Board could consider a plan like the Tex Mex/KCS plan. These types of statements are generally described in the Board's regulations under Part 1180. Although Part 1180 is generally used for Applications, Tex Mex and KCS are substantially complying with those provisions.

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[2] The additional remedial conditions sought by Tex Mex/KCS are intended, principally, to accomplish the Board's goals to ensure the continuation of an effective competitive alternative for NAFTA traffic and to improve the services provided by Tex Mex. The Petition and plan is not intended to reargue old issues so as to warrant significant new conditions or to ask for conditions that would significantly interfere with the railroad operations of either UP or BNSF.

1. Description of the Proposed Additional Remedial Conditions [49 C.F.R. Section 1180.6(a)(1)]

The Tex Mex/KCS plan proposed herein, under the Board's retained oversight jurisdiction, provides Tex Mex/KCS neutral switching and dispatching in the Houston terminal area, increases operating efficiencies, relieves congestion, adds infrastructure, and provides shippers with a competitive alternative. The Board appropriately retained oversight jurisdiction of the UP merger to, among other things, impose additional conditions and/or modify existing conditions. Tex Mex and KCS assert that additional remedial conditions are not only needed, they are essential. Accordingly, Tex Mex and KCS propose that the following remedial conditions be imposed:

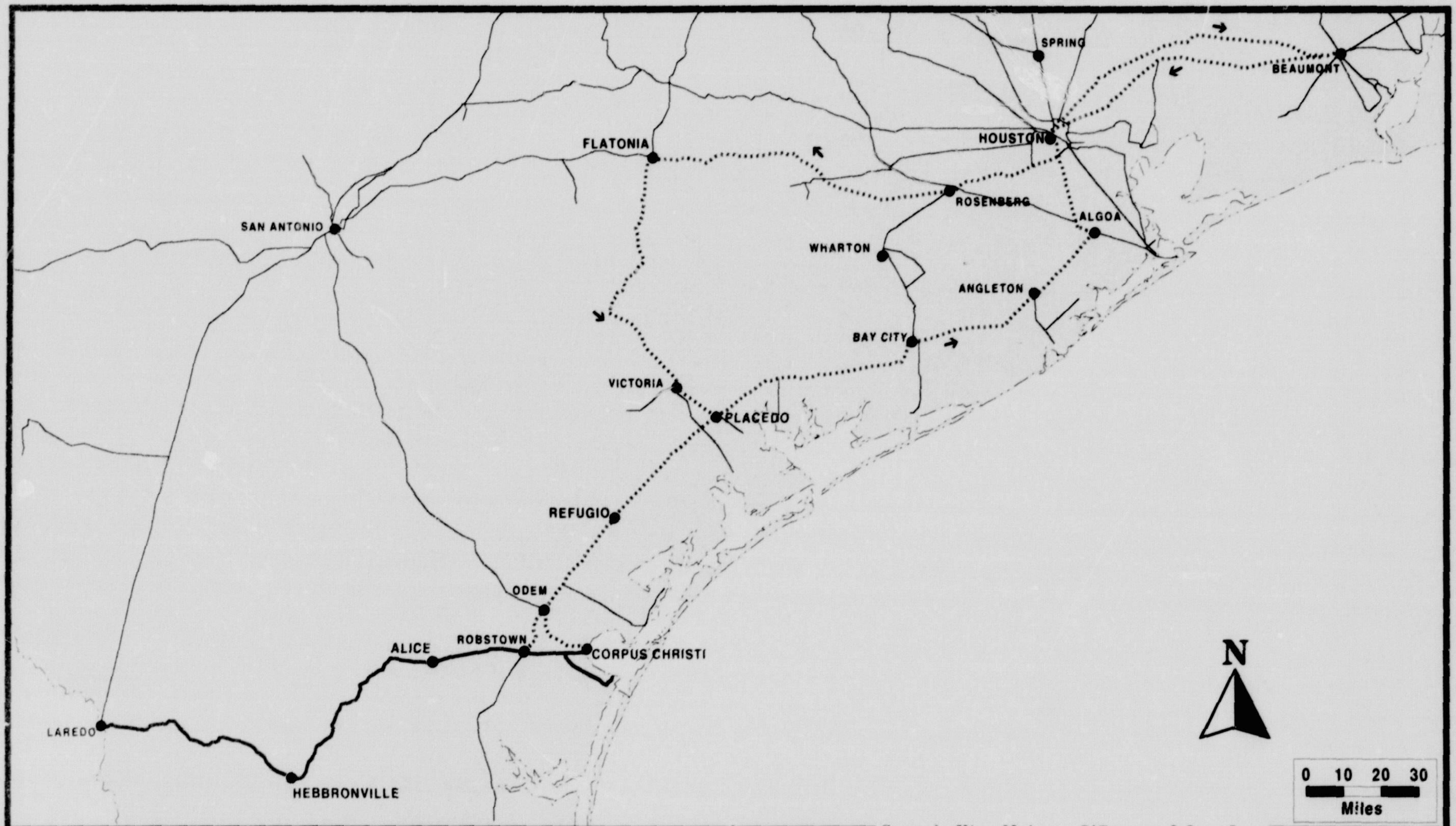
1. That UP be required to divest to Tex Mex/KCS Booth Yard, Houston, Texas along with trackage rights over the HBT tracks from Tower 85, located on the East Belt line to Booth Yard and trackage rights over PTRA owned tracks from PTRA's North Yard - (Galena Jct PTRA Milepost 1.4) to PTRA's Pasadena Yard (Pasadena Jct, PTRA Milepost 8.4) on PTRA's Southshore Subdivision;
2. That UP be required to divest itself of and sell to Tex Mex any remaining interest in the former SP Wharton Branch rail line situated between Rosenberg, Texas at SP Milepost 0.0, Tower 17 and End of Track to Victoria, Texas at SP Milepost 89.9;
3. That Tex Mex be granted authority to acquire, reconstruct and operate the former SP line situated between SP's Milepost 0.0 on SP's Wharton Branch, on the former San Antonio Subdivision, at Rosenberg, Texas, and SP's Milepost 89.8 on SP's former Wharton Branch San Antonio Subdivision, at Victoria, Texas;
4. That UP be required to grant to Tex Mex trackage rights over sufficient terminal track owned or retained by UP at Victoria, Texas, and/or Rosenberg, Texas if necessary, to allow Tex Mex to

operate trains between the aforesaid Rosenberg-Victoria line and the connection to UP's line at Victoria and Rosenberg;

5. That UP, BNSF, Tex Mex, and the Port Terminal Railroad Company ("PTRA") be required to appoint PTRA as their neutral dispatcher and contract switching carrier in a defined "Greater Houston Terminal Area"; and

6. That the temporary rights given Tex Mex as part of the Board's Emergency Service Orders, including the lifting of the restriction on Tex Mex's right to serve Houston customers, be made permanent except that, once Tex Mex has acquired, rehabilitated and commenced train operations on the aforesaid Rosenberg-Victoria line segment Tex Mex no longer will operate over the trackage rights awarded it in the Board's Emergency Service Order over the Algoa Route between Houston and Placedo.

The Tex Mex Railroad Under The UPSP Merger



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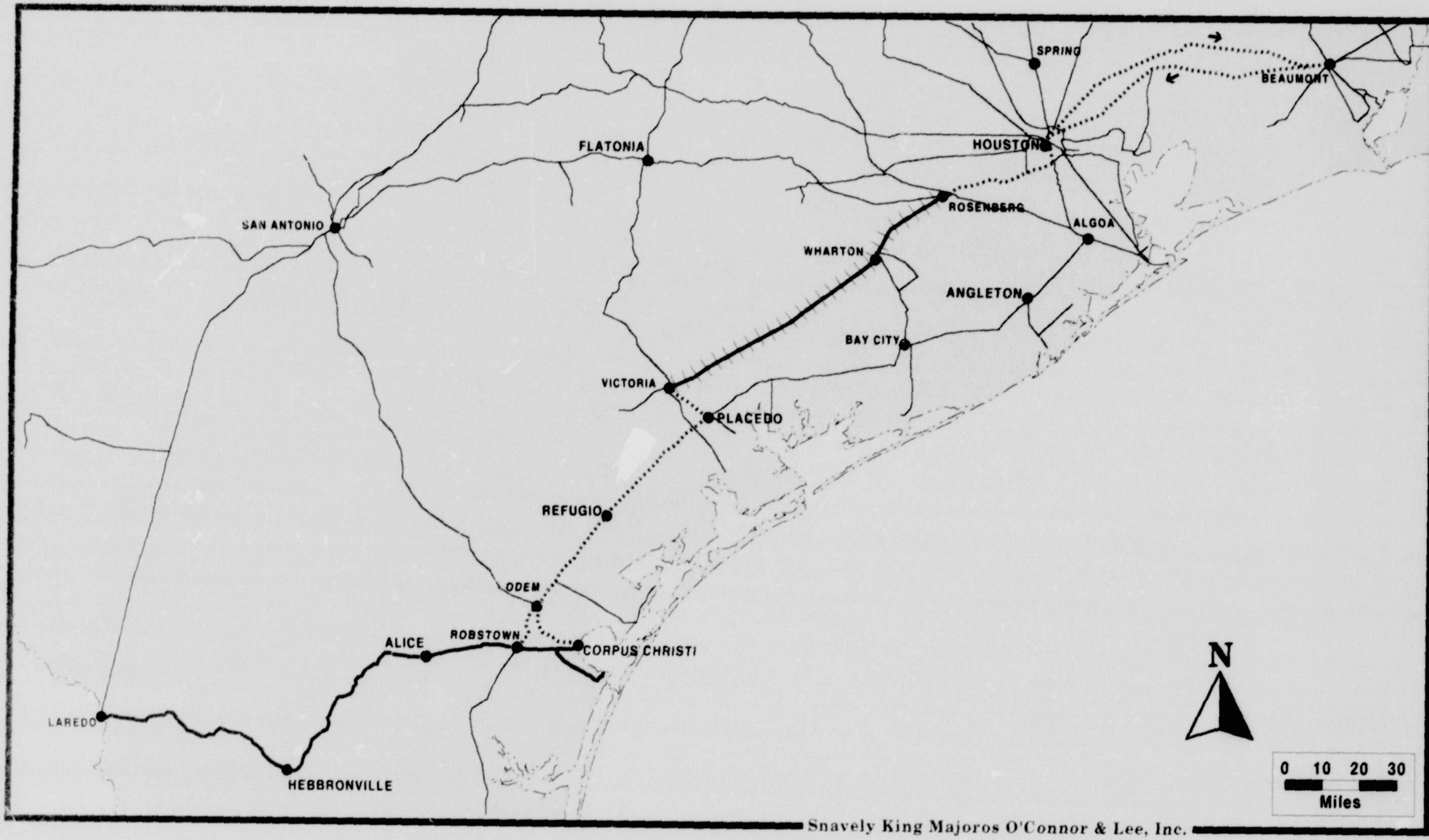
Tex Mex Pre-Merger

Tex Mex Trackage Rights Granted In UPSP Merger

→ Directional Running

The Tex Mex Railroad Under Proposed Plan



Tex Mex Pre-Merger

Tex Mex Trackage Rights Granted In UPSP Merger

Rosenberg to Victoria Reconstruction / Rehabilitation

→ Directional Running

2. Brief Summary of the Proposed Transaction; Name, Address and Telephone Number of Petitioners and Their Counsel [49 C.F.R. Section 1180.6(a)(1)(i)]

Tex Mex and KCS request that the Board grant the additional remedial conditions requested in the Tex Mex/KCS plan pursuant to the Board's retained oversight jurisdiction in the Merger and Control proceeding of Union Pacific Corporation *et al.* and Southern Pacific Rail Corporation *et al.*, Finance Docket No. 32760. In summary, the proposed remedial conditions would give Tex Mex authority to purchase, enhance and operate Booth Yard in Houston, Texas and to reconstruct and operate the former SP line between Rosenberg and Victoria, Texas. In addition, the Tex Mex/KCS plan requests that the Board allow PTRA to become the neutral dispatcher and contract switching carrier for the "Greater Houston Terminal Area" and to make the temporary rights under the Emergency Service Orders permanent. As such, the plan will ensure that the Board's intent in granting Tex Mex certain conditions in the UP/SP merger will be fully achieved.

Tex Mex's business address and telephone number for purposes of this proceeding are:

The Texas Mexican Railway Company
1200 Washington Street
Post Office Box 419
Laredo, Texas 78042
(210) 728-6700

The name and address of Tex Mex's counsel to whom questions regarding this Joint Petition can be addressed are:

Richard A. Allen
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W., Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

KCS's business address and telephone number for purposes of this proceeding are:

The Kansas City Southern Railway Company
114 West 11th Street
Kansas City, Missouri 64105
(816) 983-1392

The name and address of KCS's counsel to whom questions regarding this Joint Petition can be addressed are:

William A. Mullins
Alan E. Lubel
John R. Molm
David C. Reeves
Sandra L. Brown
Ivor Heyman
Samantha J. Friedlander
Troutman Sanders LLP
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005-3314
(202) 274-2950

3. Proposed Time Schedule for Consummation of the Proposed Transaction [49 C.F.R. Section 1180.6(a)(1)(ii)]

Tex Mex and KCS request that the Board approve the additional remedial conditions requested in the Tex Mex/KCS plan on or about July 28, 1998 as calculated under the Proposed Procedural Schedule filed by Tex Mex/KCS on February 12, 1998 (TM-5/KCS-5). Tex Mex and KCS would implement the additional remedial conditions granted by The Board immediately after the effective date in the order granting such conditions. In addition, Tex Mex and KCS have recognized that Board consideration of their related construction petition, *see* Finance Docket No. 33568 and included herein, might not occur simultaneously with the remaining requests for additional remedial conditions in the Tex Mex/KCS plan. Tex Mex proposes that construction of the Rosenberg to Victoria line will begin immediately upon the effective date of the order granting such construction approval, including the final environmental review. Tex

Mex proposes that operations over the Rosenberg to Victoria line will begin within one year after construction authority is fully granted.

4. The Purpose Sought to Be Accomplished by the Proposed Transaction [49 C.F.R. Section 1180.6(a)(1)(iii)]

The purpose sought to be accomplished by the proposed transaction is fully set forth in the Argument section of this submission and the attached Verified Statements.

5. The Nature and Amount of Any New Securities or Other Financial Arrangements [49 C.F.R. Section 1180.6(a)(1)(iv)]

Tex Mex and KCS will not issue any new securities to conduct the operations proposed in the Tex Mex/KCS plan.

6. A Discussion of the Public Interest Justification in Support of the Tex Mex/KCS plan [49 C.F.R. Section 1180.6(a)(2)]

See Evidentiary Submission and attached Verified Statements of Joseph J. Plaistow, David W. Brookings, David M. Lewis, George Woodward, Michael H. Rogers, Patrick L. Watts, Harlan Ritter, Paul L. Broussard, Larry Fields, and A. W. Rees.

In granting conditional approval of the UP/SP merger, in *Decision No. 44*, the Board recognized the possible need for further, future modification of the imposed conditions due to unforeseen future circumstances and thus specifically retained oversight jurisdiction. *Decision No. 44* at 146. The power to grant conditions such as these additional remedial conditions, including the power specificlly grantaed the Board to authorize trackage rights or order divestiture, is contained in the same section that requires the Board to grant a control application only if it serves the public interest - 49 U.S.C. § 11324(c). *See also Decision No. 44*, Ordering ¶ 6. Accordingly, the Board's conditioning powers are intended to allow the Board to relieve public harm resulting from the transaction and to impose the additional remedial conditions contained in the Tex Mex/KCS plan. These additional remedial conditions are clearly in the public interest.

The rail crisis has shown that dependence on UP is not conducive to the development of adequate alternative transportation service, which the Board envisioned when it conditionally approved the UP/SP merger. Tex Mex's trackage rights, granted in the merger, depend upon UP's dispatching practices, upon UP's and BNSF's switching of Houston operations, upon existing infrastructure controlled entirely by UP, and are too circuitous to provide an efficient north/south route. To avoid such dependence upon UP and to truly provide a competitive alternative to UP for Houston and NAFTA traffic, Tex Mex needs yard space, neutral switching, neutral dispatching, and additional infrastructure. In addition, Tex Mex needs the lifting of the current restriction placed upon Tex Mex's trackage rights in Houston.

The additional remedial conditions proposed in the Tex Mex/KCS plan can be implemented within one year and will not impose unreasonable operating or other problems for UP or BNSF. Furthermore, the Tex Mex/KCS plan will not frustrate the ability of UP to obtain the public benefits that it stated would arise from it merger with SP.

7. Effects of the Transaction on Competition [49 C.F.R. Section 1180.6(a)(2)(i)]

See Verified Statement of George Woodward, Joseph J. Plaistow and Michael H. Rogers.

8. Financial Consideration of the Tex Mex/KCS plan; Traffic Revenue and Earnings Increases; Operating Economies from the Transactions [49 C.F.R. Section 1180.6(a)(2)(ii)]

See Verified Statement of George Woodward, Joseph J. Plaistow and Michael H. Rogers.

9. Effect of the Increase in Total Fixed Charges from the Tex Mex/KCS plan [49 C.F.R. Section 1180.6(a)(iii)]

See Verified Statement of Joseph J. Plaistow, Exhibit 10.

10. Effect on the Adequacy of Transportation [49 C.F.R. Section 1180.6(a)(2)(iv)]

The Tex Mex/KCS plan will add to the adequacy of transportation. *See* Verified Statement of Patrick L. Watts and Harlan Ritter.

11. Effect of the Joint Petition on Employees [49 C.F.R. Section 1180.6(a)(2)(v)]

Imposing the additional remedial conditions requested by Tex Mex/KCS will not result in the abolition or transfer of any Tex Mex or KCS employee position. On the contrary, Tex Mex anticipates that it will need to hire between 108 employees to operate the traffic anticipated from the rights Tex Mex/KCS seek. The labor pools which Tex Mex/KCS anticipates to hire (crew base and responsibilities) are described in the Verified Statement of Patrick L. Watts and Harlan Ritter and David Brookings.

12. Effect of the Inclusion of other Railroads in the Territory [49 C.F.R. Section 1180.6(a)(vi)]

The problems identified by Tex Mex/KCS can and will be solved by the Tex Mex/KCS plan, and the Board should specify that no other carrier should be granted these rights.

13. Any Other Supporting or Descriptive Statements the Petitioners Deem Material [49 C.F.R. Section 1180.6(a)(3)]

See shipper and governmental statements, received to date and included in this filing.

14. A List of States in Which Any Part of the Property of Each Petitioner Carrier is Situated [49 C.F.R. Section 1180.6(a)(5)]

Tex Mex's property is located entirely within the State of Texas. KCS owns and/or operates railroad property in Arkansas, Alabama, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. KCS also provides service via haulage rights in Nebraska and Iowa.

15. Map [49 C.F.R. Section 1180.6(a)(6)]

Tex Mex and KCS submit various maps throughout the filing which indicate the lines discussed and their relationship to other lines.

16. Explanation of the Transaction: Nature and Terms of the Proposed Remedial Conditions [49 C.F.R. Section 1180.6(a)(7)(i)]

The nature and terms of the proposed conditions are set forth in detail in the sections above entitled "Description of the Proposed Additional Remedial Conditions" (complying with 49 C.F.R. Section 1180.6(a)(1)) and Verified Statements of Joseph J. Plaistow, David W. Brookings, David M. Lewis, George Woodward, Michael H. Rogers, Patrick L. Watts, Harlan Ritter, Paul L. Broussard, Larry Fields, and A. W. Rees.

17. Agreements - Exhibit 2 [49 C.F.R. Section 1180.6(a)(7)(ii)]

Proposed neutral dispatching protocols and other agreements involving the PTRA were attached to the Tex Mex/KCS Joint Petition For Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction filed February 12, 1998. In addition, there are numerous trackage rights agreements between Tex Mex, UP, BNSF and HBT. Many of these trackage rights agreements have been previously furnished to the Board. Upon request, Tex Mex and/or KCS will provide any of these agreements to the Board.

18. Consolidated Company Information [49 C.F.R. Section 1180.6(a)(7)(iii)]

This Evidentiary Submission does not propose a consolidation or merger; therefore, Section 1180.6(a)(7)(iii) does not apply.

19. Court Order - Exhibit 3 [49 C.F.R. Section 1180.6(a)(7)(iv)]

Tex Mex and KCS are the real parties in interest; therefore Section 1180.6(a)(7)(iv) does not apply.

20. Property Included in the Proposed Additional Remedial Conditions [49 C.F.R. Section 1180.6(a)(7)(v)]

The property included in the proposed transaction includes property of Tex Mex and KCS in Texas and property of UP, HBT and PTRA, also in Texas, all to the extent set forth in the section entitled "Description of the Proposed Additional Remedial Conditions" (complying with Section 1180.6(a)(1) and the maps.

21. Description of the Principal Routes and Termini of the Lines Involved [49 C.F.R. Section 1180.6(a)(7)(vi)]

Tex Mex is a Class II railroad providing rail service over its 157-mile line of railroad from Laredo, Texas on the Mexican border to Robstown, Texas where it meets up with UP and on to Corpus Christi, Texas on the Gulf of Mexico where it meets up with a branch line of UP. If the Board approves the proposed additional remedial conditions, Tex Mex will continue with its trackage rights over UP at Corpus Christi and Robstown to Placedo, involving 83.1 and 82.9 miles respectively. From Placedo to Victoria, Tex Mex will continue on UP lines via trackage rights for a total of 14.0 miles. From Victoria, Tex Mex will construct and renew operations on the formally abandoned SP Wharton Branch from Victoria to Rosenberg, for a total of 90 miles. At Rosenberg, Tex Mex will continue into Houston and Booth Yard, via trackage rights over UP. Tex Mex will meet up with KCS in Beaumont by way of 80.4 or 73.3 miles of trackage rights from Tower 26 in Houston and Amelia. Other principal routes and terminology set forth in the section entitled "Description of the Proposed Additional Remedial Conditions" (complying with Section 1180.6(a)(1) and the maps.

22. Governmental Financial Assistance for the Proposed Transaction [49 C.F.R. Section 1180.6(a)(7)(vii)]

No governmental financial assistance is contemplated or required.

23. Environmental Data - Exhibit 4 [49 C.F.R. Section 1180.6(a)(8)]

Based upon the traffic studies and other analysis accompanying this filing, the rail traffic reasonably likely to be associated with the Tex Mex/KCS plan will not result in any significant changes in operations of the lines at issue that would exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Of course, this conclusion does not include the proposed Rosenberg to Victoria construction project, because it is subject to a separate environmental review.[3]

Specifically, the transactions described in the Tex Mex/KCS plan will not involve either the diversion from rail to motor carriage of more than (A) 1,000 rail carloads a year, or (B) an average of 50 rail carloads per mile per year for any part of the affected line (49 C.F.R. § 1105.7(e)(4)) on the one hand, or (A) an increase in rail traffic of at least 100 percent or an increase of at least eight trains per day on any segment of the affected line, (B) an increase in rail yard activity of at least 100 percent, or (C) an increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment (40 C.F.R. § 1105.7(e)(5)), on the other hand. *See* 49 C.F.R. § 1105.6(c)(2).

The transactions proposed in the Tex Mex/KCS plan will not result in changes in carrier operations that exceed the above-listed thresholds. Therefore, no additional environmental documentation is required as part of the evidentiary submission for the Joint Petition of The Texas Mexican Company And The Kansas City Southern Railway Company For Imposition Of Additional Remedial Conditions Pursuant To The Board's Retained Oversight Jurisdiction. *See* 49 C.F.R. § 1105.6(c)(2)(i).

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[3] Notably, even the Rosenberg to Victoria line is not predicted to exceed the threshold of an increase of eight trains per day. *See* 49 C.F.R. § 1105.7(e)(5)(i)(A).

The transactions proposed in the Tex Mex/KCS plan are also exempt from the historic reporting requirements of 49 C.F.R. § 1105.8.[4] *See* 49 C.F.R. § 1105.8(b). The rail traffic and operations proposed in the Tex Mex/KCS will result in continued rail operations which would required further STB approval to abandon service or dispose of properties that are 50 years or older [49 C.F.R § 1105.8(b)(1)]; the plan will not result in any significant changes in operations of the lines at issue [49 C.F.R § 1105.8(b)(2)]; and Tex Mex and KCS do not reasonably believe that the level of maintenance of the railroad property will substantially change [49 C.F.R § 1105.8(b)(3)]. Therefore, a historic report is not required to be filed. *See* 49 C.F.R. § 1105.8(b).

24. Market Analysis - Exhibit 12 [49 C.F.R. Section 1180.7]

Tex Mex and KCS have analyzed the traffic flows as they existed prior the UP/SP merger and after adoption of the Tex Mex/KCS plan. This analysis is described in detail in the Verified Statements of George Woodward, Michael H. Rogers, and Joseph J. Plaistow.

25. Operating Plan - Exhibit 13 [49 C.F.R. Section 1180.8(1)-(4)]

The operating plan, set forth in the Verified Statement of Patrick L. Watts, provides a realistic picture of the Tex Mex/KCS operations, assuming the Board approves the proposed Tex Mex/KCS plan. Operations for all of the plan, except over the Rosenberg to Victoria line, could begin immediately upon the effective date of the order approving the proposed additional remedial conditions. Operations over the reconstructed Rosenberg to Victoria line are projected to begin within one year after final approval.

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[4] The Rosenberg to Victoria construction project is excluded from this conclusion because the construction project will be subject to separate historic review, as well as the separate environmental review.

As described in the verified statement of Mr. Watts and Mr. Ritter, implementation of the plan will have minimal impact on the operations of UP and BNSF. Further, the proposed Tex Mex/KCS will not adversely affect Amtrak operations, and in fact, will ultimately help alleviate some freight traffic from already overly congested Amtrak routes.

26. Financial Information [49 C.F.R. Section 1180.9]

Pro forma income statements and balance sheets are submitted as attachments to the verified statement of Joseph J. Plaistow.

ARGUMENT

I. THE CURRENT TEX MEX TRACKAGE RIGHTS ARE INADEQUATE

A. The Board Has A Legal Obligation To Ensure Tex Mex's Trackage Rights Are Effective

In the UP/SP decision, the Board specifically retained oversight jurisdiction "for 5 years to examine whether the conditions we have imposed have effectively addressed the competitive issues they were intended to remedy." *Decision No. 44* at 146. In formulating that "Oversight" condition, the Board specifically retained the jurisdictional power "to impose additional remedial conditions if, and to the extent, we determine that the conditions already imposed have not effectively addressed the competitive harms caused by the merger." *Id.*

The Board later specifically indicated that one of its goals in maintaining oversight was not only to ensure that the "competitive" conditions it had imposed were effective, but that its oversight process would also allow it to "correct any problems created by Tex Mex's operations through and in the Houston terminal area" and that the Board was "prepared to exercise that continuing jurisdiction if necessary and as appropriate" to ensure that the conditions granted to Tex Mex would achieve its stated goals. Decision No. 47 at 12. It is now "necessary" and "appropriate" to correct the problems faced by Tex Mex by adopting the Tex Mex/KCS plan.

Further, in clarifying why it granted Tex Mex two separate and distinct routes through Houston, the Board stated that it did so:

> (a) to allow Tex Mex effective connections to HBT, to PTRA, and to various yards; and (b) to provide an alternative route through Houston in the event of congestion. Tex Mex has the right to insist that any realignment of its Houston routes provide both effective connections and an alternative route.

Decision No. 47 at 12. Thus, to the extent Tex Mex does not have effective connections and cannot operate through Houston, the Board has specifically retained jurisdiction to resolve those problems and indeed, Tex Mex has the "right" to insist that it has an alternative route through Houston.

B. Tex Mex Is Experiencing Significant Operational And Financial Difficulties Due To The UP Congestion Problems

As noted, the Board's decision to grant Tex Mex certain limited trackage rights was intended to provide Houston and NAFTA shippers with a competitive alternative and the Board specifically retained oversight to ensure that those trackage rights were adequate and performing as intended. However, given that Tex Mex must operate in or through Houston over tracks owned, switched, and dispatched by its competitors, whatever happens to the UP has a significant impact upon Tex Mex's and KCS's operations and the NAFTA shippers they serve. UP's problems have caused Tex Mex typically to take more than 12-18 hours simply to move through Houston. This distance across town is only approximately 13½ miles and should normally take four hours. Verified Statement of Patrick L. Watts ("V.S. Watts") at 165. In addition, there have been instances where Tex Mex's trains have been held just outside of Houston for over 10 hours before being permitted to proceed through Houston because UP trains were tied up on the main track without crews. V.S. Watts at 159. An extraordinary number of

Tex Mex trains have experienced Hours of Service tie-ups on the UP system because of intolerable operating practices. Some of the most egregious examples are:

- On December 19, 1997, a Tex Mex train departed from Corpus Christi at 6:30 in the evening, arriving at Robstown, Texas only one half hour later. It took nearly 42 hours to move the remaining miles to Beaumont, using a total of 4 crews.

- On Friday, January 23, 1998, a westbound Tex Mex train [MSHCPJ-22, Shreveport to Corpus Christi] arrived at Settegast Junction, Northeast of Houston, at 11:00 a.m., and did not depart West Junction, on the opposite side of Houston, until 5:35 a.m. on January 24, 1998. While the MSHCPJ-22 set out some rail cars at Basin Yard and picked up 13 rail cars at Dallerup Yard it still took 18 ½ hours to travel the 13 ½ miles. Under normal circumstances, this move, which includes two work events (set out and pick up of cars) while moving the train just across town, should only take four hours.

- On Wednesday, March 4, 1998 Tex Mex train, MHOSH-04 only went 38.2 miles in 12 hours with an average velocity of 3.2 MPH.

V.S. Watts at 163-165. Tex Mex has had many situations where trains will move three miles or less during an entire 12-hour crew shift due to the Houston congestion. *See, e.g.*, V.S. Watts at 160-162. The Tex Mex has not seen any improvements, instead it has seen continued increases in congestion and degradation in service levels in the Houston and Gulf Coast areas.

While the on-going service disruptions in Texas have taken a profound toll on shippers in Texas and especially in Houston, they also have cost Tex Mex over two million dollars due to additional rail operating expenses from increased transit and cycle times utilizing the UP trackage rights. *See Joint Petition of The Texas Mexican Railway Company and The Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction*, Finance Docket No. 32760 (Sub-No. 21) at 11, n. 7. Thus, even though Tex Mex's revenues have significantly increased as a result of the congestion crisis, due the Board's emergency service orders and shippers diverting traffic away from UP and onto the Tex Mex/KCS system, the added expenses caused by the congestion have caused Tex Mex to operate at an operating ratio of 113% for the 3rd Quarter of 1997. For 1997, Tex Mex had an operating <u>loss</u> of $1,193,000. Verified Statement of Joseph J. Plaistow ("V.S. Plaistow") at 126. Tex Mex cannot continue to provide the services necessary to ensure a competitive alternative in the Houston area, let alone invest in additional infrastructure, at such high levels of operating expense.

C. Even Without Congestion, Tex Mex's Trackage Rights Are So Limited That Tex Mex Will Be Unable To Fulfill The Board's Intent In Granting Those Rights To Tex Mex In The First Instance

The focus of the Tex Mex/KCS proposal is to remedy, on a permanent basis, the trackage rights granted to Tex Mex in Decision Nos. 44 and 47 so as to ensure that Houston and NAFTA shippers will, to the maximum extent possible, have a viable alternative to UP's dominance of the NAFTA market so that NAFTA shippers will never again have to suffer service problems of the magnitude caused by UP. The traffic studies, pro-forma financials, operating plan, and competitive analysis included herein have attempted, therefore, to present an analysis based upon the assumption that the congestion will eventually be resolved. What these studies show is that even without congestion, the trackage rights granted to Tex Mex will not be an effective competitive alternative due to (1) the lack of yard space; (2) the fact that Tex Mex/KCS will still be dependent upon dispatching and switching practices controlled by its competitors; and (3) the fact that Tex Mex's competitive ability is weakened by the Board's limits on Tex Mex's rights; and (4) the fact that the revenues generated from those limited rights makes it unattractive to invest in additional infrastructure and capacity which is necessary to reduce Tex Mex's circuitous routing and to free up capacity for both UP and BNSF.

1. Tex Mex Cannot Operate Effectively Without Yard Space

In 1996, UP told the Board that Tex Mex needed to establish a yard operation in Houston to interchange effectively with PTRA at North Yard, as Tex Mex now does.[5] Tex Mex now proposes to establish just such an operation at Booth Yard, an underutilized, partially dismantled yard located away from the East Belt of the former HBT. By purchasing that yard from UP, upgrading it to function effectively as a classification and switching yard, and utilizing that facility in connection with the new Rosenberg-Victoria line that Tex Mex proposes to rebuild, Tex Mex will be able to operate more efficiently, will add needed infrastructure to the Houston area, and will help relieve congestion on the East and West Belts of the former HBT.

Tex Mex must control yard space in Houston to become the competitive counterbalance that the Board intended in the UP/SP merger proceeding. Verified Statement of Paul L. Broussard ("V.S. Broussard") at 212. Yard facilities are essential to normal railroad operations because they are used to interchange traffic between carriers and to classify and block (*i.e.*, sort and group by destination) cars for movement.[6] V.S. Broussard at 202. The essential nature of yard facilities to railroad operations is demonstrated by the number of rail yards that UP, BNSF and PTRA operate in the Houston area. See V.S. Broussard at 200 and map following that page. UP and BNSF together operate at least 26 yards in the Houston Terminal area, while PTRA

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[5] "UP/SP insists that, if Tex Mex wants to interchange directly with PTRA at North Yard, it should establish a yard operation in Houston and put on the required transfer job." Decision No. 47 at 9.

[6] Classification of cars means sorting the cars according to their destination or intended route so that they can be added to the appropriate train. "The purpose of a railroad classification yard is to serve as a kind of a break bulk station, but in this instance a break car station. A rail train will have its cars separated for movement in differing directions under separate trains in the classification yard." James L. Cavinato, *Transportation Logistics Dictionary* 48 (Traffic Service Corp. 1982). Blocking of cars means gathering cars bound to the same destination or intended for movement on the same connecting train into a group so that they can be switched from one train to another as a group in a single movement, rather than car-by-car requiring multiple switch engine movements.

operates approximately 7 yards. Meanwhile, Tex Mex controls no yard space in Houston. V.S. Broussard at 200.

Being able to control and operate yard space to classify and block cars is essential to enable Tex Mex to avoid substantial operating inefficiencies it now suffers in serving Houston. V.S. Broussard at 204. The Board's Decision No. 44 in the UP/SP merger proceeding granted Tex Mex the right to set out or pick up shipments in Houston if those shipments had a prior or subsequent movement on Tex Mex's Corpus Christi-Robstown-Laredo line. Subsequently, the Board's October 31, 1997 Service Order No. 1518 granted Tex Mex the right to accept northbound traffic tendered to it by Houston shippers switched by the HBT and PTRA. The next day, UP and BNSF arbitrarily dissolved the HBT.

Interchanges to shippers formerly switched by the HBT are made by pick ups or set outs at Basin or Dallerup Yards, on the East Belt. V.S. Watts at 177. This requires Tex Mex trains to traverse the heavily congested East Belt portion of the Houston Terminal area.[7] Moreover, in order to interchange at Dallerup or Basin Yards, Tex Mex trains are forced to block the main line while performing pick ups and set outs at those yard. V.S. Broussard at 205. This impedes movement of through traffic while the switching operation occurs, and is inefficient to all concerned.[8]

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[7] To avoid delays to its Beaumont to Laredo trains, Tex Mex has established 2 new trains, daily, operating between Houston and Beaumont to serve Houston shippers for shipments destined to or originating from Beaumont and points north.

[8] "The railroads in Houston, UP/SP contends, long ago recognized that operations such as this would cause unacceptable inefficiencies and delays, and, for this reason, no railroad stops its through trains on the East Belt route to pick up or set out PTRA cars as Tex Mex proposes to do." Decision No. 47 at 9.

Tex Mex interchanges with the PTRA in North Yard, which is adjacent to Basin Yard and close to Booth Yard. A Tex Mex train, if given access to the East Belt by UP's dispatchers,[9] arrives in North Yard to pick up and to set out cars interchanged with PTRA. Normally, these interchanges are made only by Tex Mex trains bound from Laredo or Corpus Christi to Beaumont, inasmuch as congestion on the East Belt is so bad that UP's dispatchers often will not allow a Laredo-bound Tex Mex train onto the East Belt. PTRA has not classified or blocked cars for Tex Mex. Instead, PTRA has tendered Tex Mex at Houston sets of cars that sometimes contain both cars bound south toward Laredo and cars bound north to Beaumont. V.S. Broussard at 203.

The inadequacy of interchange facilities available to Tex Mex in Houston causes inefficiency to both Tex Mex, its customers and to other carriers serving Houston. V.S. Broussard at 203-204. Because Tex Mex has no yard facilities in Houston in which it can classify cars received in interchange or, if the cars were classified, in which it can leave the cars for pick up by a train bound in the proper direction, Tex Mex is forced to haul groups of cars bound in different directions from Houston to the nearest yard facilities available for Tex Mex's use. Normally, that means hauling the cars approximately 80 miles north of Houston to Beaumont. In some instances, however, this could mean having to haul the cars almost 300 miles south to Corpus Christi. V.S. Broussard at 203. Either result creates substantial inefficiency and added cost for Tex Mex. Hauling the cars to Beaumont for classification, for example, has the following effects:

- it slows movement of the shipment by forcing Tex Mex to move it approximately 160 miles to and from Beaumont unnecessarily;

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[9] Several times, Tex Mex trains have been denied access to the East Belt, and were thus prevented from interchanging cars that originated or were terminating in Houston.

- the additional unnecessary movement of cars simply adds further traffic unnecessarily to the already-congested Houston-Beaumont lines;

- it slows the movement of the shipment by forcing the shipment to transit Houston twice rather than just once;

- it further congests the lines in Houston by causing shipments to transit Houston twice rather than just once;

- if southbound cars must be hauled to Beaumont, it forces Tex Mex to pay KCS a switching fee for each car switched to a southbound train; and

- it forces Tex Mex to pay unnecessary trackage rights fees to UP[10] and added time and mileage-based car hire fees to car owners.

If Tex Mex is forced to haul cars to Corpus Christi for classification and then to send them back though Houston, the delay caused by unnecessary movement of the shipments and the unnecessary trackage rights and car hire fees incurred by Tex Mex increase significantly. Accordingly, Tex Mex's lack of yard facilities in Houston forces significant inefficiencies onto Tex Mex, its customers, and to a lesser extent even onto other carriers. V.S. Broussard at 203-204.

2. The Trackage Rights Are Subject To UP's Control

Houston is at the heart of the on-going service disruptions, which have been felt all the way into Central Mexico as UP restricts other traffic in order to let its own pass. One of the primary causes of those disruptions is the absolute control of the dispatching by UP of the Houston operations. *See* V.S. Watts at 163-166. Another cause is the elimination of the HBT as

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[10] For example, under the 3.84 mills per gross ton mile trackage rights fee (subject to RCAF-based increases) established in the Board's Decision No. 47 in the UP/SP merger case (Finance Docket No. 32760, Decision No. 47 at 18), hauling a 100-ton loaded rail car 160 miles round-trip between Houston and Beaumont forces Tex Mex to pay UP over $61.00 per car in unnecessary trackage rights fees.

a neutral switcher and dispatcher, an arrangement that had worked effectively for almost 90 years. V.S. Ritter at 230-231.

Tex Mex/KCS recognize that discriminatory treatment is extraordinarily hard to prove because discriminatory treatment is often disguised by the circumstances of the treatment, nonetheless Tex Mex's trains have been delayed, while in many cases UP trains have not. As an example, while traffic records could indicate that a particular Tex Mex train moved at something resembling normal time during the time it spent on UP trackage rights lines, that would disguise the fact that the train suffered extreme delays entering the UP trackage rights lines in the first place.

This is exactly what happened to Tex Mex MMXSHJ-13. At 2:45 a.m. on February 15, 1998, that train had a crew and was ready to depart Houston. Instead it sat for over 12 hours. First, it sat until 7:00 a.m. because UP trains blocked both main lines. At 7:00 a.m., UP cleared the west main track, but UP dispatchers continued to hold the train because an Amtrak train was due an hour and twenty minutes later. Even after the Amtrak train passed, the UP dispatchers held the Tex Mex train for several more hours before they let the train begin its journey. V.S. Watts at 160. Similarly, in early November, Tex Mex's mainline operations were paralyzed for 54 hours because UP held a train at Robstown, refusing to permit it onto the UP lines.[11] V.S. Watts at 165.

Again on November 6, 1997, Tex Mex was paralyzed by UP. As Mr. Watts explains, a UP crew failed to clear a Tex Mex line near Robstown, which blocked Tex Mex trains from entering the UP lines to Houston. The crew left their train on the siding, secured it and then left

[11] The train being held was actually a UP tri-level that Tex Mex agreed to operate for UP. While UP's operations continued, UP's dispatchers blocked both trains that Tex Mex was operating for UP and for itself. V.S. Watts at 165.

for home without clearing the Tex Mex interlocking. That crew created the gridlock, but the gridlock should have been of a temporary nature. It was not. Tex Mex immediately reported the problem but UP management failed to act for over 13 hours. UP's failure to act for over 13 hours paralyzed Tex Mex operations and caused Tex Mex to tie up under the hours of service law three trains operating between Corpus Christi and Laredo. V.S. Watts at 166.

As Mr. Watts explains, these examples also demonstrate a second fundamental aspect of UP discrimination, but one that is also difficult to prove other than to demonstrate that the problem happens again and again.[12] Simply put, one of the ways UP discriminates against Tex Mex is by resolving congestion problems, not in the most rational and efficient manner possible, but instead in a manner so as to permit its trains to move, leaving Tex Mex to wait until later.[13] V.S. Watts at 160. That was the case on March 19, 1998, when Tex Mex train MHOSHI-19 with a crew on duty for 12 hours was able to move only one mile, from PTRA's North Yard to UP's Strutt Siding on the East Belt line in Houston before being forced by UP to consolidate with another Tex Mex train. This consolidated train was held by UP dispatchers at Basin Yard for 3 hours and Strutt Siding for over 5 hours because of lack of communication between UP's dispatchers in Spring, UP's yardmaster at Settegast Yard, and UP's dispatchers in Omaha. "In my experience, if this had been a UP train, the three entities (Spring, Settegast, and Omaha)

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12 In his verified statement, Mr. Watts describes several specific examples in which UP discriminatory treatment has resulted in extraordinary delays and costs to Tex Mex.

13 This is demonstrated by the fact that the Flatonia to Placedo line, over which both BNSF and Tex Mex must operate southbound to the Laredo gateway, is often where UP parks trains (BNSF and Tex Mex must operate over that line southbound to accommodate the UP directional running south of Houston). Congesting the Flatonia to Placedo line certainly harms UP, but not so much as it hurts Tex Mex and BNSF because UP uses another line altogether to move traffic southbound to the Laredo gateway. *See* V.S. Watts at 158.

would have come together quicker to advance this train or they would have had to answer to their UP boss." V.S. Watts at 160.

Sometimes, though, the discrimination is explicit, as was the case on February 6, 1998 when Tex Mex train 2MSHCPJ-06 departed Dawes, TX at 9:45 p.m. At 10:00 p.m., the Tex Mex crew was instructed to head into Englewood's East Yard to allow Amtrak No. 1 to pass. This train was not allowed to back out of East Yard until 10:40 AM on February 7, 1998. It had no work to do in Houston, it just was to continue on to Victoria. Despite repeated radio attempts with the UP's yardmaster to allow this train to back out of the yard behind Amtrak, the UP's yardmaster made it sit. Shortly before midnight, the UP's yardmaster told the Tex Mex crew: "I can't let you back out because I have UP trains to run in and out of Englwood." Upon hearing about the incident, Mr. Watts had to call the UP's supervisor at the Spring Dispatching Center at 4:05 a.m. and, when that accomplished nothing, the UP's General Manager at 6:10 a.m. to urge the UP to release the Tex Mex train. V.S. Watts at 159.

Other examples of explicit discrimination are described by Mr. Watts. One of the most egregious cases occurred in mid-September, 1997, when the UP Beaumont Subdivision dispatcher refused a Tex Mex train at Beaumont until he was given conclusive proof that the Tex Mex train was a UP detoured grain train being operated by the Tex Mex. As soon as this fact was established, UP allowed the train to enter UP's trackage and the train only experienced 15 minutes delay at Huffman enroute to Houston and delivery to UP, unlike Tex Mex trains which routinely experience many hours of delay. V.S. Watts at 158.

Yet another example was the case on March 19, 1998 at another point on the trackage rights the STB granted to Tex Mex over UP. Tex Mex train MSHCPJ-18 was held at Eagle Lake, TX (on UP's Glidden Subdivision) from 9:00 a.m. until 5:50 p.m., 8 hours and 50 minutes, because two UP dispatchers in Omaha did not make time to work with each other to allow the Tex Mex train to advance from the Glidden Subdivision to the Port Lavaca Branch. Meanwhile, those dispatchers did work together to permit two equal-classed UP westbound trains to pass this Tex Mex train; one at 2:50 p.m. (CSXT 8158 West) and one at 3:20 p.m. (UP 3762 West). V.S. Watts V.S. at 159-160.

Many of these delays also stem in part from the elimination of the HBT as a neutral terminal carrier in Houston,[14] but it seems that UP has treated Tex Mex trains as second class citizens almost from the first time Tex Mex operated over the trackage rights lines. Of course there is an inherent conflict in the situation—the trackage rights granted to Tex Mex were intended to allow Tex Mex/KCS to be an effective competitor to UP for NAFTA traffic, but Tex Mex's operations over those trackage rights are subject to UP's control and Tex Mex trains must compete for limited "window space" with UP's trains. It is not surprising then that UP would tend to favor the movement of its trains over the movement of Tex Mex/KCS trains.[15]

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[14] The ICC recognized that there is an essential and fundamental difference between a terminal railroad company and line-haul railroads. "Terminal companies by their nature and purposes must act as the impartial and bona fide agents of the railroads using their facilities" whereas line-haul railroads do not. *St. Louis Southwestern Railway Co., et al. -- Purchase -- Alton & Southern Railroad*, 331 I.C.C. 514, 536 (1968).

[15] The UP discriminatory treatment has affected not only Tex Mex and KCS, but BNSF as well. In regard to the interchange at Eagle Pass, "affected by extreme congestion on UP lines," BNSF noted that "it is becoming increasingly clear that UP is denying equal access to BNSF, resulting in BNSF being unable to interchange in a timely fashion." BNSF-PR-5, October 1, 1997 Quarterly Progress Report at 3.

Tex Mex trains traveling through Houston have suffered significantly longer delays subsequent to UP's takeover of the dispatching operations in Houston than occurred when HBT dispatched Tex Mex trains, delays that cannot be solely attributed to UP's congestion problems. UP reports system average velocities of between 12 m.p.h. and 16 m.p.h., while Tex Mex often is restricted to velocities of between 0 and 5 m.p.h. as a result of UP actions. V.S. Watts at 161. With the demise of neutral switching and dispatching provided by HBT, Tex Mex and its customers have also encountered numerous operational problems, including problems interchanging with the PTRA. Prior to the abolition of the HBT, the Tex Mex would set out and pick up cars at Basin Yard. From Basin Yard, the HBT would then interchange Tex Mex cars to the PTRA at PTRA's North Yard, which is immediately adjacent to Basin Yard. (In fact, the PTRA utilized much of HBT's Basin Yard through an agreement between HBT and PTRA.) Because the PTRA and HBT utilized the same computer system called TIES (Terminal Information Exchange System), this set out and pick-up was done efficiently and with few problems. Now, as a result of the UP taking over the HBT and using a different computer system than the PTRA, the pick-up and set out is sporadic and inefficient. Indeed, UP has lost and misrouted numerous cars. For example, there have been instances where loaded Shell Company cars, arriving at Houston via the Tex Mex, are never interchanged to the PTRA and delivered to the customer as they should be. Instead, the cars have been routed back to the origin by UP as empty cars. When these Shell cars arrive back at their origin, shown as empty but in fact loaded, both Shell and the Tex Mex are harmed. These problems and delays were not experienced when the HBT was still in existence.

Given the historical treatment of Tex Mex during the congestion crisis, Tex Mex expects that such discrimination will continue even if UP manages someday to overcome its service crisis. Indeed, many of these discriminatory practices pre-date the service crisis and, if left unresolved, will likely continue after the immediate crisis has subsided.

BNSF and UP both have acknowledged the desire to exercise control of their own routes and to ensure the independent and neutral handling of switching and dispatch in the Greater Houston Terminal area, at least for those two carriers. BNSF, which was granted substantial trackage rights in the UP/SP merger, advocated a greater-Houston area solution even more ambitious than that proposed herein by Tex Mex and KCS. Thus, in its October 1, 1997 Quarterly Progress report (BNSF-PR-5) filed in this oversight proceeding, BNSF argued that the several steps were required to prevent UP from continuing to "deny equal access to BNSF," including the following:

> (1) Allow BNSF to control one of two UP mainline tracks through the Houston complex between Tower 26 and Dawes to connection with BNSF's trackage rights over the former SP line to New Orleans, or otherwise provide a route for BNSF to control that enables it to bypass Englewood Yard;
> (2) Grant BNSF supervisory dispatching control of former SP routes between Houston and Memphis and Houston and Iowa Junction;
> (3) Place a neutral third-party (PTRA) in charge of switching operations on the Baytown Branch;
> (4) Install PTRA as a neutral dispatcher of the HBT, as well as the entire Strang/Bayport Loop area, including Pasadena and Sinco; and
> (5) Open the former SP Bayport Loop to reciprocal switching under supervision of PTRA.

Id. at 6.

Subsequently, BNSF proposed several steps that involved either BNSF assuming control of lines or at least requiring neutral third-party control of dispatching of lines through the Houston area.[16] Specifically, BNSF asked for the following steps:

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[16] Petition of BNSF In Support of Joint Petition for Emergency Service Order, Service Order Number 1518, filed October 24, 1997, at 4-5.

(1) Allow BNSF or a neutral third-party to control on a temporary basis a route through the Houston complex which bypasses Englewood Yard to connect with BNSF's trackage rights over the former SP line to New Orleans;

(2) Provide BNSF with temporary supervisory dispatching control of the former SP routes between Houston and Memphis and between Houston and Iowa Junction, or give a neutral third-party dispatching control of the former UP and SP lines in each of these corridors;

(3) Strang area/Baytown Branch Operations
   (i) install PTRA as a temporary neutral supervisory dispatcher of the HBT as well as the entire Strang/Bayport Loop area; and
   (ii) Place a neutral third party (PTRA) temporarily in charge of switching operations on the Baytown Branch.

The BNSF concern regarding UP discriminatory treatment -- and the need to resolve the problem through neutral dispatching and switching -- obviously was strong. In the December 3, 1997 written testimony of Matthew K. Rose, Senior Vice President and Chief Operating Officer of BNSF, Mr. Rose proposed giving BNSF a role in joint supervision of dispatching with UP of the HBT/PTRA/UP dispatching function at Spring, Texas, and joint BNSF/UP supervisory dispatching control of the former SP routes from Houston to Memphis and Iowa Junction. Id. at 6.

In the BNSF Quarterly Progress Report (BNSF-PR-6), filed on January 2, 1998 in this proceeding BNSF again advocated the concept of neutral dispatching in the Houston area:

> In an effort to facilitate fluid operations, BNSF made a proposal to UP that includes the operation of the major lines in the Houston area by UP and BNSF on a coordinated basis under neutral dispatching that BNSF believes would ensure equal treatment and improve service for all.

BNSF-PR-6 at 20. (emphasis added).

BNSF did not stop there in its quest for neutral dispatching and switching in the Greater Houston Terminal Area. In a widely reported letter from BNSF's CEO Robert Krebs to UP Chief Executive Dick Davidson, BNSF threatened to ask the STB to reopen the merger case and to order divestiture of the eastern portion of the SP system if BNSF could not be given equal control in dispatching of lines. BNSF stated its rationale for needing such control as follows:

> [Your] description of how the lines would be operated is contrary to the principle of joint control we discussed. <u>It has become clear to us over the last year that BNSF must have an equal say in the way operations are structured and carried out in order to attract and properly service customers on this line. It is also clear that we will never be on an equal footing unless we are able to offer service to all industries, just as you do today.</u>

UP Says No to Burlington Bid for Share, San Antonio Express-News, February 10, 1998 (discussing ownership plan which would give BNSF access to all shippers in Houston area on UP lines); and Jack Burke, *UP Foes Move In*, Traffic World., February 16, 1998, at 18 (emphasis added).

Most recently, in addressing the need for joint operations to resolve the current rail congestion crisis, BNSF Chairman and CEO Robert D. Krebs was quoted as follows at a major shippers' conference:

> "The problems aren't competition," said Krebs. "We're ready, willing and able to be as strong a competitor as SP was. The problems aren't capacity, though that exacerbates the problem. SP did a pretty good job of getting cars in and out. What we have been objecting to is UP having sole operating authority."

Jack Burke, *Vote of No Confidence UP-BNSF Deal Fails to Quell Shipper Worries; NITL's Bottom Line; Freight is Still Not Moving*, Traffic World., February 23, 1998, at 13.

The BNSF campaign was successful in obtaining for BNSF an equal say in the switching and dispatching of traffic in the Greater Houston Terminal Area, so BNSF no longer has an interest in continuing its fight for installing PTRA as a neutral dispatcher for the HBT lines -- a move which would permit Tex Mex and KCS to maintain the competitive role envisioned by the STB. Thus, while on the one hand, UP continues to insist that there is no need for a neutral dispatcher for Tex Mex's Houston operations, on the other hand, UP and BNSF have established just such a neutral dispatcher for their own operations, but not for Tex Mex's operations:

> As described in the attached press release, BNSF and UP yesterday implemented neutral dispatching in the Gulf Coast area. The new joint dispatching center controls the former SP mainline between New Orleans and Houston, as well as HBT trackage and a portion of the PTRA. A neutral joint director will supervise the center, overseeing corridor managers and dispatchers from both railroads using a common dispatching system. By the end of April, BNSF and UP will expand consolidated dispatching to include hundreds of miles of additional trackage extending north of Houston and all the way to the Mexican border. Tex Mex is still invited to participate, and space is available for its personnel.

Ex Parte No. 573, *Rail Service in the Western United States*, UP March 16, 1998 Weekly Progress Report at 5. Indeed, BNSF has already indicated that they are "very happy with the start-up" and that the consistency and frequency of their switching has improved. *See Joint Dispatching Showing Results*, Rail Business, Vol. 4, No. 12, March 23, 1998, at 12.

Thus, UP and BNSF have already agreed that the concept of neutral dispatching of Houston operations is a viable and good concept. Indeed, the Tex Mex/KCS plan for neutral dispatching would fulfill the enunciated expectations of the Greater Houston Partnership, the City of Houston, the Port of Houston Authority, the Harris County Commissioners, the Railroad Commission of Texas, UP, BNSF, PTRA, KCS and Tex Mex regarding neutral dispatching in the Greater Houston Terminal Area. V.S. Watts at 170-171. However, while UP and BNSF claim the UP/BNSF agreement creating a joint dispatching center "carries out the Surface Transportation Board mandate that railroads operating in the Houston area work together,"[17] the center is to be run by and for UP and BNSF. If such a joint UP/BNSF dispatching arrangement is operationally feasible and beneficial for the two of them, why shouldn't Tex Mex and PTRA

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[17] "Union Pacific, Burlington Northern Santa Fe Open Joint Dispatching Center," Union Pacific Press Release dated March 13, 1998; "Union Pacific, Burlington Northern Santa Fe Open Joint Dispatching Center," BNSF Press Release dated March 13, 1998.

be included in the establishment and selection of such an arrangement that would inure to the benefit of all of the carriers who operate in and through Houston?

UP continues to claim that "Tex Mex is still invited to participate, and space is available for its personnel" in an attempt to indicate that Tex Mex being offered to "participate" in the neutral dispatching scheme. However, when one reads the fine print, it is clear that Tex Mex is to be provided space, and nothing else, for Tex Mex dispatchers. Although Tex Mex dispatchers would be in the same room, and using the same dispatching equipment as the UP and BNSF dispatchers, Tex Mex dispatchers would have no say in the way lines in and around Houston are dispatched and would have no say in the selection of the neutral dispatcher.

Despite UP's misleading statements, the solution is not the UP/BNSF Joint Dispatch Center, but instead is the establishment of the PTRA as the independent and neutral switching and dispatching carrier for the Greater Houston Terminal Area. Tex Mex and KCS propose positive steps towards taking charge of the Tex Mex routes -- constructing at substantial cost a route between Rosenberg and Victoria, purchasing Booth Yard, and offering to provide financial and operational support as necessary to establish a system of neutral switching and dispatching. However, control over switching and dispatching in Houston by UP pursuant to the UP/BNSF joint dispatching center, where Tex Mex has no role in the operations of that center, renders questionable the practicality of the proposed Tex Mex/KCS infrastructure and capacity investments and casts doubt on the long term ability of Tex Mex/KCS to ensure a competitive alternative for NAFTA traffic. To remedy this situation, the STB must establish PTRA as the neutral dispatching and switching carrier in the Greater Houston Terminal Area to: 1) permit Tex Mex to fully and fairly use the terminal area; 2) prevent UP discriminatory practices in Houston and the surrounding territories; and 3) allow Tex Mex and KCS control over their planned infrastructure and capacity investments.

Mr. Ritter has demonstrated conclusively that the STB must act, particularly in light of the dismantling of HBT, to reestablish neutral switching and dispatching. V.S. Ritter at 230-31. Such a proposal is entirely consistent with similar arrangements in other major metropolitan areas that are served by terminal carriers, as well as prior precedent. V.S. Ritter at 230. The ICC has long recognized the importance of, and need for neutral switching and dispatching in circumstances not so different than those presented here.[18]

3. The Current Trackage Rights Do Not Allow Tex Mex To Be An Effective Competitor To UP

The Board granted Tex Mex certain trackage rights and local access to Houston shippers as a condition to the UP/SP merger "to ensure the continuation of an effective alternative to UPSP's routing into the border crossing at Laredo" and to protect the essential service Tex Mex provides to the more than 30 shippers located on its line. Decision No. 44 at 148-149. However, the Board's objectives in granting Tex Mex trackage rights have been undermined because of UP's management practices, the elimination of neutral switching and dispatching, and discriminatory treatment toward Tex Mex.

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[18] *See, e.g., Niagara Junction Railway Company Control*, 267 I.C.C. 649 (1947) (ICC-brokered resolution to concerns over New York Central acquisition of Niagara Junction Railway company includes the maintenance of the Niagara Junction as an independent switching company charged with neutral dispatching); *Fort Worth Belt Railway Company*, 187 I.C.C. 88 (1932) (acquisition of the Fort Worth Belt Railway Company by the Texas and Pacific Railway Company is approved conditioned on the maintenance of the Belt as a separate corporate entity charged with neutral switching and dispatching); *St. Louis Southwestern Railway Co., et al. -- Purchase -- Alton & Southern Railroad*, 331 I.C.C. 514 (1968) (ICC determines that the unique circumstances in St. Louis and East St. Louis require the maintenance of the Alton & Southern as an independently-operated switching carrier).

NAFTA shippers, using a joint Tex Mex/KCS routing, also suffer from the fact that its competitors completely control the routes into and out of Houston.[19] In a normal year, Tex Mex's share of NAFTA traffic using the Laredo gateway is predicted at 14.4%. V.S. Woodward at 110. While BNSF also serves the NAFTA market, much of BNSF's NAFTA traffic does not have to go through the Houston terminal. Further, in the event of congestion in Laredo, BNSF has the Eagle Pass and Brownsville gateways in which to route NAFTA traffic.[20] Tex Mex/KCS must travel in and through Houston subject to UP's dispatch and switching practices. This fact significantly impairs the ability of Tex Mex/KCS to serve the NAFTA traffic.

NAFTA has the potential to contribute greatly to the economic growth and prosperity of the United States and Mexico. As the United States Department of Agriculture explained, "[u]nder NAFTA, Mexico is expected to be an important growth market, especially for grains and oil seeds produced in the midwest and plains states. Affordable rail rates and access to service are critical." Decision No. 44 at 137 (footnote omitted). The Board agreed and stated: "We are particularly sensitive to our responsibility to ensure that this merger will foster the goal of North American economic integration embodied in NAFTA." Decision No. 44 at 147.

As evidenced by Tex Mex/KCS's small market share for this NAFTA traffic, Tex Mex/KCS cannot provide a competitive alternative under the current routings for the trackage rights. Indeed, when Tex Mex suffers delays due to UP's dispatching practices, these delays

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19 *See Letter from Nancy C. Wease, Traffic Manager, CertainTead Corporation to STB dated March 11, 1998*: "As a shipper who has freight moving through Texas, we also understand the importance of ensuring the continued and expanding growth in trade through the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading."

20 *See* "The BNSF agreement should preserve shippers' competitive alternatives at the Brownsville border crossing, and should enhance them at Eagle Pass by upgrading BNSF's access from haulage to trackage rights." Decision No. 44 at 147.

have a spill-over effect on the operations of the KCS. KCS is often times required to store Tex Mex trains in siding at Vidor, Lucas, Helme, and DeQuincy and stage Tex Mex trains as far north as Shreveport and Kansas City. Numerous manifest trains destined for TFM at Mexico have been staged and held at KCS's Beaumont yard, awaiting clearance from UP for Tex Mex to take these trains.

While, during this congestion crisis, UP's market share of Laredo traffic is declining and the number of carloads on the Tex Mex/KCS is increasing (which is precisely what the Board should expect to happen under its emergency service orders and due to shippers diverting traffic away from UP), this is not an indicator of the relevant traffic flows in a post-congestion environment. Indeed, the traffic impact study done by ALK and discussed in the Verified Statements of Joseph Plaistow and George Woodward reflects the traffic flows in just such a post-congestion environment. Those analyses show how, even in the absence of congestion, the Tex Mex trackage rights are still too limited to truly make Tex Mex/KCS an effective alternative to UP for NAFTA traffic. It is important that the Board allow Tex Mex to permanently solicit northbound freight from Houston in order to ensure that Tex Mex is the competitive alternative for Mexico traffic intended by the Board. Without the ability to solicit traffic from Houston to other United States points, the Tex Mex will be relegated to the role of an ineffective niche player who will never be a truly competitive alternative to UP. *See* V.S. Woodward at 106.

II. THE TEX MEX/KCS PLAN RESOLVES THESE CONCERNS AND PROVIDES HOUSTON AND NAFTA SHIPPERS WITH AN EFFECTIVE ALTERNATIVE TO UP

A. The Tex Mex/KCS Proposal

When it approved the merger of the UP and the SP, the Board granted Tex Mex certain limited trackage rights to ensure that that Tex Mex would continue to provide essential services and to be an effective alternative to UP at Laredo – to provide NAFTA and Texas shippers with an adequate permanent alternative to service by UP. The February 12 Joint Petition filed by Tex Mex and KCS set forth the basic elements of the proposed plan intended to improve those trackage rights conditions to allow Tex Mex to fill the role the STB envisioned.

The basic elements set forth have changed since the February 12 Joint Petition. Those changes are reflected in this submission at 15, "Description of the Proposed Additional Remedial Conditions" (complying with Section 1180.6(a)(1) and the maps. Most significantly, in light of the proposed joint ownership of the Houston to Beaumont line by BNSF and UP, Tex Mex and KCS are no longer requesting a forced divestiture of that line to Tex Mex and KCS.

B. The Proposed Plan Resolves, On A Permanent Basis, Many Of The Operational Problems In And Through The Houston Terminal

1. Provides Needed Yard Space For Tex Mex Operations

Tex Mex's proposed purchase of Booth Yard is the optimal solution to inefficiencies Tex Mex now suffers from lack of yard space in Houston, and would have ancillary benefits for all Houston railroads as well. V.S. Ritter at 238. Booth Yard is a former HBT yard now controlled and owned by UP. V.S. Broussard at 204. UP presently uses the yard for storage of cars, a type of use widely agreed to be inefficient use of valuable yard space in a crowded and badly congested terminal area such as Houston. V.S. Broussard at 211. Although the yard has 17 tracks, the connections between most of those tracks and the tracks leading out of the south end of the yard were severed recently. V.S. Broussard at 209. Accordingly, most of the movement of cars into and out of the yard, and even between most of the tracks in the yard, must be performed from the north end of the yard. This reduces flexibility in using the yard for switching and other purposes. V.S. Broussard at 209.

Tex Mex would rehabilitate the Booth Yard facility and put it to more productive use than UP's use of the yard as a railcar parking lot. V.S. Broussard at 209. Tex Mex proposes to restore the connections between the yard tracks and the south end lead track. This would allow cars to be moved between the various yard tracks from either end of the yard, creating added flexibility in classification and blocking of cars. It also would allow trains moving into or out of Houston to enter and exit the yard from the north or from the south. V.S. Broussard at 209. This would be particularly important in connection with Tex Mex's planned rehabilitation and rebuilding of the Rosenberg-Victoria line, which connects with the south end of Booth Yard via the Booth Yard-Harrisburg Junction-T&NO Junction-Rosenberg segment of UP's Houston-Flatonia-San Antonio ("HFS") route. V.S. Broussard at 212.

Not only would Tex Mex improve the usefulness of Booth Yard by upgrading that facility, but using that yard would also reduce congestion on the former HBT belt lines. V.S. Broussard at 212. Thus, Tex Mex trains could travel between Booth Yard and the Rosenberg-Victoria line directly via the HFS route and additional connecting terminal track without having to use the extremely congested West or East Belt lines. Tex Mex trains could operate through Booth Yard, avoiding the nearly gridlocked southern junction of the East and West Belts, Double Track Junction. In addition, interchange for shippers switched on the former HBT lines could take place in Booth Yard, avoiding blockage of the East Belt which presently is forced upon Tex Mex by the need to interchange such shipments at Dallerup, Basin and PTRA North Yards. V.S. Broussard at 205. Interchange with PTRA would also be improved because North Manchester and Pasadena Yards are accessible directly from Booth Yard. V.S. Broussard at 206. Accordingly, interchange by Tex Mex with Houston-serving railroads would become more efficient and congestion on the Belt lines, particularly the East Belt, would be reduced. This would assist all railroads operating in Houston by keeping Tex Mex trains away from some of the most congested portions of the former HBT lines, particularly Double Track Junction, the southern intersection of the East and West Belts. Furthermore, using Booth Yard would coincide well with Tex Mex's rehabilitation and reconstruction of the Rosenberg-Victoria line. V.S. Broussard at 212.

2. Provides Neutral Switching and Dispatching For All Carriers

Tex Mex/KCS proposes to optimize efficient use of Houston Terminal assets by returning to the truly neutral switching and dispatching system which historically served Houston's shippers and railroads effectively and impartially. The switching and dispatch systems presently imposed on Houston by UP and BNSF are not neutral; rather, they are a combination of single carrier switching coupled with joint dispatching managed for the benefit of UP and BNSF. UP controls switching on well over 80 percent of the lines of the former HBT; BNSF controls the remaining small portion. UP and BNSF agreed between themselves to establish a "neutral" UP/BNSF dispatch system,[21] which is really a joint dispatcher selected by both UP and BNSF with no input from Tex Mex or KCS. V.S. Watts at 166-168. Further, while (after they had already decided what to do between themselves without Tex Mex/KCS input) they invited Tex Mex to "participate" in such a center, this was really a euphemism for "observe." Tex Mex/KCS were to be given no substantive role in selecting the dispatcher or operating the center. V.S. Watts at 167. Efficient operation of the Houston Terminal requires more than "joint" UP/BNSF

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[21] "Union Pacific Railroad has proposed to set up and operate with Burlington Northern Santa Fe a joint regional dispatching center to coordinate all train operations in the Houston area and along key lines serving the entire Gulf Coast corridor." UP Press Release, dated February 6, 1998. "At Spring, Texas, near Houston BNSF telecommunications crews are installing the . . . links necessary to begin operation of the joint BNSF/UP regional dispatching center." BNSF Press Release, dated March 5, 1998.

control - it requires an impartial, neutral operator. Such an operator would return efficiency to the Houston terminal while increasing safety of operations.

Historically, Houston enjoyed truly neutral switching and dispatching over much of the Belt and adjacent trackage. Harlan Ritter, currently Vice President for KCS, was president of HBT from 1981 to 1995. His testimony in this matter shows that prior to its dissolution by UP and BNSF last November, HBT switched and dispatched Houston trackage with a view to maximizing efficiency of operations in the Houston Terminal. V.S. Ritter at 230-231. As stated many years earlier by the Interstate Commerce Commission ("ICC") in *Houston Belt & Terminal Railway Company Control, Etc.*, 275 I.C.C. 289, 294, 300 (1950):

> The plan proposed [a new agreement on the operation and management of HBT] is said to offer a practical solution to these difficulties [of inadequate infrastructure and delays in handling traffic]. Primarily it will permit the consolidation of the terminal operations of all of the Missouri Pacific lines entering Houston, and will enable the Rock Island and the Ft. Worth and Denver to operate their trains into Houston, as such, and have the benefit of the Belt terminal facilities. Some benefit will accrue to all the using lines. . . . each of such using lines to be accorded equal rights with respect to the use of the terminal.

In other words, efficient and impartial operation for the overall benefit of the railroads serving Houston was the goal of the HBT fifty years ago. That is Tex Mex's and KCS's goal as well today.

HBT's operation served Houston well for almost 90 years. V.S. Ritter at 230. Despite the difficulties of operating a complex system of lines in a crowded urban area where some physical boundaries are immutable, such as the harbor, HBT served Houston shippers and railroads efficiently up until UP's merger with SP began to take hold. During its operation, HBT earned a number of safety awards, operated profitably, and fulfilled its role as impartial operator of the Houston terminal. V.S. Ritter at 231. Not until UP acquired SP and began to make changes to terminal and yard operations affecting HBT did the Houston situation deteriorate to the deplorable condition in which it is today. Those changes included closings of yards such as Eureka and Strang and various crew reassignments. V.S. Ritter at 248. As those and other management decisions by UP took effect, Houston terminal operations deteriorated. *See* V.S. Ritter at 248-249. UP and BNSF then chose to shove HBT out of the way and to take over operation of its properties themselves, a move which has abandoned the neutral operator concept to one that favors the two of them at the expense of another competitor, Tex Mex/KCS.

UP and BNSF have recently modified the original concept with their joint dispatching operation, although that operation is merely a joint UP-BNSF operation, not a neutral operation such as the former HBT, and still leaves actual switching in the hands of UP and BNSF individually. The joint dispatching operation installed by UP and BNSF at UP's offices in Spring, TX, beginning March 15, 1998, is not "neutral," but merely joint dispatching. When UP announced the plan on February 13, it characterized the operation as follows:

> Union Pacific Railroad and the Burlington Northern and Santa Fe Railway Company agreed today to proceed immediately to set up a joint regional dispatching center for all of their Gulf Coast train operations . . . .

Union Pacific Railroad News Release, dated February 13, 1998. Indeed, UP's plan was developed solely with BNSF in mind ("The agreement follows three months of negotiations between UP Railroad . . . and BNSF." *Id.*) as the joint participant, and was not even broached to Tex Mex/KCS until immediately prior to its public announcement.[22]

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[22] In subsequent statements, the carriers have continued to characterize the dispatch plan as "joint," rather than "neutral," dispatch. *E.g.*, "The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad (UP) today announced that a joint regional dispatching center for Gulf Coast operations," Union Pacific Railroad Company News Release dated March 13, 1998, and "At Spring, Texas, near Houston BNSF telecommunications crews are installing the telephone and data communications links necessary to begin operation of the joint BNSF/UP regional dispatching center as scheduled March 15." BNSF Merchandise Service Update dated March 5, 1998.

V.S. Watts at 167.

The center's operations are designed to serve UP and BNSF. Dispatch personnel will all be responsible to UP and BNSF -

> The entire former Southern Pacific Houston-New Orleans line will be dispatched by UP/BNSF employees, who will report to supervisors of both railroads at the center, as well as the Union Pacific line from Houston to Beaumont, dispatched by UP employees.

Id., and is to be run by a former SP employee, who will be responsible to UP and BNSF.[23]

Tex Mex/KCS has been invited to relocate its dispatching operation to a separate "consolidated dispatching center [which] will be established at Spring where UP and BNSF dispatchers will control their respective lines along the entire Gulf Coast region [and] which is expected to begin operating by the end of April." UP News Release dated March 13, 1998. In other words, Tex Mex has been invited to relocate its dispatching facilities, not to participate in the management of joint dispatching, but merely to observe the joint dispatch process under BNSF and UP control. Even assuming neutral dispatching protocols, UP and BNSF control would skew the process. V.S. Watts at 167. In a like manner, PTRA, which is largely owned by UP and BNSF, has been invited to sit in and observe. *Id.* In short the center was created by and for UP and BNSF, will be staffed and operated by them, and is "neutral" only as between them. Others such as Tex Mex/KCS are merely invited to stand on the sidelines and watch.

The Tex Mex/KCS neutral dispatching and neutral switching plan would serve the publicly-avowed purposes of the UP/BNSF joint dispatch center, but would serve them more

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[23] "W. T. Slinkard of Denver, CO, a former Southern Pacific train management officer, has been appointed to supervise the center as the neutral joint director. Reporting to Slinkard will be four corridor managers, two from UP, and two from BNSF as well as two supervisors of terminal operations and two train dispatcher territories, one each from UP and BNSF." UP News Release dated March 13, 1998.

effectively, in the time-tested manner of the former HBT. UP and BNSF have stated publicly that the purpose of the joint dispatch center is improved efficiency:

> The joint dispatching center will also manage and coordinate UP, BNSF, as well as Houston Belt & Terminal (HBT) and Port Terminal Railroad Association (PTRA) lines in the Houston area. The purpose will be to maintain the ability of the terminal area to handle through trains, as well as trains serving customers and trains moving to and from area freight yards to minimize delays and congestion. Rail customers and the general public will benefit from better train flows through Houston, ...

Id. Similarly,

> The center is designed to improve coordination of train operations and communication among all the railroads serving the Houston area, as well as improve the efficiency of yards serving the area.

UP News Release dated March 13, 1998; and

> Coordination with the joint dispatching center should further assist in expediting Gulf Coast train operations.

BNSF Press Release dated March 5, 1998. In short, the avowed purpose of the joint dispatching center is the same as the function of the former HBT - to improve the efficiency of the terminal operations and facilities - yet the joint dispatching center is an untested concept in Houston while the concept and operation of the HBT stood the test of time for nearly 90 years until it was dismantled by UP and BNSF. *See* V.S. Ritter at 230.

Expanding PTRA's role in Houston to enable it to act as the neutral operator proposed by Tex Mex/KCS would be a more complete, more efficient solution to Houston's operational problems than the joint UP/BNSF dispatch control center. First, Tex Mex/KCS propose an entity which is truly neutral, which has no financial incentive to favor one carrier serving Houston over another, and which therefore can premise its actions on efficiency, not patronage. The UP/BNSF joint dispatching center is - a joint operation by and for UP and BNSF, to the exclusion of others. The Tex Mex/KCS proposal would be impartial, with operational efficiency and impartiality as its principal goals, as governed by the Neutral Dispatching Protocol submitted by Tex Mex/KCS on February 12 in this proceeding. V.S. Watts at 170 and 172. That protocol requires treating all participating carriers serving Houston equitably.

Second, the proposed expanded PTRA operation would be a complete, and therefore more effective, solution because it would encompass switching as well as dispatching. Why would neutral dispatching alone not be enough? Consider the following example of UP's service to Tex Mex as a switching carrier, taken from the February 3, 1998 verified statement of Patrick Watts, *Petition for Consolidation, to Declare Exemptions Void Ab Initio, and to Revoke Exemptions*, FD 33461, 33462, 33463:

> Finally, UP's dissolution of the HBT has recently resulted in UP refusing even to allow the Tex Mex to operate over the HBT's East Belt Line in order to interchange with PTRA. UP has claimed that for operational reasons Tex Mex is no longer permitted to operate over the East Belt. Instead, UP directs the Tex Mex over the West Belt Line and requires Tex Mex to set out the PTRA cars it is moving at Congress Yard rather than setting them out at Basin Yard, on the East Belt, where Tex Mex is supposed to interchange them to PTRA. All of the cars which UP has forced the Tex Mex to set out at Congress Yard instead of at Basin Yard are still sitting in Congress Yard and have not been moved by the UP to Basin Yard as originally intended.

Neutral dispatching alone would not have moved Tex Mex's cars because dispatchers do not assign locomotives and crews to move cars. Only an operating railroad - terminal, switching or linehaul - makes those decisions. In Houston, those decisions are being made for all of the former HBT properties north of the Galveston, Houston & Henderson Railroad ("GH&H") line by UP. That territory encompasses over 80 percent of the former HBT terminal trackage. V.S. Ritter at 226. Without neutral switching to accompany neutral dispatching, UP will continue to be able to nullify the efficiency of other carriers serving Houston by switching non-UP cars in an inefficient or discriminatory manner which prevents other carriers from providing effective service competitive with UP.

Finally, having PTRA as the neutral switching carrier would improve operational safety. UP's safety troubles are well known, having resulted in 2 Federal Railroad Administration ("FRA") safety inspection blitzes within the past year, as well as a National Transportation Safety Board ("NTSB") inquiry into the many accidents on UP's system since the merger with SP. V.S. Ritter at 262-265. Moreover, rather than concluding its safety inquiry following its March 18-20 hearing, the NTSB extended that inquiry, calling for another hearing, in approximately September, into the performance of UP's new safety program.

In contrast to UP, PTRA is a highly qualified and safe operator. Since 1983, PTRA earned 12 Harriman safety awards. Its accident ratio of .93 per 200,000 manhours worked is far better than the industry average of 4.56 per 200,000 manhours worked for switching carriers. Coupled with PTRA's intimate familiarity with the Houston area, where it has operated since 1924, PTRA is highly qualified to be the impartial, efficient, neutral switching carrier and dispatcher of the Houston Terminal under the Neutral Dispatching Protocol submitted herein by Tex Mex/KCS.[24]

3. The Tex Mex/KCS Proposal Adds Infrastructure And Increases Capacity

As Mr. Harlan Ritter, former President of the HBT, details in his verified statement, the congestion problems in Houston and South Texas were not primarily caused by the lack of infrastructure, but rather by various other factors, including inefficient management practices, incompatible computer systems, and the lack of sufficient planning and due diligence. V.S. Ritter at 222. Tex Mex and KCS recognize, however, that building and maintaining an adequate

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[24] UP previously has stated that the PTRA has no experience in dispatching operations in the Houston area. Mr. Watts explains in his verified statement that both Jack Jenkins, the PTRA General Manager, and Paul Tucker, the PTRA Superintendent, have long-term experience with Houston operations. Mr. Watts believes that a very efficient and fair operation could be set up under Messrs. Jenkins' and Tucker's leadership. V.S. Watts at 169.

infrastructure are key elements in providing necessary services to shippers. Toward this end, the parent companies of KCS and Tex Mex have, in the past year or so, invested in excess of $75 million for the upgrading of existing infrastructure and for building new infrastructure in order to improve the rail transportation of NAFTA traffic. These expenditures were specifically for traffic that flows into and out of Mexico and were in addition to the normal capital spending programs spent by Tex Mex and KCS. V.S. Rees at 92. In addition, Tex Mex is currently building a $9.5 million yard facility at Laredo to handle automotive and intermodal traffic that Tex Mex is expecting to handle as a result of the trackage rights granted to Tex Mex in the UP/SP merger. Verified Statement of Larry D. Fields ("V.S. Fields") at 86.

One specific area where Tex Mex and KCS are committed to making capital investments which will increase infrastructure around Houston and a critical element of the Tex Mex/KCS plan is the proposed reconstruction of the Rosenberg to Victoria line. As part of this evidentiary submission, Tex Mex and KCS are filling a related petition with the Board pursuant to 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 for Tex Mex's proposed reconstruction/rehabilitation and operation of a previously abandoned rail line outside of Houston, Texas.[25] The construction petition has been filed under Finance Docket No. 33568 and seeks authority for Tex Mex to reconstruct and subsequently operate approximately eighty-eight (88) miles of line between Milepost 0.0 in Rosenberg, Texas and Milepost 87.8 near

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[25] The subject rail line was previously granted abandonment authority by the Board's predecessor in two proceedings. In *Southern Pacific Transportation Company -- Abandonment Exemption -- In Jackson, Victoria and Wharton Counties, TX*, Docket No. AB 12 (Sub-No. 162X) (ICC served Nov. 1, 1993), a notice of exemption was published for SP's abandonment of the 62 mile portion of the Wharton Branch between Milepost 25.8, near Wharton rail station and Milepost 87.8, near Victoria rail station. In *Southern Pacific Transportation Company -- Abandonment Exemption – In Fort Bend and Wharton Counties, TX*, Docket No. AB 12 (Sub-No. 166X) (ICC served March 8, 1995), SP was granted an exemption to abandon certain rail lines including the 23.3 mile portion called the Wharton segment extending between Milepost 2.5, west of rail station McHattie to Milepost 25.8, west of and including the Wharton rail station.

Victoria, Texas.[26] The reconstruction of the 88-mile Victoria to Rosenberg line will provide a new and needed infrastructure alternative to the approximately 160 mile route Tex Mex is currently compelled to use from Rosenberg to Victoria via the Flatonia route.

Tex Mex estimate that the cost for reconstruction, rehabilitation and purchase of necessary right of way will cost $65.5 million. Tex Mex will construct and operate the line. *See* Verified Statements of David Brookings ("V.S. Brookings") and David M. Lewis ("V.S. Lewis"), attached as Exhibits 1 and 2 to the construction petition. Tex Mex estimates that it will take approximately nine (9) months to complete the engineering, procurement and construction of the rail line proposed herein. *See* V.S. Brookings at 295. Unquestionably, the most expedient reconstruction of the line and reactivation of service over the entire Rosenberg to Victoria line is in the best interest of all concerned.

Tex Mex's planned investment in the Rosenberg to Victoria reconstruction is an integral part of their desire to provide additional infrastructure to the Houston area. In addition, this line will provide a more competitive alternative route to the current rail transportation service provided over the highly congested and circuitous route via Flatonia. The construction authority sought herein, combined with the other additional remedial conditions sought in this submission, will enable Tex Mex and KCS together to effectively compete with UP in the Houston, Laredo and NAFTA markets. *See* V.S. Woodard.

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[26] SP was granted an exemption to abandon the Rosenberg to Wharton portion of this line beginning at Milepost 2.5. As a result, SP retained the stub end at Rosenberg. In a later abandonment proceeding, which included the Wharton to Victoria portion, SP also retained the stub end at Victoria. Recently, Union Pacific indicated its willingness to sell its remaining interest in the line between Milepost 0.0 in Rosenberg to approximately Milepost 85.8, near Victoria. Then UP would grant rights for Tex Mex to operate over the approximate 4 remaining miles between Milepost 85.8 to Milepost 89.8 in Victoria. Depending on the outcome of the negotiations between the parties, Tex Mex is requesting authority to operate and/or purchase the stub end portions as applicable.

It is imperative to note that in order for Tex Mex to make an investment of this magnitude in expanding capacity by reconstructing the Rosenberg to Victoria line, Tex Mex must generate sufficient revenues and traffic densities to pay for such an investment. Operating pursuant to the existing trackage rights, Tex Mex cannot generate sufficient revenues to justify this investment. Indeed, in a normal year without congestion, Tex Mex is projected to produce a net operating income of $4,386,000. V.S. Plaistow at 127. This level of revenue cannot justify building the Laredo yard, reconstructing the Victoria to Rosenberg segment and purchasing Booth yard. However, under the proposed plan, Tex Mex is projected to net $7,107,000. V.S. Plaistow at 127. Thus, under the projected traffic levels for the proposed plan, which includes Houston originated northbound traffic, Tex Mex's investment in Victoria to Rosenberg and Booth yard would be justified and Tex Mex would continue to operate at profitable levels. It is clear that Tex Mex/KCS needs the lifting of the Houston traffic restriction and the additional remedial conditions in order to realize the needed revenues to make this essential investment. V.S. Plaistow at 128.

In addition, if the Tex Mex/KCS plan were adopted, KCS will also commit to the following additional infrastructure capacity improvements in order to improve the traffic flows in and out of Houston and the Texas Gulf Coast.

Location	***Estimated Cost***	***Description of Improvement***
Shreveport, LA	$10.5M	Additional double main track, yard capacity CTC and increased speed.
Lake Charles, LA	$ 7.3M	Additional yard capacity
Leesville, LA	$ 7.0M	Build new storage in transit (SIT) yard for plastics and chemical industries.
Beaumont, TX	$ 5.7M	Build 6 additional tracks in Spindletop Yard adding additional capacity.
Port Arthur, TX	$2.0M	Building a New Intermodal Facility
Helme, Lucas, and Ruliff, TX	$5.8M	Extend active main line sidings by 5,100 feet, 5,000 feet, and 6,311 feet, respectively.

V.S. Rees at 93.

Congestion and delays in the Houston terminal result in a back-up of traffic on the KCS system, sometimes even as far north as Kansas City. The above-described measures for expanding capacity on the KCS system would provide sufficient siding capacity to avoid such back-ups on the KCS system in the event of any future congestion in the Houston terminal complex. These improvements would also provide Houston based shippers, particularly plastics shippers, additional and sufficient yard space to store loaded cars. One of the reasons for the congestion has been the inefficient use of SIT yard space and in some cases, the lack of yard space. However, as long as Tex Mex's trackage rights are limited to southbound traffic, KCS would not have the necessary economic incentive to invest in this additional capacity.

Tex Mex and KCS are no longer requesting a forced divestiture of the Houston to Beaumont line. Rather, they are offering to purchase the former Missouri Pacific main line from UP. If UP were willing to sell the line to KCS/Tex Mex, UP could use the sale proceeds to double track its other Houston to Beaumont line. As a condition to their purchase of the line, KCS/Tex Mex would commit themselves to grant trackage rights over the purchased line to both UP and BNSF. If UP used the sale proceeds it receives from the line sale to double track the other Houston-Beaumont line, it could significantly increase overall capacity between Houston and Beaumont. The use of crossover switches linking double main tracks that are 10 feet apart, instead of 10 miles apart (which is the distance between UP's Beaumont and Lafayette Subdivisions), increases velocity and capacity of the UP's Lafayette Subdivision between Houston and Beaumont. Furthermore, the grant back to UP and BNSF of trackage rights trackage rights on the purchased line would allow those two carriers to continue their directional operations. Finally, because there is no local traffic on the UP line which KCS/Tex Mex has offered to purchase, UP and BNSF would not lose any anticipated revenues or any proposed benefits from the UP/BNSF joint ownership of that line. In total, if the proposed plan is adopted and the traffic levels warrant it, Tex Mex and KCS are willing to commit to spending up to $200 million in additional capital expenditures.[27]

4. The Tex Mex/KCS Proposal Improves Tex Mex's Financial Viability

Following the implementation of the Tex Mex/KCS plan, Tex Mex's financial picture will substantially improve. The model year-to-year trend in the financial information reported in Joseph J. Plaistow's Verified Statement suggests that under the Tex Mex plan, Tex Mex's financial outlook will be much better than its current financial situation. V.S. Plaistow at 138. The models predict a financially strong Tex Mex with an improving financial position over the course of the operating plan's implementation. V.S. Plaistow at 138.

Specifically, the analysis shows that in 1996,[28] the year prior to the UP/SP merger, Tex Mex handled 36, 600 carloads and produced a net operating income of $972,000. V.S. Plaistow at 126. In 1997, subsequent to the implementation of the rights granted to Tex Mex by the STB as a condition to the UP/SP merger, the analysis predicted that Tex Mex would have a net gain of 8,474 carloads and a net operating income of $4,386,000. V.S. Plaistow at 126. Despite this prediction, due to the previously unforeseen congestion problems in and around the Houston area, Tex Mex actually suffered a net operating loss of $1,193,000 in 1997. V.S. Plaistow at 126. However, under the Tex Mex/KCS plan, after rebuilding the Victoria to Rosenberg line segment

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[27] This figure includes the capital investment that Tex Mex is already committed to for the building of its intermodal and automotive yard, the rebuilding of the Victoria to Rosenberg segment, the additional yard and track space that KCS is willing to build, the purchase of Booth yard, and investment in, or purchase of, the line from Houston to Beaumont.

[28] The pre-merger situation was derived from the STB Waybill Sample combined with the 100% Tex Mex traffic tapes. *See* V. S. Michael H. Rogers at 116.

and gaining access to Houston northbound traffic, the models predict that Tex Mex will have a net gain of 49,913 carloads and a net operating income of $7,107,000. V.S. Plaistow at 127 While the predicted number of carloads is a significant increase, this increase is required to generate the income necessary to support Tex Mex's $65,500,000 capital investment in the Victoria to Rosenberg line. V.S Plaistow at 129.

The predicted financial picture will allow Tex Mex to continue to provide essential services to its on-line shippers, provide a competitive alternative to the UP at Laredo, serve as primary operator of Laredo's International Bridge, contribute to relieving congestion in the Houston region, and provide competitive relief to Houston's shippers. V.S. Plaistow at 138. Therefore, if the Board grants the relief requested in the Joint Petition, not only will the planned infrastructure and capacity enhancement projects and capital improvements be economically justified, but in addition, the capacity increasing investment will provide relief to Houston's congestion, additional competitive relief to Houston's shippers, and will improve Tex Mex's financial viability. V.S. Plaistow at 129.

5. The Tex Mex/KCS Proposal Does Not Significantly Interfere With UP's or BNSF's Operations

a. Yard Space

Under the plan, Tex Mex trains could travel between Booth Yard and the Rosenberg-Victoria line directly via the HFS route and additional connecting terminal track without having to use the extremely congested West or East Belt lines. V.S. Broussard at 206. Tex Mex trains could operate through Booth Yard, avoiding the nearly gridlocked southern junction of the East and West Belts, Double Track Junction. In addition, interchange for shippers switched on the former HBT lines could take place in Booth Yard, avoiding blockage of the East Belt which presently is forced upon Tex Mex by the need to interchange such shipments at Dallerup and

Basin Yards. V.S. Broussard at 205. Interchange with PTRA would also be improved because North Manchester and Pasadena Yards are accessible directly from Booth Yard without the necessity of traveling the East Belt. V.S. Broussard at 205. Accordingly, interchange by Tex Mex with Houston-serving railroads would become more efficient and congestion on the Belt lines, particularly the East Belt, would be reduced.

b. Lifting of the restriction

The northbound restriction is an artificial and inefficient waste of railroad service capacity in Houston. The Tex Mex/KCS plan would lift that restriction permanently. Lifting that restriction makes sense operationally, allows Houston shippers to have an alternative routing out of Houston in the event of future congestion, allows Tex Mex/KCS to invest in additional infrastructure, and allows Tex Mex/KCS to become an effective competitor to UP's dominance of the Houston and NAFTA market so as to accomplish the Board's objectives set forth in the UP/SP decision.

The Board concluded in the UP/SP merger that to offset UP's domination of the south Texas and trans-border markets, Tex Mex must be able to haul traffic between its Corpus Christi-Laredo line on the one hand and points in Houston and those north of Beaumont on the other. To provide those services, Tex Mex must operate through Houston to Beaumont. Were it not for the Board's restriction on Tex Mex service, Tex Mex would pick up northbound traffic in Houston for interchange at Beaumont.

Because of the Board's restriction, though, Tex Mex's operation between Houston and Beaumont has been converted into the railroad equivalent of the inefficient, one-way motor carrier authorities that Congress repudiated almost twenty years ago in the Motor Carrier Act of 1980. Tex Mex must occupy essentially the same time and tracks in Houston to merely drop off cars originating on the Corpus Christi-Laredo line as it would to drop those cars off while picking up cars northbound from Houston to Beaumont. By restricting Tex Mex against such service, the Board is making Tex Mex's occupancy of that time and those tracks only half as useful as it could be. By wasting precious time and space available on the Houston rail infrastructure, the Board's restriction against Tex Mex carrying Houston traffic northbound has converted Tex Mex's Houston-Beaumont operations into the rail equivalent of a trucker's empty backhaul. Particularly if the Board is convinced that Houston's service problems stem from inadequate infrastructure, the Board should not permit the continued waste of time and space available on the present infrastructure by forcing Tex Mex to use only half of its service capacity while transiting Houston.

Furthermore, allowing Tex Mex the ability to serve all of the HBT and PTRA shippers for both southbound and northbound movements is not a significant expansion of the trackage rights granted to Tex Mex. Indeed, even BNSF called such a request "a modest expansion of its [Tex Mex's] rights." BNSF-5 at 6. What BNSF and UP strenuously object to in the Tex Mex/KCS proposal is the request that UP divest itself of the Houston to Beaumont line. BNSF called such a proposal "a vastly more expansive and intrusive remedy." BNSF-5 at 6. As noted previously, due to Tex Mex/KCS's desire to cause the least amount of disruption to UP's and BNSF's service and joint ownership proposal as possible, Tex Mex/KCS are no longer requesting divestiture of the Houston to Beaumont Segment. Given that Tex Mex already has trackage rights between Houston and Beaumont and is operating over such lines on a bi-directional basis today, lifting the restriction will have little, if any, operational impact. Indeed, today Tex Mex/KCS run 2 trains per day on a bi-directional basis between Houston and

Beaumont. Operating Plan at 186-187. Under the plan, this will increase to 4 trains per day. Operating Plan at 182.

c. Neutral switching and dispatching

Tex Mex/KCS's proposal to restore a neutral switching and dispatching system will not interfere with UP's operations in and around the Houston area. V.S. Ritter at 235. When UP and BNSF established the joint UP/BNSF regional dispatching center, UP stated that the objective was to "coordinate all train operations in the Houston area . . ." UP Press Release, dated February 6, 1998 (emphasis added). However, other carriers operating in the Houston area have not been allowed to meaningfully participate in dispatching or switching operations. The efficient coordination of Houston train operations cannot take place with two of the four carriers controlling all operations.

The reinstatement of an impartial and neutral operation of the Houston terminal will fulfill UP's goal of coordinating all train operations. V.S. Ritter at 234-236. As demonstrated by HBT's successful operation of the Houston terminal for almost 90 years, a neutral operator will improve the overall efficiency of the Houston terminal operations and facilities by:

- improving coordination of all train operations;
- improving the communication among all railroads serving the Houston area;
- improving the efficiency of the yards serving the area; and
- expediting Gulf Coast train operations.

V.S. Ritter at 233; V.S. Watts at 180.

Moreover, the increased efficiency of the Houston area will not interfere with UP operations. To the contrary, UP will necessarily benefit from having an impartial operator, familiar with the Houston area, dispatch and switch all Houston area traffic. Because an impartial operator is concerned with the overall efficiency of rail operations, Tex Mex/KCS's proposal will alleviate congestion around the Houston terminal, and help carriers expedite their operations through the terminal. V.S. Ritter at 230-233. A neutral switching and dispatching operator will eliminate the possibility of discriminating against competing carriers, and will serve the publicly-avowed purposes of the UP/BNSF joint dispatch center more effectively. V.S. Ritter at 234-236.

d. Rebuilding Victoria to Rosenberg

Once operations begin on the Rosenberg to Victoria line, Tex Mex will not operate on UP's heavily congested Glidden subdivision (part of the Sunset Route) from Tower 17 in Rosenberg to Flatonia, Texas, a distance of 83.7 miles. The removal of Tex Mex from the 83.7 mile portion of the Sunset Route will remove freight trains from a congested UP and Amtrak route. In addition, after operations begin on the Rosenberg to Victoria line, Tex Mex will not operate on UP's Brownsville subdivision between Houston and Placedo via Algoa, Texas. See Operating Plan at 179.

6. Improves Tex Mex's Competitive Position

As Tex Mex has pointed out in the past, the combination of UP and SP has resulted in UP being the dominant rail carrier in Houston. Houston is a unique market and the competitive harms resulting from the reduction in the number of carriers serving Houston is far more severe than in any other market.[29] While the Board partially recognized this harm and granted trackage rights to Tex Mex in the merger, granting the Tex Mex/KCS plan will ensure a competitive

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[29] *See* Supplemental Verified Statement of Dr. Curtis Grimm in support of Tex Mex's Petition to Reopen, Finance Docket No. 32760, filed September 3, 1996. Tex Mex hereby incorporates by reference the full text of Dr. Grimm's Supplemental Verified Statement. Because of the unique characteristics of the Houston rail market, the loss of competition between UP and SP was particularly substantial. Prior to the merger, UP and SP were the two strongest competitors in Houston and BNSF only held a small market share in Houston – less than 15%.

counterweight to UP's dominance of the Houston market. Indeed, as pointed out in our February 3, 1998 filing, Exhibit D, UP's dominance of the Houston market is shown by the 1996 market share of traffic originating in the Houston area: 86 % to the East-Northeast, 91% to the South-Southeast, 80% to the Midwest, and 74% to the Southeast.

The limitation placed upon Tex Mex's rights to serve Houston shippers limits its ability to provide much needed competition to Houston shippers. As a condition to the UP/SP merger, the Board granted Tex Mex certain trackage rights in order to allow shippers who were then served by the HBT and the PTRA the competitive choice to use Tex Mex.[30] However, the Board also placed a limitation on Tex Mex and these HBT and PTRA shippers. While such HBT and PTRA shippers were given the competitive choice to use the Tex Mex, such shippers could only use the Tex Mex if their shipments were going southbound to Mexico. If these same Houston shippers had northbound traffic, they could not tender it to Tex Mex, despite the fact that a Tex Mex train was serving their facility. This restriction places Tex Mex at a great disadvantage to UP in providing a competitive alternative for Mexico traffic.

[30] Tex Mex's access to shippers located on the HBT was limited to "2-1" shippers, subject to the southbound limitation. Tex Mex did not gain access to HBT shippers who were "3-2" shippers, even for southbound movements. Tex Mex was granted access to all of the PTRA shippers, subject to the southbound limitation. The plan proposed herein would allow all HBT and PTRA shippers the choice to use Tex Mex for both northbound and southbound shipments.

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32760 Sub 27

1996 Traffic Originating in the Houston BEA

Destination Geographic Region (1)	Carloads (2)	Tons (3)	Revenue (4)
1. East-Northeast			
a. All Commodities	36,532	2,824,137	$191,766,024
b. UP Market Share	86%	84%	86%
2. South-Southeast			
a. All Commodities	114,112	7,388,856	$291,398,672
b. UP Market Share	91%	86%	88%
3. Midwest			
a. All Commodities	51,524	3,930,322	$165,943,364
b. UP Market Share	80%	77%	81%
4. Southwest			
a. All Commodities	30,476	2,450,846	$38,414,996
b. UP Market Share	74%	73%	79%
5. Grand Total			
a. All Commodities	232,644	16,594,161	$687,523,056
b. UP Market Share	83%	80%	84%

For example, under the Staggers Act, totality contracts or tying contracts are permitted whereby the UP can solicit all of a customer's freight and tie those shipments to areas in the United States, other than traffic destined to Mexico. As an example of the magnitude of this leverage, it should be noted that the traffic originating and terminating at Houston is a $1.1 billion total U.S. rail market, while the Houston to and from Laredo traffic segment was only $18.5 million in 1996. This suggests that the UP would have sufficient competitive leverage to tie traffic to Mexico into UP's comprehensive totality contracts. *See* V.S. Woodward at 106.

Thus, despite the fact that the UP/SP merger decision gave Tex Mex the right to pick up traffic for these Houston shippers, Houston based shippers do not have the option of using a Tex Mex/KCS routing for northbound traffic.[31] This northbound restriction severely impacts Tex Mex's competitiveness for soliciting Mexico freight. For example, in shipper markets such as packaged freight (like United Parcel Service), automotive and plastic pellets the freight is often "hubbed" in Houston and then shipped to specific areas of the United States. *See* V.S. Woodward at 106-107. These shippers will choose the carrier that has the most efficient route and that can serve the most United States markets, especially where the carrier is able to tie multiple contracts. As a result, Tex Mex must be able to create a more efficient route by reconstructing the Rosenberg to Victoria line and must be permanently able to solicit traffic northbound from the Houston "hub." V.S. Woodward at 106. Right now, Tex Mex is there, available, and willing to serve these Houston shippers, but such Houston shippers cannot use this choice.[32] Therefore, UP continues to dominate this market.

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[31] The emergency service order did lift the restriction on Tex Mex and has allowed Tex Mex to move Houston traffic northbound. However, this order will expire on August 2, at which time Houston shippers will no longer have the ability to move northbound traffic on the Tex Mex.

[32] *See Letter from Dean W. DeVore, Manager Transportation, LaRoche Industries, Inc. to STB dated March 16, 1998*: "We currently do not have the option to use Tex Mex/KCS on some

Under the Tex Mex/KCS plan, while UP will still continue to dominate the Laredo/NAFTA market, Tex Mex will be a much stronger alternative. Indeed, the traffic studies indicate that Tex Mex's share of the Laredo market will increase to 22.6% when the proposed plan. V.S. Woodward at 108. Thus, the plan will allow Tex Mex to grow substantially and provide a much stronger alternative to UP, which is what the Board intended when it granted Tex Mex the trackage rights in the first instance.

7. Has The Support Of Shippers And The Texas Community

Business and political leadership in the Houston area recognize that the area is in the midst of a severe economic disaster and they are demanding action. Recently the Greater Houston Partnership (the Houston version of a Chamber of Commerce), the Houston City Council, the Mayor of Houston, the County Commissioners Court of Harris County, the Port of Houston, numerous shippers and shipper organizations and elected officials are petitioning the STB for relief. Some examples:

> Gridlock of Union Pacific trains causing economic problems - The inability of Union Pacific to move their trains through Houston in a timely manner has caused significant economic losses to local businesses. Also, there have been difficulties in getting non-Union Pacific trains in/out/through Houston because of Union Pacific's problems and their control of the local dispatching.

Letter from Lee P. Brown, Mayor of Houston to STB dated February 18, 1998.

> The Partnership calls on the STB to act diligently in its oversight of rail service responsibilities and to investigate the capabilities and commitments of the railroads to invest in infrastructure to support the growth of the Houston community. Other Partnership recommendations include:
>
> * ensuring a neutral dispatching system to serve Houston's Port and industrial complete;

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of our shipments into Houston or Mexico."

* adding the Port of Houston and the Tex Mex Railroad as voting board members of the Port Terminal Railroad, the only neutral switching operation in the Houston area;

* determining whether the emergency orders result in adequate levels of service to the Houston Gulf Coast area;

* assuring that the trackage rights can be fully executed and honored completely;

* assuring that the rail system service for the Houston metropolitan area is designed to attract adequate investment to expand capacity to serve our growing market;

* implementing an effective neutral switch operation to service as large an area as practical;

Resolution adopted by the County Commissioners Court of Harris County dated March 3, 1998.

> We use Tex Mex/KCS for moving shipments into and out of Mexico and into and out of Houston. The Tex Mex/KCS service is essential to our transportation needs. In addition, the trackage rights granted to Tex Mex in the UP/SP merger are vital to our operations.
>
> However, the fact that there is no neutral dispatching or switching in Houston, and the fact that Tex Mex does not have yard space or sufficient infrastructure, makes it impossible for Tex Mex/KCS to provide the integral service and competitive alternatives we need. The trackage rights granted to Tex Mex need to be improved, changed and broadened and Tex Mex/KCS need to be permitted to increase their infrastructure in the Houston area so that Tex Mex/KCS can provide more efficient and competitive rail service for our traffic. Importantly, Tex Mex/KCS has proven commitment of service for both big and shall [sic] shippers into and out of the Mexican market. International trade routes such as Tex Mex/KCS's through south Texas must be preserved and permitted to prosper.

Letter from George A. Anderson, Manager, Supply & Distribution, Bareco Products to STB dated March 15, 1998.

> Our company is a shipper of freight traffic into Houston and Mexico from various geographic regions. . . . We ship over 11,000 car loads, per year and use all the major rail carriers. We currently do not have the option to use Tex Mex/KCS on some of our shipments into Houston or Mexico. However, if the Tex Mex/KCS plan is adopted by the STB, we would use their service more. . . . Our company has been and continues to be hurt by UP's problems. . . . [W]e believe that competing railroads, such as Tex Mex and KCS, must be permitted to increase

their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

Letter from Dean W. DeVore, Manager Transportation, LaRoche Industries, Inc. to STB dated March 16, 1998.

> Ameripol Synpol supports neutral switching and neutral dispatching in Houston as well as additional measures aimed at obtaining efficiency and capacity enhancement in Houston. . . . Our Company has been and continues to be hurt by UP's problems. . . . Ameripol Synpol Corporation believes that the implementation of the Tex Mex/KCS proposed plan for south Texas which includes neutral switching and neutral dispatching in Houston, is essential to a long-term solution. In addition, we believe that Tex Mex and KCS must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

Letter from M. L. McClintock, Corporate Traffic Manager, Ameripol Synpol Corporation to STB dated March 17, 1998.

> The rail service crisis in the Gulf Coast is monumental. . . . We need a long term solution to the service problems in the Gulf Coast. Reagent Chemical believes that the implementation of neutral switching and neutral dispatching in Houston is essential to a long-term solution. In addition, competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

Letter from Edwin E. Vigneaux, Traffic Manager, Reagent Chemical & Research, Inc. to STB dated March 18, 1998.

> The Board also needs to allow KCS and Tex Mex a more solid footing from which to help resolve the south Texas problem by enforcing neutral switching and dispatch in the Houston terminal area and allowing KCS and Tex Mex the opportunity to control facilities which any railroad needs to operate efficiently. For months, UP allowed its problems in Texas to grow until gridlock occurred. . . . I believe that it is essential that the Board take steps to enforce neutral dispatching and switching in Houston and allow Tex Mex and KCS the opportunity to own and control facilities (lines and yards) in Houston and south Texas in order to have a solid base from which to contribute to correcting what UP and BNSF together have not been able to resolve.

Letter from John G. Breslin, Witco Corporation to STB dated March 18, 1998.

> We need a long term solution to the service problems in south Texas. I strongly urge the STB to lift all service restrictions on the Tex Mex, giving it full local service access in the greater Houston area on a permanent basis. Full access would provide for a viable third rail competitor in Houston that could connect with other carriers in Beaumont, including the Union Pacific, BNSF, and The

> Kansas City Southern. Competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

Letter from Tony Benway, Corporate Transportation Operations Manager, CITGO Petroleum Corporation to STB dated March 18, 1998.

> Shell is utilizing the Tex Mex under the current STB Emergency Order in an attempt to mitigate some of the adverse effects of the current UP service performance on our business units. . . . It is vital to Shell's ability to meet the needs of our customers that we have a strong, competitive and efficiently operated rail transportation network for the movement of our products. This has not been the case for the past eight months in the western United States. . . . We believe that establishment of the Tex Mex as a permanent presence in the Houston market will be an important contribution to the efforts to address the long term needs of Houston shippers.

Testimony of Shell Oil Company and Shell Chemical Company, Finance Docket No. 32760 (Sub. No. 21), Union Pacific corp. et al. -- Control Merger -- Southern Pacific Rail Corp. et al., Oversight Proceeding, dated March 19, 1998.

> We believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. Neutral switching, neutral dispatching and permitting competing railroads to increase their infrastructure will foster these goals.

Letter from Charles P. Halvorson, Manager, Transportation & Base Oil Purchases, Lyondel Lubricants to STB dated March 20, 1998.

> The rail service crisis in south Texas in [sic] monumental. The Surface Transportation Board has rightfully recognized UP's inability to solve the problem, at least in the short term, through the Board's implementation of its Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and that UP will no longer attempt to predict when normal service will return.

Letter from David Parkin, Director-Transportation & Logistics, Huntsman Corporation to STB dated March 20, 1998.

III. UP CANNOT SOLVE THE PROBLEMS UNILATERALLY

A. The Primary Cause Of The Problems In Houston and Texas

Contrary to numerous recent press accounts, the problems in Houston were not primarily caused by a lack of infrastructure or capacity, but by a mismanagement of the existing infrastructure. UP's latest explanation is that the congestion in and around the Houston area exists because of infrastructure deficiencies in Houston. However, the facts support Tex Mex/KCS's assertion that the major factor in the persistence of congestion in Houston is the existence of inadequate UP operating procedures and policies. V.S. Ritter at 242.

If UP truly believes that the problems in Houston have resulted from and persisted due to an inadequate infrastructure, why then has UP taken actions, in the past few months, to reduce the existing infrastructure by: (1) closing the former MKT line into Houston; (2) selling off a 100 foot path in the middle of the MKT Eureka Yard, located in the heart of Houston, resulting in the loss of a substantial portion of that yard; (3) closing Strang Yard at a critical point, losing yard capacity in a fully functioning yard.[33] V.S. Ritter at 248. Similarly, Dayton Yard was closed for a period of time. Instead, it is clear that the present discriminatory and inefficient mismanagement of Houston's infrastructure have caused the capacity problems in Houston to persist and grow worse.

The reality is that the continuing congestion problems in the Houston area are not caused by deficiencies in the Houston rail infrastructure.[34] Prior to the UPSP merger, SP was able to operate in the Houston area, over substantially the same infrastructure that exists there today, without congestion problems. V.S. Ritter at 242. SP's successful operation over these lines was facilitated by HBT's neutral dispatching and switching of Houston area traffic. V.S. Ritter at 242. However, rather than maintain the status quo while implementing the merger between UP

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[33] Evidencing its complete about face on Strang Yard, UP announced in a February 11, 1998, news release that "major projects this year in the Houston area include construction of receiving and departure tracks at Strang Yard."

[34] BNSF's Chairman and CEO Robert D. Krebs said of the infrastructure issue: "The problems aren't capacity, though that exacerbates the problem. SP did a pretty good job of getting cars in and out. What we have been objecting to is UP having sole operating authority." Traffic World, Feb. 23, 1998, p. 13.

and SP, UP, together with BNSF, dissolved the HBT, and UP assumed sole control over dispatching in the Houston area. V.S. Ritter at 227. It became immediately apparent that UP's dispatch and switching of traffic in the Houston area compounded Houston's congestion problems. V.S. Ritter at 242. Much of this was, and continues to be, due to UP's discriminatory dispatch and switching, but part was and is due to mismanagement. For example, KCS/Tex Mex has first-hand knowledge of problems with UP's dispatch, such as UP's Houston dispatch being unaware of arriving trains, and UP's yard dispatch's lack of knowledge regarding paths through yards. V.S. Ritter at 243. Poor communication among the three levels of dispatch: road dispatch, Houston terminal dispatch, and yard dispatch and yardmaster control is painfully evident. V.S. Ritter at 243. Likewise, UP's switching is not without problems. For example, many shippers have adopted the practice of going to the UP yards themselves to locate cars and to inform UP of the car's location so that their goods can be delivered. V.S. Ritter at 230-231. The plain and simple fact of the matter is that neutral switching and dispatching worked in the Houston area because HBT provided all the carriers serving the Houston terminal area with equal access, allowing the customer's needs to come first. V.S. Ritter at 230-231. UP's assumption of control over all dispatching and switching caused a shock to the Houston system, not only because of UP's preferential treatment towards its own traffic, but also because of UP's inability to meet the prior efficient standard of HBT's dispatching and switching of traffic through Houston. V.S. Ritter at 242.

Moreover, traffic increases in the Houston area since the UPSP merger have been moderate, and historical performance levels suggest that UP should have been able to handle the Houston area traffic on the existing infrastructure together with a neutral HBT. V.S. Ritter at 245. The traffic trends for the Houston area from 1990-1996 show a 3.9% average annual increase in the total weight of freight hauling, and a 4.8% average annual increase in revenue. V.S. Ritter at 245. From this data it is clear that rail carriers serving the Houston area can well afford to keep up with the growth of Houston area traffic. In fact, beginning in the last half of 1997 and continuing into 1998, UP's traffic base has eroded due to poor service levels and operating inefficiencies, while the rail traffic for all other railroads was increasing throughout the United States. V.S. Ritter at 260. Neither the traffic levels nor the Houston area infrastructure are to blame for the problems in and around the Houston area.

Instead the facts surrounding UP's operations in Houston point to the existence of pervasive management problems with the newly merged UPSP. For example, a recent Federal Railroad Administration (FRA) report on the situation at UP points to broad management problems, including deteriorated internal controls and malfunctioning management systems. V.S. Ritter at 263. The FRA Report found:

- numerous problems with UP's Crew Management Services, including questionable crew management decisions and significant evidence of ineffective crew utilization;
- an inaccurate system for providing train lineup information;
- inaccurate lineups created by malfunctioning automated voice systems;
- dispatching supervisors unfamiliar with the territories of the dispatchers under their supervision as a result of inadequate training,
- instances of mistakes that could have affected the safety of railroad employees and members of the public; and
- that many managers have been called for train and engine service without regard for qualifications of familiarization with the territories for which they were responsible.

V.S. Ritter at 264. UP's management problems also have been a significant factor in many serious accidents on UP lines since the UP/SP merger. The National Transportation Safety Board (NTSB) conducted an investigation and has identified a number of key issues on UP that have contributed to these accidents. These issues include problems with general management oversight of train dispatching on the UP and of train operating crews. V.S. Ritter at 264.

Due to the lack of management foresight and planning and as a result of the UPSP merger, UP has suffered a significant loss of train and engine crew personnel: between January and June, 1997, the net loss to UP in train and engine crew personnel was almost 1,000 employees. This loss of key personnel was directly caused by management problems, including UP's underestimation of the number of train and engine personnel that would be required to provide service on the combined UP/SP system and the apparent inability to forecast future retirement of senior level employees and the need to hire replacement personnel. V.S. Ritter at 255. UP's constant changes in its assessment regarding the level of personnel needed to provide efficient operations in the Houston area has given rise to legitimate concerns as to whether or not UP truly has sufficient knowledge of the manpower requirements for the Houston Area. V.S. Ritter at 255.

A further indication that the congestion in the Houston area are primarily related to UP management problems, and not to Houston's infrastructure, is the fact that UP is experiencing operating problems throughout the West. Congestion, lack of power and other problems have been identified in Colorado, Oklahoma, Arizona, Iowa, Louisiana and New Mexico. V.S. Ritter at 256. If UP's congestion in Houston were related to local infrastructure alone, UP should not be experiencing the extraordinary operating problems throughout the entire region. The fact that problems exist across UP's lines is further evidence that the Houston congestion problems do not lie with Houston's infrastructure, but that in reality, UP's mismanagement is to blame. V.S. Ritter at 243.

B. The Reasons For The Rail Service Crisis That Have Been Advanced By UP and BNSF Also Do Not Indicate That The Problem In Houston Was A Result Of A Lack Of Adequate Capacity

UP first referred to a "congestion problem" in and around Houston in its July 1, 1997, quarterly report to the Board. UP cited various problems which seemed temporary and superficial in nature, including:

- BNSF track maintenance on the SP line between Houston and New Orleans; and
- weather-related line closures resulting in severe disruptions to a new service plan intended to improve traffic flows in the Houston terminal.

UP did not offer reasons for the congestion but assured the Board that it was implementing operating practices that would relieve the problem.

UP again referred to the congestion problem in and around Houston in its October 1, 1997, quarterly report and cited problems which were completely different from those appearing in its July 1, 1997, quarterly report. These problems, which again seemed temporary and superficial in nature, included:

- Blocked sidings resulting in UP inability to process inbound trains and resulting in restricted movement of other trains;
- Overloaded switching yards resulting in other trains on line to back up; and
- Excessive carloadings resulting in severe constraints on the ability of the railroad to operate normally while depriving shippers and other railroads of needed equipment.

UP advised the Board that it had conducted "the most intensive service review in memory" to study these problems and had devised solutions to address them which resulted in the "Service Recovery Plan" – a drastic plan which would supposedly bring operations to acceptable levels within 30 days. The report contained no explanation of what had caused the problems in the first place.

THE CLAIMS	THE REALITY
"UP/SP's new Executive Vice President-Operations, Brad King, expects Central Corridor service to return to acceptable levels within 30 days **and Southern Corridor service [Texas and the Gulf Coast] within 60 to 90 days**." Applicant's Third Quarter 1997 Progress Report (UP/SP-323) Finance Docket No. 32760, October 1, 1997, p. 14.	180 days later, March 30, 1998, the service crisis still persists in Houston and Southern Corridor

The BNSF quarterly report of October 1, 1997, told a completely different story of the factors causing the congestion in and around Houston than those set forth by UP. The report implicated UP in all of the difficulties that BNSF had experienced in and around Houston. This included the following:

- Interchange delays <u>caused by UP</u> resulting in BNSF receiving unequal access to interchanges;

- Misdirected traffic <u>caused by UP</u> resulting in BNSF shipments being diverted to the severely congested Englewood Yard instead of to Dayton Yard;

- Mainline disruptions <u>caused by UP</u> storing trains on mainline tracks used as routes by Houston Belt and Terminal Railroad Company ("HBT") and/or the Port Terminal Railroad Association ("PTRA") resulting in obstructions to critical movements of traffic; and
- Blocked sidings <u>caused by UP</u> staging trains and then parking them on multiple passing sidings resulting in violations of dispatching protocols imposed by the Board as a condition to the UP merger.

On October 2, 1997, the Board, recognizing there was a rail service crisis, instituted a proceeding to provide interested persons the opportunity to report on railroad service problems in the western United States and to review proposals for solving service problems. *See Rail Service in the Western United States*, STB Ex Parte No. 573 ("Service Proceeding").

On October 14, 1997, Tex Mex and KCS filed reply comments addressing certain references and factual assertions made in the UP and BNSF October 1, 1997 quarterly reports.

See Finance Docket 32760 ("Tex Mex/KCS Reply Comments"). Those comments supplied two important reasons for concluding that the congestion in Englewood Yard was attributable to UP mismanagement:

- UP elimination of terminal operations at Strang Yard and the diversion of Strang Yard traffic to Englewood Yard to avoid higher labor costs effective on Strang Yard operations; and

- UP switching of Baytown Branch traffic from Dayton Yard to Englewood Yard.

The Tex Mex/KCS reply comments asserted further that Strang Yard and Dayton Yard had been formerly used by SP to alleviate capacity problems at Englewood Yard. The already congested Englewood Yard was now being forced to receive this additional traffic which was resulting in gridlock.

In an October 23, 1997, written statement filed in accordance with the Service Proceeding, Mr. Davidson sought to blame the congestion on a "series of unusual stresses" (many of which had not been previously mentioned) which had very little, if anything, to do with UP management of the problem. These stresses included:

- Increased rail business resulting in a surge in chemicals, plastics and intermodal volumes;

- Adverse weather conditions resulting in: (i) severe washouts on SP mainlines in Texas and Arkansas, and (ii) backups of traffic in Texas as a result of Hurricane Danny in the Southeast;

- The privatization of the Mexican rail system resulting in backups of traffic bound to Mexico;

- UP track maintenance resulting in interrupted traffic flows on SP lines in Texas and UP's Sunset Corridor;

- BNSF track maintenance resulting in the imposition of slow orders and maintenance-of-way curfews on the SP line between Houston and New Orleans;

- Crew shortages resulting from higher-than-anticipated retirements; and

- **Derailments** resulting in congestion on SP lines in Texas and in SP's Englewood Yard in Houston.

With the exception of its own track maintenance, a fairly regular occurrence on any line, UP again chose to attribute the congestion to uncontrollable events such as the weather, or third parties.

Mr. Davidson also stated that, in retrospect, UP had not taken sufficiently aggressive measures early enough to combat the congestion in and around Houston. The clear implication to be drawn from his account of the problems and the Service Recovery Plan, however, was that the problems were imminently soluble. This filing, like all filings which had preceded it, contained no suggestion at all of any long-term infrastructure problems that would be impossible to overcome within the foreseeable future.

Ultimately, notwithstanding UP's many assurances that the congestion problem would be imminently resolved, after a hearing on October 27, 1997, the Board on October 31, 1997, correctly concluded that there was a transportation emergency in the western United States, especially in the Houston, Texas area and issued an emergency service order ("Service Order I"). *See Joint Petition for Service Order*, STB Service Order No. 1518 (STB served Oct. 13, 1998) ("Service Order No. 1518").

THE CLAIMS	THE REALITY
<u>Hearing before the Board</u>, October 27, 1997 Morgan: ". . . under your recovery plan you estimate that all of this will be resolved by January 1 . . ."	Congestion worsened by Thanksgiving

THE CLAIMS		THE REALITY
Davidson:	"We do, and I would say to you that I will be terribly disappointed if we're not substantially cleared up by very shortly after Thanksgiving. . . . [we are] confident that [this recovery] should not extend beyond Thanksgiving by any appreciable manner."	
(pp. 95-96)		
	* * *	
Morgan:	"You have said here today that under the UP recovery plan that you will fix this problem within 30 days. Is that what I heard you say?"	
Davidson:	"We will be substantially fixed, Chairman Morgan, within 30 days. Shortly after Thanksgiving I expect this railroad to be flowing at a very fluid level."	
(p. 113)		
	* * *	

Service Order I became effective on November 5, 1997, and was scheduled to expire on December 4, 1997. The Board stated that the measures it was about to impose would facilitate the resolution of the transportation emergency. There was no reference at this stage to the state of rail infrastructure in and around Houston. Instead, the Board sought to mitigate the severe congestion in the Houston area and throughout the UP system by, among other things, providing for:

- the filing of UP reports, including information on its performance in general;
- an authorization to Tex Mex to accept northbound traffic routed to it by Houston shippers switched by the PTRA and/or HBT and directing that UP release from their contracts all shippers capable of being switched by the PTRA at Houston that desire to be served by Tex Mex (the "Tex Mex Authorization");
- the granting of trackage rights to Tex Mex to utilize rights over the Algoa route south of Houston to mitigate congestion over UP's Sunset Corridor (the "Tex Mex Trackage Rights"); and
- an authorization to BNSF to continue to operate over the Caldwell-Flatonia-Eagle Pass line and to interchange Laredo run through traffic with Tex Mex at Flatonia if it desired to do so.

THE CLAIMS	THE REALITY
Houston Chronicle, Sect. C, October 28, 1997 "Davidson promised that service on UP would be substantially improved by Thanksgiving or shortly thereafter. 'We're confident, absolutely confident, our service levels will be back to normal.'"	San Antonio Express - News, November 18, 1997 UP's goal of clearing rail gridlock "substantially" by Thanksgiving is behind schedule, company officials said Monday. UP had set a Thanksgiving deadline to correct service problems, but spokesperson Mark Davis said Monday rail congestion won't be improved until year's end.
The Journal of Commerce, October 28, 1997 "We are confident service will be back to normal by year end and possibly several weeks beforehand. They (customers) will see it (progress) in the very near term. I would be terribly disappointed if we were not back to normal by Thanksgiving."	
UP's Letter to the Board, November 10, 1997 "Terminal and line fluidity . . . particularly in Texas . . . continues to improve, and substantial progress is being made in focusing on clearing out backlogs of delayed cars."	

THE CLAIMS	THE REALITY
Houston Chronicle, November 18, 1997 In a report filed with federal regulators, UP said it is making "steady progress" in improving its railroad operations. **"By the end of the year, we believe we'll have the railroad pretty much back to normal by then," said Bromley**.	Houston Chronicle, December 24, 1997 When asked if the company still hopes to get operations running normally by January 1, 1998, as it has promised federal regulators, Bromley said "It's going to be pretty hard to do, with this crew shortage."

In a Report on Service Recovery filed in accordance with the Service Proceeding on December 1, 1997, UP again furnished a whole host of new factors which it had previously never mentioned, some of which blamed the Board for the measures that it had taken to alleviate the emergency and the remainder blaming third parties. In addition, UP made the startling claim that its service was recovering and that it would continue to pursue its Service Recovery Plan intensively, once again giving the impression that matters were gradually being brought under its control and that normal operations would resume within a short period. However, this assessment was at best dubious and at worst ridiculous in view of the inconsistent explanations being offered by UP and the ever worsening congestion. The new factors cited by UP were the following:

- The Tex Mex Authorization (ordered by the Board) which had resulted in further interchange operations on congested lines;
- The Tex Mex Trackage Rights (ordered by the Board) which had resulted in worsened operations through Tex Mex's refusal to participate in directional running;
- KCS delays resulting from, among other things: (i) KCS blocking sidings on its lines, and (ii) KCS' inability to accept its own traffic handled by UP;
- Locomotive shortages caused by locomotives becoming tied up on-line in stopped trains; and
- Switching delays resulting from temporarily switching traffic from Strang Yard to Englewood Yard in order to reduce double-switching.

UP failed to mention that its decision to switch traffic to Englewood Yard had aggravated the congestion in Englewood Yard and not alleviated it. Furthermore, the assertion that switching delays had been caused by UP switching traffic from Strang yard to Englewood Yard was not novel. It had already been made in the Tex Mex/KCS Reply Comments. However, UP failed to acknowledge that it was now admitting the truth of the assertion which had originally appeared in the Tex Mex/KCS Reply Comments.

In the December 1 report and for the first time since the rail transportation emergency had been declared, UP claimed that infrastructure was a problem in and around the Houston area, which had been fueled by a growth in traffic during the era of deregulation, and the failure of infrastructure capacity to keep pace with such growth. Like all previous explanations by UP, this was just another explanation which it had concocted to avoid the conclusion that the congestion problem in and around Houston had in large measure been caused by UP mismanagement and that UP could not contain it. Furthermore, if an inadequate infrastructure was indeed the problem, UP would presumably have acknowledged it in one of its earlier reports to the Board instead of leading the Board to believe all along that the congestion problem was under its control.

UP's attempt to blame the congestion in and around Houston on the infrastructure is specious when compared with the statements by UP in the merger application itself. UP claimed:

> UP/SP will be positioned to provide improved service for the transport of chemicals to and from virtually every region of the country, but the service enhancements made possible by the merger will be particularly evident with regard to flows involving the Gulf Coast areas of Texas and Louisiana. For these shippers, a combination of better transit times and more efficient yard and classification procedures will result in safer and more expedited shipments.

UP Merger Application, Vol. 2, (V.S. Richard D. Spero at 707). UP also claimed that:

> Reduced Terminal Delay. The UP/SP merger will improve operations through terminals and avoid delays in numerous ways.... On the UP/SP system, through trains and blocks will run around terminals traditionally used for switching, such as Houston.

UP Merger Application, Vol. I, at 27. Further, in a February 6, 1996 speech to the Houston Traffic Club, Dick Davidson, then President of the Union Pacific Railroad, stated that the UP/SP merger was "the most significant opportunity you have seen in this century for improving rail transportation in your State." He then went on to claim that the UP/SP merger would benefit the State of Texas the "most" and that the merger would produce "enormous benefits in terms of improved service, costs savings and investment, for the whole country, but especially for Texas." As clearly set out in the Verified Statement of Harlan Ritter, there were numerous reasons why these merger benefits did not occur, but they generally occurred because of mistakes made by UP management, not lack of infrastructure. V.S. Ritter at 245-255.

On December 4, 1997 after conducting a further hearing on the current state of rail service in the West, the Board concluded that while service was showing signs of improvement, the emergency was not yet over. The Board stated that it would continue "facilitating the service recovery in a timely manner without substantially impeding UP/SP's own recovery effort." *See Joint Petition for Service Order*, Service Order No. 1518 at 3 (STB served Dec. 4, 1997) ("Service Order II").

THE CLAIMS	THE REALITY
UP Report on Service Recovery, December 1, 1997: "The congestion of recent months is gone." (p. 1.) "UP/SP's Service Recovery Plan has been ambitious and extremely expensive . . .. But it is working. UP/SP service is recovering. **The Board can rely on that**." (p. 3.) "UP/SP's major yards in Houston continue to improve, and congestion in Houston is now only episodic." (p. 12). "UP/SP's Service Recovery Plan has worked. UP/SP's operations are returning to normal with only limited congestion issues remaining to be addressed." (p. 108)	"Union Pacific says woes eased, but critics say data inaccurate." Houston Chronicle , December 2, 1997 By March 30, 1998, UP's plan has not worked. Congestion has worsened. The Board cannot rely on UP.
Hearing before the Board, December 3, 1997: * * * Davidson: "The emergency is over and the Board need not take further action. The Board would be safe in rescinding at least a portion of the action already taken. . . . " "The task in the next few weeks is to get service back to acceptable levels." (pp. 55-57)	BNSF Quarterly Progress Report, Finance Docket 32760, p. 21, January 2, 1998 "Although BNSF was led to believe that UP would fully resolve the congestion problem soon after Thanksgiving holiday, such problems remained, and congestion continues to hinder BNSF operations."
New York Times, December 4, 1997 Davidson said that while a backlog still existed, rail traffic was fluid and should return to normal by the end of the year.	

THE CLAIMS	THE REALITY
Houston Chronicle, December 5, 1997 Davidson assured the Board in October that the problem would be resolved by shortly after Thanksgiving. On Wednesday, Davidson claimed victory over UP's traffic woes and told reporters that his railroad would be running smoothly again by the end of the year.	UP's Letter to the Board, January 5, 1998 "As at the outset of this crisis, the railroad is experiencing problems in the Houston area."
Corpus Christi Caller Times, December 13, 1997 The President of UP, Jerry Davis, says that all of UP's internal measures indicate that the worst is over and service is getting better.	Traffic World, p. 18, January 5, 1998 In a letter to the STB accompanying its report on operations for the week ended December 19, 1997, UP admitted its service had deteriorated in the Gulf coast area in the previous two weeks, due, it said, to effecting new crew implementing agreements in the transition to the TCS on SP lines.
	The Journal of Commerce, 11A, January 27, 1998 UP has admitted that it has not smoothed out operations in Houston and the Texas Gulf Coast.
	The Wall Street Journal, A2, February 10, 1998 UP on the timetable for recovery: "We think it can be done, but we don't know when. We hesitate to give anyone any dates. Who knows how long it will take."

On February 17, 1998 the Board issued a further service order denying a petition for divestiture of UP. *See* Service Order No. 1518 ("Service Order III").

THE CLAIMS	THE REALITY
Yahoo Reuters, February 13, 1998 Davidson said merging UP and SP "has proven much harder to fix that I ever imagined it would be. We have our fingers crossed that by the **end of the first quarter** we'll get things pretty well ironed out." Davidson warned that there was no guarantee that UP would meet that goal.	AFX News, February 11, 1998 "We have no schedule on when we can expect a full recovery . . . In Houston and New Orleans conditions remain very congested and there are significant delays in some situations."
	UP Letter to the Board, February 18, 1998 "Service remains impaired in the Houston/Gulf region." By March 30, 1998, the service crisis in the Houston area has persisted.

The Board, on February 25, 1998, issued a further service order extending Service Order II until August 2, 1998. Service Order 1518 ("Service Order IV"). In Service Order IV, the Board indicated that while the service crisis had eased in some areas, it continued to persist in some others. Again the Board stated that the rail service emergency was in part attributable to the inadequate infrastructure in the Houston area, including limited capacity, antiquated facilities and an inefficient configuration not capable of with surges in demand. As a result, the Board conceded that it was not optimistic that the Houston railroad service problems would be finally resolved for the long term until infrastructure was addressed in a meaningful way.

The perceived infrastructure problem would likely only be addressed with the passage of time and the injection of a significant capital investment – which UP committed to "study.". If the assumed capital investments are not forthcoming, shippers and competing railroads would have no alternatives while congestion continues to worsen.

In a letter to the Board requesting a 60-day extension of Service Order II filed February 19, 1998 UP referred to undefined "unavoidable interim dislocations" associated with implementation of its Service Recovery Plan in the Houston/Gulf region. Unlike previous filings to the Board, the letter did not make any assurances that the problems would be resolved speedily – a clear indication that UP was now reaching the realization that the problems may not be speedily resolved by means of its Service Recovery Plan. UP requested further time to assess the extent of recovery when implementation of its Service Recovery Plan was "further along." UP did not mention the inadequate infrastructure supposedly paralyzing the region, which raises the question whether UP ever believed that poor infrastructure was actually the cause of the problem. Clearly, UP had referred to the infrastructure problem but, like many explanations furnished to the Board, never referred to it again. However, the Board chose to accept this explanation as a primary cause of the congestion problem.

The March 9, 1998 weekly report went on to state that should the actions that UP was proposing to take "prove inadequate to generate very substantial improvement within the next 30 days, Union Pacific will take even more aggressive actions. These may include transferring business to other carriers and a temporary pause in shipments to allow the railroad to clear."

THE CLAIMS	THE REALITY
AP Online, February 25, 1998 "Our feeling is that we will be able to improve service back to satisfactory levels before August 2." UP.	The Omaha World-Herald Company, March 7, 1998 Philip Anshutz, Vice Chairman of UP's corporate board, states "it's not going to get better overnight. It will take time. A lot of the factors regarding UP problems had to do with combining UP and SP. It takes time to implement the business plans."
UP's Weekly Report to the STB on Service Recovery Efforts, March 9, 1998 "UP's goal is to clear congestion on the affected lines within 30 days."	By March 30, 1998 congestion has not cleared in the Houston area.

The problems in the Houston area, which the additional remedial conditions requested by Tex Mex and KCS address, are larger than any one carrier, and require a joint effort and cooperation by all parties involved. The Tex Mex/KCS proposal is one critical element of that effort. UP's attempts to downplay the seriousness of the recent service problems, and its continuing failure to meet its commitments to the Board to resolve this transportation emergency, should give the Board pause for concern as to whether UP can be relied upon for solutions.

Over the last six to nine months, UP has followed a pattern of not meeting its commitments made to this Board, and to the shipping public, as to when it would resolve the serious congestion problems in the Houston area. UP first denied that a service problem existed, then underestimated the scope of the problems and offered false hopes for its ability to resolve the problems.

UP has shown itself willing to say anything in its filings to the Board. The history of the last six months should cast doubt on UP's ability to analyze and to resolve the competitive situation on its own. Having failed so miserably in remedying the Houston area service problems, UP is in no position to question the validity of other reasonable suggestions to improve the competitive environment, especially in light of the fact that UP has never been required to follow-up any of its statements with evidence or analysis.

CONCLUSION

The rail crisis has shown that nearly total dependence upon UP is not conducive to the development of adequate alternative transportation service. While UP is not entirely to blame for the rail service crisis, UP's management practices greatly exacerbated that crisis. UP's Service Recovery Plans have failed to solve the problem, and other than publicly stating that it intends to make certain capital investments in Texas and Louisiana, UP has not provided this Board or the public with any indication that the congestion crisis will be resolved anytime soon.

To avoid such dependence upon UP and to provide a truly competitive alternative to UP for Houston and NAFTA traffic, the Tex Mex/KCS proposal provides additional rail capacity in the Houston terminal area, increases operating efficiencies, relieves congestion, and provides Houston and NAFTA shippers with an effective competitive alternative. Tex Mex and KCS are willing to commit to invest in this plan and add new infrastructure for Houston and NAFTA shippers, but with the current limitations placed upon Tex Mex's trackage rights, Tex Mex/KCS cannot generate sufficient traffic densities to justify additional infrastructure investment. These investments can only be made if Tex Mex is allowed to solicit traffic in Houston on both a northbound and southbound basis.

If the plan is adopted, the Board's intent in granting trackage rights to Tex Mex from Houston to Beaumont in the UP/SP merger will be fully achieved. If the plan is not adopted, Tex Mex cannot provide the effective alternative to UP at the Laredo gateway and cannot invest in additional infrastructure. In that case, the Board's purpose for granting Tex Mex trackage rights in the first instance will not be achieved.

Respectfully Submitted this 30th day of March, 1998,

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March 30, 1998

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 21)

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

VERIFIED STATEMENT

OF

LARRY D. FIELDS

VERIFIED STATEMENT

OF

LARRY D. FIELDS

Larry D. Fields, being duly sworn, upon his oath makes the following Verified Statement:

My name is Larry D. Fields and I am President and Chief Executive Officer of the Texas Mexican Railway Company ("Tex Mex"), headquartered at 1200 Washington Street in Laredo, Texas. I have previously submitted verified statements in several proceedings before the Surface Transportation Board ("STB" or "Board"). I am submitting this verified statement describing the capital improvements, capacity enhancement projects, and infrastructure improvement projects currently underway, and projected, should the Joint Petition be granted.

Tex Mex currently has under construction a new yard at Laredo which will have 14 general merchandise tracks and 2 intermodal tracks, with a total capacity of handling 1,400 cars. There are three phases to this construction. Phase 1, which should be completed on May 15, 1998, consists of the construction of the first 4 tracks. Phase 2, which should be completed on July 30, 1998, consists of the construction of the next 10 tracks. Phase 3, the completion of the yard and intermodal facilities, should be completed by October 1, 1998. The total cost for the project is projected at $9.5 million.

Tex Mex expects to extend the Muil siding from its present 3,599 feet to 6,500 feet. Tex Mex estimates the cost of this project to be $262,500. Tex Mex also anticipates extending the Realitos siding from its present 6,687 feet to 8,500 feet at an estimated cost of $190,365.

Tex Mex will upgrade rail at the Killam siding from 65 and 75 lbs. rail to at least 90 lbs. rail at a cost of $569,500. Near Killam, Tex Mex will replace a bridge, which will cost an estimated $2 million. Tex Mex also plans to replace 40,000 mainline ties at a cost of $1,680,000. Upgrading Booth Yard would cost approximately $250,000: $150,000 for upgrading track and switches and $100,000 for installing a ground air brake testing system.

Under construction is a new 8,500 siding just a quarter mile west of Robstown. That siding, which should be completed on July 15, 1998, will cost approximately $962,500. Also currently under construction is the new Robstown connection between UP and Tex Mex. That project, which should be completed on June 1, 1998, will cost approximately $1.5 million.

I understand from David M. Lewis that obtaining the right of way for the Rosenberg to Victoria line will cost approximately $8 million; and from David Brookings that the cost of reconstructing that line will be approximately $57.5 million.

The STB must provide Tex Mex with the tools it needs to provide competition for NAFTA traffic which the STB sought to protect by the grant of trackage rights to Tex Mex. The capital improvements, capacity enhancement projects and infrastructure improvement projects I have just described are an important part of the overall plan set forth in the Joint Petition necessary to permit Tex Mex to provide that competition, but these projects alone will not be enough. Unless Tex Mex is provided a better route through Houston and is able to generate sufficient revenues to build additional infrastructure, the trackage rights granted to Tex Mex in the UP/SP merger to preserve competition for NAFTA traffic will have failed.

VERIFICATION

I, Larry D. Fields, declare under penalty of perjury that the foregoing is true and correct. I certify that I am qualified and authorized to file this statement as President and Chief Executive Officer of the Texas Mexican Railway Company. Executed on this 29 day of March, 1998

Larry D. Fields

Larry D. Fields

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 21)

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

VERIFIED STATEMENT

OF

A. W. REES

VERIFIED STATEMENT

OF

A. W. REES

My name is A. W. Rees and I am Senior Vice President-Operations and Chief Operating Officer for The Kansas City Southern Railway ("KCS"). I came to KCS and assumed my current position on June 28, 1995. Immediately prior to my employment by KCS, I was employed at the Atchison, Topeka & Santa Fe Railway Company ("ATSF") from 1989 until June of 1995. My qualifications and work experience are set out fully in the Appendix to this Verified Statement.

I am submitting this Verified Statement in support of the "Joint Petition of the Texas Mexican Railway Company and The Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction" (TM-5, KCS-5, filed February 12, 1998, in Finance Docket No. 32760 (Sub-No. 21), hereafter referred to as the "Joint Petition"). My purpose in submitting the statement is three fold. First I want to describe to the Board certain infrastructure capacity improvements which KCS has considered implementing in order to help relieve congestion on the UP system in the Gulf Coast region. The second purpose is to extend an offer to UP for KCS/Tex Mex to purchase the former Missouri Pacific main line between Houston and Beaumont in an arms length transaction rather than pursuant to a forced divestiture and to describe to the Board the net benefits of that offer. My third purpose is to address UP's and BNSF's proposal that KCS' main line between Beaumont, Texas and DeQuincy, Louisiana be included in their joint dispatching functions at their dispatching facility in Houston, Texas.

First, let me note that the parent companies of KCS and Tex Mex have, in the past year or so, invested in excess of $70 million for the upgrading of existing infrastructure and for building new infrastructure in order to improve the rail transportation of NAFTA traffic. These expenditures were aimed specifically at traffic that flows into and out of Mexico and were in addition to Tex Mex and KCS's normal capital spending programs.

In addition to these investments, which have already been made, KCS has initiated a study to consider additional infrastructure capacity improvements on its system in such a way as to relieve congestion in the Gulf Coast area and implement the proposed Tex Mex/KCS plan. KCS initiated this study in response to a request made by the NIT League, the Society of the Plastics Industry, and the Chemical Manufacturers Association, at a meeting in the Washington, D.C. area on March 13, 1998, to UP, BNSF, Tex Mex and KCS to develop common actions which the listed carriers might voluntarily undertake to assist in relieving the effects of UP's rail crisis in the West and, particularly, in the Gulf Coast region.

These capacity improvements will have a significant cost to KCS, with very little corresponding benefit to it, but they are being done to demonstrate KCS's commitment to relieving the devastating effect of the rail crisis upon the shipping public and our commitment to the proposed Tex Mex/KCS plan. Tex Mex also has responded to the aforesaid shipper groups with offered remedial steps and I understand that these will be described in the Verified Statement of Tex Mex's President and Chief Executive Officer Larry D. Fields.

The infrastructure capacity improvements which KCS is offering are:

Location	*Estimated Cost*	*Description of Improvement*
Shreveport, LA	$10.5M	Additional double main track, yard capacity CTC and increased speed
Lake Charles, LA	$ 7.3M	Additional yard capacity
Leesville, LA	$ 7.0M	Build new storage in transit (SIT) yard for plastics and chemical industries
Beaumont, TX	$ 5.7M	Build 6 additional tracks in Spindletop Yard adding additional capacity
Port Arthur, TX	$2.0M	Building a new intermodal facility
Helme, Lucas, and Ruliff, TX	$ 5.8M	Extend active main line sidings by 5,100 feet, 5,000 feet, and 6,311 feet, respectively

I should stress that, although the above-described measures will relieve congestion on UP's system to a certain extent, I do not consider them adequate substitutes for the long term remedial conditions proposed by KCS and Tex Mex in our Joint Petition, and some of them would not be necessary unless the proposed Tex Mex/KCS plan is adopted.

Congestion and delays in the Houston terminal have resulted in a back-up of traffic on the KCS system, sometimes even as far north as Kansas City. The above-described measures for expanding capacity on the KCS system would provide sufficient siding capacity to avoid such back-ups on the KCS system in the event of any future congestion in the Houston terminal complex. These improvements would also provide Houston based shippers, particularly plastics shippers, additional, sufficient yard space to store loaded cars. One of the reasons for the congestion has been the inefficient use of SIT yard space and in some cases, the lack of yard space. However, as long as Tex Mex's trackage rights are limited to southbound traffic, KCS would not have the necessary economic incentive to invest in this additional capacity.

My second purpose for this statement is to state for the record that Tex Mex and KCS are no longer requesting a forced divestiture of the Houston to Beaumont line. Rather, they are offering to purchase the former Missouri Pacific main line from UP. If UP were willing to sell the line to KCS/Tex Mex, UP could use the sale proceeds to double track its other Houston to

Beaumont line. As a condition to their purchase of the line, KCS/Tex Mex would commit themselves to grant trackage rights over the purchased line to both UP and BNSF. If UP used the sale proceeds it received from the line sale to double track the other Houston-Beaumont line, it could significantly increase overall capacity between Houston and Beaumont. Furthermore, the grant back to UP and BNSF of trackage rights on the purchased line would allow those two carriers to continue their directional operations. Finally, because there is no local traffic on the line KCS/Tex Mex has offered to purchase, UP and BNSF would not lose any anticipated revenues or any anticipated benefits from the proposed UP/BNSF joint ownership of that line.

My third purpose for this statement is to respond to the offer recently made by UP and BNSF to include the dispatching of the KCS' main line between DeQuincy, Louisiana and Beaumont, Texas in their joint dispatching function at Houston, Texas. After thorough evaluation of this offer, we have determined that we are unable to financially or operationally justify our participation in such joint dispatching of this line at this time. The CTC operator at Beaumont, Texas controls the train operation from DeQuincy, Louisiana to Beaumont, Texas as well as the lift bridge at Beaumont over the Neches River. Our Beaumont CTC operator also performs additional duties in KCS classification and interchange yards at Beaumont and at the Port of Beaumont. That position is directly subordinate to KCS's train dispatcher located in Shreveport, Louisiana and is an integral part of the dispatching of KCS lines from Lake Charles to Shreveport to New Orleans.

KCS's dispatching of the Beaumont to DeQuincy segment of its system works well, both in its own right and in conjunction with dispatching activities on the balance of KCS' system. There simply is no justification for uprooting the families of our CTC operators or requiring them to incur unnecessary moving expenses. Furthermore, if KCS joined UP's and BNSF's joint dispatching, KCS would be required to purchase new CTC equipment without any financial or operating savings inuring to KCS. KCS would also be required to abandon the other duties currently performed by our Beaumont CTC operator. Those duties can be best accomplished as they have been for many years at their current location and without any disruption to KCS' operations.

APPENDIX

A. W. Rees

Executive Experience

Vice President of Operations, Vice President of Quality Management, General Manager and numerous additional positions, gained broad general management experience with major achievements in productivity, cost reductions, restructuring, mergers, business growth and customer service. Served on numerous industry, joint venture and in-house Boards of Directors. Characterized as a high achiever in creating excellence and a builder of cohesive teams.

Kansas City Southern Railway Co., Kansas City, MO — 1995 to Present

Atchison, Topeka & Santa Fe Railway, Schaumburg, IL — 1989 to 1995

Santa Fe is a $2.8 billion rail transportation company with 14,000 employees operating in 12 western states between Chicago, Texas and California

Union Pacific Railroad/Missouri Pacific Railroad, Omaha, NE — 1969 to 1989

Union Pacific is a $4.0 billion rail transportation company with 30,000 employees operating in 20 western states.

EDUCATION

B.S. Business, University of Central Arkansas, 1969
Program for Management Development (PMD), Harvard Business School, 1981
Philip Crosby Quality College, 1986
3M Managing Total Quality, 1992

INDUSTRY ASSOCIATIONS

National Association of Corporate Directors
American Arbitration Association
Council of Railroad Quality Professionals
American Society for Quality Control
Association for Quality and Participation
Western Railway Club of Chicago

Professional Experience

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, KANSAS CITY, MO
1995 TO Present

Senior Vice President - Operations (1995 to Present)
Kansas City Southern Railway Company
Kansas City, MO

ATCHISON, TOPEKA & SANTA FE RAILWAY, SCHAUMBURG, IL
1989 to 1995

Responsible for all Transportation, Engineering, Equipment Maintenance, Quality Accident and Injury Prevention, Operating Rules, Security and Prevention Services, Environmental Protection, Technical Training, Land, Leases and Contracts. Annual operating budget of $1.5 billion and capital budget of $300 million. Member of Executive Quality Steering Team which developed corporate vision, long range and over-all business strategies. Member of numerous Board of Directors of industry, joint venture and in-house operations.

- Created a cultural change through employee awareness and participation in the quality process. Significantly reduced decades of adversarial union/management relations, increased communication and cooperation between employees and management, achieved productivity and customer service gains, and reduced failure costs, resulting in the achievement of corporate vision.

- Reduced operating expenses $100 million by directing 3 restructurings, eliminating three levels of management and 4,700 employees.

- Reduced 1994 personal injuries and lost work days by 44.7% and 58.6%, respectively, placing Santa Fe No. 3 in industry safety ranking.

- Achieved annual savings of $7.5 million as a result of negotiating trackage rights agreements with competing railroads which provided improved route structure and customer service.

- Saved $80 million annually through team negotiations which revised inefficient work rules and crew consist arrangements in labor agreements.

- Directed joint operating/marketing efforts to attract and capture additional business in the Texas Gulf Coast area to the east and west coasts.

- Established Derailment Analysis and Prevention Team reducing the derailment ratio, per million train miles, placing Santa Fe No. 4 in the industry.

- Developed and implemented a Disability Management Program, using professional medical staff to ensure proper medical services for injured employees, reduction in expenses, lost work days, and expediting return to work.

- Educated over 10,200 employees in the principles of Quality and trained over 4,000 engineers, conductors and dispatchers in Locomotive Simulation and Train Operations.

UNION PACIFIC RAILROAD, OMAHA, NE
1985 to 1989

General Manager - Western Region, **Salt Lake City, UT**

Responsible for Transportation, Engineering, Maintenance of Equipment, Budgeting and Administration, Labor Relations, Safety, Loss and Damage Prevention, Public Relations, Policy Formulation and Enforcement directed 7,200 employees in 6 states, with annual revenues of $800 million and operating and capital budgets of $393 million and $30 million, respectively.

- Resolve ongoing crisis created by flooding of Great Salt Lake by securing $29 million of capital to rebuild track structure, preventing interruption of interstate commerce.

- Directed merger of operations resulting from the acquisition of the Western Pacific Railroad.

- Restructured Region through elimination of 4 train yards and repair facilities and 100 employees.

- Created the first all-encompassing, company-wide service measurement system designed to measure company performance against customer expectations.

MISSOURI PACIFIC RAILROAD, ST. LOUIS, MO
1969 to 1985

General Manager - Texas District, **Dallas, TX (1982 to 1985)**

Responsible for Transportation, Engineering, Maintenance of Equipment, Budgeting and Administration, Labor Relations, Safety and Rules Compliance, Loss and Damage Prevention, Public Relations, Policy Formulation and Enforcement. Directed 3,000 employees in 4 states, with annual revenues of $400 million and operating and capital budgets of $210 million and $18 million, respectively.

- Created a new operating District by building staff, administration and line management into a cohesive operating team.

- Interfaced with President of National Railway of Mexico and Executive Director of Conasupo, increasing Mexican market share from $20 million to $110 million.

- Restructured District, eliminating 6 facilities and 100 employees with annual savings of $10 million and $4 million, respectively.

- Directed consolidation of District, eliminating 3 levels of management and administrative support, as a result of merger with Union Pacific Railroad.

Began Missouri Pacific employment in 1969 as Management Trainee, progressing through nine promotions to General Manager in 1982.

Executive and Board of Director Positions

Chairman, Port Terminal Railroad Association
Chairman, Los Angeles Union Passenger Terminal Railroad
Chairman, Council of Railroad Quality Professionals
Director, Great Southwest Railroad
Director, Texas City Terminal Railway Company
Director, Houston Belt & Terminal Railway Company
Director, Atchison, Topeka and Santa Fe Railway Company
President, Oakland Terminal Railway
President, Alameda Belt Line Railway
President, Central California Traction Railroad
President, Los Angeles Junction Railway Company
President, The Wichita Union Terminal Railway Company
President, Santa Fe Rail Equipment Company
President, St. Joseph Terminal Railroad Company
V.P., Weatherford, Mineral Wells & Northwestern Railroad
V.P., Ogden Union Railway & Depot Company

Directorships

Chairman, Director, President and Vice President of jointly and wholly owned subsidiaries of Santa Fe, Union Pacific and Missouri Pacific Railroads.

- Director of the Atchison, Topeka & Santa Fe Railway Co. from 1989 to 1995. Participated in dramatic downsizing resulting in revenue growth and significant profit increase, positioning Santa Fe as a leader in the transportation industry, dedicated to growth by meeting customer expectations.

- Port Terminal Railroad Association, Houston, Texas, jointly owned by Union Pacific, Southern Pacific, Santa Fe and Burlington Northern. Member of Board of Operations from 1989 to 1993 and Chairman from 1992 to 1993. Moved the organization towards merger with the Houston Belt & Terminal Railway by making numerous joint management positions. Significant achievement in view of the adversarial relationship between the owners due to the continuing changes of directors of the various roads.

- Houston Belt and Terminal Railway, Houston, TX, jointly owned by Union Pacific, Burlington Northern and Santa Fe. Served as Director, member of the Compensation and Executive Committee from August 1989 to May 1993.

- Texas City Terminal Railway, Texas City, TX, 1/3 owned by Santa Fe, 2/3 by Union Pacific. Served as Director, member of the Compensation and Executive Committees from August 1989 to May 1993. Rebuilt infrastructure, increased revenues, held costs in line and increased dividends to the owner companies 12% - 15% annually during 1989 to 1993.

- Los Angeles Union Passenger Terminal Railroad, Inc., jointly owned by Union Pacific, Southern Pacific and Santa Fe. Assets include the Union Passenger Station in Los Angeles and the surrounding acreage. Served as Director from 1985 to 1987, Chairman during 1986. Facilitated the complete rebuilding of passenger facilities and the ultimate transformation of the organization to a land utilization company.

- Oakland Terminal Railway and Alameda Belt Railway, Oakland, CA, jointly owned by Union Pacific and Santa Fe. Twice served as President and Vice President of these organizations.

- Twice served as President and Vice President of Central California Traction Railroad at Stockton, CA, during tenure as President, completely restructured the company, reducing losses dramatically.

- Los Angeles Junction Railway Company. Served as President from 1989 to 1993, spearheading downsizing and reduction in expenses, returning Company to profitability.

- Vice President and Director for wholly owned Santa Fe subsidiaries from 1989 to 1993:

  a. The Clinton and Oklahoma Western Railway Company
  b. Oklahoma City Junction Railway Company
  c. The Dodge City and Cimarron Valley Railway Company
  d. The Garden City, Gulf and Northern Railway Company
  e. The Gulf and Interstate Railway Company of Texas
  f. The Kansas Southwestern Railway Company of Texas
  g. Starlake Railway Company (President)

- Ogden Union Railway & Depot Company, Ogden, UT, jointly owned by Union Pacific and Southern Pacific. Served as Vice President and Director during 1985 to 1988.

- Weatherford, Mineral Wells and Northwestern Railroad (Texas). Served as Vice President and Director 1982 to 1985.

- President and Director of the following railroads jointly owned by Union Pacific and Santa Fe:

a. St. Joseph Terminal RR Company, St. Joseph, MO
b. The Wichita Union Terminal Railway Company, Wichita, KS

- Santa Fe Rail Equipment Company, wholly owned subsidiary of Santa Fe Railway. Served as President 1989 to 1993. Subsidiary was used to purchase cars and locomotives.

- Great Southwest Railroad, Arlington, TX, jointly owned by Missouri Pacific, Rock Island, and Missouri-Kansas-Texas Railroads. Served as Director 1982 to 1985.

- Chairman of the Council of Railroad Quality Professionals (CRQP), subdivision committee of the Association of American Railroads (AAR) made up of the senior Quality professionals of major railroads in US and Canada, including Amtrak, American Short Line Association and AAR. Member from 1991 to 1995 and Chairman for 1994.

- Western Railway Club of Chicago, Transportation Club of Railroads and Railroad Equipment Companies. Served as Director, Vice President and President 1993 to 1995.

VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

I, A.W. Rees, being first duly sworn, upon my oath state that I have read the foregoing statement and the contents thereof are true and correct as stated.

AWRees

A.W. Rees

Subscribed and sworn to before me this 24th day of March, 1996.

Julie A. Robinson

Notary Public

My Commission Expires:

JULIE A. ROBINSON
Notary Public - State of Missouri
Commissioned in Jackson County
My Commission Expires May [illegible], [illegible]

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

VERIFIED STATEMENT

OF

GEORGE C. WOODWARD

VERIFIED STATEMENT

OF

GEORGE C. WOODWARD

INTRODUCTION

My name is George C. Woodward. I am Senior Vice President-Chief Commercial Officer at ALK Associates, Inc. a management consulting and information technology development firm focused on the transportation industry. ALK is the repository of the STB rail waybill sample and has developed advanced traffic diversion (ATD) information systems that provide rail carriers the ability to quantify synergies in proposed mergers, acquisitions, divestitures, and corporate restructurings. Prior to joining ALK in 1991, I was Executive Vice President-Distribution Services at Southern Pacific Transportation Co. from 1987-91 and Vice President-Marketing with Conrail from 1978-87. I have a B.S. in Physics from the Georgia Institute of Technology and attended the MBA program at the University of Arizona. I completed the Advanced Management Program (AMP) at Harvard Business School. I am ALK's Chief Commercial Officer and lead its strategic planning and value creation consulting services.

In the UP/SP merger proceeding, the Surface Transportation Board ("STB") granted the Texas Mexican Railway Company ("Tex Mex") trackage rights, allowing Tex Mex to provide a competitive alternative for NAFTA traffic in order to alleviate the anticompetitive impact of the merger. The first purpose of my statement is to explain why the current Tex Mex trackage rights do not allow Tex Mex to be an effective competitor to Union Pacific ("UP"). The present proposal is for Tex Mex to acquire and construct a new line from Rosenberg, Texas to Victoria, Texas and to gain the unrestricted ability to solicit traffic at Houston. The second purpose of my statement is to document how this proposal strengthens the Tex Mex competitive alternative for

U.S.-Mexico traffic through the Laredo gateway, thereby facilitating implementation of the STB's decision with regard to NAFTA traffic.

I. THE CURRENT TRACKAGE RIGHTS DO NOT ALLOW TEX MEX TO BE AN EFFECTIVE NAFTA COMPETITOR TO UP

It has been noted that the use of trackage rights by a tenant on a parallel competing landlord is the least effective use of trackage rights. Tex Mex's use of the Union Pacific line from Victoria to Flatonia and east to Houston is a clear example of where Tex Mex must operate on a parallel competing landlord and has found itself frustrated in its attempt to provide competitive rates and service. In addition, it should be noted that the Tex Mex trackage rights route from Victoria through Flatonia to Rosenberg is 85% longer than the Rosenberg to Victoria line that Tex Mex is proposing to acquire and rehabilitate. The Tex Mex/KCS proposal reduces the circuity of the Tex Mex in the Houston to Laredo market to a distance of 368 miles, which is comparable to the UP route distance of 366 miles.

The acquisition and rehabilitation of the line from Rosenberg to Victoria is therefore an important investment that will place Tex Mex on a secure financial and competitive footing with the UP. This acquisition and rehabilitation would provide Tex Mex with a route structure between Laredo and Houston that is primarily owned track structure while minimizing the use of overhead trackage rights on the UP, a parallel competing carrier.

A second critical component of the proposal is to lift the Houston restriction. This restriction places Tex Mex at a great disadvantage to UP in providing the NAFTA competition intended by the STB. UP can solicit traffic at Houston to major markets in the southeast, the northeast, the midwest, California, and the pacific northwest in addition to traffic to Mexico. Under the Staggers Act, totality contracts or tying contracts are permitted whereby the UP can solicit all of a customer's freight and tie those shipments to areas in the United States, other than traffic destined to Mexico. As an example of the magnitude of this leverage, it should be noted that the traffic originating in and terminating at Houston is a $1.1 billion total U.S. rail market, while the Houston to and from Laredo traffic segment was only $18.5 million in 1996. This suggests that the UP would have sufficient competitive leverage to tie traffic to Mexico into UP's comprehensive totality contracts. In order to provide Tex Mex a reasonable competitive opportunity, it is important that the Board allow Tex Mex to permanently solicit northbound freight from Houston in order to ensure that Tex Mex is effective in soliciting freight to Mexico, the primary market where Tex Mex is to provide competition. Without the ability to solicit traffic from Houston to other points in the United States (not just Mexico), Tex Mex will be relegated to the role of an ineffective niche player whose competitive reach will never allow it to be effective in the primary market that the STB directed Tex Mex to be a competitive alternative to UP (i.e., the U.S to/from Laredo market).

Tex Mex's commercial plan contemplates the use of Houston and the Rosenberg interchange as a gathering and distribution hub for traffic to and from Mexico. It is important that shippers be able to add incremental volumes from Houston to points in the U.S. that would be mixed and matched with shipments to and from Mexico. Thus, the restriction that Tex Mex cannot solicit northbound traffic at Houston places a very real commercial impediment on the ability of Tex Mex to solicit traffic to and from Mexico, the primary market where the STB expects it to provide a competitive alternative.

As an example, dedicated trains for packaged freight such as United Parcel Service or other LTL carriers from Monterrey and Mexico City might be "hubbed" at Houston and then combined with domestic U.S. freight destined for specific markets in the United States including Chicago, Kansas City, and Atlanta. Only by having the unrestricted ability to solicit freight at Houston for both carload and intermodal can Tex Mex realistically provide service in the primary market where it is expected to provide a competitive alternative in the U.S. to Laredo (NAFTA) market. The reduction in circuity for Tex Mex in the Houston to Laredo market is significant and valuable both from the standpoint of inherently lowering the cost structure of the Tex Mex railroad and providing the service consistency and reliability that the transportation market requires. Following the acquisition and rehabilitation of the Rosenberg to Victoria line, Tex Mex will have a route structure between Houston and Laredo that is comparable to the UP's on a mileage basis with sufficient traffic density to support profitable operations and the investment to acquire and rehabilitate the Rosenberg to Victoria line. (*See* Verified Statement of Joseph J. Plaistow.)

Similarly, Tex Mex's ability to develop a transportation market for automotive customers directly hinges on their ability to use Houston as a gathering, distribution and mixing point for vehicle and parts traffic originating in and destined to Mexico. Automotive shippers have become adept in using the network capabilities of the U.S. rail system. Ford Motor Company's mixing center in Kansas City is an example of this concept where shipments of vehicles from widely dispersed assembly plants are resorted by dealer destinations at a mixing hub and then taken by rail and truck to consuming markets. Tex Mex's ability to participate in these transportation network opportunities would be severely and negatively impacted were it not able to solicit northbound freight in the Houston marketplace. Vehicles produced in Mexico might be mixed with vehicles imported through the port of Houston for rail and truck distribution to markets in the United States and Canada. For Tex Mex to provide effective rail competition at the important Laredo gateway, it is necessary that the Board permanently provide Tex Mex the ability to solicit traffic northbound from its Houston "hub." The inability to solicit northbound freight at Houston would relegate Tex Mex to the role of niche transportation provider whose traffic solicitation efforts would be forever frustrated by the pervasive competitive network leverage of the UP.

Another example of the necessity for unrestricted traffic solicitation in the Houston market is for the production of plastic pellets. Many plastic shipments are produced without the final destination being determined at the time of production. Covered hoppers of plastic pellets are then taken to storage in transit yards in the Houston area where it is later determined where these shipments will be consigned. Unless Tex Mex has unrestricted traffic solicitation capabilities in Houston, Tex Mex will be frustrated by its restriction to solicit only Mexico destined traffic. Plastic shippers will clearly want a rail carrier that can solicit freight to all major markets and deliver those cars to the appropriate connecting carriers when the shipment destination is determined.

II. THE PROPOSAL WILL ALLOW REALIZATION OF THE BOARD'S DECISION WITH REGARD TO NAFTA RAIL COMPETITION

As a direct result of its merger with Southern Pacific, UP now dominates the key Laredo gateway for U.S.-Mexico rail traffic with approximately 90% of the carloads at Laredo to and from the U.S. in 1996. See Exhibit 1. The STB identified this dominance as an anticompetitive impact of the merger, and provided Tex Mex trackage rights to ensure effective competition for NAFTA traffic. However, we project that the Tex Mex trackage rights, restricted as they are and even with concessions made by UP to allow bi-directional flow, still leaves UP with a 85.6% market share at Laredo. The Tex Mex/KCS proposal would reduce the UP share to 77.4%, providing shippers with a significantly stronger competitive alternative in Tex Mex. This is due to the fact that Tex Mex would have an owned, and less circuitous route, not overly dependent on trackage rights over the lines of parallel competitors. The proposal would allow Tex Mex to interchange directly with BN at Rosenberg, providing a Houston bypass interchange, and with KCS at Beaumont, providing an alternate route into and out of Houston. *See* attached Exhibits 1, 2, and 3 for an accurate projection of the traffic flows and market shares into and out of Laredo if the Tex Mex/KCS proposed plan was adopted.

CONCLUSION

The STB expects Tex Mex to provide an effective competitive alternative in the important Laredo to U.S. marketplace. Therefore, it should approve the acquisition of the Tex Mex owned and non-circuitous route from Rosenberg to Victoria with unrestricted traffic solicitation capability at Houston. The Tex Mex/KCS plan would reduce the circuitry of the current Tex Mex route from Rosenberg to Victoria by 85%, add infrastructure and capacity, and improve Tex Mex's ability to compete against UP for Laredo and Houston traffic.

Exhibit 1

Laredo Market Share (M.S.%) By Scenario

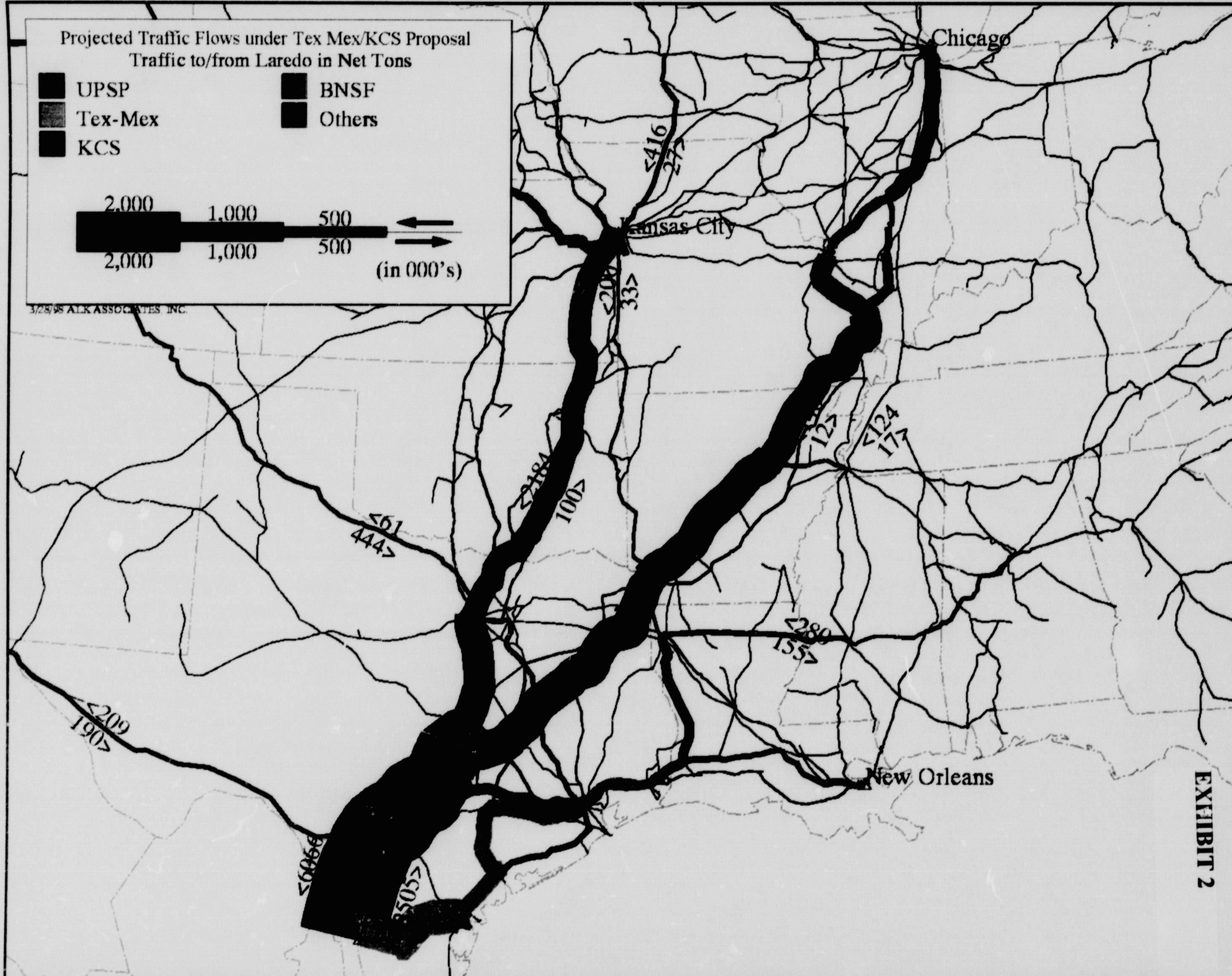
Total Laredo To/From U.S. Rail Freight Market (1996)[1]

	Tex Mex		UPSP		Total
1996 Actual Traffic	Loads	M.S.%	Loads	M.S.%	Loads
General Merchandise	22,735	23.3%	74,810	76.7%	97,545
Intermodal	-	0.0%	112,480	100.0%	112,480
Coal/Bulk	9,172	30.1%	21,289	69.9%	30,461
Automotive Vehicles	-	0.0%	58,240	100.0%	58,240
Total	*31,907*	*10.7%*	*266,819*	*89.3%*	*298,726*

Post UP/SP Merger	Tex Mex		UPSP		Total
General Merchandise	22,964	23.5%	74,581	76.5%	97,545
Intermodal	4,497	4.0%	107,983	96.0%	112,480
Coal/Bulk	9,591	31.5%	20,870	68.5%	30,461
Automotive Vehicles	5,882	10.1%	52,358	89.9%	58,240
Total	*42,934*	*14.4%*	*255,792*	*85.6%*	*298,726*

Post UP/SP Merger With Tex Mex/KCS Proposal					
General Merchandise	30,682	31.5%	66,863	68.5%	97,545
Intermodal	12,963	11.5%	99,517	88.5%	112,480
Coal/Bulk	10,694	35.1%	19,767	64.9%	30,461
Automotive Vehicles	13,124	22.5%	45,116	77.5%	58,240
Total	*67,463*	*22.6%*	*231,263*	*77.4%*	*298,726*

[1] This analysis reflects a normal year operation and assuming no congestion. The analysis is not a "snapshot" of the market shares as of this filing because those shares would be skewed due to the congestion crisis.

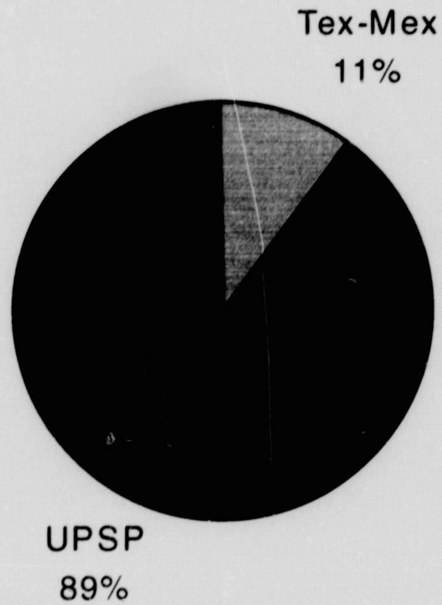


Projected Traffic Flows under Tex Mex/KCS Proposal
Traffic to/from Laredo in Net Tons
UPSP
BNSF
Tex-Mex
Others
KCS
2,000
1,000
500
2,000
1,000
500
(in 000's)
3/28/98 ALK ASSOCIATES, INC.
Chicago
ansas City
New Orleans
<416
27>
33>
100>
<61
444>
<209
190>
<280
155>
<124
17>
12>

EXHIBIT 2

Laredo Market Shares
Carloads Handled Through Laredo Gateway

1996 Actual Market Shares



TM/KCS Proposal Projected Shares

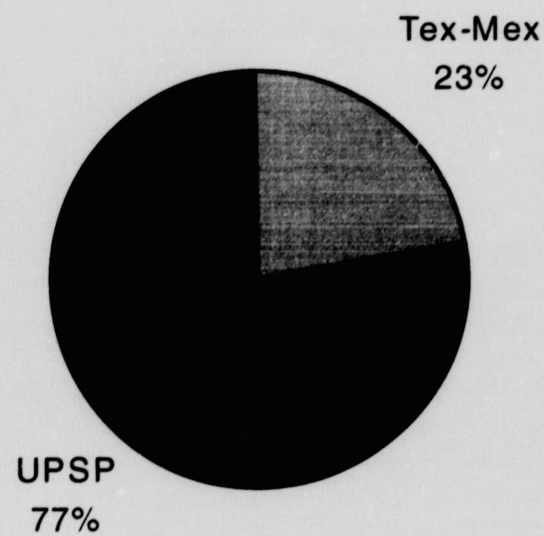


EXHIBIT 3

VERIFICATION

I, George C. Woodward, declare under penalty of perjury that the foregoing is true and correct. I certify that I am qualified and authorized to file this statement as Senior Vice President and Chief Commercial Officer of ALK Associates, Inc. Executed on this 29th day of March, 1998.

George C. Woodward

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 21)

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

VERIFIED STATEMENT

OF

MICHAEL H. ROGERS

VERIFIED STATEMENT

OF

MICHAEL H. ROGERS

Introduction

My name is Michael H. Rogers. I am a Vice President at ALK Associates, Inc. ("ALK"), a transportation consulting and software development firm located in Princeton, New Jersey. Since joining ALK in June 1989, I have conducted numerous railroad traffic diversion studies for both strategic planning purposes and in support of merger and acquisition filings. My education includes a B.S.E. in Engineering and Management Systems from Princeton University, and an M.B.A. from Columbia University.

Scope and Assumptions of Traffic Diversion Analysis

ALK was retained by the petitioners in this proceeding, Finance Docket No. 32760 (Sub-No. 21), to study the impact upon traffic flows that would result from the Tex Mex acquisition of a less circuitous line from Rosenberg to Victoria and permanent, unrestricted traffic solicitation in the Houston market. This study includes both extended haul traffic and new business markets. ALK did not attempt to address changes in rail origin/destination patterns, transportation modal shifts, or economic growth considerations. In conducting this study, I operated under the following parameters:

a. The expanded Tex Mex will operate as a single-line system from Laredo to Houston and Beaumont.

b. The railroad industry competitive environment can be represented by the results of 1996, except for the impact of other rail industry changes that occurred during or after 1996. Base A includes the changes primarily from the Union Pacific acquisition of Southern Pacific and the numerous protective conditions and trackage rights associated with that merger.

c. In order to better reflect the markets served by Tex Mex, an internal 1996 Tex Mex 100% traffic database was integrated with the 1996 Waybill Sample data.

This analysis was conducted as part of a broader market feasibility study. The results of my traffic diversion were provided to Mr. George C. Woodward of ALK for that purpose, to Mr. Joe Plaistow of Snavely King for a financial viability analysis, and to Mr. Patrick Watts, Vice President - Operations, Tex Mex for purposes of developing an operating plan.

Methodology

On an ongoing basis, ALK maintains a computerized representation of the North American railroad network, consisting of links and nodes. The links correspond to track segments. For each segment, ALK is aware of the railroad(s) operating over the segment, the exact distance, and the mainline/branchline classification. The nodes correspond to freight stations and to interline junctions between railroads. For each node, ALK is aware of the Freight Station Accounting Codes (FSACs) for the freight stations, and the 5-character Association of American Railroads (AAR) codes for the interline junctions.

Using this network, ALK can generate the most likely route between an origin and a destination, for all combinations of originating and terminating railroads. The most likely route for each combination is the route with the minimum sum of "impedances" over the route. There are impedances for each track link and interline junction. The track impedances are a function of distance and mainline/branchline designation, and the origin carrier's track impedances are discounted to account for the originating carrier's ability to extract a longer length of haul. The interline junction impedances are a function of the quality of service offered: run-through,

through block, daily switching, and less than daily switching. Using information provided by the railroads on actual routes used, ALK calibrated the track and junction impedances relative to one another.

ALK uses its Advanced Traffic Diversion (ATD) methodology to conduct this study. The ATD methodology begins by extracting pertinent origin-destination pairs from a traffic data set. For the purposes of its diversion study, ALK refers to these origin-destination pairs in shorthand form as "markets."

For this diversion analysis, ALK integrated the 1996 100% Tex Mex traffic data with the 1996 Waybill Sample. Because the 1996 Waybill Sample overstated the Tex Mex traffic volumes, all Tex Mex participatory records were removed from the Waybill and replaced with their 100% traffic records. We then extracted all markets from the 1996 ICC Waybill Sample where the Tex Mex could conceivably offer routes to connecting carriers.

For each origin-destination market, the model generated a route for every combination of origin and terminating railroad. If, for example, the origin was served by three railroads and the destination by two railroads, we generated six routes. We screened out routes unlikely to attract traffic, such as overly circuitous routes. We then estimated market shares for the remaining routes based on their relative impedances, using a formula that was calibrated based on actual market shares from the 1996 waybill.

We diverted traffic to each Tex Mex route from other Waybill routes until the total Tex Mex market share equaled the share suggested by the model. Finally, for multicarrier routes involving Tex Mex and other carriers, we allocated revenue among the participating carriers using a revenue allocation model. This model allocated revenue in proportion to each carrier's share of the route's mileage, constrained to provide a minimum share to each carrier, and extra shares for origin and terminating carriers.

Results

The overall diversion projections are summarized as Table 1 of this statement. ALK estimates that the proposed Tex Mex system will be able to attract approximately $35 million of additional freight revenue as a result of the less circuitous line from Victoria to Rosenberg and unrestricted traffic solicitation capabilities at Houston. This figure represents gains from both new markets served and extended haul opportunities for the Tex Mex.

TABLE 1

1996 TexMex Traffic
1996 Actual Data (TexMex 100% + Waybill)

Service Type	Cars	Car-Miles	Vans	Van-Miles	Tons	Ton-Miles	TM Revenue
General Merch.	27,478	3,889,632	-	-	1,987,409	277,017,436	$ 14,152,256
Intermodal	-	-	-	-	-	-	$ -
Coal/Grain	9,182	1,443,640	-	-	786,902	123,720,761	$ 4,214,209
Auto Racks	-	-	-	-	-	-	$ -
Total	36,660	5,333,272	-	-	2,774,311	400,738,197	$ 18,366,465

1996 TexMex Traffic
UP/SP w/concessions

Service Type	Cars	Car-Miles	Vans	Van-Miles	Tons	Ton-Miles	TM Revenue	Delta TMRev
General Merch.	27,547	4,356,575	-	-	2,004,538	314,910,481	$ 16,663,986	$ 2,511,730
Intermodal	3,240	466,560	4,497	671,886	65,772	9,860,256	$ 887,527	$ 887,527
Coal/Grain	8,450	1,352,433	-	-	722,286	115,652,740	$ 4,139,160	$ (75,049)
Auto Racks	5,897	858,818	-	-	119,877	17,462,236	$ 5,448,639	$ 5,448,639
Total	45,134	7,034,386	4,497	671,886	2,912,473	457,885,713	$ 27,139,312	$ 8,772,847

1996 TexMex Traffic
TM/KCS Proposal (Line Acquisition + Houston Access)

Service Type	Cars	Car-Miles	Vans	Van-Miles	Tons	Ton-Miles	TM Revenue	Delta TMRev
General Merch.	58,190	12,275,364	-	-	4,381,265	869,087,150	$ 37,062,723	$ 20,398,737
Intermodal	10,800	4,444,800	13,247	5,315,137	184,753	72,270,504	$ 4,131,134	$ 3,243,607
Coal/Grain	12,813	2,515,803	-	-	1,117,512	214,415,903	$ 6,894,366	$ 2,755,206
Auto Racks	13,244	5,068,948	-	-	269,843	103,239,752	$ 14,678,015	$ 9,229,376
Total	95,047	24,304,915	13,247	5,315,137	5,953,373	1,259,013,309	$ 62,766,238	$ 35,626,926

STB FD-~~33568~~ 3-30-98 A ID-186754 3 OF 6

32760 Sub 27

VERIFICATION

)
) ss.
)

I, Michael H. Rogers, being first duly sworn, upon my oath state that I have read the foregoing statement and the contents thereof are true and correct as stated.

Michael H. Rogers
Michael H. Rogers

Subscribed and sworn to before me this 29 day of March, 1998.

____
Notary Public

My Commission Expires: _______________

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 21)

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

VERIFIED STATEMENT

OF

JOSEPH J. PLAISTOW

VERIFIED STATEMENT

OF

JOSEPH J. PLAISTOW

My name is Joseph J. Plaistow, Vice President and principal of Snavely King Majoros O'Connor & Lee, Inc. (hereinafter, "SK") with offices at 1220 L Street, NW, Washington, DC 20005. Throughout my 26-year career in transportation, I have studied the economics of providing transportation services by private and public transportation companies. For much of that time, I also studied how railroads can meet shippers' needs in a cost and operationally efficient manner.

Many of the cost and economic analyses I have performed during my career I have presented in testimony before the Surface Transportation Board ("STB") or its predecessor the Interstate Commerce Commission. In 1976 I was admitted to practice before the Interstate Commerce Commission as a non-attorney practitioner. I have submitted several verified statements in this proceeding on behalf of the Kansas City Southern Railway Company ("KCS").

In Finance Docket No. 33388, the joint control of Conrail by Norfolk Southern and CSX, I was responsible for the development of the estimated benefits Norfolk Southern will realize as a result of the acquisition.

Exhibit No. JJP-1, attached, is a more detailed statement of my background and qualifications.

1. INTRODUCTION

In this, the STB's ongoing Oversight of the UP/SP Merger (Finance Docket No. 32760 (Sub No. 21)) The Texas Mexican Railway Company ("Tex Mex" or "TM") and KCS have asked me to describe the financial and economic impact of implementing the operations resulting from the grant of the additional remedial conditions described in the TM/KCS Joint Petition.

TM-5, KCS-5, filed February 12, 1998 (hereinafter, "Joint Petition"). The purpose of this Verified Statement is to explain the preparation of the Statement of Benefits and of the pro forma financial statements (balance sheets and income accounts) which describe the Joint Petition's financial effect.

Michael H. Rogers, Vice President, ALK Associates, Inc., has provided me with traffic level projections expected to result from implementation of the Joint Petition. Traffic diversions and the resulting carload volume and revenue levels provided by Witness Rogers are reflected in the Statement of Benefits. Pat Watts, Tex Mex Vice President Transportation, developed the operating plan for the projected traffic levels and the method of operations proposed in the TM/KCS Petition. Harlan Ritter, Kansas City Southern Vice President and Executive Representative and Paul Broussard of Paul L. Broussard and Associates have provided operating and expenditure information for the Houston area including the capital expenditures required to integrate Booth Yard into the operations of Tex Mex. David Brookings, KCS Vice President and Executive Representative provided the acquisition cost and capital expenditure estimates required to restore the Victoria, TX to Rosenberg, TX line segment. Witness David M. Lewis gave me the associated right of way acquisition costs. Economies inherent to Witness Watts' operating plan have been incorporated into my Statement of Benefits.

I report the financial information that would be required by Section 1180.9 of 49 CFR. This includes pro forma balance sheets, income accounts and sources and applications of funds for the number of years following consummation of the transaction necessary to effect the operating plan. I report the earnings available for fixed charges, net earnings, effect on total fixed charges, operating ratios and a number of other financial ratios.

The financial statements are created in the following steps:

- Select the financial statements representing the most recent 12-month period prior to implementation of the Joint Petition. In this case, I selected Tex Mex financial statements for the calendar year 1996.

- Modify the 1996 financial statements to reflect known changes between the close of 1996 and the initiation of implementation of the petition. (For purposes of this analysis, I assume that these known changes did not begin until after 1996.[1])
- Calculate the Statement of Benefits reflecting the financial effect of implementing the Joint Petition.
- Develop the Tex Mex pro formas post-petition by adjusting the financial statements to reflect the financial effects summarized in the Statement of Benefits.

My Statement of Benefits reflects the implementation of the Joint Petition, that is, the change between the following scenarios:

- The **Base Case** is the pre-petition state from which the Joint Petition is implemented. The Base Case includes known operational changes post-1996, most significant of which is the construction of the new yard at Laredo described in the verified statement of Larry Fields which will permit Tex Mex to handle two new traffic categories, intermodal and automotive. The Base Case reflects Tex Mex operations following full implementation of the trackage rights Tex Mex received as a result of the Union Pacific/Southern Pacific merger and full implementation of the Union Pacific agreement with Burlington Northern Santa Fe (BNSF) to share ownership of the Houston to New Orleans line segment. The trackage rights granted Tex Mex include the following:
  - ⇒ Trackage rights over the lines shown in the map on the following page (Corpus Christi to Placedo to Flatonia to Rosenberg to Houston to Beaumont).

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[1] Since "[c]ommon control [of SP by UP] was consummated on September 11, 1996" (UP/SP Merger Decision No. 62, page 2) and UP's implementation of its merger plans in Texas did not occur until well into 1997, the UP/SP merger had little, if any, effect on Tex Mex in 1996.

⇒ The alternate route through Houston "(a) to allow Tex Mex effective connections to HB&T, to PTRA, and to various yards; and (b) to provide an alternate route through Houston in the event of congestion. ... Tex Mex has the right to insist that any realignment of its Houston routes provide both effective connections" to the HB&T, the PTRA and various yards and an alternative route for use in the event of congestion.[2]

⇒ The STB granted "Tex Mex all of the trackage rights it sought, including access to 2-to-1 shippers."[3] The STB "granted Tex Mex its trackage rights both to preserve a competitive routing at Laredo and to preserve the essential services now provided by Tex Mex."[4]

⇒ The *Tex Mex Routing Restriction Condition* imposed by the STB which "...provides that all freight handled by Tex Mex pursuant to such trackage rights must have a prior or subsequent movement on Tex Mex's Laredo-Robstown-Corpus Christi line."[5]

- The **Tex Mex/KCS Plan** is the post-petition state to which Tex Mex develops after fully implementing the Joint Petition including the permanent lifting of the *Tex Mex Routing Restriction Condition*.

Although at the time the analysis was made, the emergency service order ("ESO") conditions were in effect, they have not been taken into account in the Base Case.

As a matter of organization, first, I draw conclusions from the completed analyses, then, I explain the development of the Statement of Benefits and the post-petition pro forma financial statements.

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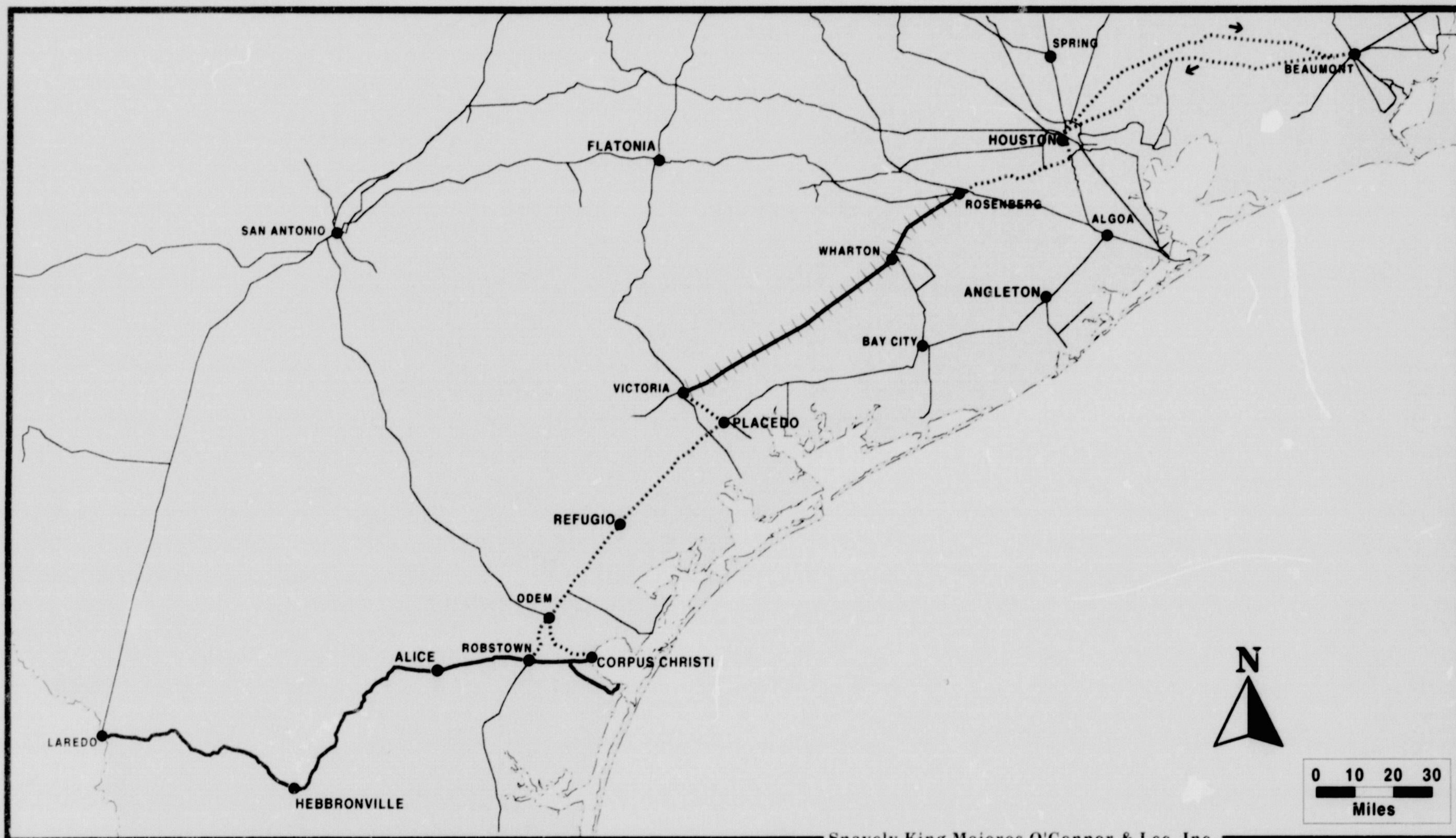
2 UP/SP Merger, Decision No. 47, Decided September 9, 1997, page 12.

3 UP/SP Merger, Decision No. 47, page 15.

4 UP/SP Merger, Decision No. 47, page 16.

5 *See* UP/SP Decision No. 44, slip op. at 30-33 and 147-51.

The Tex Mex Railroad Under Proposed Plan



Tex Mex Pre-Merger

Tex Mex Trackage Rights Granted In UPSP Merger

Rosenberg to Victoria Reconstruction / Rehabilitation

→ Directional Running

2. CONCLUSIONS

I conclude the following from the completed financials:

a) In spite of UP's discrimination and service meltdown and the severe damage they do to Tex Mex's ability to compete effectively, Tex Mex has been able to 1) continue providing essential services to its on-line shippers; 2) provide a competitive alternative to the UP at Laredo, and 3) serve as primary operator of Laredo's International Bridge.

b) If the Board grants the relief requested in the Joint Petition, the planned infrastructure and capacity enhancement projects and capital improvements will be economically justified. That capacity increasing investment will provide relief to Houston's congestion and additional competitive relief to Houston's shippers. The Victoria to Rosenberg line segment is an investment that even Union Pacific recognizes as having "considerable merit" and "would help address the capacity shortfall described by the STB in [its February 26, 1998] decision."[6]

a) Tex Mex has been able to 1) continue providing essential services to its on-line shippers; 2) provide a competitive alternative to the UP at Laredo, and 3) serve as primary operator of Laredo's International Bridge in spite of UP's service meltdown and its devastating effect on Tex Mex profitability and its ability to compete effectively.

Even though Tex Mex lost $994,000 in 1995, had net operating income of only $972,000 in 1996, and lost $1,193,000 in 1997, the rights granted to Tex Mex as STB imposed UP/SP merger conditions have made possible the uninterrupted provision of essential services and continuation as primary operator of Laredo's International Bridge. The rights granted also provided the foundation for Tex Mex's $9.7 million investment in the new Laredo yard and in the future of this international traffic. The new Laredo yard enables Tex Mex to handle

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[6] February 27, 1998 letter from Dick Davidson, Union Pacific Chairman, to Tex Mex's President & CEO, Larry Fields and Michael Haverty, President & CEO, KCS.

intermodal and automotive traffic for the first time, breaking the Union Pacific monopoly over these commodities.

In 1996, Tex Mex handled 36,660 carloads, 5,333,272 car miles, 400,738,197 ton miles, incurred expenses of $18.8 million, and produced revenues of $19.8 million and net operating income of $972,000. The highlighted portion of the following table summarizes the ***incremental*** change from 1996 to the Base Case. The Base Case reflects the implementation of the conditions the STB imposed on its approval of the UP/SP merger and the other known changes since the close of 1996 absent the ESO conditions.

Table 1
Incremental Results of Traffic Analyses: Base Case

Traffic Category	Carloads	Car Miles (000's)	Ton Miles (000's)	Expenses (000's)	Revenues (000's)	Net Oper. Inc (000's)
1996 to Base Case	*8,474*	*1,701*	*57,148*	*$4,387*	*$8,773*	*$4,386*
Base Case to Tex Mex /KCS Plan	49,913	17,271	801,128	28,520	35,627	7,107

Full implementation of the known changes since the end of 1996 produces a net gain of 8,474 carloads. The net gain resulted primarily from a 1,511 increase in Tex Mex originated traffic, a 8,242 carload loss from former Southern Pacific traffic being diverted to Union Pacific, its merger partner, and a 14,397 carload gain from BNSF. Changes in the pattern of interchange among Tex Mex and the other railroads in the region from ALK Witness Rogers' traffic flow analyses are shown in Table 2 below.

Table 2
Summary of Changes in Tex Mex Interchanges: 1996 to Base Case

Tex Mex I/C Partner	Carloads I/C 1996	Carloads I/C Base Case	Carloads I/C Net Change
UP/MP	1,782	850	(932)
SP	16,158	7,916	(8,242)
BNSF	3,990	18,387	14,397
TFM	31,907	39,391	7,484

Tex Mex incremental revenue from the additional intermodal traffic, automotive traffic, BNSF interchange traffic and extended hauls more than offsets the revenue reduction from lost carloads of SP interchanged traffic resulting from SP's merger with the UP.

The net economic effect of these changes is to increase net operating income from $4.4 million to $7.1 million. However, that level of profitability assumes cost levels similar to those experienced in 1996. 1997 was very different from 1996 because the UP service meltdown in Houston raised the operating ratios of all Texas carriers. Tex Mex's operating ratio ballooned to over 113% in the 3rd quarter of 1997 and an operating loss of $1,193,000 resulted for the full year.

Tex Mex's financial results in 1997 were not good, but they would surely have been intolerable without the STB imposed conditions to the UP/SP merger granting Tex Mex its requested trackage rights. Without those rights, Tex Mex losses would have been substantially larger and Tex Mex may not have been able to 1) continue providing essential services to its on-line customers; 2) provide a competitive alternative to the UP at Laredo; nor 3) serve as the primary operator of the International Bridge at Laredo.[7]

In subsection b), below, I describe the estimated level of operating profits realized if the Tex Mex/KCS Plan is implemented.

b) If the Board grants relief requested in the Joint Petition, the planned infrastructure and capacity improvement projects and capital improvements will be economically justified.

The highlighted portion of Table 3 below summarizes the *incremental* results of implementing the Tex Mex/KCS Plan in which the Joint Petition, including the lifting of the *Tex Mex Routing Restriction*, is granted.

[7] Cars crossing Laredo's International Bridge for the account of Tex Mex totalled 82,844 in 1997, up from 50,373 in 1996. Bridge crossings for the account of Union Pacific totalled 247,502 in 1997, approximately the same levels UP experienced in 1996.

Table 3
Incremental Results of Traffic Analyses: Tex Mex/KCS Plan

Traffic Category	Carloads	Car Miles (000's)	Ton Miles (000's)	Expenses (000's)	Revenues (000's)	Net Oper. Inc (000's)
1996 to Base Case	**8,474**	1,701	57,148	**$4,387**	**$8,773**	**$4,386**
Base Case to Tex Mex /KCS Plan	*49,913*	*17,271*	*801,128*	*28,520*	*35,627*	*7,107*

Full implementation of the Tex Mex/KCS Plan produces a net gain of 49,913 carloads. This consists of an increase of 11,286 carloads in Tex Mex originated traffic, a 25,928 carload increase in traffic to and from Mexico and a 12,932 carload shift from BNSF. A substantial portion of the gain is intermodal and automotive traffic.

Table 4 below summarizes the impact of changes in interchange traffic resulting from implementing the Tex Mex/KCS Plan.

Table 4
Summary of Changes in Tex Mex Interchanges: Base Case to Tex Mex/KCS Plan

Tex Mex I/C Partner	Carloads I/C Base Case	Carloads I/C *Tex Mex/KCS Plan*	Carloads I/C Net Change
UP/MP	850	588	(262)
SP	7,916	5,604	(2,312)
BNSF	18,387	31,319	12,932
TFM	39,391	65,319	25,928

The net economic effect of all these changes is to increase net operating income by $7.1 million. This predicted level of profitability assumes that congestion has been relieved in the region and that cost levels have improved to those experienced in 1996. This level of net operating income will support the $65.5 million capital investment in the Victoria to Rosenberg line.

All parties agree that capital investment in the Victoria to Rosenberg line segment will make a significant contribution to relieving the congestion being experienced in the Houston area. Even UP recognizes that investment has "considerable merit" and "would help address the capacity shortfall described by the STB...." That investment is one major piece of the relief requested in the Joint Petition. As I have demonstrated, that relief is economically justified.

3. STATEMENT OF BENEFITS

This section, (1) describes the incorporation of the Tex Mex Joint Petition operating plan into my economic analysis and (2) estimates the change in costs associated with the Tex Mex traffic diversions described in ALK Witness Michael Rogers verified statement. These results were incorporated into the Tex Mex pro forma financial statements as described in Section 4 of this verified statement.

Development of the Statement of Benefits can be divided into three parts as follows:

a) Selection of the appropriate Uniform Rail Costing System ("URCS") application for the transaction;

b) Compilation of the effect on operating expenses of implementing the Joint Petition; and

c) Compilation of the costs and revenues associated with the traffic changes described in Witness Rogers' verified statement.

a) Selection of the appropriate Uniform Rail Costing System ("URCS") application

While the STB has developed approved URCS applications for each of the Class I railroads in the United States, it has not developed applications for smaller railroads. As a general practice, regional URCS applications are used in proceedings involving non-Class I railroads.[8] My cost calculations employ the STB's development of Region VII (that is, the Western Region) unit costs. I applied these costs to the traffic changes described above to estimate the costs associated with those changes in traffic volumes.

If Tex Mex unit costs were available, and they are not, I still would have used Region VII unit costs since historic Tex Mex unit costs would not have properly represented the cost characteristics of the post-Joint Petition Tex Mex. The Tex Mex of 1996 is much smaller than the post-Joint Petition Tex Mex will be. Unit costs will also be very different. Post-Joint

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[8] See, for example, Rate Guidelines – Non-Coal Proceedings, STB Ex Parte No. 347 (Sub-No. 2), Decision served May 1, 1997, page 1.

Petition Tex Mex includes the trackage rights awarded in the UP/SP merger, the Laredo Intermodal Yard, and the Victoria to Rosenberg line segment. Post-Joint Petition Tex Mex has freight revenues equal to 347% and net properties equal to 351% of historic 1996 Tex Mex. In terms of carloads handled, the post-Joint Petition Tex Mex is expected to be 259.3% of historic 1996 Tex Mex.

b) Compilation of the effect on operating expenses of implementing the Joint Petition, and compilation of the costs and revenues associated with the traffic changes described in ALK Witness Rogers' verified statement

i. Incorporating the Joint Petition's Operating Plan

I coordinated with Tex Mex Witness Patrick L. Watts, the sponsor of Tex Mex's operating plan,[9] to insure that my economic analyses corresponded with the operations described. The traffic characteristics developed by ALK Witness Rogers were used to develop the operating plan described by Witness Watts. The transportation services required to transport that traffic were accumulated by service unit.

ii. Operating Expenses of the Joint Petition's Operating Plan and the Incremental Traffic

Costs associated with the Base Case and the Tex Mex/KCS Plan were calculated by multiplying *incremental* service units by the correct cost per service unit as determined from the STB's Region VII URCS analysis.

The service units accumulated by ALK Witness Rogers were as follows:

- Total and incremental carloads by car type, ownership and commodity group,
- Total and incremental net tons,

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[9] See the verified statement of Tex Mex Vice President, Mr. Pat Watts.

- Total and incremental loaded carmiles by car type, ownership and commodity group,
- Total and incremental net ton miles by commodity group,
- Cars handled in terminals, and
- Total and incremental revenue.

The service units for which I determined specific Tex Mex factors were as follows:

- Total and incremental gross tons using Tex Mex ratio of gross to net,
- Train miles using Tex Mex cars per train, and
- Locomotive unit miles using the number of Tex Mex locomotives per train.

The Region VII URCS application was used to develop most of the unit costs (that is, the cost per service unit) and the following parameters:

- Empty return ratios,
- Car days (utilizing the ALK determined car miles and the Region VII URCS car days per car mile); and
- Switch engine minutes (utilizing the ALK determined number of cars handled in terminals and the Region VII URCS switch engine minutes per switch event).

Required labor costs were estimated directly. Witness Watts determined the number of additional employees, by category, that Tex Mex would need to handle the traffic volumes associated with each scenario. I used the Tex Mex cost per employee to determine their annual economic impact. Labor cost data were compiled with Tex Mex assistance. These data developed an average annual 1996 wage associated with personnel in each craft (including overtime and constructive allowances, if appropriate) and associated fringe benefits. The required number of incremental employees by category was multiplied by the annual wages and fringes for each employee category to calculate the change in annual labor costs.

iii. Additional Equipment Requirements

Traffic volume increases require Tex Mex to provide additional locomotives and freight cars. I calculated the capital and operating costs associated with this additional equipment.

Witness Watts states that Tex Mex, to implement the Tex Mex/KCS Plan, will lease an additional 26 locomotives over and above those required to handle Base Case traffic levels. Tex Mex's existing locomotive fleet (including 6 of the additional locomotives leased this year) is adequate to handle the Base Case.

Most Tex Mex traffic is bridge traffic, and this is especially true of the incremental traffic. Therefore, I assume that Tex Mex will not have to buy more freight cars. The traffic is already handled in freight cars of various ownerships. Most of the traffic gained by Tex Mex will involve shifting existing freight cars from the routes of competing carriers to the Tex Mex routes. I account for the ownership and operating costs associated with these freight cars on a time and mileage, car hire basis.

Automotive traffic requires special consideration because (a) it is new to Tex Mex, (b) it has unique car characteristics, and (c) railroads are unable to participate in the traffic unless they provide the appropriate equipment. Tex Mex is providing this equipment through their affiliation with Transportacion Ferroviaria Mexicana (TFM).

Costs associated with the additional locomotive and freight car equipment requirements were included in my economic analysis using the capital cost portion of the appropriate URCS unit costs.

iv. Additional Fixed Plant Investment Capital Requirements

The capital and operating costs associated with the incremental investment in fixed property (primarily consisting of the investment in the Victoria to Rosenberg line segment) were calculated based on the capital expenditure estimates provided to me by Witness David Brookings and Witness David M. Lewis.

v. Adjustments to the Base Case

Traffic volumes and the associated revenue and expense levels reflect several major adjustments to those reported for the year 1996. These adjustments flow from the following Tex Mex fixed plant changes and operational changes affecting Tex Mex's ability to handle certain traffic categories:

- Trackage rights Tex Mex gained as a result of conditions granted in the UP/SP merger proceeding.
- Construction of the Laredo Intermodal Yard including the changes which allow Tex Mex to handle automotive and intermodal traffic in the Base Case.

vi. Inclusion of Cost and Economic Results in the Pro Forma Financial Statements

My cost and economic results, discussed above, were incorporated into the Tex Mex pro forma financial statements. Exhibit No. JJP-2 presents the Statement of Benefits for implementing the Tex Mex/KCS Plan.

4. PRO FORMAS FOR THE BASE CASE AND TEX MEX/KCS PLAN

In this section I discuss the creation of the pro forma financial statements for Tex Mex following implementation of the Joint Petition consistent with Section 1180.9 of 49 CFR.

I created the pro forma financials in the following four stages:

- Select the financial statements representing the starting point. In this case, I selected Tex Mex financial statements for the calendar year 1996.

- Modify the 1996 financial statements to reflect known changes between the close of the year and the period immediately preceding the implementation of the Joint Petition. Financial statements resulting from these adjustments represent the pre-Joint Petition or Base Case financials.
- Calculate the Statement of Benefits associated with implementing the Tex Mex/KCS Plan.
- Modify the Base Case pro forma financial statements to reflect the changes resulting from the Tex Mex/KCS Plan Statement of Benefits. Financial statements resulting from these adjustments represent the Tex Mex/KCS Plan pro forma financials.

I used 1996 Tex Mex financials as the starting point. The financial consideration and arrangements involved in the proposed transaction were provided by other Tex Mex and KCS witnesses including Witnesses David W. Brookings and David M. Lewis, who provided information regarding the Victoria to Rosenberg line segment.

I also computed financial ratios typically used in assessing the financial soundness of the entity resulting from implementing the Joint Petition.

a) Pro Formas for Each Case

i. Base Case and Tex Mex/KCS Plan financial statements include the following:

- A pro forma Balance Sheet for the Base Case, each of the three following years required to implement the operating plan, and for the normal post- Tex Mex/KCS Plan year. These Balance Sheets are included as Exhibit No. JJP-6.
- A pro forma Income Statement for the Base Case, each of the three following years required to implement the operating plan, and for the normal post-Tex Mex/KCS Plan year. These Income Statements are included as Exhibit No. JJP-7.
- A pro forma Sources and Applications of Funds for the Base Case, each of the three following years required to implement the operating plan, and for the normal post-

Tex Mex/KCS Plan. These Sources and Applications of Funds statements are included as Exhibit No. JJP-8.

b) Pro Formas for the Base Case

For this Joint Petition, calendar year 1996 results are used as the starting point for the projections. Creating the pro formas for the Base Case required several adjustments to historical Tex Mex data. Extraordinary Charges and other significant non-recurring items were eliminated. Adjustments were also made to reflect known operational changes post-1996 and their financial effects. These known operational changes include the following:

- Full implementation of the Tex Mex trackage rights granted as a condition of approving the UP/SP merger,
- Full implementation of the Union Pacific/BNSF joint ownership agreement involving the Houston to New Orleans line segment,
- Construction of the new Laredo yard,
- The newly installed capability to handle intermodal and automotive traffic,
- The hiring of 30 employees, and
- The leasing of 6 locomotives.

Tex Mex historical 1996 and adjustments to construct the pro forma Base Case are presented in Exhibit No. JJP-3 (Balance Sheet), Exhibit No. JJP-4 (Income Statement), and Exhibit No. JJP-5 (Sources and Applications of Funds).

c) Projection Years Pro Formas

The financial statements for years 1, 2, 3 and the normal year are derived from the Base Case financials modified by the changes identified in the Statement of Benefits.

The Statement of Benefits corresponding to the Tex Mex/KCS Plan is Exhibit No. JJP-2.

We project three years will be required to fully implement Witness Watts' operating plan and realize the revenues therefrom. Other Tex Mex/KCS witnesses discuss the timing of the capital expenditures. We project that revenue and expense will be realized 15% in year 1, 75% in year 2, and the remaining 10% in year 3. Consequently, this schedule for realizing revenues and expenses is reflected in the Statements ofBenefits and the pro forma financials appearing as Exhibit Nos. JJP-6 through JJP-8.

The next sub-section d) discusses the financial arrangements to fully implement the Joint Petition. Each of the previously mentioned pro forma financial statements are modified to reflect the cash flows associated with the financial arrangements discussed.

d) Financial Arrangements

Tex Mex and KCS have advised me that the Victoria to Rosenberg line segment investment will be $65.5 million. They have further advised me that this amount of money will be loaned to Tex Mex by KCS under a mortgage financing arrangement with annual interest at the rate of 8%. I modified the pro forma financial statements to reflect the effect of this arrangement on the Tex Mex Balance Sheets, Income Statements, and Sources and Applications of Funds. Exhibit No. JJP-9 reflects the interest payments and principal repayments on the KCS mortgage loan to Tex Mex.

e) Financial Ratios to Evaluate the Financial Strength of Tex Mex following Implementation of the Joint Petition

In this section, I report the financial information (described in Section 1180 of 49 CFR) permitting the STB to evaluate the financial strength of the corporation resulting from consummation of the Joint Petition. Earnings Available for Fixed Charges and financial ratios bearing on the security of the financial structure are most important in this regard.

The financial information and ratios I report are as follows:

- Earnings Available for Fixed Charges
- Fixed Charge Coverage Ratio
- Operating Ratio
- Return on Equity
- Debt to Equity Ratio

I report this information in Exhibit No. JJP-10 for the Tex Mex/KCS Plan. I computed this information for the Base Case and for each of the pro forma years. The year-to-year trend in the reported information suggests that financials improve significantly when the Tex Mex/KCS Plan is implemented.

Exhibit No. JJP-10, which reports this information for the Tex Mex/KCS Plan, depicts a financially strong Tex Mex with improving financial ratios over the operating plan's implementation. With this financial picture, Tex Mex will continue to 1) provide essential services to its on-line shippers; 2) provide a competitive alternative to the UP at Laredo, and 3) serve as primary operator of Laredo's International Bridge, contribute to relieving congestion in the Houston region, and provide competitive relief to Houston's shippers. Shippers need a service outlet when competing railroads experience problems such as the Union Pacific service meltdown.

Exhibit No. JJP-1

STATEMENT OF QUALIFICATIONS
OF
JOSEPH J. PLAISTOW

My name is Joseph J. Plaistow, Vice President and principal of Snavely King Majoros O'Connor & Lee, Inc. with offices at 1220 L Street, NW, Washington, DC 20005. I graduated in 1967 from Michigan Technological University with a Bachelor of Science Degree in Metallurgical Engineering. In 1972 I graduated from the University of Minnesota with a Masters Degree in Business Administration. I was employed by Burlington Northern Railroad for 15 years as Director of Costs and Economic Analyses in the Finance Department, as Director of Equipment and Service, and Director of Planning and Equipment in the Food and Manufactured Products Business Unit of the Marketing Department from 1972 to 1987. In 1987 and 1988, I was employed by Fleet Management Inc. as a Vice President managing the efficient operation of refrigerated boxcars. In 1988, I joined Snavely King & Associates (now known as Snavely King Majoros O'Connor & Lee, Inc.).

As Director of Costs and Economic Analyses for Burlington Northern, I was responsible for all corporate cost analyses. During that period, I designed and coordinated the implementation of a totally reconstructed costing system. I testified many times on the cost of moving coal unit trains to electric utility power plants. I also testified and spoke on the cost of capital, rate of return regulation, and corporate investment policies.

Acquisitions, divestitures and investment analyses were a primary focus during several stages of my career. I have established sales prices and negotiated the sale of shortline railroads. I worked with investment bankers in advising Burlington Northern regarding the potential purchase of several railroads. I was responsible for the development of the estimated benefits Norfolk Southern will realize as a result of their joint acquisition with CSX of Conrail.

As Director, Planning and Equipment, I developed the revenue, contribution, and equipment requirement projections. I was also responsible for customer service functions. This included identifying customers' needs and coordinating with Operations to insure that those needs were met. This included the provision of an adequate car supply and the assurance that the freight car fleet serving customers was adequately maintained. Databases were developed to support analyses of required maintenance, car acquisition and utilization improvements.

As Vice President of Fleet Management Incorporated, I was responsible for managing the optimal distribution of most of the country's insulated boxcars. Responsibilities included marketing, railroad relations, and daily management.

At Snavely King, I provide expert testimony on transportation economics, rate structures and rate reasonableness for private and public corporations. In addition to providing expert testimony regarding the economics of coal movements in the United States and Canada, I also provide testimony in the areas of economics and competitive analysis in the major railroad mergers. I have conducted dozens of merger studies

Other assignments have included re-engineering the freight car management function for a major railroad as part of their corporate-wide re-engineering effort. I have also provided expert testimony in the branch line abandonment/feeder line area. For several major United States corporations, I was responsible for optimizing the rail portion of their distribution network. I have conducted rail contract and rate negotiations on behalf of major corporations.

I have also studied the economics of the provision of passenger service by rail. For Amtrak, I recommended the route structure designed to optimize their financial viability in the year 2000. I have also worked with the Government Accounting Office on a follow-up to the original Amtrak Review. For a major Northeast commuter agency, I evaluated the relative economics of passenger service provision in adjoining states.

I am a Past President of the Washington Chapter of the Transportation Research Forum and a member of the Association for Transportation Law, Logistics and Policy. I am also the national Secretary of the Cost Analysis Chapter of the Transportation Research Forum.

In 1976 I was admitted to practice before the Interstate Commerce Commission and its Surface Transportation Board successor, as a non-attorney practitioner. I am familiar with practice before the Commission, and I have testified before the Board and the Interstate Commerce Commission dozens of times on cost and economic issues.

Professional Organizations

Transportation Research Board and Forum – Past President, Washington Chapter
Association for Transportation Law, Logistics and Policy – Registered Practitioner
American Society of Transportation and Logistics

Tex Mex / KCS Plan
Statement of Benefits

The Texas Mexican Railway Company

Description	Year 1 (000s)	Year 2 (000s)	Year 3 (000s)	Normal Year (000s)
	(a)	(b)	(c)	(d)
1 Incremental Revenue	$ 5,344	$ 32,064	$ 35,627	$ 35,627
Operating Expense:				
2 Way and Structures	275	275	275	275
3 Equipment	685	3,630	4,033	4,113
4 Transportation - Direct	902	4,305	4,784	4,968
5 URCS related operating cost	1,194	7,162	7,958	7,722
6 T&E Crew	1,462	8,772	9,747	7,958
7 General & Administrative	218	1,311	1,456	1,456
8 Total Operating Costs	$ 4,736	$ 25,456	$ 28,254	$ 26,493
9 Total Benefits	$ 608	$ 6,609	$ 7,373	$ 9,134

Base Case
Balance Sheet

Exhibit No. JJP-3

The Texas Mexican Railway Company

	Description	December 31, 1996 Audited (000s)	Adjustment Amount (000s)	Adjusted Base Period Amount (000s)
		(a)	(b)	(c)
	Assets			
	Current Assets:			
1	Cash and cash equivalents	$ 392	$ 3,718	$ 4,110
2	Investments	572		572
3	Net Accounts and Notes Receivable	6,663	172	6,835
4	Inventory	1,562		1,562
5	Due from Parent and Other related parties	912		912
6	Current deferred income taxes	984		984
7	Other	590		590
8	Total Current Assets	$ 11,675	$ 3,890	$ 15,565
	Properties:			
9	Equipment	23,481		23,481
10	Land, Buildings & improvements	18,931	9,700	28,631
11	Less accumulated depreciation	(17,870)	(158)	(18,028)
12	Net Properties	$ 24,542	$ 9,542	$ 34,084
	Other Assets:			
13	Investments in other partnership	3,889		3,889
14	Net other assets	1,099		1,099
15	Total Other Assets	$ 4,988	$ -	$ 4,988
16	Total Assets	$ 41,205	$ 13,433	$ 54,638
	Liabilities & Equities			
17	Accounts Payable	$ 1,912	478	2,390
18	Due to Parent and other related parties	410		410
19	Other accrued liabilites	4,344	1,345	5,689
20	Total current liabilities	$ 6,666	$ 1,822	$ 8,488
21	Long Term Debt	3,800	9,000	12,800
22	Deferred Income Taxes	5,203	0	5,203
23	Total liabilities	$ 15,669	$ 10,822	$ 26,491
	Stockholder's equity:			
24	Common Stock	2,500		2,500
25	Additional paid in capital	981		981
26	Retained earnings	22,055	2,610	24,665
27	Total Stockholder's equity	$ 25,536	$ 2,610	$ 28,146
28	Total Liabilities & Equity	$ 41,205	$ 13,433	$ 54,638

Exhibit No. JJP-4

Base Case
Income Statement

The Texas Mexican Railway Company

	Description	December 31, 1996 Audited (000s)	Adjustment Amount (000s)	Adjusted Base Period Amount (000s)
		(a)	(b)	(c)
	Operating Revenues:			
1	Frieght	$ 18,107	$ 9,032	$ 27,139
2	Switching	554	276	830
3	Demurrage	550	274	824
4	Incindental	603	301	904
5	Total Operating Revenues	$ 19,814	$ 9,884	$ 29,698
	Operating Expenses:			
6	Maintenance of Ways & Structures	$ 3,032	$ 158	$ 3,190
7	Maintenance of Equipment	2,559	931	3,490
8	Transportation	9,403	3,518	12,921
9	General & Adminstrative	3,823	628	4,451
10	Loss (Gain) On Sale of Fixed Assets	25	(25)	-
11	Total Operating Expenses	$ 18,842	$ 5,209	$ 24,051
12	Income (Loss) From Operations	$ 972	$ 4,675	$ 5,647
13	Other Income & Expense Net	636	(720)	(84)
14	Income (Loss) before Income Taxes	1,608	3,955	5,563
15	Income Tax Rate	34%	34%	34%
16	Income Taxes	620	1,345	1,891
17	Net Income (Loss)	$ 988	$ 2,610	$ 3,671

Base Case
Sources and Applications of Funds

Exhibit No. JJP-5

The Texas Mexican Railway Company

	Description	December 31, 1996 Audited (000s)	Adjustment Amount (000s)	Adjusted Base Period Amount (000s)
		(a)	(b)	(c)
	From Operating Activities:			
1	Net Income (Loss)	$ 988	$ 2,610	$ 3,671
2	Depreciation	1,577	158	1,735
3	Deferred Income Taxes	620	-	620
4	Equity Earnings - Partnership Investment	(477)		(477)
5	Dividend Distribution - Partnership Investment	556		556
6	Change in current assets - (Increase) or Decrease	(899)	(172)	(1,071)
7	Change in current liabilities - Increase or (Decrease)	(988)	1,822	834
8	Change in amounts due to/from parent and other related parties -Increase or (Decrease)	498		498
9	Net Cash Provided by Operating Activities	$ 1,875	4,418	6,366
	From Investing Activities:			
10	Purchases of Equipment & Improvements, net of gain or loss on dispostion of fixed assets	(2,011)	(9,700)	(11,711)
11	Proceeds from sale of investments	1,224		1,224
12	Investment in Long Term Assets	(1,099)		(1,099)
13	Net Cash Used by Investing Activities	$ (1,886)	(9,700)	(11,586)
	From Financing Activities:			
14	Long Term Debt Borrowings	-	9,000	9,000
15	Net Cash Provided by Financing Activities	$ -	9,000	9,000
16	Increase (Decrease) in Cash & Cash Equivalents	(11)	3,718	3,780
17	Cash & Cash Equivalents at Beginning of Year	403		403
18	Cash & Cash Equivalents at End of Year	$ 392	$ 3,718	$ 4,183

Exhibit No. JJP-6

Tex Mex / KCS Plan
Balance Sheet

The Texas Mexican Railway Company

	Description	Adjusted Base Period Amount (000s)	Adjustment Amount (000s)	Year 1 After Change in Operations (000s)	Adjustment Amount (000s)	Year 2 After Change in Operations (000s)	Adjustment Amount (000s)	Year 3 After Change in Operations (000s)	Adjustment Amount (000s)	Normal Year After Change in Operations (000s)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
	Assets									
	Current Assets:									
1	Cash and cash equivalents	$ 4,110	$ 1,184	$ 5,294	$ 11,515	$ 16,809	$ 8,900	$ 25,709	$ 10,185	$ 35,894
2	Investments	572		572		572		572		572
3	Net Accounts and Notes Receivable	6,835	102	6,937	510	7,447	68	7,515	-	7,515
4	Inventory	1,562		1,562		1,562		1,562		1,562
5	Due from Parent and Other related parties	912		912		912		912		912
6	Current deferred income taxes	984		984		984		984		984
7	Other	590		590		590		590		590
8	Total Current Assets	$ 15,565	$ 1,286	$ 16,851	$ 12,025	$ 28,877	$ 8,968	$ 37,844	$ 10,185	$ 48,030
	Properties:									
9	Equipment	23,481		23,481		23,481		23,481		23,481
10	Land, Buildings & improvements	28,631	65,500	94,131		94,131		94,131		94,131
11	Less accumulated depreciation	(18,028)	(2,669)	(20,697)	(3,603)	(24,300)	(3,603)	(27,903)	(3,603)	(31,507)
12	Net Properties	$ 34,084	$ 62,831	$ 96,915	$ (3,603)	$ 93,312	$ (3,603)	$ 89,709	$ (3,603)	$ 86,105
	Other Assets:									
13	Investments in other partnership	3,889		3,889		3,889		3,889		3,889
14	Net other assets	1,099		1,099		1,099		1,099		1,099
15	Total Other Assets	$ 4,988	$ -	$ 4,988	$ -	$ 4,988	$ -	$ 4,988	$ -	$ 4,988
16	Total Assets	$ 54,638	$ 64,117	$ 118,755	$ 8,422	$ 127,177	$ 5,364	$ 132,541	$ 6,582	$ 139,123
	Liabilities & Equities									
17	Accounts Payable	$ 2,389.80	$ 517.67	$ 2,907.47	$ 2,082.72	$ 4,990.19	$ 266.27	$ 5,256.46	$ (185.75)	$ 5,070.71
18	Due to Parent and other related parties	410		410		410		410		410
19	Other accrued liabilites	5,615	(1,707)	3,909	2,237	6,146	355	6,501	707	7,208
20	Total current liabilities	$ 8,415	$ (1,189)	$ 7,226	$ 4,320	$ 11,546	$ 622	$ 12,167	$ 521	$ 12,688
21	Long Term Debt	12,800	64,947	77,747	(598)	77,149	(648)	76,501	(701)	75,800
22	Deferred Income Taxes	5,203		5,203		5,203		5,203		5,203
23	Total liabilities	$ 26,418	$ 63,758	$ 90,176	$ 3,721	$ 93,897	$ (26)	$ 93,871	$ (180)	$ 93,691
	Stockholder's equity:									
24	Common Stock	2,500		2,500		2,500		2,500		2,500
25	Additional paid in capital	981		981		981		981		981
26	Retained earnings	24,739	359	25,097	4,701	29,798	5,391	35,189	6,762	41,951
27	Total Stockholder's equity	$ 28,220	$ 359	$ 28,578	$ 4,701	$ 33,279	$ 5,391	$ 38,670	$ 6,762	$ 45,432
28	Total Liabilities & Equity	$ 54,638	$ 64,117	$ 118,755	$ 8,422	$ 127,177	$ 5,364	$ 132,541	$ 6,582	$ 139,123

Exhibit No. JJP-7

Tex Mex / KCS Plan
Income Statement

The Texas Mexican Railway Company

	Description	Adjusted Base Period Amount (000s)	Adjustment Amount (000s)	Year 1 After Change in Operations (000s)	Adjustment Amount (000s)	Year 2 After Change in Operations (000s)	Adjustment Amount (000s)	Year 3 After Change in Operations (000s)	Adjustment Amount (000s)	Normal Year After Change in Operations (000s)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
	Operating Revenues:									
1	Frieght	$ 27,139	$ 5,344	$ 32,483	$ 26,720	$ 59,204	$ 3,563	$ 62,766	$ -	$ 62,766
2	Switching	830	164	994	818	1,811	109	1,920	-	1,920
3	Demurrage	824	162	987	812	1,798	108	1,907	-	1,907
4	Incindental	904	178	1,082	890	1,972	119	2,090	-	2,090
5	Total Operating Revenues	29,698	5,848	35,546	29,239	64,785	3,899	68,683	-	68,683
	Operating Expenses:									
6	Maintenance of Ways & Structures	3,190	1,289	4,479	934	5,413	-	5,413	-	5,413
7	Maintenance of Equipment	3,490	605	4,095	3,025	7,120	403	7,523	-	7,523
8	Transportation	12,921	3,401	16,322	17,007	33,329	2,268	35,596	(2,025)	33,571
9	General & Adminstrative	4,451	348	4,799	1,740	6,538	232	6,770	-	6,770
10	Loss (Gain) On Sale of Fixed Assets	-	-	-	-	-	-	-	-	-
11	Total Operating Expenses	$ 24,051	$ 5,644	$ 29,695	$ 22,706	$ 52,400	$ 2,903	$ 55,303	$ (2,025)	$ 53,278
12	Income (Loss) From Operations	$ 5,647	$ 204	$ 5,851	$ 6,534	$ 12,385	$ 996	$ 13,380	$ 2,025	$ 15,405
13	Other Income & Expense Net	$ (84)	$ (5,224)	$ (5,308)	$ 46	$ (5,262)	$ 49	$ (5,213)	$ 53	$ (5,159)
14	Income (Loss) before Income Taxes	5,563	(5,019)	543	6,579	7,122	1,045	8,168	2,078	10,246
15	Income Tax Rate	34%		34%		34%		34%		34%
16	Income Taxes	1,891	(1,707)	185	2,237	2,422	355	2,777	707	3,484
17	**Net Income (Loss)**	$ 3,671	$ (3,313)	$ 359	$ 4,342	$ 4,701	$ 690	$ 5,391	$ 1,372	$ 6,762

Tex Mex / KCS Plan
Sources and Applications of Funds

Exhibit No. JJP-8

The Texas Mexican Railway Company

Description	Base Period Adjusted (000s) (a)	Year 1 After Change in Operations (000s) (b)	Year 2 After Change in Operations (000s) (c)	Year 3 After Change in Operations (000s) (d)	Normal Year After Change in Operations (000s) (e)
From Operating Activities:					
1 Net Income (Loss)	3,671	$ 359	$ 4,701	$ 5,391	$ 6,762
2 Depreciation	1,735	2,669	3,603	3,603	3,603
3 Deferred Income Taxes	620	-	-	-	-
4 Equity Earnings - Partnership Investment	(477)	-	-	-	-
5 Dividend Distribution - Partnership Investment	556	-	-	-	-
6 Change in current assets - (Increase) or Decrease	(1,071)	(102)	(510)	(68)	-
7 Change in current liabilities - Increase or (Decrease)	761	(1,189)	4,320	622	521
8 Change in amounts due to/from parent and other related parties -Increase or (Decrease)	498	-	-	-	-
9 Net Cash Provided by Operating Activities	$ 6,293	$ 1,737	$ 12,114	$ 9,548	$ 10,887
From Investing Activities:					
10 Purchases of Equipment & Improvements, net of gain or loss on dispostion of fixed assets	$ (11,711)	$ (65,500)	$ -	$ -	$ -
11 Proceeds from sale of investments	1,224	-	-	-	-
12 Investment in Long Term Assets	(1,099)	-	-	-	-
13 Net Cash Used by Investing Activities	$ (11,586)	$ (65,500)	$ -	$ -	$ -
From Financing Activities:					
14 Long Term Debt Borrowings	9,000	64,947	(598)	(648)	(701)
15 Net Cash Provided by Financing Activities	$ 9,000	$ 64,947	$ (598)	$ (648)	$ (701)
16 Increase (Decrease) in Cash & Cash Equivalents	$ 3,707	$ 1,184	$ 11,515	$ 8,900	$ 10,185
17 Cash & Cash Equivalents at Beginning of Year	403	4,110	5,294	16,809	25,709
18 Cash & Cash Equivalents at End of Year	$ 4,110	$ 5,294	$ 16,809	$ 25,709	$ 35,894

Snavely King Majoros O'Connor & Lee, Inc.

Tex Mex / KCS Plan
Loan Amortization

Exhibit No. JJP-9

The Texas Mexican Railway Company

	Annual	Quarterly		
Estimated Construction Cost			$	57,500,000
Estimated Land Cost				8,000,000
Loan Period in Years	30	120		
Interest Rate	8.00%	2.00%	$	65,500,000

Year		Payment Amount	Interest	Principal	Balance
1st Quarter	1999	(1,444,150)	1,310,000	(134,150)	65,365,850
2nd Quarter	1999	($1,444,150)	1,307,317	(136,833)	65,229,016
3rd Quarter	1999	($1,444,150)	1,304,580	(139,570)	65,089,446
4th Quarter	1999	($1,444,150)	1,301,789	(142,361)	64,947,085
1st Quarter	2000	($1,444,150)	1,298,942	(145,209)	64,801,876
2nd Quarter	2000	($1,444,150)	1,296,038	(148,113)	64,653,763
3rd Quarter	2000	($1,444,150)	1,293,075	(151,075)	64,502,688
4th Quarter	2000	($1,444,150)	1,290,054	(154,097)	64,348,592
1st Quarter	2001	($1,444,150)	1,286,972	(157,179)	64,191,413
2nd Quarter	2001	($1,444,150)	1,283,828	(160,322)	64,031,091
3rd Quarter	2001	($1,444,150)	1,280,622	(163,529)	63,867,563
4th Quarter	2001	($1,444,150)	1,277,351	(166,799)	63,700,764
1st Quarter	2002	($1,444,150)	1,274,015	(170,135)	63,530,628
2nd Quarter	2002	($1,444,150)	1,270,613	(173,538)	63,357,091
3rd Quarter	2002	($1,444,150)	1,267,142	(177,009)	63,180,082
4th Quarter	2002	($1,444,150)	1,263,602	(180,549)	62,999,533
1st Quarter	2003	($1,444,150)	1,259,991	(184,160)	62,815,374
2nd Quarter	2003	($1,444,150)	1,256,307	(187,843)	62,627,531
3rd Quarter	2003	($1,444,150)	1,252,551	(191,600)	62,435,931
4th Quarter	2003	($1,444,150)	1,248,719	(195,432)	62,240,499
1st Quarter	2004	($1,444,150)	1,244,810	(199,340)	62,041,159
2nd Quarter	2004	($1,444,150)	1,240,823	(203,327)	61,837,832
3rd Quarter	2004	($1,444,150)	1,236,757	(207,394)	61,630,438
4th Quarter	2004	($1,444,150)	1,232,609	(211,542)	61,418,897
1st Quarter	2005	($1,444,150)	1,228,378	(215,772)	61,203,124
2nd Quarter	2005	($1,444,150)	1,224,062	(220,088)	60,983,036
3rd Quarter	2005	($1,444,150)	1,219,661	(224,490)	60,758,547
4th Quarter	2005	($1,444,150)	1,215,171	(228,979)	60,529,567
1st Quarter	2006	($1,444,150)	1,210,591	(233,559)	60,296,008
2nd Quarter	2006	($1,444,150)	1,205,920	(238,230)	60,057,778
3rd Quarter	2006	($1,444,150)	1,201,156	(242,995)	59,814,783
4th Quarter	2006	($1,444,150)	1,196,296	(247,855)	59,566,929
1st Quarter	2007	($1,444,150)	1,191,339	(252,812)	59,314,117
2nd Quarter	2007	($1,444,150)	1,186,282	(257,868)	59,056,249
3rd Quarter	2007	($1,444,150)	1,181,125	(263,025)	58,793,224
4th Quarter	2007	($1,444,150)	1,175,864	(268,286)	58,524,938
1st Quarter	2008	($1,444,150)	1,170,499	(273,652)	58,251,286

Exhibit No. JJP-9

Tex Mex / KCS Plan
Loan Amortization

The Texas Mexican Railway Company

	Annual	Quarterly		
Estimated Construction Cost			$	57,500,000
Estimated Land Cost				8,000,000
Loan Period in Years	30	120		
Interest Rate	8.00%	2.00%	$	65,500,000

Year		Payment Amount	Interest	Principal	Balance
2nd Quarter	2008	($1,444,150)	1,165,026	(279,125)	57,972,161
3rd Quarter	2008	($1,444,150)	1,159,443	(284,707)	57,687,454
4th Quarter	2008	($1,444,150)	1,153,749	(290,401)	57,397,053
1st Quarter	2009	($1,444,150)	1,147,941	(296,209)	57,100,844
2nd Quarter	2009	($1,444,150)	1,142,017	(302,133)	56,798,710
3rd Quarter	2009	($1,444,150)	1,135,974	(308,176)	56,490,534
4th Quarter	2009	($1,444,150)	1,129,811	(314,340)	56,176,194
1st Quarter	2010	($1,444,150)	1,123,524	(320,626)	55,855,568
2nd Quarter	2010	($1,444,150)	1,117,111	(327,039)	55,528,529
3rd Quarter	2010	($1,444,150)	1,110,571	(333,580)	55,194,949
4th Quarter	2010	($1,444,150)	1,103,899	(340,251)	54,854,698
1st Quarter	2011	($1,444,150)	1,097,094	(347,056)	54,507,642
2nd Quarter	2011	($1,444,150)	1,090,153	(353,998)	54,153,644
3rd Quarter	2011	($1,444,150)	1,083,073	(361,077)	53,792,567
4th Quarter	2011	($1,444,150)	1,075,851	(368,299)	53,424,268
1st Quarter	2012	($1,444,150)	1,068,485	(375,665)	53,048,603
2nd Quarter	2012	($1,444,150)	1,060,972	(383,178)	52,665,424
3rd Quarter	2012	($1,444,150)	1,053,308	(390,842)	52,274,582
4th Quarter	2012	($1,444,150)	1,045,492	(398,659)	51,875,924
1st Quarter	2013	($1,444,150)	1,037,518	(406,632)	51,469,292
2nd Quarter	2013	($1,444,150)	1,029,386	(414,765)	51,054,527
3rd Quarter	2013	($1,444,150)	1,021,091	(423,060)	50,631,468
4th Quarter	2013	($1,444,150)	1,012,629	(431,521)	50,199,947
1st Quarter	2014	($1,444,150)	1,003,999	(440,151)	49,759,795
2nd Quarter	2014	($1,444,150)	995,196	(448,954)	49,310,841
3rd Quarter	2014	($1,444,150)	986,217	(457,934)	48,852,907
4th Quarter	2014	($1,444,150)	977,058	(467,092)	48,385,815
1st Quarter	2015	($1,444,150)	967,716	(476,434)	47,909,381
2nd Quarter	2015	($1,444,150)	958,188	(485,963)	47,423,418
3rd Quarter	2015	($1,444,150)	948,468	(495,682)	46,927,736
4th Quarter	2015	($1,444,150)	938,555	(505,596)	46,422,141
1st Quarter	2016	($1,444,150)	928,443	(515,708)	45,906,433
2nd Quarter	2016	($1,444,150)	918,129	(526,022)	45,380,411
3rd Quarter	2016	($1,444,150)	907,608	(536,542)	44,843,869
4th Quarter	2016	($1,444,150)	896,877	(547,273)	44,296,596
1st Quarter	2017	($1,444,150)	885,932	(558,218)	43,738,378
2nd Quarter	2017	($1,444,150)	874,768	(569,383)	43,168,995

Tex Mex / KCS Plan
Loan Amortization

Exhibit No. JJP-9

The Texas Mexican Railway Company

	Annual	Quarterly		
Estimated Construction Cost			$	57,500,000
Estimated Land Cost				8,000,000
Loan Period in Years	30	120		
Interest Rate	8.00%	2.00%	$	65,500,000

Year		Payment Amount	Interest	Principal	Balance
3rd Quarter	2017	($1,444,150)	863,380	(580,770)	42,588,225
4th Quarter	2017	($1,444,150)	851,764	(592,386)	41,995,839
1st Quarter	2018	($1,444,150)	839,917	(604,234)	41,391,605
2nd Quarter	2018	($1,444,150)	827,832	(616,318)	40,775,287
3rd Quarter	2018	($1,444,150)	815,506	(628,645)	40,146,642
4th Quarter	2018	($1,444,150)	802,933	(641,217)	39,505,425
1st Quarter	2019	($1,444,150)	790,108	(654,042)	38,851,383
2nd Quarter	2019	($1,444,150)	777,028	(667,123)	38,184,260
3rd Quarter	2019	($1,444,150)	763,685	(680,465)	37,503,795
4th Quarter	2019	($1,444,150)	750,076	(694,074)	36,809,721
1st Quarter	2020	($1,444,150)	736,194	(707,956)	36,101,765
2nd Quarter	2020	($1,444,150)	722,035	(722,115)	35,379,650
3rd Quarter	2020	($1,444,150)	707,593	(736,557)	34,643,092
4th Quarter	2020	($1,444,150)	692,862	(751,288)	33,891,804
1st Quarter	2021	($1,444,150)	677,836	(766,314)	33,125,490
2nd Quarter	2021	($1,444,150)	662,510	(781,641)	32,343,849
3rd Quarter	2021	($1,444,150)	646,877	(797,273)	31,546,576
4th Quarter	2021	($1,444,150)	630,932	(813,219)	30,733,357
1st Quarter	2022	($1,444,150)	614,667	(829,483)	29,903,874
2nd Quarter	2022	($1,444,150)	598,077	(846,073)	29,057,801
3rd Quarter	2022	($1,444,150)	581,156	(862,994)	28,194,806
4th Quarter	2022	($1,444,150)	563,896	(880,254)	27,314,552
1st Quarter	2023	($1,444,150)	546,291	(897,859)	26,416,693
2nd Quarter	2023	($1,444,150)	528,334	(915,816)	25,500,876
3rd Quarter	2023	($1,444,150)	510,018	(934,133)	24,566,744
4th Quarter	2023	($1,444,150)	491,335	(952,815)	23,613,928
1st Quarter	2024	($1,444,150)	472,279	(971,872)	22,642,056
2nd Quarter	2024	($1,444,150)	452,841	(991,309)	21,650,747
3rd Quarter	2024	($1,444,150)	433,015	(1,011,135)	20,639,612
4th Quarter	2024	($1,444,150)	412,792	(1,031,358)	19,608,254
1st Quarter	2025	($1,444,150)	392,165	(1,051,985)	18,556,268
2nd Quarter	2025	($1,444,150)	371,125	(1,073,025)	17,483,243
3rd Quarter	2025	($1,444,150)	349,665	(1,094,485)	16,388,758
4th Quarter	2025	($1,444,150)	327,775	(1,116,375)	15,272,383
1st Quarter	2026	($1,444,150)	305,448	(1,138,703)	14,133,680
2nd Quarter	2026	($1,444,150)	282,674	(1,161,477)	12,972,203
3rd Quarter	2026	($1,444,150)	259,444	(1,184,706)	11,787,497

Tex Mex / KCS Plan
Loan Amortization

Exhibit No. JJP-9

The Texas Mexican Railway Company

	Annual	Quarterly		
Estimated Construction Cost			$	57,500,000
Estimated Land Cost				8,000,000
Loan Period in Years	30	120		
Interest Rate	8.00%	2.00%	$	65,500,000

Year		Payment Amount	Interest	Principal	Balance
4th Quarter	2026	($1,444,150)	235,750	(1,208,400)	10,579,097
1st Quarter	2027	($1,444,150)	211,582	(1,232,568)	9,346,528
2nd Quarter	2027	($1,444,150)	186,931	(1,257,220)	8,089,308
3rd Quarter	2027	($1,444,150)	161,786	(1,282,364)	6,806,944
4th Quarter	2027	($1,444,150)	136,139	(1,308,011)	5,498,933
1st Quarter	2028	($1,444,150)	109,979	(1,334,172)	4,164,761
2nd Quarter	2028	($1,444,150)	83,295	(1,360,855)	2,803,906
3rd Quarter	2028	($1,444,150)	56,078	(1,388,072)	1,415,834
4th Quarter	2028	($1,444,150)	28,317	(1,415,834)	(0)
		($173,298,042)	$107,798,042	($65,500,000)	

Total		Payment Amount	Interest	Principal	Balance
Year	1	($5,776,601)	$5,223,686	($552,915)	64,947,085
Year	2	($5,776,601)	$5,178,108	($598,493)	64,348,592
Year	3	($5,776,601)	$5,128,773	($647,828)	63,700,764
Normal Year	4	($5,776,601)	$5,075,371	($701,230)	62,999,533

Adjustments			Interest		Principal
Year	1	$	5,223,686	$	(552,915)
Year	2		(45,578)	$	(598,493)
Year	3		(49,335)	$	(647,828)
Normal Year	4		(53,402)	$	(701,230)

Tex Mex / KCS Plan
Selected Financial Ratios

Exhibit No. JJP-10

The Texas Mexican Railway Company

Description	December 31, 1996 Audited (000s)	Base Period Adjusted (000s)	Year 1 After Change in Operations (000s)	Year 2 After Change in Operations (000s)	Year 3 After Change in Operations (000s)	Normal Year After Change in Operations (000s)
	(a)	(b)	(c)	(d)	(e)	(f)
Selected Items from Proforma Statements						
1 Net Income	$ 988	$ 3,671	$ 359	$ 4,701	$ 5,391	$ 6,762
2 Interest Expense	409	1,129	6,353	6,307	6,258	6,204
3 Operating Revenues	19,814	29,698	35,546	64,785	68,683	68,683
4 Operating Expenses	18,842	24,051	29,695	52,400	55,303	53,278
5 Long Term Debt	3,800	12,800	77,747	77,149	76,501	75,800
6 Stockholder's Equity	25,536	28,220	28,578	33,279	38,670	45,432
7 Earnings Available for Fixed Charges	$ 1,875	$ 6,293	$ 1,737	$ 12,114	$ 9,548	$ 11,861
8 Fixed Charge Coverage Ratio	4.58	5.57	0.27	1.92	1.53	1.91
9 Operating Ratio	95.09%	80.99%	83.54%	80.88%	80.52%	77.57%
10 Return on Equity	3.87%	13.01%	1.25%	14.13%	13.94%	14.88%
11 Debt to Equity Ratio	12.95%	31.20%	73.12%	69.86%	66.42%	62.52%

VERIFICATION

DISTRICT OF COLUMBIA

Joseph J. Plaistow, being duly sworn, deposes and says that he has read the foregoing statement concerning STB Finance Docket No. 32760 (Sub No. 21), knows the contents therein, and that the same are true and correct.

Joseph J. Plaistow

Joseph J. Plaistow

Subscribed and sworn to before me
this 29th day of March, 1998

Georgia M. Dicken

Georgia M. Dickens
Notary Public, District of Columbia
My Commission Expires: My Commission March 14, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 21)

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

VERIFIED STATEMENT

OF

PATRICK L. WATTS

VERIFIED STATEMENT

OF

PATRICK L. WATTS

Patrick L. Watts, being duly sworn, upon his oath makes the following Verified Statement:

My name is Patrick L. Watts and I am Vice President - Transportation for The Texas Mexican Railway Company. I am located at Tex Mex's offices at 501 Crawford St., Room 317, Houston, Texas. In my current position as Vice President - Transportation, I am responsible for directing all of Tex Mex's train operations across its line between Laredo and Beaumont, Texas, and within and through the Corpus Christi and Houston, Texas terminals. My qualifications have been stated in previous Verified Statements filed before the Surface Transportation Board ("STB").

I intend to discuss in this verified statement: 1) Discriminatory treatment by UP dispatching; 2) Reasons why BNSF and UP's Joint/Consolidated Dispatching Center falls short of its intended mark; 3) Establishing PTRA as the entity to supervise and administer "truly neutral" dispatching operations; and 4) How to embrace and satisfy the expectations of the Greater Houston Partnership, the City of Houston, the Port of Houston Authority, the Harris County Commissioners, the Railroad Commission of Texas, UP, BNSF, PTRA, KCS, and Tex Mex regarding neutral dispatching in the greater Houston terminal.

I have also developed an Operating Plan in conjunction with others to be filed in connection with this proceeding. That Operating Plan is attached as Attachment 1 to this Verified Statement.

1. <u>Discriminatory Treatment by UP Dispatching</u>

Introduction: History of Discrimination

Union Pacific Railroad has demonstrated a historic pattern of exercising discriminatory dispatching practices. In Southern Pacific Transportation Company's Response Application in the UP/CNW Control proceedings before the Interstate Commerce Commission ("ICC") between 1993 and 1995, many former Southern Pacific employees, including myself, came forward and asserted in verified statements that they had witnessed acts by UP employees discriminating against the operations of Southern Pacific trains across Union Pacific controlled trackage. As I discuss below, this discrimination continues.

Discrimination Associated With Directional Running between Houston and Placedo

In early November, 1997, UP announced at a meeting attended by representatives of UP, BNSF, and Tex Mex that it was their intent to establish directional running between Houston and Placedo, TX. South-bound traffic would move predominantly along the Houston-Flatonia-Victoria-Placedo route, whereas north-bound traffic would move predominantly along the Placedo-Algoa-Houston route. BNSF and Tex Mex Mexican traffic would move over these routes, while UP Mexican traffic would move over the UP San Antonio-Laredo route.

At the meeting, BNSF agreed to the concept of directional running, but I voiced my objections based upon recent history of UP abandoning their trains between Flatonia and Placedo, TX on the main track without crews for as long as 24 hours impeding the movement of all trains behind. BNSF and Tex Mex were assured by then UP General Manager Charles Malone, that those problems would end because UP was taking the necessary steps of establishing Traveling Switch Engine ("TSE") crews that would do nothing but promptly remove unmanned and uncrewed trains, preventing delay to both BNSF and Tex Mex trains destined to Corpus Christi and Laredo.

None of UP's promises have held up. On almost any given day since early November, there are countless UP trains, stopped and without crews on the Flatonia to Placedo segment, severely impeding the ability of BNSF and Tex Mex to provide competition to UP at the all-important Laredo gateway. On March 26, 1998 at 7:00 AM there was a Tex Mex train enroute Laredo sitting at Moulton, TX, just south of Flatonia, behind 3 or 4 dead (unmanned) UP and BNSF trains. Certainly UP is harmed by having trains parked, but UP makes certain that if it is going to park a train and block a route to Laredo, it is the route that Tex Mex uses and not the route that UP uses for its own traffic.

With UP's significant embargo of important rail traffic destined to Mexico via the Laredo gateway, this discriminatory and mismanaged handling of BNSF and Tex Mex trains fighting their way towards Laredo significantly impedes free trade to what may become an international crisis level if it is not stopped.

Discrimination Associated with Unjustifiable Scheduling Preferences for UP and Other Trains

Sometimes UP yardmasters and dispatchers will give unjustifiable preference to UP trains. This was the case in mid-September, 1997, when a UP Beaumont Subdivision dispatcher refused a Tex Mex train at Beaumont until he was given conclusive proof that the Tex Mex train was a UP detoured grain train being operated by Tex Mex. As soon as this fact was established, UP allowed the train to enter UP's trackage and the train only experienced 15 minutes delay at Huffman enroute Houston and delivery to UP, unlike Tex Mex trains which routinely experience many hours of delay.

Similarly, on January 20, 1998 at 3:15 PM, Tex Mex called UP in Omaha asking permission to run a train out of Beaumont to Houston. UP responded that the Tex Mex train would have to wait because UP had all of its sidings full and that a UP train had to depart Houston to reach its destination on time. Tex Mex was permitted to move nearly 12 hours later.

On February 6, 1998 Tex Mex train 2MSHCPJ-06 arrived in Dawes, TX at 7:45 PM and departed at 9:45 PM having been delayed due to trains ahead. At 10:00 PM, the Tex Mex crew was instructed to head into Englewood's East Yard, track 6, to allow Amtrak No. 1 to pass. This train was not allowed to back out of East Yard until 10:40 AM on February 7, 1998. It had no work to do in Houston and was just to continue on to Victoria. Despite repeated radio attempts with UP's yardmaster to allow this train to back out of the yard behind Amtrak, UP's yardmaster made it sit. Shortly before midnight, UP's yardmaster told the Tex Mex crew: "I can't let you back out because I have UP trains to run in and out of Englewood." I called UP's supervisor at the Spring Dispatching Center at 4:05 AM and UP's General Manager at 6:10 AM attempting to urge them to release our train of its captive hold. There has never been any explanation offered as to how and why this overt discrimination occurred.

On March 19, 1998, Tex Mex train MSHCPJ-18 was held at Eagle Lake, TX (on UP's Glidden Subdivision) from 9:00 AM until 5:50 PM, 8 hours and 50 minutes, because two UP dispatchers in Omaha did not make time to interface with each other to allow the Tex Mex train to advance from the Glidden Subdivision to the Port Lavaca Branch. Meanwhile, two-equal-classed, UP westbound trains passed this Tex Mex train, one at 2:50 PM (CSXT 8158 West) and one at 3:20 PM (UP 3762 West). It was apparent to all that the two Omaha based dispatchers found time to communicate about the two UP trains that rounded the Tex Mex train. Simply put, one of the ways UP discriminates against Tex Mex in solving congestion problems is by allowing dispatchers to give preference to UP trains, leaving Tex Mex trains to wait until later.

Sometimes, the discrimination is not so overt. For example, On February 15, 1998, Tex Mex train MMXSHJ-13 with a crew on duty in Houston at 2:45 AM went 0 miles in 12 hours for an average velocity of 0 MPH. Between 2:45 AM and 7:00 AM, this train could not depart Basin Yard because both main lines were blocked with UP trains. At 7:00 AM, the west main track was cleared but the Tex Mex train was held by UP dispatchers in Spring and Omaha because Amtrak No. 2 was departing Eagle Lake over 80 miles west of Settegast Jct. Both trains were eastbound trains to be operated on this date over UP's designated eastward directioned Beaumont Subdivision. However, UP refused to let this freight train, capable of a maximum speed of 50 MPH, to operate ahead of Amtrak, capable of a maximum speed on the Beaumont Subdivision of 60 MPH, with at least one hour and twenty minutes head start for an 83.7 mile run. Instead, UP made the Tex Mex train wait until after the Amtrak train left, and then chose not to allow the Tex Mex train to move for several more hours, so that the Tex Mex train sat for over 12 hours.

On March 19, 1998, Tex Mex train MHOSH1-19 with a crew on duty for 12 hours was able to move only one mile from PTRA's North Yard to Union Pacific's Strutt Siding on the East Belt line in Houston before being forced by UP to consolidate with another Tex Mex train. This consolidated train was held by UP dispatchers at Basin Yard for 3 hours and Strutt siding for over 5 hours because of a lack of communication between UP's dispatchers in Spring, UP's yardmaster at Settegast Yard, and UP's dispatchers in Omaha. In my experience, if this had been a UP train, the three entities (Spring, Settegast, and Omaha) would have come together quicker to advance this train or they would had to answer to their UP boss.

Discrimination Associated with Congestion

Often, discrimination is not explicit or explainable and is almost impossible to prove other than the simple fact that certain events happen again and again. The discimination here is so prevalent that it is hard to ignore. Much of this discrimination, both covert and overt, takes place under the guise of congestion, but the result is that UP reports system average velocities of between 12 MPH and 16 MPH, and Tex Mex, in too many instances, is being restricted to velocities of between 0 MPH and 5 MPH while on UP owned and controlled trackage.

While it has become fashionable and somewhat convenient to blame the lack of movement on congestion and lack of infastructure, these system average velocities tell a different tale. For example, on March 9, 1998 Tex Mex train MSHCPJ-09 with a crew on duty at Beaumont at 2:00 PM departed KCS' Chaisson Yard at 4:50 PM. This train was delayed at Dawes, TX for 3 hours and 45 minutes. A second Tex Mex crew went on duty in Houston at 10:00 PM, to relieve the first crew at Dawes prior to the expiration of their shift under the federal hours-of-service law. The first Tex Mex crew traveled 75.8 miles in 12 hours with an average velocity of 6.3 MPH. The second Tex Mex crew traveled less than 6 miles within their 12 hour shift with an average velocity of 0.5 MPH before a third Tex Mex crew was put on duty and departed Houston. The combined average velocity of the first two Tex Mex crews was only 3.4 MPH. The purported reason was congestion.

At 8:00 PM on January 22, 1998, Tex Mex contacted UP to run a Tex Mex train from Beaumont to Corpus Christi (1MSHCPJ-22). UP wouldn't accept this train on UP trackage rights, stating that heavy congestion on the Beaumont Subdivision had caused all the sidings to become blocked with UP trains between Beaumont and Houston. At 12:01 AM on January 23rd, Tex Mex sought permission again to run the same train and was told it could not yet leave.

Shortly thereafter, UP finally agreed and a crew was put on duty at 2:30 AM. This train departed Beaumont's Chaisson Yard at 2:45 AM. At 7:10 AM the Tex Mex train arrived at Huffman, just 62 miles from where its journey began and was delayed at Huffman for 3 hours and 25 minutes. At 11:10 AM the train arrived in North Houston (Settegast Jct.) and was held there until the first Tex Mex crew's time expired on the federal hours-of-service law at 2:30 PM; a 3 hour and 20 minute delay. At 3:00 PM a second Tex Mex crew arrived at the train and was held until 5:00 PM, another 2 hour delay. The train did not arrive at Basin Yard until 7:45 PM after taking 2 hours to travel a distance of less than 10 miles because the Settegast yardmaster and the Spring dispatcher were unable to coordinate this move. At 7:45 PM the train arrived at Basin Yard and set out cars in track no. 3. This second crew experienced delay-after-delay, excuse-after-excuse, before the hours-of-service restriction prevented them at 1:15 AM on January 24th from leaving Basin Yard. A third Tex Mex crew arrived on the train at Basin Yard and departed at 2:45 AM, proceed to Dallerup Yard approximately 1 mile from Basin and picked up 13 cars. This train finally passed West Jct., the west end of the Houston terminal, at 5:30 AM. This train traversed approximately 90 miles in 26 hours and 15 minutes with an average velocity of 3.4 MPH.

Tex Mex train, 1MSHCPJ-20 was out of Beaumont, TX destined to Laredo on January 21, 1998. After arriving in Houston with 58 loads and 14 empties, the original crew was nearing the expiration of their hours-of service and the second Tex Mex crew went on duty in Houston at 4:00 AM. This second crew arrived at Tower 87, located in Houston near Englewood and Settegast yards, to meet their train at 4:30 AM and they were preparing plans to set out 16 cars at Basin Yard and pick up 13 cars at Dallerup Yard. The distance between Tower 87 and Dallerup Yard is approximately 3 miles. A UP train blocked Tower 87 interlocking, preventing the Tex Mex train from moving from 4:30 AM until 5:50 AM. This crew finally received a signal from the UP Spring dispatcher to proceed through Tower 87 and they arrived Basin Yard at 6:20 AM to set out their 16 cars in Basin Yard track no. 9. The Tex Mex train was then held at Basin Yard from 7:02 AM until 3:00 PM by UP dispatchers while they ran two more UP trains across the UP interlocking at Tower 86, located between Basin Yard and Dallerup Yard. The train arrived Dallerup Yard at 3:10 PM and had their setout made by 4:00 PM, which coincided with their hours-of-service and this is when a 3rd Tex Mex crew arrived to move the Tex Mex train from Dallerup. The total miles moved by the 2nd Tex Mex crew, while in Houston was only 3 miles during their 12 hours on duty. Beginning at approximately the same time and the same day, a northbound Laredo to Houston Tex Mex train (1MXSHJ-19) only went 11 miles through Houston in 12 hours. These outrageous situations occurred on the same day, January 21, 1998, that Railroad Commission Chairman Matthews was holding a meeting in Houston on how to implement a permanent fix to UP induced problems in the Houston area and was advocating neutral dispatching.

On February 23, 1998, Tex Mex train 1MSHCPJ-23 departed East Bernard, TX at 6:15 PM. By 6:10 AM on February 24th it had not reached Flatonia, meaning that it had traversed 70.6 miles in 12 hours at an average velocity of 5.9 MPH. The reason for delay was that there were UP trains on the Port Lavaca Branch on the main track without crews.

On March 4, 1998 Tex Mex train MHOSH-04 only went 38.2 miles in 12 hours with an average velocity of 3.2 MPH. This train was unable to advance to Beaumont because of unmanned UP trains ahead blocking its route.

Discrimination Associated with the Dissolution of the HBT and UP Control of Dispatching in Houston

The dissolution of the Houston Belt and Terminal Railway Company ("HBT") certainly did not help matters, and only gave UP more of an opportunity to discriminate against Tex Mex.

The HBT was a terminal railroad company which provided to all carriers entering Houston independent and neutral dispatching over its line-haul lines. I have made two verified statements in petitions (Finance Docket Nos. 33461, 33462, and 33463, Petitition For Consolidation, To Declare Exemptions Void AB INITIO, And To Revoke Exemptions) pending before the STB regarding the dissolution of the HBT. In those statements I explained my fears and provided several examples of UP treatment in Houston which resulted in harm done to Tex Mex and its customers. My fears continue to be realized, providing yet more reasons why the STB needs to create an independent dispatching and terminal company in Houston. For example:

- Between November 19 and November, 1997, a Tex Mex train spent nearly 23 hours in Houston, just to set out 3 cars.
- Between November 20 and November 21, 1997, a Tex Mex train spent over 13 hours in Houston, just to pick up 9 cars and to set out another 20.
- Between December 9 and December 10, 1997, a Tex Mex train spent over 13 hours in Houston. Tex Mex used three train crews getting this train through Houston because it had earlier been set aside for an extended period at Dyersdale.
- On December 17, 1997, a Tex Mex train enroute to Beaumont spent 12 hours going 5 miles between Dallerup Yard and Tower 87. However, the actual forward progress at the end of 12 hours was only 1 mile. The train leaving Basin Yard had to "double its train over"[1] at Strutt Siding to clear Basin Yard and was held for 3 hours. Then the crew was told by UP's Spring Dispatching Center to put their train back together because Settegast Yard was ready to allow them to enter its yard. After doing this and reaching Tower 87, the Settegast yardmaster refused the train because the dispatching center in Omaha wouldn't allow it to enter the

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[1] Terminology used to describe putting part of train on one track and rest of the train on

Beaumont Subdivision. The crew then was told to shove back to Basin Yard (approximately two miles and over 3 major road crossings at night) and put their train in UP's Basin Yard. The conductor had to walk the length of his train and hang onto a rail car at the rear to make this unsafe reverse move given these conditions.

- On December 19, 1997, a Tex Mex train departed from Corpus Christi at 6:30 PM, arriving at Robstown, Texas only one half hour later. It took nearly 42 hours to move the remaining miles to Beaumont, using a total of 4 crews.
- On Friday, January 23, 1998, a westbound Tex Mex train [MSHCPJ-22, Shreveport to Corpus Christi] arrived at Settegast Junction at 11:00 AM, and did not depart West Junction until 5:35 AM on January 24, 1998. While the MSHCPJ-22 set out some rail cars at Basin Yard and picked up 13 rail cars at Dallerup Yard, it still took 18 ½ hours to travel the 13 ½ miles. Under normal circumstances, this move, which includes two work events (set out and pick up of cars) while moving the train just across town, should only take 4 hours.

UP's control over Houston dispatching is as much of a concern to Tex Mex as UP's control over Tex Mex access to the track granted to it following the UP/SP merger. The following are only two of many examples reflecting how UP refuses to let Tex Mex trains enter UP's line at Robstown, TX, resulting in the disruption of Tex Mex's service between Corpus Christi and Laredo. In early November, a UP tri-level train full of brand new Chrysler automobiles that Tex Mex had agreed to operate for UP from Laredo to Houston to help relieve their congestion, sat on the Tex Mex's main line at Robstown for 54 hours with 4 Tex Mex train crews that didn't "turn a wheel" their entire 12 hour work shift because UP refused it in the name of congestion. A reasonably minded person would ask the question as to why Tex Mex would

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another track.

keep putting crews on a train that wasn't going to move? The answer is that we were constantly being told by UP that they would take the train and that we should "get another crew." In the meantime, Tex Mex's own operations were paralyzed by UP's actions for 54 hours.

On November 6, 1997, a UP Kingsville, TX destined train crew was instructed by their UP dispatcher to leave their train in the siding at Robstown, secure it and clear the Tex Mex interlocking. The UP crew did almost all of what they were instructed to do prior to getting off their train and going home to Kingsville. However, what they failed to do was to clear the Tex Mex interlocking. The Tex Mex interlocking was blocked for 13 hours and 25 minutes. This again paralyzed our operations and caused Tex Mex to tie up under the hours-of-service law three trains operating between Corpus Christi and Laredo. The UP's crew failure to completely follow instructions was to blame for the incident initially occuring, but it was UP's management inaction for over 13 hours that constituted explicit discrimination because they were immediately notified of the incident and did nothing about it.

2. Reasons Why BNSF and UP's Joint/Consolidated Dispatching Center Falls Short of its Intended Mark

Many of the aforementioned examples of discriminatory practices have happened in the Houston terminal since the dissolution of the HBT and its neutral dispatching center while the two examples I referred to earlier (which took place on March 19, 1998) happened after the establishment of the highly publicized "Joint/Consolidated Dispatching Center" now being touted by UP and BNSF as "neutral" (Referals made to the center by BNSF's Peter Rickershauser and UP's Robert Starzel during a CMA/NITL/SPI meeting held in Washington, D. C. on March 13, 1998).

When the KCS, Tex Mex, BNSF, Port of Houston Authority, and the Railroad Commission of Texas were meeting in January and early February, we discussed the concept of neutral dispatching in Houston. At that time, most parties were not aware that BNSF and UP were holding private meetings to negotiate their agreement that since has been made public regarding joint ownership and joint/consolidated UP/BNSF dispatching. Since their announcement, UP and BNSF have decided to change the terminology of their dispatching initiative from "joint/consolidated" to "neutral." However, their new plan is far from being neutral.

For the record, Tex Mex has been invited to participate in the new Spring Dispatching Center. We are currently evaluating our involvement and its cost has yet-to-be determined. However, we firmly believe that the only true answer to equal treatment for all in Houston means that the dispatching center must totally be supervised, headquartered, payrolled and administered by a neutral party such as the PTRA for the following reasons:

1) Dispatching protocols haven't worked and won't work under the supervision and administration of UP's management team. Dispatching must be under an independent management team. The former SP complained about UP dispatching before the Interstate Commerce Commission to no avail. BNSF implied as much in their 4th quarter, 1997 report to the STB, and Mr. Krebs made public statements about UP dispatching that needed no interpretation. Tex Mex is doing the same now, with specific examples.
2) The role UP would give Tex Mex in the joint dispatching areas, called "involvement," is limited to airing its grievances through a dispatching protocol team, which history tells us won't work. If neutral protocols administered by UP worked, then BNSF would not have demanded an equal say in dispatching operations, but instead would have relied on the process of protocols to work. Just like BNSF, I know we cannot rely on UP-administered protocols, and Tex Mex cannot rely on UP/BNSF administered protocols for the same reason.

3) When I notified UP on March 16, 1998, of our intent to place a neutral observer, a newly hired Tex Mex employee, into the Spring Dispatching Center, I was asked whom it would be. I gave them this new employees' name; a former SP employee that left UP's employ about 2 months ago and had prior experience as a train dispatcher, a former Terminal Superintendent at Englewood Yard, and someone who briefly had worked in the dispatching center for UP. I was astonished at what I heard next. I was told by UP that they were not going to allow this Tex Mex employee into the building "because he left UP in the heat of the battle and took a severance package and was now going to work for the competition." The assertion was made by UP that they had prevailed upon BNSF to ban this person from BNSF employ. Even UP wouldn't question this employee's qualifications, but sought to ban him based on their personal, not professional, prejudices. Finally, UP relented. What UP was attempting was to assert control over Tex Mex employees because they owned the building. This, as currently administered, is far from being a neutral center.

4) Individual dispatchers in the joint operations area will still be paid (salary and benefits) by their previous employer, either BNSF or UP. This will obviously have a material effect to whom they give preference in dispatching. That is not what Tex Mex or the Texas competitive situation needs today.

5) I was told by Mr. Steve Barkley, Vice President-Transportation, Southern and Eastern Regions on March 16, 1998, that Tex Mex could not do anything in his building (the location of the Joint/Consolidated Center) without his permission. With that controlling mindset, how could Tex Mex control their operations from a center where they are considered just a guest and must receive permission to do anything and could not have their employees work without first being approved by UP?

3. Establishing the PTRA as the Entity to Supervise and Administer "Truly Neutral" Dispatching Operations

It is important for the Board to know about the qualifications of the PTRA's management team because UP has stated categorically that the PTRA has no experience in dispatching operations in the Houston area, a contention that is simply false as UP well knows. After-all, both Jack Jenkins, the PTRA General Manager, and Paul Tucker, the PTRA Superintendent, worked for UP/SP during most of their railroading careers

Mr. Jack Jenkins, PTRA General Manager, spent over 25 years on the former Southern Pacific; most of which were in the greater Houston area. Jack was a former Trainmaster at Strang, Superintendent for territories covered in UP's and BNSF's "joint ownership" trackage and even Assistant General Manager headquartered in Houston for the SP. Jack, historically, has managed the safest divisions and regions while employed by SP and that same tradition continues now with the PTRA. Jack has vast experience in the management and supervision of dispatching and switching operations.

Mr. Paul Tucker, PTRA Superintendent, spent over 15 years with the Missouri Pacific and Union Pacific Railroads in a variety of management positions. Paul was the former UP Superintendent and General Superintendent in Houston and was Assistant General Manager for UP in Kansas City. Paul has vast experience in the management and supervision of dispatching and switching operations in both Houston and Kansas City. Jack Jenkins and Paul Tucker are eminently qualified to run dispatching in the Greater Houston Terminal Area.

UP has asserted that the PTRA currently has no train dispatchers and this is true. However, a simple transfer of some train dispatchers from UP's and BNSF's payrolls to the PTRA's payroll to work the same territory that they currently are dispatching could be accomplished. This is very similar to what UP did when they dissolved the HBT's dispatching center. It is possible that a few of the current UP or BNSF employees would not want to leave their present employer in favor of the PTRA, but I have personal knowledge that there are a few UP dispatchers in Omaha that wanted to relocate to Houston and were not selected by UP to move. This could be an additional source of qualified people for the PTRA. I do not believe that there would be a problem fully staffing an independent PTRA dispatching center for the Greater Houston Terminal Area.

The whole purpose of transferring dispatching territories to the PTRA's supervision, administration, and payroll for the area that we have referred to as the "Greater Houston Terminal Area" is to remove the possibility of any train dispatcher working this designated territory from being controlled by any of UP, BNSF, or Tex Mex. No dispatcher would be prevented from making the best and fairest decisions due to the fear of retaliation from the employer that "signs their check."

In summary, it is important to have a neutral party, such as the PTRA, so that UP, BNSF and Tex Mex through the PTRA Board of Directors, can prevent one entity from flexing their muscles unless it is justified, fair, and just to all parties.

4. How to Embrace and Satisfy the Expectations of the Greater Houston Partnership, the City of Houston, the Port of Houston Authority, the Harris County Commissioners, the Railroad Commission of Texas, UP, BNSF, PTRA, KCS, and Tex Mex Regarding Neutral Dispatching in the Greater Houston Terminal.

On March 3, 1998, the Greater Houston Partnership voted on a resolution calling for immediate action to end Houston's freight rail service crisis. Partnership recommendations to the STB included, "ensuring a neutral dispatching system to serve Houston's port and industrial complex" and "assuring that the trackage rights can be fully executed and are honored completely." Ned Holmes, Chairman of the Port of Houston, has requested the same action to be taken by the STB. Again, on March 3, 1998 the County of Harris, State of Texas, Commissioners Court passed a resolution that stated, "Neutral dispatching and neutral switching should be expanded and employed to help achieve a more competitive rail system. These principles have long been used by the Port Terminal Rail Authority and the Houston Belt and Terminal Authority to achieve these goals."

On March 24, 1998, the City Council of the City of Houston, Texas passed a resolution that called for in part, the "[e]liminat[ion of the] 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; [and a STB] Mandate that all railroads operating in the Houston region work together to design and implement efficient customer service oriented dispatch and switch systems for the region;..." The Railroad Commission of Texas has also advocated neutral dispatching in the Houston area as one step in helping resolve the Houston rail crisis.

None of the aforementioned governmental agencies, delegated with the responsibilities of protecting both the public and private sector interests of the great city of Houston, Harris County, and the State of Texas, have endorsed UP and BNSF's "Joint/Consolidated Dispatching Center" as the neutral dispatching solution that they've asked the Board to establish. How could so many politicians representing the 4th largest city, one of the most prosperous counties, and the largest state in America be wrong?

What we propose in terms of neutral dispatching will satisfy all of the interested parties' objectives:

1) Allow UP and BNSF's "Joint/Consolidated Dispatching Center" to move forward only long enough to allow the PTRA to secure an office building that would facilitate a new neutral

dispatching center free of any direct ownership by UP, BNSF, or Tex Mex. When the PTRA has accomplished providing a facility, within a time frame ordered by the Board not to exceed 3 months, the Board should order all dispatching operations defined in UP and BNSF's "Joint/Consolidated Dispatching Center" area to be relocated to the PTRA site. Tex Mex will also locate their dispatching operations in the PTRA site upon its completion.

2) The PTRA will supervise, administer, and employ the dispatching operations outlined in our "Agreement For Neutral Dispatching Protocols Greater Houston Terminal Area" defined in the agreement as the "Greater Houston Terminal Area."

3) The PTRA will provide office space at the neutral center to office executive level operating personnel from all the rail carriers serving Houston to better resolve any and all potential problems.

With these three simple steps, the Board can take major strides toward establishing a truly neutral dispatch center in Houston. As demonstrated here and throughout the Joint Petition, neutral dispatch is a major piece of the overall plan to resolve the competitive problems arising from the UP/SP merger.

ATTACHMENT 1

TEX MEX/KCS OPERATING PLAN

1. Introduction – Purpose and Scope

This Operating Plan has been prepared in conformance with the requirements in 49 C.F.R. § 1180.8 applicable to a significant transaction. The Operating Plan is submitted in support of the relief sought by Tex Mex and KCS in their Joint Petition. The Operating Plan was developed to depict the manner in which Tex Mex would operate its train service between Laredo, Texas and Beaumont, Texas, if the Board imposed upon the UP/SP consolidation the additional remedial conditions requested by Tex Mex/KCS in their Joint Petition.

This Operating Plan will address the changes in Tex Mex and KCS train operation characteristics occasioned by the new operations. The Operating Plan will start with a description of current train operations and service patterns. It will then address the changed traffic flows and changed train operations and service patterns resulting from the proposals in the Operating Plan. Finally, it will address impacts upon employees, upon passenger service, upon equipment availability, and of any resulting line abandonments or discontinuance of service.

2. Development of the Operating Plan

The Operating Plan was constructed using a traffic analysis which was performed by ALK Associates and which has been included in the Market Impact Analysis filed in support of this Joint Petition. The traffic analysis was used to project the change in traffic service patterns and line densities resulting from the implementation of this Operating Plan. This implementation includes line acquisitions, yard acquisition, neutral switching and dispatching, and unrestricted access to Houston.

The results of the traffic analysis are reflected in two Traffic Density Maps prepared by ALK Associates, Inc. and attached hereto as Appendix A and Appendix B. These Traffic Density Maps show changes in tonnage which will flow annually through Tex Mex's and KCS's major terminals.

3. Current Patterns of Service and Operation

3.1 Tex Mex

Currently, Tex Mex operates over the route it has historically operated between Laredo, Texas and Corpus Christi, Texas, with a connection to the UP's Brownsville Subdivision at Robstown, Texas. It operates between Robstown and Houston, Texas and between Houston and Beaumont, Texas over UP's rail lines pursuant to trackage rights granted as a condition in the UP/SP control proceeding. Tex Mex's trackage rights between Robstown and Houston are over a route through Placedo, Victoria, and Flatonia, Texas which are a quite circuitous 289 miles. Tex Mex also operates over terminal trackage rights of the tracks of the HBT in Houston, Texas. Tex Mex has the right to serve shippers located in Houston on the PTRA and the HBT. Its right to serve Houston shippers is restricted to traffic having a prior or subsequent move across Tex Mex's line between Corpus Christi and Laredo, Texas. However, Tex Mex has no yard facilities available to it in Houston. Prior to the break up of the HBT by its owning railroads, Booth Yard in Houston, a yard leased by PTRA from the HBT, was used by Tex Mex through the PTRA. Shortly after UP and BNSF divided up all of HBT's yards and other rail assets, UP canceled PTRA's lease covering Booth Yard and UP assumed its control.

In the Board's Emergency Service Order No. 1518, entered in *Ex Parte 573* ("Service Order No. 1518") in response to the rail service emergency impacting the Western region of the United

States and, particularly, the Houston area, Tex Mex received certain expanded rights so as to ensure the continuation of an effective alternative to UP for Houston and NAFTA traffic and to ensure the continued provision of essential rail services provided by Tex Mex to Texas shippers. These rights consisted of: (a) the lifting of the restriction confining its Houston traffic to that which has a prior or subsequent move over its line between Corpus Christi and Laredo; (b) the right to serve shippers at certain points on UP's Algoa branch south of Houston; and (c) the ability to serve shippers at Houston who were contractually obliged to ship via UP because of volume requirements in their transportation contracts. These expanded rights will expire with the expiration of the Emergency Service Order on August 2, 1998, unless they are made permanent as requested in the petitioners' Joint Petition.

Also in relation to the service crisis, UP has granted Tex Mex temporary trackage rights over its Algoa route between Houston and Placedo. It has offered to make these rights permanent, if Tex Mex agrees to participate in directional operation of trains south of Houston. Finally, to accommodate its own directional operations between Houston and New Orleans, on June 16, 1997, SP granted Tex Mex trackage rights on its line (Lafayette Subdivision) between Houston and Beaumont.

Tex Mex operates two scheduled trains per day between Laredo and Beaumont and two scheduled trains per day between Houston and Beaumont. The Laredo-Beaumont trains set out and pick up Houston traffic en route in Houston. However, because Tex Mex has no yard facility at Houston in which to store and make up southbound and northbound blocks of cars, it often is forced to take cars destined to Beaumont and beyond in its southbound trains to Corpus Christi where it has sufficient yard facilities to marshal cars. These Beaumont cars must then be placed in a northbound train at Corpus Christi and moved back through Houston to Beaumont. The same sort of double reverse handling occurs when a northbound train must pick up a cut of cars destined for Laredo. The PTRA has not blocked cars for Tex Mex so all cars received by Tex Mex from the PTRA, even if they are destined to Laredo, must move to Beaumont, where they are set out in KCS' Chaison Yard for inclusion in the next scheduled southbound train.

The Laredo - Beaumont trains also set out and pick up traffic at Corpus Christi. In addition to the Laredo-Beaumont trains and the Houston-Beaumont trains, Tex Mex also operates seven scheduled trains per day between Laredo and Corpus Christi.

Tex Mex interlines traffic with KCS at Beaumont; with BNSF at Houston, Corpus Christi, and Robstown; with UP at Corpus Christi and Houston, and with TFM, via the International Bridge, at Laredo.

3.2 KCS

KCS is a Class 1 rail carrier, serving the states of Nebraska, Iowa, Kansas, Missouri, Oklahoma, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, and Texas. KCS's northern terminus is Kansas City Missouri/Kansas, although it has haulage rights over UP between Kansas City and Omaha/Council Bluffs; Lincoln, Nebraska; and Atchison and Topeka, Kansas. To the south, KCS serves Dallas, Beaumont and Port Arthur, Texas; Shreveport, Baton Rouse, New Orleans and Lake Charles, Louisiana; Vicksburg, Jackson, Gulfport and Meridian, Mississippi; and Birmingham, Alabama. KCS also has the right to exercise haulage or trackage rights over UP between Beaumont and Houston and Galveston, Texas but only for grain and grain products. By its connection with its wholly-owned subsidiaries, Gateway Western Railway Company ("Gateway Western") and Gateway Eastern Railway Company, at Kansas City, Missouri, KCS serves the St. Louis gateway and, for certain traffic, the Chicago gateway. KCS also has access to the Chicago gateway through a voluntary coordination agreement with I&M Rail Link. KCS interlines with

UP, BNSF, I&M Rail Link, NS and Gateway Western at Kansas City; with UP, BNSF, and the South Orient at Dallas; with NS and CSX at both Birmingham, Alabama and Meridian, Mississippi; with NS, CSX, UP, BNSF, and Illinois Central at New Orleans, Louisiana; and with the Illinois Central at Jackson, Mississippi. Gateway Western interchanges with all the Kansas City railroads at Kansas City and with NS, CSX, and Conrail at East St. Louis, Illinois.

KCS' parent company, Kansas City Southern Industries, Inc. ("KCSI"), owns 49% of Tex Mex's parent company, Mexrail, Inc. The other 51% of Mexrail is owned by Transportacion Maritima Mexicana ("TMM"). In addition to its ownership of Tex Mex, Mexrail also owns the 50% portion of the International Bridge spanning the Rio Grande River which is situated within the United States at Laredo, Texas. KCSI and TMM also share with the Mexican government ownership of TFM, the first private rail concession in Mexico. TFM connects with Tex Mex at the center of the International Bridge at Laredo and serves, among other points in Mexico, the following cities: Nuevo Laredo, Matamoros, Monterey, San Luis Potosi, Tampico, Vera Cruz, and Mexico City.

4. Proposed Patterns of Service and Operation

4.1 Divestiture of Booth Yard

Since Tex Mex has no yard facilities in Houston, Tex Mex trains must block one of the East Belt main tracks while they deliver cars to the PTRA North Yard, UP's Basin Yard, UP's Dallerup Yard, and BNSF's New South Yard. This can sometimes take as long as 4 or 5 hours which slows the operations of all Houston carriers --UP, BNSF, PTRA. In January, Tex Mex was forced to stop making their setout and pickups in one yard, Basin Yard, because UP misrouted many of Tex Mex's Houston destined cars to far off places such as Ft. Worth and Alexandria, LA.

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32760 Sub-27

The Operating Plan therefore proposes UP's divestiture to Tex Mex/KCS of Booth Yard in Houston, Texas, along with trackage rights over the HBT tracks from Tower 85, located on the East Belt line to Booth Yard and trackage rights over PTRA owned tracks from PTRA's North Yard (Galena Jct. PTRA Mile Post 1.4) to PTRA's Pasadena Yard (Pasadena Jct. PTRA Mile Post 8.4) on PTRA's Southshore Subdivision.

Access to Booth Yard will enable Tex Mex to do smaller inter-yard transfer jobs to effect interchanges between (i) Tex Mex and PTRA; (ii) Tex Mex and UP at Basin Yard and Dallerup Yard; and (iii) Tex Mex and BNSF at New South Yard. This will reduce the congestion and increase the capacity of the East Belt line and increase the velocity of UP, BNSF, and Tex Mex trains. Tex Mex through freight trains picking up and setting out in Houston would be routed to Booth Yard where this work would be done, clearing up both the East Belt line and the PTRA's Southshore Subdivision thereby increasing all railroad's Houston terminal velocity. Tex Mex will also make the capital investiture (approximately $100,000) to install ground air at Booth Yard which will facilitate safer and faster air brake tests for cars and trains at Booth Yard. With the sale of Booth Yard to Tex Mex, UP could use the proceeds from this sale to fund expansions at Settegast Yard or Strang Yard. Tex Mex will rehabilitate the south end of Booth Yard and add additional tracks to increase its capacity. Tex Mex is willing to provide contract switching services for the BNSF, UP, and PTRA at Booth Yard to further increase capacity.

4.2 Reconstruction and Rehabilitation of the Rosenberg-Victoria Line

The Operating Plan contemplates the reconstruction and rehabilitation of approximately 88 miles of line between Rosenberg, Texas and Victoria, Texas. This reconstruction and rehabilitation includes the following components:

(1) UP be required to divest itself of and sell to Tex Mex any remaining interest in the former SP Wharton Branch line situated between Rosenberg, Texas, extending from Tower 17. SP MP 0.0 and SP MP 89.8 on SP's Wharton Branch at Victoria, Texas.

(2) Tex Mex being granted authority by the Board to acquire, rebuild and operate the former SP line between SP's MP 0.0 on SP's Wharton Branch, on the former SP San Antonio Subdivision, at Rosenberg, Texas, and SP's MP 89.8 on SP's former Wharton Branch, San Antonio Subdivision, at Victoria, Texas.

(3) UP be required to grant to Tex Mex trackage rights over sufficient terminal track owned or retained y UP at Victoria, Texas, and/or Rosenberg, Texas, if necessary, to implement Tex Mex's Operation over the reconstructed Rosenberg to Victoria line.

The reconstruction and rehabilitation of the 88 mile Rosenberg-Victoria line will provide a much needed alternative to the highly congested and circuitous approximately 160 mile route that Tex Mex is currently compelled to use from Rosenberg to Victoria via Flatonia. It will also provide an easy transition for traffic continuing on to Laredo or Corpus Christi via Placedo. In this regard, the Operating Plan contemplates a grant by UP to Tex Mex/KCS of terminal trackage rights between Victoria, Texas and Placedo, Texas.

If this Operating Plan is accepted, Tex Mex will not operate on UP's heavily congested Glidden Subdivision between Tower 17, Rosenberg, TX and Flatonia, TX, a distance of 83.7 miles. Tex Mex will also not operate on the UP Brownsville Subdivision between Placedo and Brownie nor on BNSF's line between Algoa, TX and TN&O Jct., a distance of 142.3 miles.

One can analogize the benefits of this additional line by comparing Houston to a large glass filled with water (rail cars) which is being sucked from the glass by means of a number of straws (existing lines) and being replenished with water from a flowing tap (incoming rail cars). If you add another straw (the Rosenberg-Victoria line), this will enable the water to be sucked from the glass more quickly which will allow the flow (velocity) of the water falling from the tap to increase.

4.3 Neutral Dispatching and Switching

The Operating Plan proposes that UP, BNSF and Tex Mex be required to appoint PTRA as their neutral dispatcher and contract switching carrier in a defined "Greater Houston Terminal Area".

Historically, Houston enjoyed truly neutral switching and dispatching. Prior to its dissolution by UP and BNSF in November 1997, HBT switched and dispatched Houston trackage with a view to maximizing efficiency of operations in the Houston Terminal. On February 13, 1997, UP and BNSF announced that they would be establishing a joint dispatching operation. The problem with the joint dispatching operation is that it is still not neutral and thus it runs the risk of favoring some parties over others.

On the other hand, by expanding PTRA's role in Houston to enable it to act as the neutral operator would be a more efficient solution. First, it would be truly neutral. Second, it would encompass switching as well as dispatching; without neutral switching to accompany neutral dispatching, UP may still be able to switch non-UP cars in an inefficient or discriminatory manner. Third, it would improve operational safety; PTRA's safety record is well known while UP's safety record can be questioned. A corporation of PTRA's and UP's safety record can be found in the Verified Statement of Harlan Ritter at 262-265.

4.4 Temporary Rights Given in Emergency Service Order Should Be Made Permanent

The Operating Plan proposes that the temporary rights given Tex Mex in the Board's Emergency Service Order, including the lifting of the restriction on Tex Mex's right to serve Houston customers, be made permanent.

As stated above, Tex Mex received certain expanded rights so as to ensure the continuation of an effective alternative to UP for Houston and NAFTA traffic and to ensure the continued provision of essential rail services provided by Tex Mex to Texas shippers. These rights consisted of: (a) the lifting of the restriction confining its Houston traffic to that which has a prior or subsequent move over its line between Corpus Christi and Laredo; (b) the right to serve shippers at certain points on UP's Algoa branch south of Houston; and (c) the ability to serve shippers at Houston who were contractually obliged to ship via UP because of volume requirements in their transportation contracts. These expanded rights will expire with the expiration of the Emergency Service Order on August 2, 1998, unless they are made permanent as requested in the petitioners' Joint Petition.

5. <u>Impact of Operating Plan</u>

If the Board adopts the Operating Plan it will have the following impact:

1) ***Increased Capacity:*** With the adoption of all elements of this Operating Plan, our traffic analysis shows that Tex Mex will provide service for 49,913 more (manifest and intermodal) rail cars of business annually than we currently handle. This represents an average of approximately 150 additional rail cars per day. Under the Operating Plan, we have the ability to expand our capacity in order to provide reliable and efficient service for approximately 350 rail cars per day of Houston originating and terminating business. If fully developed, this will have a very significant impact on solving UP's problems in Houston and prevent this rail crisis from happening again.

2) ***Added trains:*** The above-described traffic flows will result in an increase in Tex Mex's and KCS' traffic currently handled on and through relevant routes and terminals and we project the need for new 2 additional daily Tex Mex trains operating between Laredo

and Beaumont, 2 additional daily Tex Mex trains operating between Houston and Beaumont, 2 additional daily Tex Mex trains operating between Rosenberg and Laredo and 1 additional local operating between Rosenberg and Edna, TX to serve customers along the Rosenberg-Victoria line.

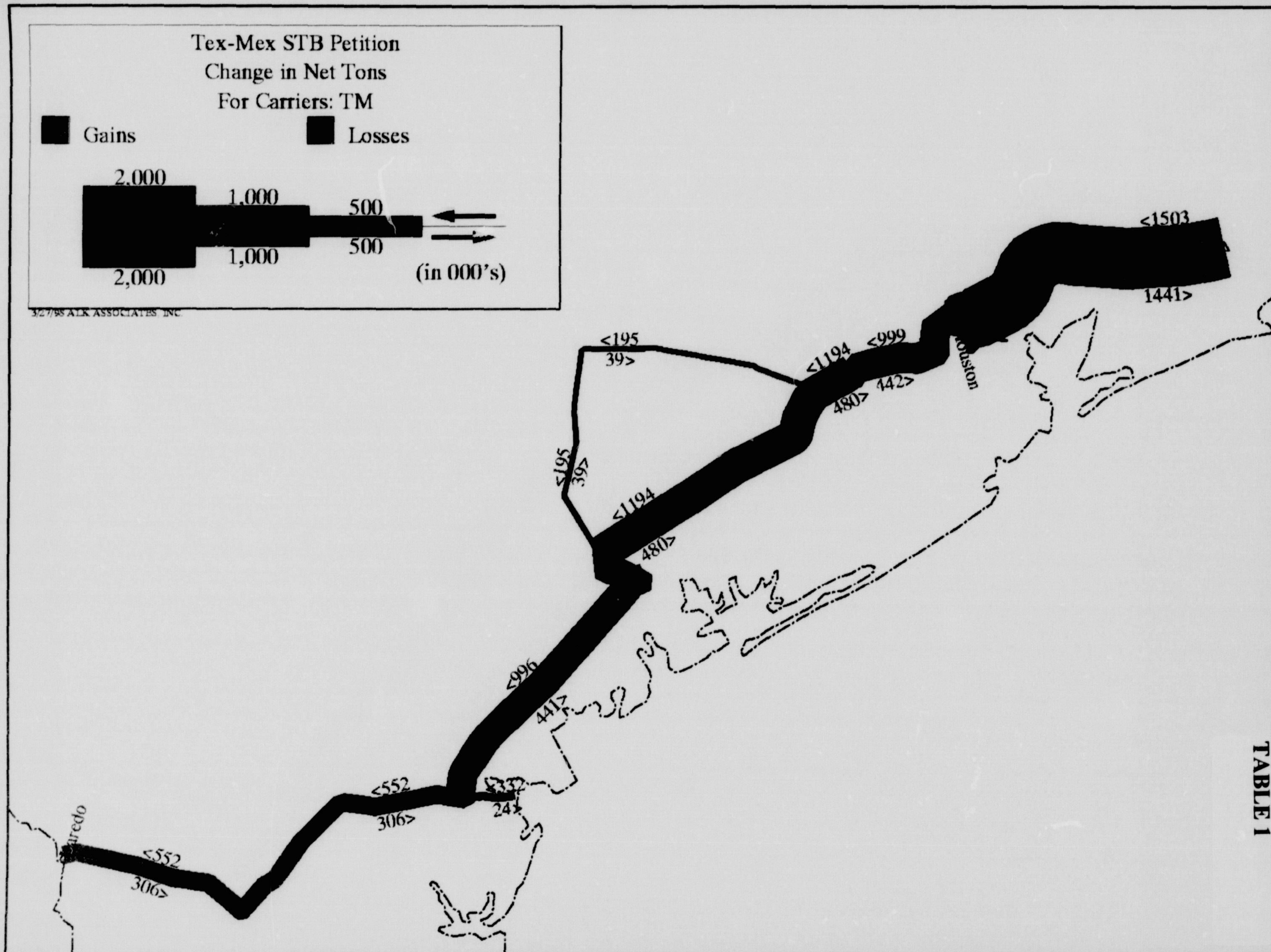
3) ***Increased Terminal Activities:*** The additional, new traffic represented by the above-described traffic flows can be handled adequately in KCS's current terminal operations and Tex Mex's existing Corpus Christi yard, Booth Yard and the new Tex Mex yard being constructed at Laredo.

4) ***Added Employees:*** The proposed new haulage rights operations are projected to have a positive impact, adding 108 personnel in train and engine service within 3 years.

5) ***Less Congestion on Commuter or Other Passenger Lines:*** The proposed transaction will have a beneficial impact upon commuter or passenger services, in that it will remove one daily freight train from that portion of the Sunset Route, used by Amtrak trains, between Flatonia and Rosenberg, a distance of 83.7 miles. Tex Mex operations on the Sunset Route (Amtrak route) will be confined to a 23.7 mile segment between West Junction and Tower 17.

6) ***Adequate Equipment Requirements:*** Tex Mex and KCS currently have adequate equipment to meet the needs of the proposed new service. Tex Mex is expecting to secure through lease an additional 26 locomotives.

7) ***Anticipated Discontinuances or Abandonments:*** The proposed transaction will not result in any discontinuances or abandonments.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For Carriers: TM
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TABLE 1

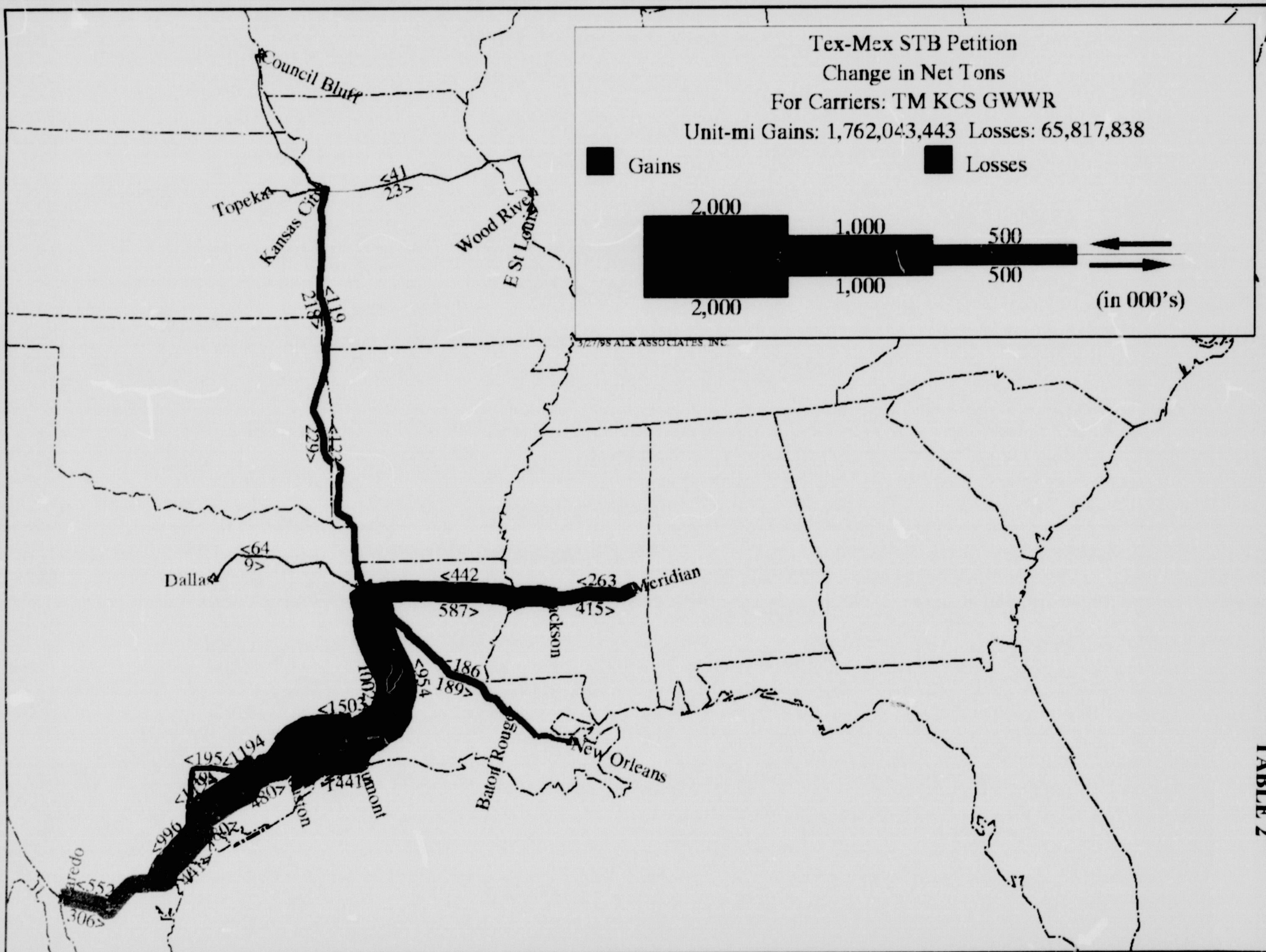
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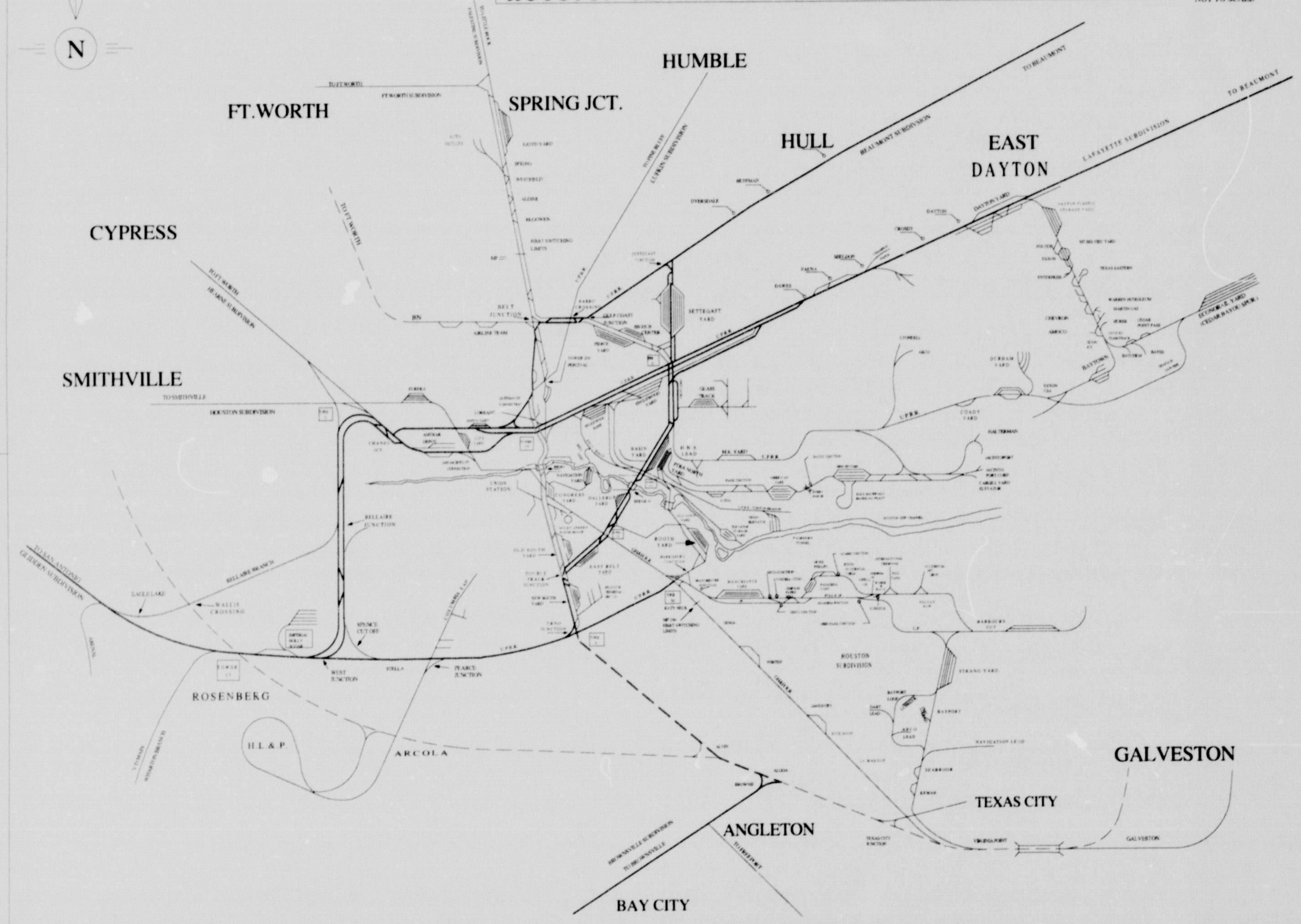
TABLE 2

HOUSTON TEX MEX OPERATING ROUTES - CURRENT



Snavely King Majoros O'Connor & Lee. Inc. adaptation of a KCS / HBT map.

TABLE III

CURRENT TEX MEX TRAIN SCHEDULES
LAREDO - BEAUMONT

NORTH BOUND
***Train ID* -M MXSH1**

Days of Operation	Origin	Destination
S M T W T F S	LAREDO	BEAUMONT

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
International BR	TX		1000	0	7200	0
Laredo	TX	1100	0200	1	7200	9
Robstown	TX	0800	0830	1	7200	146
Placedo	TX	1200	1215	1	7200	229
Algoa	TX	1630	1630	1	7200	348
TN&O Jct.	TX	1800	1800	1	7200	370
Houston	TX	1830	2000	1	7200	372
Settegast Jct.	TX	2100	2100	1	7200	377
Beaumont	TX	2359		1	7200	455

SOUTH BOUND
***Train ID*-M SHMX1**

Days of Operation	Origin	Destination
S M T W T F S	BEAUMONT	LAREDO

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Beaumont	TX		1600	0	7200	0
Dawes	TX	1900	1900	0	7200	75
Houston	TX	2000	2130	0	7200	81
West Jct.	TX	2330	2330	0	7200	91
Flatonia	TX	0330	0400	1	7200	199
Victoria	TX	0800	0830	1	7200	274
Placedo	TX	0930	0930	1	7200	287
Robstown	TX	1345	1415	1	7200	370
Laredo	TX	2015	2230	1	7200	507
International BR	TX	2330		1	7200	516

CURRENT TEX MEX TRAIN SCHEDULES
HOUSTON - BEAUMONT

NORTH BOUND
***Train ID* -M HOSH1**

Days of Operation	Origin	Destination
S M T W T F S	HOUSTON	BEAUMONT

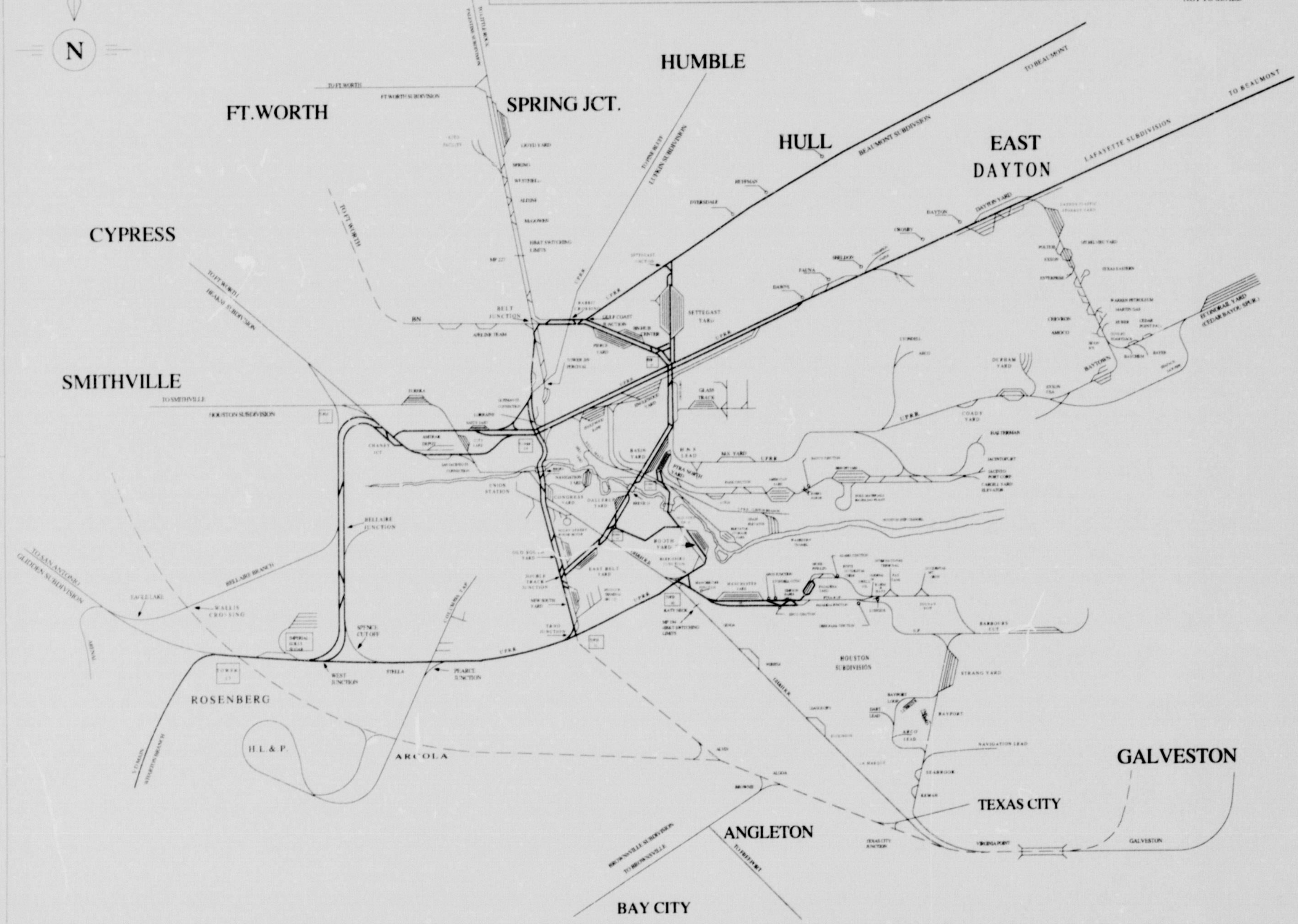
STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Houston	TX		2000	0	7200	0
Settegast Jct.	TX	2100	2100	0	7200	5
Beaumont	TX	2359		0	7200	78

SOUTH BOUND
***Train ID*-M SHHO1**

Days of Operation	Origin	Destination
S M T W T F S	BEAUMONT	HOUSTON

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Beaumont	TX		2000	0	7200	0
Dawes	TX	2300	2300	0	7200	75
Houston	TX	2359		0	7200	81

HOUSTON TEX MEX OPERATING ROUTES - PROPOSED



Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.

NEW OR ALTERED TEX MEX TRAIN SCHEDULES
LAREDO - BEAUMONT

Train ID -I MXSH1 Intermodal

Days of Operation	**Origin**	**Destination**
S M T W T F S	LAREDO	BEAUMONT

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
International BR	TX		0200	0	7200	0
Laredo	TX	0300	0315	0	7200	9
Robstown	TX	0830	0845	0	7200	146
Placedo	TX	1145	1145	0	7200	229
Victoria	TX	1245	1300	0	7200	242
Rosenberg	TX	1500	1500	0	7200	332
Houston	TX	1600	1615	0	7200	372
Settegast Jct.	TX	1700	1700	0	7200	377
Beaumont	TX	1915		0	7200	455

Train ID -M MXSH2

Days of Operation	**Origin**	**Destination**
S M T W T F S	LAREDO	BEAUMONT

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
International BR	TX		1000	0	7200	0
Laredo	TX	1100	0200	1	7200	9
Robstown	TX	0800	0830	1	7200	146
Placedo	TX	1200	1215	1	7200	229
Victoria	TX	1315	1345	1	7200	242
Rosenberg	TX	1645	1645	1	7200	332
Houston	TX	1815	1945	1	7200	372
Settegast Jct.	TX	2045	2045	1	7200	377
Beaumont	TX	2345		1	7200	455

Train ID -M LDTE1

Days of Operation	**Origin**	**Destination**
S M T W T F S	LAREDO	ROSENBERG

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
International BR	TX		1600	0	7200	0
Laredo	TX	1700	0500	1	7200	9
Robstown	TX	1300	1330	1	7200	146
Placedo	TX	1700	1715	1	7200	229
Victoria	TX	1815	1845	1	7200	242
Rosenberg.	TX	2145		1	7200	332

SOUTH BOUND

Train ID-M SHMX1

Days of Operation	Origin	Destination
S M T W T F S	BEAUMONT	LAREDO

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Beaumont	TX		0400	0	7200	0
Dawes	TX	0700	0700	0	7200	75
Houston	TX	0800	0930	0	7200	81
West Jct.	TX	1130	1130	0	7200	91
Rosenberg	TX	1300	1300	0	7200	115
Victoria	TX	1600	1630	0	7200	205
Placedo	TX	1730	1730	0	7200	218
Robstown	TX	2045	2115	0	7200	301
Laredo	TX	0430	0700	1	7200	438
International BR	TX	0800		1	7200	447

Train ID-I SHMX2 Intermodal

Days of Operation	Origin	Destination
S M T W T F S	BEAUMONT	LAREDO

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Beaumont	TX		1600	0	7200	0
Dawes	TX	1815	1815	0	7200	75
Houston	TX	1830	1845	0	7200	81
West Jct.	TX	1930	1930	0	7200	91
Rosenberg	TX	2045	2045	0	7200	115
Victoria	TX	2245	2300	0	7200	205
Placedo	TX	0001	0001	1	7200	218
Robstown	TX	0300	0315	1	7200	301
Laredo	TX	0830	0900	1	7200	438
International BR	TX	1000		1	7200	447

Train ID-M TELD1

Days of Operation	Origin	Destination
S M T W T F S	ROSENBERG	LAREDO

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Rosenberg	TX		0700	1	7200	0
Victoria	TX	1000	1030	1	7200	90
Placedo	TX	1130	1130	1	7200	103
Robstown	TX	1445	1515	1	7200	186
Laredo	TX	2230	2300	1	7200	323
International BR	TX	2359		1	7200	332

NEW OR ALTERED TEX MEX TRAIN SCHEDULES

HOUSTON - BEAUMONT

Train ID **-M HOSH1**

Days of Operation	Origin	Destination
S M T W T F S	HOUSTON	BEAUMONT

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Houston	TX		2000	0	7200	0
Settegast Jct.	TX	2100	2100	0	7200	5
Beaumont	TX	2359		0	7200	78

Train ID **-I HOSH2 Intermodal**

Days of Operation	Origin	Destination
M T W T F S	HOUSTON	BEAUMONT

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Houston	TX		2100	0	7200	0
Settegast Jct.	TX	2300	2300	0	7200	5
Beaumont	TX	0115		1	7200	78

SOUTH BOUND

Train ID **-M SHHO1**

Days of Operation	Origin	Destination
S M T W T F S	BEAUMONT	HOUSTON

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Beaumont	TX		2000	0	7200	0
Dawes	TX	2300	2300	0	7200	75
Houston	TX	2359		0	7200	81

Train ID **-I SHHO2 Intermodal**

Days of Operation	Origin	Destination
S M T W T F S	BEAUMONT	HOUSTON

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Beaumont	TX		2345	0	7200	0
Dawes	TX	0215	0215	1	7200	75
Houston	TX	0430		1	7200	81

NEW OR ALTERED TEX MEX TRAIN SCHEDULES

BETWEEN ROSENBERG AND EDNA

Train ID **-L RBRB1**

Days of Operation	Origin	Destination
M T W T F S	ROSENBERG	ROSENBERG

STATION	ST	ARR TIME	DPT TIME	DAY	MAX LENGTH	MILEAGE
Rosenberg	TX		0600	0	7200	0
Edna	TX	1300	1400	0	7200	70
Rosenberg	TX	1700		0	7200	140

Blocking Practices:

Laredo will build the following blocks for departing Northbound trains:

Train ID **-I MXSH1 Intermodal**

Days of Operation	Origin	Destination
S M T W T F S	**LAREDO**	**BEAUMONT**

BLOCKS:
Houston
Port Arthur
Shreveport
Kansas City
Norfolk Southern
CSXT

Train ID **-M MXSH2**

Days of Operation	Origin	Destination
S M T W T F S	**LAREDO**	**BEAUMONT**

BLOCKS:
Houston
Beaumont
Shreveport
Kansas City
Norfolk Southern
CSXT

Train ID **-M LDTE1**

Days of Operation	Origin	Destination
S M T W T F S	**LAREDO**	**ROSENBERG**

BLOCKS:
Ft. Worth-South
Ft. Worth-North
Grain Empties

Booth Yard will build the following blocks:

Train ID **-M HOSH1**

Days of Operation	Origin	Destination
S M T W T F S	**HOUSTON**	**BEAUMONT**

BLOCKS:
Beaumont
Shreveport
Kansas City
Norfolk Southern
CSXT

Booth Yard will build the following blocks for southbound pickups(Houston originated business):

BLOCKS:
Corpus Christi
Laredo (Proper)
Laredo (Non-Customs cleared cars enroute Mexico)
Monterrey
Mexico City
Mexico - All Other

Booth Yard will build Houston (proper) blocks:

BLOCKS:
PTRA North Yard
PTRA Pasadena Yard
UP
BNSF

VERIFICATION

DISTRICT)
OF) ss.
COLUMBIA)

I, Patrick L. Watts, being first duly sworn, upon my oath state that I have read the foregoing statement and the contents thereof are true and correct as stated.

Patrick L. Watts

Subscribed and sworn to before me this ______ day of March, 1998.

____
Notary Public

My Commission Expires:

Document1

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 21)

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

VERIFIED STATEMENT

OF

PAUL L. BROUSSARD

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I. SUMMARY OF STATEMENT AND BACKGROUND

A. Summary Of Statement

My name is Paul L. Broussard. I am the founder of Paul L. Broussard & Associates, Inc. ("PLB"), a transportation and logistics consulting firm with offices in Houston and Dallas, TX. I personally have over 27 years' involvement with rail operations in the Houston Terminal area, first as a railroad operations officer with Missouri Pacific Railroad Co. ("MP") and Houston Belt & Terminal Railway Co. ("HBT"), and later as a consultant to shippers and carriers using and operating those facilities.

This statement describes the benefits to Houston Terminal operations which would occur were the Surface Transportation Board ("STB" or "Board") to authorize the Texas Mexican Railway Co. ("Tex Mex") and The Kansas City Southern Railway Company ("KCS") to purchase Union Pacific Railroad Company's Booth Yard and to have trackage rights over connecting terminal tracks. This forms part of an overall plan being submitted by Tex Mex and KCS to increase their capacity to help dig Houston rail operations out of the hole into which those operations have fallen during almost a full year's mismanagement by Union Pacific Railroad Company ("UP"). Those benefits include:

- moving Tex Mex's interchange point off the crowded East Belt of the former HBT, facilitating interchange and freeing up mainline trackage for movement of trains;

- creating an alternative means for Tex Mex to interchange with the Port Terminal Railroad Association ("PTRA") while reducing use of the East Belt;

• optimizing use of Booth Yard by allowing Tex Mex/KCS to make capacity improvements that will enable the yard to be used efficiently for switching and makeup of trains, rather than merely for storage of cars;

• connecting Tex Mex's route through Houston more directly to the line to be constructed from Rosenberg to Victoria;

• blocking of cars allowing improved transit time by reducing re-switching at other yards; and

• facilitating more efficient crew management by Tex Mex in Houston.

B. Qualifications, Background And Experience Of Witness

I have in-depth knowledge of Houston rail terminal operations from over 27 years' of personal experience in railroad operations and transportation consulting.

I began my railroad career in 1966 with MP, a UP predecessor. At MP, I worked as a rail terminal operations officer in St. Louis, Little Rock and Memphis, before coming to Houston in 1970. In 1972, I left MP to work for the HBT. I worked for HBT for approximately six years, during which time I progressed from Manager - Terminal Planning to Assistant to the Vice President of Operations, and finally serving for three years as Assistant to the President of HBT. I left HBT in 1978 to start PLB.

My first major project as an independent businessman was representing all rail carriers serving Houston [1] as their primary interface, or contact person, with local government. In that role, I acted as liaison between the Houston railroads and municipal authorities on innumerable issues from grade crossing problems to track construction. From this, I learned many of the

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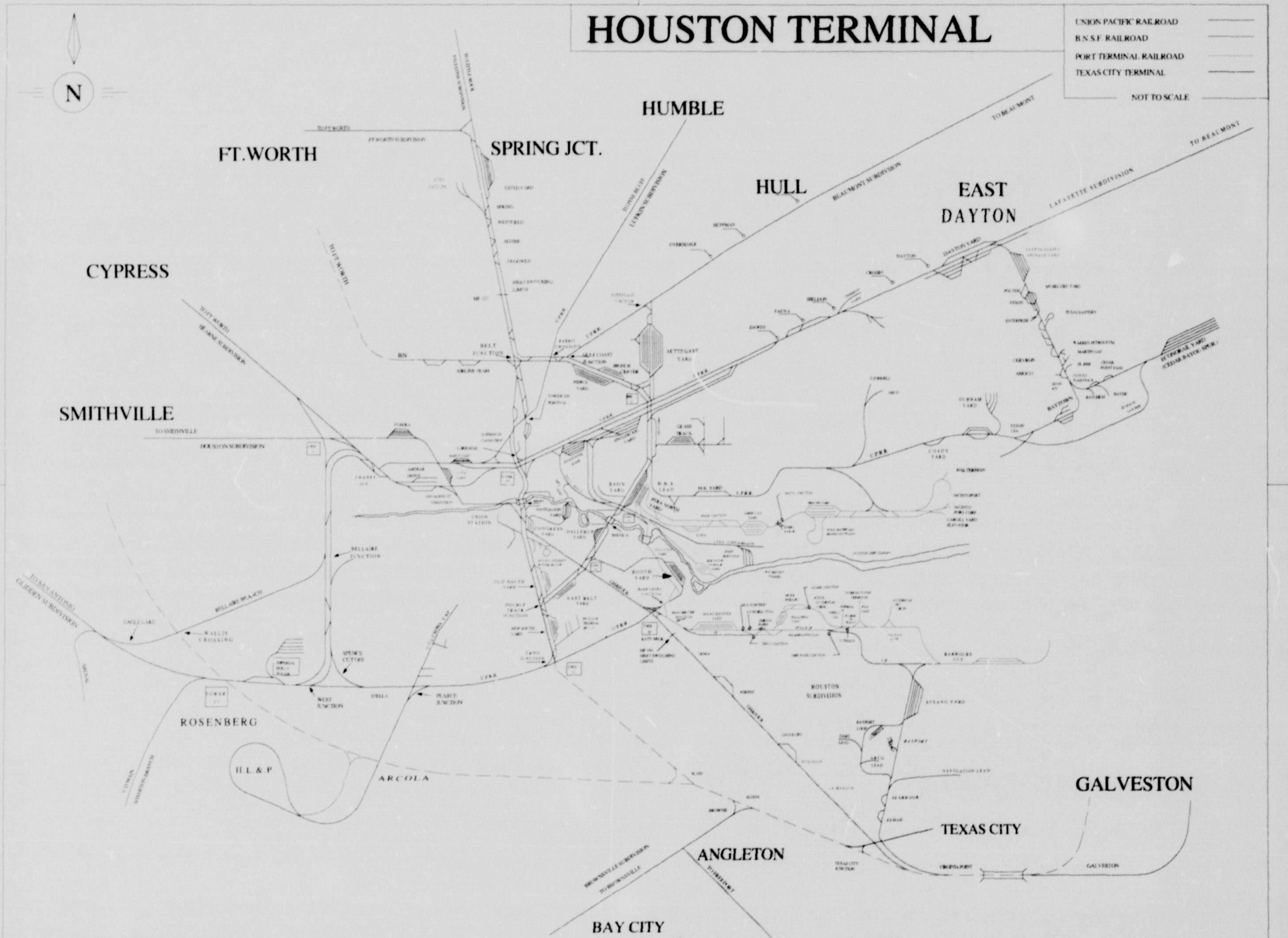
[1] Namely, Missouri Pacific Railroad Co.; Port Terminal Railway Association; Santa Fe Railway Co., and Southern Pacific Railroad Co.; Chicago Rock Island & Pacific Railroad; Fort Worth & Denver Railway Co.; Galveston Houston & Henderson Railway Co.; Houston Belt & Terminal Railway Co.; and Missouri-Kansas-Texas Railroad Co.

details of rail operations in Houston. My consulting activities since that time have kept me abreast of changes in those rail operations to the present time. Today, in addition to consulting with rail carriers on operating issues, my company serves many shippers, including shippers in the Houston area, on matters ranging from freight bill auditing to logistics planning. Through these activities, I am particularly familiar with the rail shipping needs of Houston-area shippers and with the hardships imposed upon them by UP's mismanagement of its rail assets in the Houston area.

I hold a Bachelor of Business Administration degree in Transportation from the University of Houston, and I have been a registered Interstate Commerce Commission (now, Surface Transportation Board) practitioner since 1976. I am a certified member of the American Society of Transportation and Logistics; Regional Director for the National Association of Freight Transportation Consultants; and a Director of the Transportation Club of Houston. My company is also a member of the National Industrial Transportation League, Inc., the Transportation Consumer Protection Council, the Energy Traffic Association and the Southwest Association of Rail Shippers.

Throughout the last 27 years of my professional career, beginning with service to MP, then with HBT, and now with PLB, I have been involved continually with rail operations issues in the Houston area. From that work, I am very familiar with railroad operations in the Houston Terminal area, which is shown on the map on the following page. Both from a professional point of view, and as a resident of Houston, I have kept up with the travails of UP's Houston area service beginning last summer.



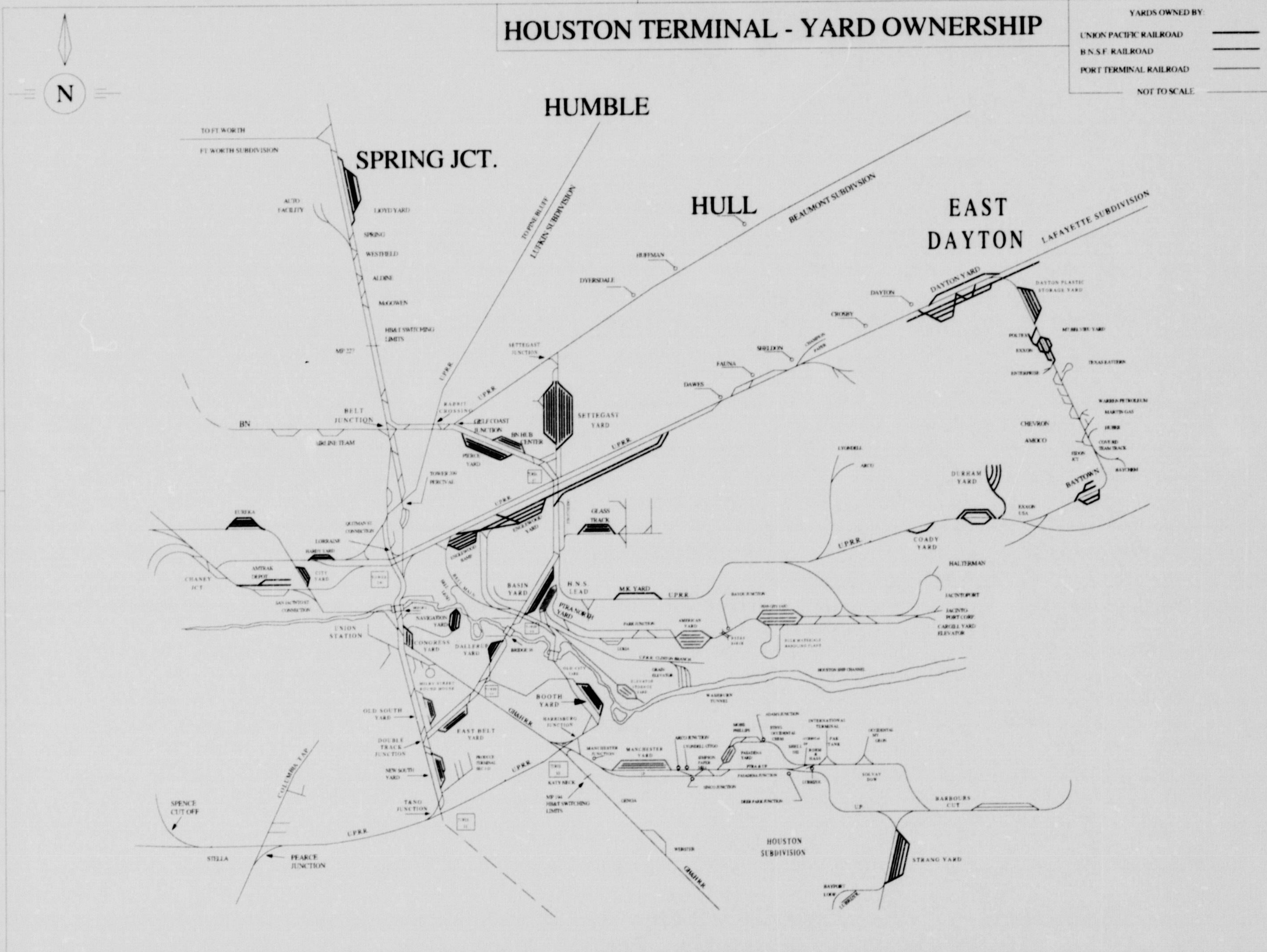
Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.

II. WHY IT IS IMPORTANT FOR TEX MEX TO HAVE A YARD IN HOUSTON

Rail yards are essential to the movement of most rail freight. Although some freight movements, such as unit train coal shipments, proceed directly from origin to destination with little or no intermediate handling, most freight must be switched, classified, and blocked in a yard to be handled efficiently by the railroads. Yard facilities are needed to perform this essential function. No yard facilities are presently available to Tex Mex anywhere in the approximately 400-mile stretch between Corpus Christi and Beaumont, TX. The lack of such facilities impairs Tex Mex's operating efficiency, makes Tex Mex a less effective competitor with the merged UP, and leads to additional congestion on the rail lines in Houston.

All rail carriers serving Houston, except Tex Mex, have yard space. The following is a list of the yards (shown on the map on the next page) that UP, The Burlington Northern and Santa Fe Railway Company ("BNSF") and the PTRA operate in the Houston area:

UP	UP	PTRA	Tex Mex
Settegast	Mt. Belvieu	PTRA North	None
Englewood	Coady	Manchester	
Dallerup		American	
Basin		Penn City	
Booth		Pasadena	
Strang		Elevator Storage	
Eureka		Old City Yard	
Hardy			
City		**BNSF**	
M.K.		Old South	
Pierce		New South	
Congress		East Belt	
Glass Track		Hub Center	
Dayton			
Navigation			
Lloyd			
Durham			
Dayton Plastic Storage			
Passenger Deport Yard			
Baytown			



Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.

As the foregoing list and map show, there are many rail yards in the Houston Terminal area.[2] Three of the four railroads serving Houston each have several of those yards. The fourth railroad serving Houston - Tex Mex - has none.

Lack of access to yard space in Houston impairs Tex Mex's efficiency and competitiveness. Rail yards have two or three principal uses, but the most important one is switching, classification and blocking of cars. In simple terms, switching, classification and blocking of cars means gathering cars into groups based on where they are destined and by what route they will be delivered to that destination.

Being able to switch, classify and block cars is important to a railroad's competitiveness. Classification and blocking of cars increases railroad efficiency and cuts operating costs. By allowing cars to be handled in groups rather than car-by-car at each terminal, classification and blocking reduce the amount of time that the railroad needs to move cars into the appropriate connecting train. That translates into faster transit times for shippers' goods and lower handling costs which enable the railroad to hold down its rates. Because switching, classification and blocking of cars reduces transit time and handling costs, it is essential to a railroad's ability to compete for traffic. Yard space is necessary in order to perform these functions.

Yards also normally serve as the point of interchange between railroads. At present, Tex Mex sets out and picks up cars destined to or originated by Houston shippers at UP's Basin and Dallerup Yards, on the East Belt line of the former HBT, PTRA's North Yard, and BNSF's New South Yard. There have been times when Tex Mex trains that needed to set out or pick up cars in Houston have been denied access to the East Belt by UP's dispatchers who control that track, preventing Tex Mex from interchanging with other carriers and from effectively serving Houston area shippers. In order to avoid delays to its Beaumont-Corpus Christi-Laredo-bound trains

[2] In addition, BNSF operates a yard called Mykawa South of T&NO Junction. There are additional yards at Texas City, on the Beaumont Subdivision and elsewhere in the Houston area.

caused by interchanging on the East Belt, Tex Mex has sometimes used special trains running a round trip from Beaumont to Houston and back, in order to serve Tex Mex's customers more efficiently, albeit at increased cost to Tex Mex.

Both Tex Mex and the other carriers serving the Houston Terminal are forced to operate less efficiently because Tex Mex cannot classify and block shipments received in Houston. Cars that Tex Mex receives in Houston have not been classified or blocked by the carrier interchanging them to Tex Mex. Tex Mex receives from interchanging carriers an unsorted mixture of cars destined to different points. Sometimes those destinations lie in opposite directions. For example, Tex Mex has often received groups of cars that contain some cars destined to Laredo and beyond and other cars destined to locations such as Beaumont and beyond. If Tex Mex had yard facilities of its own in Houston, Tex Mex likely would assemble northbound blocks destined to Beaumont, Shreveport, Kansas City, Atlanta and Chicago and would assemble southbound blocks destined to location such as Corpus Christi and Laredo. This would reduce the down-line handling of Tex Mex cars originating in Houston that is now required. Because Tex Mex does not have a yard in Houston and because Tex Mex cannot use other carriers' yards to classify and block the cars, Tex Mex has to haul cars received in interchange at Houston about 80 miles to the closest yard facility available to it - Beaumont. However, if the cars are interchanged to a southbound Tex Mex train, Tex Mex has to haul them about 300 miles to Corpus Christi to classify them. Even worse, because some of the cars received in interchange actually will be destined in the opposite direction from that in which Tex Mex had to move them to reach available yard space, Tex Mex has to haul those same cars back along the same track in the opposite direction, through Houston and to destinations beyond. For example, Houston-originated cars bound for Mexico that are tendered to Tex Mex with northbound cars may have to be moved to Beaumont, classified, and then moved back through Houston toward Corpus Christi and beyond.

The inefficiencies caused by such operations are obvious. First and foremost, such operations result in unnecessary car movements over heavily congested lines as cars go back and forth through Houston. Second, the wasted movement increases transit time for these cars, resulting in cars being on UP lines longer than necessary in many instances. Third, such operations impose unnecessary time and mileage-based-car hire charges and duplicative trackage rights fees on Tex Mex for moving the cars unnecessarily on UP lines, and force Tex Mex to pay KCS a switching fee for switching cars to southbound trains at Beaumont. Fourth, it results in wasted fuel for hauling cars unnecessarily. All told, Tex Mex's lack of access to a classification yard under its control in Houston causes Tex Mex, its customers and other users of south Texas rail lines substantial lost productivity.

III. BENEFITS OF TEX MEX OWNING BOOTH YARD

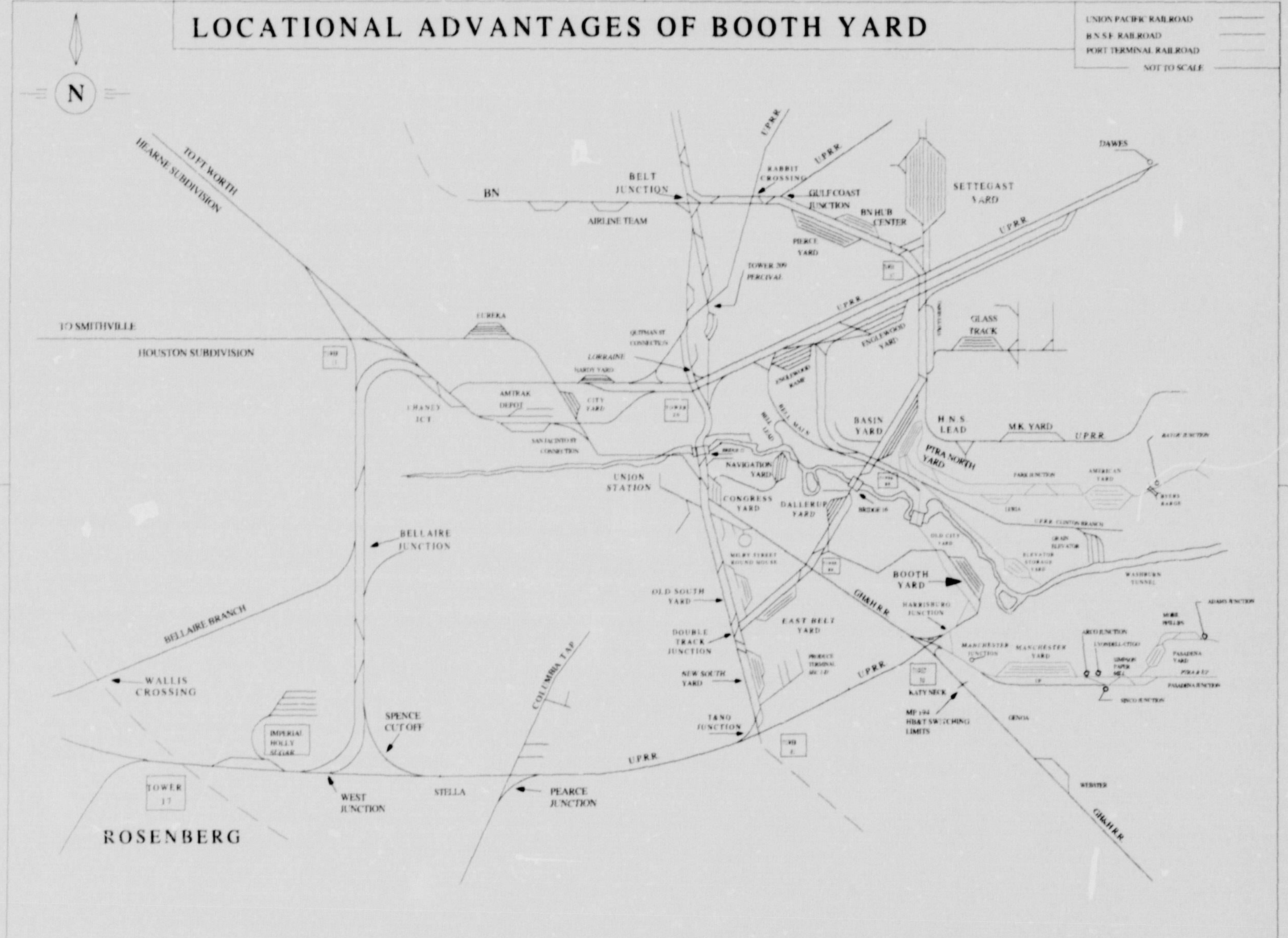
It is my opinion that if Tex Mex is ever to be able to compete efficiently with UP in south Texas, Tex Mex must control yard space in Houston. For a number of reasons, Booth Yard is the best yard available for this purpose.

A. Locational Advantages of Tex Mex Using Booth Yard

Booth Yard is currently a UP-owned and operated railcar parking lot. The yard is located on what would generally be described as the southeast side of Houston. The map on the next page shows Booth Yard in relation to other features of the Houston Terminal, including the West Belt line extending north from Double Track Junction past Old South and Congress Yards to Belt Junction, and the East Belt, which also begins at Double Track Junction and passes many UP yards including Dallerup, Basin and Pierce before rejoining the West Belt at Belt Junction.

The location of Booth Yard is especially important to Tex Mex/KCS for three reasons. First, Booth Yard is **not** located on the East Belt. The East Belt is generally the most congested section of the Houston Terminal area. Indeed, the East Belt is so congested that UP's Houston dispatchers have several times denied Tex Mex trains authority to get on the East Belt, even when the trains needed to pick up or set out cars at Basin, Dallerup or PTRA North Yards. Unlike Basin and Dallerup Yards, where Tex Mex now picks up and sets out traffic, Booth Yard is located off the East Belt. After the Rosenberg - Victoria line construction is completed, Booth Yard can be accessed from the south without traveling the East Belt. This would allow Tex Mex, if it operated Booth Yard, to avoid the southern junction of the East and West Belts at Double Track Junction, which is widely thought to be the most congested point in Houston. Also, accessing Booth Yard from the north trackage rights over the line running between the East Belt north of Tower 85 and Booth Yard would take a Tex Mex train over a portion of the East Belt, but would allow the train to exit the East Belt sooner, again allowing Tex Mex to avoid Double Track Junction. (That access to Booth Yard also would be necessary in the interim, until the Rosenberg-Victoria line was completed.) Thus, being able to use Booth Yard for interchange would reduce Tex Mex's travel on the East Belt, freeing some capacity on that line for other train movements. In addition, being able to interchange with other Houston carriers at Booth Yard would eliminate delays to East Belt traffic that now result from Tex Mex having no alternative but to interchange at Dallerup, Basin and North Yards. Setting out cars at Dallerup, Basin and North Yards usually requires Tex Mex trains to block a main line of the East Belt during the interchange process. That blockage, of course, impedes other traffic. Thus, using Booth Yard would both reduce Tex Mex's travel on the East Belt and would create an alternative interchange

LOCATIONAL ADVANTAGES OF BOOTH YARD



Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.

point so Tex Mex was not forced to obstruct East Belt traffic while setting out cars for interchange at Basin, Dallerup and North Yards.

The second important feature of Booth Yard's location is its accessibility to the proposed Rosenberg-Victoria line. The south end of Booth Yard connects to UP's Glidden Subdivision line that runs through Rosenberg to Flatonia and San Antonio. The Board granted Tex Mex trackage rights on the Houston-Rosenberg-Flatonia portion of that route in the UP/SP merger proceeding. Using those trackage rights and others, Tex Mex could, as indicated by the map on the next page, avoid the East Belt altogether in entering or exiting Booth Yard from or to the Rosenberg-Victoria line, which Tex Mex/KCS seeks permission in this proceeding to reactivate.

Thirdly, purchasing Booth Yard from UP would create new flexibility in interchanging with PTRA. Booth Yard is located adjacent to a yard facility of PTRA known as Old City Yard. That yard connects, via a bridge across a bayou, to PTRA's North Yard, where Tex Mex and PTRA now interchange. If Tex Mex owned Booth Yard, it could connect directly to Old City Yard and from there to PTRA North Yard without traversing the East Belt to do so. Similarly, connections exist from Booth Yard to PTRA's Manchester and Pasadena Yards, where Tex Mex has the right to interchange. Thus, not only could Booth Yard be an interchange point off the East Belt for Tex Mex to interchange with BNSF and UP, it also could provide Tex Mex access to interchange with PTRA that would not require using the East Belt. Again, anything that reduces usage of the East Belt will help alleviate traffic congestion in Houston. It also would allow Tex Mex to facilitate interchange with PTRA at Manchester and Pasadena yards, saving approximately 48 hours off the current interchange time through the PTRA's North Yard.

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B. Tex Mex/KCS Propose Improved Utilization of Booth Yard

Booth Yard today is underutilized and poorly configured. Tex Mex/KCS would remedy that underutilization and poor configuration enabling Booth Yard to contribute more substantially to the smooth operation of the Houston Terminal. By restoring connections of many Booth Yard tracks to the south yard lead track Tex Mex/KCS would restore flexibility to the yard's operation. By using the yard for switching, classification and blocking of cars, rather than as a railcar parking lot, Tex Mex/KCS would make the yard more useful to overall Houston Terminal area operations.

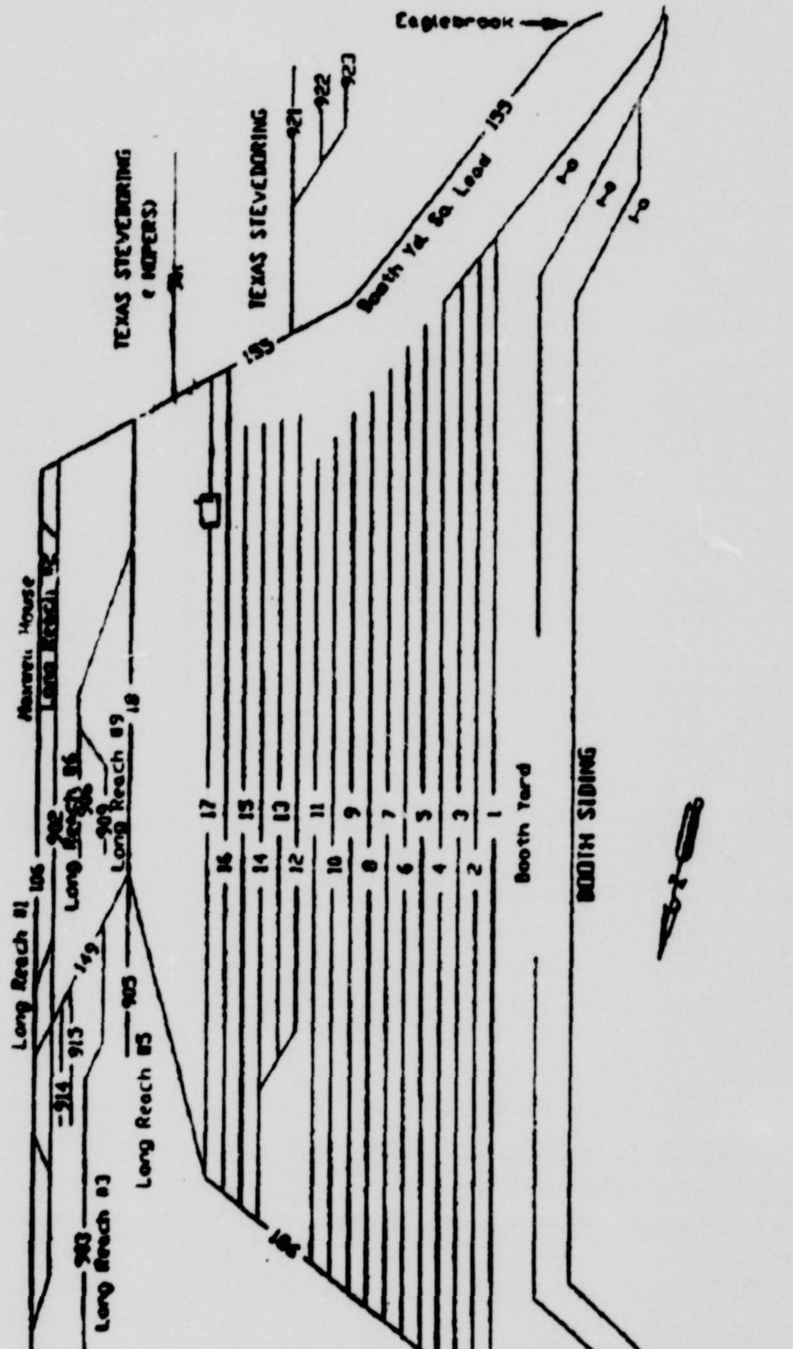
Until late last year, Booth Yard was an HBT yard that was leased to PTRA. Today the yard is operated by UP. UP took over Booth Yard last November as part of its publicly proclaimed disbanding of the HBT. It then canceled PTRA's lease of the yard. Knowledgeable sources have confirmed to me that PTRA paid $32,000 per month to lease Booth Yard, which included maintenance performed by HBT, from the HBT prior to the termination of that lease late last year.

Booth Yard is of modest size compared to other Houston rail yards. Attached to this statement as Exhibit A is a copy of a page taken from a November 1996 HBT handbook about HBT's Houston yards. The page shows that the 17 tracks in Booth Yard together have the capacity to hold 593 fifty-foot railcars, or 456 sixty-five-foot railcars. The same page shows nearby Basin Yard with a capacity of 778 fifty-foot railcars, or 595 sixty-five-foot railcars. Moreover, UP's weekly reports to the STB on the western rail service crisis list Englewood Yard as having a capacity to hold 8,535 sixty-foot cars, and list Settegast Yard as having a capacity of

3,675 sixty-foot cars. Thus, Booth Yard is not by any means one of the largest yards in the Houston area.

The next page contains a drawing of Booth Yard taken from an August 1997 PTRA booklet. As can be seen from that drawing, Booth Yard has 17 tracks.[3] Although all of the tracks connect to the North Booth Yard Lead track, only four of the tracks connect to lead track on the south end of the yard. That the remaining 13 tracks are stub-ended limits the usefulness of the tracks and of the yard as a whole because cars cannot be moved between most of the tracks from the south end, and because a train cannot be assembled for movement on most of the tracks to be pulled from the south end. It is my understanding that many of the current stub-ended tracks in Booth Yard previously connected at both ends, but those connections were removed within the past few years. The removal of those connections significantly limits the number of options that a carrier would have in using Booth Yard. Tex Mex is committed, if it is allowed to purchase Booth Yard from UP, to upgrading the capacity of the yard by reconnecting most of the presently stub-ended tracks at the south end to the Booth Yard south lead track. That would increase the capacity of the yard by allowing the yard to be worked from either the north or the south, and allowing blocks to be assembled on more tracks to be pulled south out of the yard. These planned improvements would significantly increase the utility of Booth Yard as an operating rail yard instead of its current use as a railcar parking lot.

3 My own March 20, 1998, inspection of the yard, however, showed that the tracks numbered 12 and 13 on the drawing connect directly to the track numbered 186, the north Booth Yard lead track.



PORT TERMINAL RAILROAD

SOUTH SHORE SUBDIVISION REV. AUG 1997

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Booth Yard is underutilized today not only because of its configuration but also because it is used merely for a limited amount of car storage. UP presently uses Booth Yard to store cars, according to a February 27, 1998, letter that UP's Chairman Dick Davidson sent to Messrs. Mike Haverty and Larry Fields, presidents and CEO's of KCS and Tex Mex, respectively. While storage of cars is an acceptable use of a rail yard in some circumstances, it is a terrible waste in a terminal like Houston that is starving for capacity to move cars. On March 13, I attended a meeting of the Chemical Manufacturers Association, the Society of the Plastics Industry and the National Industrial Transportation League held in Arlington, VA. The purpose of the meeting was to explore options available for unlocking the rail congestion on UP's lines. There was general agreement among the participants at the meeting, including UP personnel, that options should be explored to remove stored cars from the immediate Houston environs to free up essential capacity for the movement of cars. The general agreement expressed at that meeting evidences the fact that storage of cars is a low priority use in a congested terminal like Houston. UP's use of Booth Yard for storage is, simply, a misuse of that space.

Booth Yard's capacity is also underutilized in terms of the number of cars for which the yard is used. Tex Mex personnel counted the cars present in Booth Yard each weekday from February 16 to March 10. On average, there were only 190 cars present in the yard each day during that period. Never did the number of cars exceed 266 (which is about half of the standing car capacity of the yard, even assuming the cars were sixty-five-foot cars, which normally many would not be). Two-thirds of the time there were less than 200 cars in the yard. Thus, Booth Yard is underutilized in the extent to which it is used. These facts show mismanagement of assets by UP which is hard to fathom considering the desperate crisis into which UP has allowed the entire Houston area to slide.

C. Other Benefits

Purchasing Booth Yard from UP would enhance Tex Mex's operational efficiency in terms of crew usage. Due to congestion on UP's lines serving Houston, it is often the case that Tex Mex crews run out of their Federal Railroad Administration ("FRA") allotted 12 hours of on-duty time while waiting for clearance to proceed through Houston. If Tex Mex operated Booth Yard, it would have yard crews on duty there. Should a Tex Mex train "die" (the railroad slang for having a crew's FRA hours of service expire before a train reaches its intended destination or crew change point) in the Houston area, the switch crew could be available on short notice to move the train into Booth Yard, without the interruption that might occur due to normal procedures for calling road crews. Also, by enabling Tex Mex to operate a part of its route through Houston via Booth Yard, rather than through Double Track Junction, the potential for delay of Tex Mex trains, and the amount of costly yet unproductive crew time that Tex Mex would suffer, should be significantly reduced.

IV. CONCLUSION

If Tex Mex is to become competitive with UP in south Texas as the Board envisioned when it issued the UP/SP merger decision, Tex Mex needs yard space in Houston. Booth Yard is the best choice of yard space available because it is presently underutilized. Its configuration limits its usefulness and it is being used at less than capacity for storage rather than for switching, classification and blocking of cars. Booth Yard also is advantageous because of its direct connection to the proposed Tex Mex/KCS Rosenberg-Victoria line and because its location would allow Tex Mex to avoid some of the most heavily congested portions of the East Belt. Accordingly, Booth Yard is the best yard for KCS/Tex Mex to purchase and rehabilitate to optimize its potential.

EXHIBIT A

NEW SOUTH YARD TRACK LENGTHS AND CAR CAPACITY

TRACK NO.	CLEAR TRACK LENGTHS	50' CAR CAPACITY	65' CAR CAPACITY
1	4,250	85	65
2	4,150	83	63
3	3,990	79	61
4	3,830	76	58
5	3,658	73	56
6	3,475	69	53
7	3,300	66	50
8	3,110	62	47
9	2,960	58	45
10	3,375	67	51
11	2,350	47	36
12	1,970	39	30
13	3,545	70	54
14	3,400	68	52
15	3,250	65	50
16	3,175	63	48
17	2,960	59	45
18	2,810	56	43
19	2,660	53	40
20	2,590	51	39
21	2,365	47	36
22	2,225	44	34
23	2,080	41	32
24	1,930	38	29
25	1,700	35	27
26	1,640	32	25
27	1,490	29	22
28	1,420	28	21
29	1,110	22	17
Total	80,818	1,605 cars	1,229 cars

BASIN YARD TRACK LENGTHS AND CAR CAPACITY

TRACK NO.	CLEAR TRACK LENGTHS	50' CAR CAPACITY	65' CAR CAPACITY
1	3,910	78	60
2	3,900	78	60
3	4,130	82	63
4	4,010	80	61
5	3,920	78	60
6	3,700	74	56
7	3,620	72	55
8	3,340	66	51
9	2,370	47	36
10	2,180	43	33
11	2,010	40	30
12	2,000	40	30
Total	39,090	778	595

BOOTH YARD TRACK LENGTHS AND CAR CAPACITY

TRACK NO.	CLEAR TRACK LENGTHS	50' CAR CAPACITY	65' CAR CAPACITY
660	2,940	59	45
661	2,760	55	42
662	2,605	52	40
663	2,415	48	37
664	2,085	41	32
665	1,975	39	30
666	1,735	34	26
667	1,630	32	25
668	1,530	30	23
669	1,180	23	18
670	1,080	21	16
671	1,260	25	19
672	1,160	23	17
673	1,500	30	23
674	1,365	27	21
675	1,860	37	28
676	920	18	14
Total	30,000	593 cars	456 cars

VERIFICATION

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

I, Paul L. Broussard, being first duly sworn, upon my oath state that I have read the foregoing statement and the contents thereof are true and correct as stated.

Paul L. Broussard

Paul L. Broussard

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

TAMELA S. KUBICEK
Notary Public, State of Texas
My Commission Expires 01-17-99

NOTARY PUBLIC
STATE OF TEXAS

Tamela S. Kubicek

Notary Public

My Commission Expires: 1-17-99

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 21)

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

OVERSIGHT PROCEEDING

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VERIFIED STATEMENT

OF

HARLAN RITTER

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1. INTRODUCTION AND EXECUTIVE SUMMARY

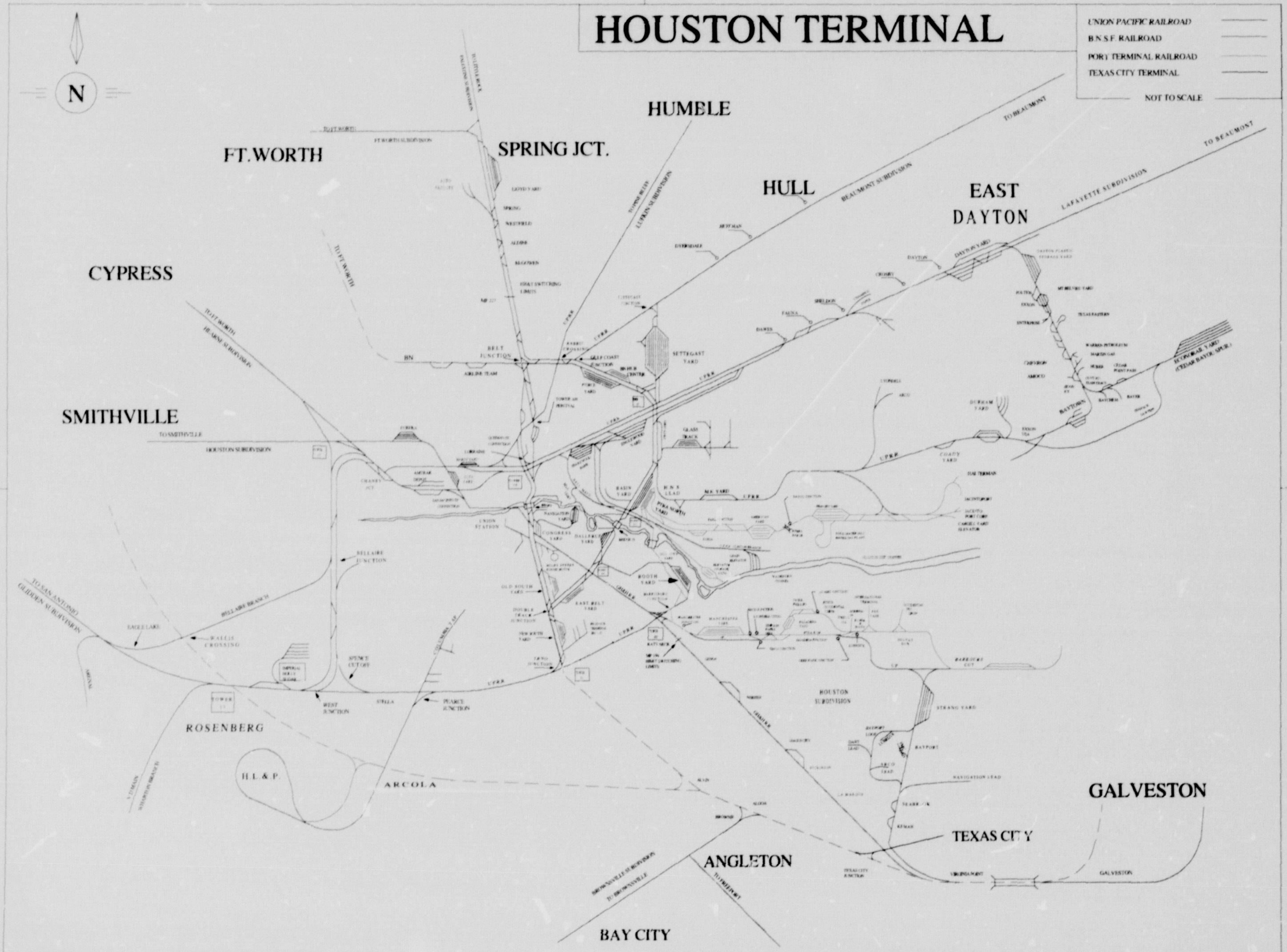
1.1 Introduction

My name is Harlan Ritter. I am Vice President of the Kansas City Southern Railway Company. The purposes of this statement are to describe the proposal of Tex Mex/KCS for reinstatement of neutral switching and dispatching in the Houston Terminal area and the benefits of that plan for all Houston shippers and railroads. This statement also addresses Tex Mex's plan to purchase and to optimize utilization of Booth Yard. Finally, the statement also describes why the solution proposed by Tex Mex/KCS, in Houston, is necessary in light of UP's persistent failure to properly manage its operations, particularly in Houston. A map depicting the Houston Terminal area is on the next page.

I have been engaged in the business of transportation for more than twenty five years. My professional career began in 1964 with the Missouri Pacific Railroad Company ("MP"). Subsequently, I have held increasingly responsible management positions with the Texas City Terminal Railway, The Port of Texas City, the Houston Belt & Terminal Railway ("HBT") and the Kansas City Southern Railway ("KCS"). I served as President of the Texas City Terminal Railway, President of the Port of Texas City and, for fourteen years, as President of the HBT. I have rail terminal operations management experience in the Houston, Chicago and St. Louis terminal areas. A statement of my qualifications appears in Appendix A. I have previously provided testimony on transportation operations and economics.

Significant and persistent deterioration in UP service and performance levels has occurred during the past nine months. While most severe at Houston, this deterioration has appeared persistently throughout the UP system, indicating systemic managerial problems, not just isolated occurrences resulting from factors beyond UP's management control. Because the collapse of UP's service has had particularly adverse effects in the Houston area, we now face an urgent need for remedial conditions to restore service and to resolve this disastrous episode in railroad history. Tex Mex/KCS are proposing such a plan in this proceeding.[1]

[1] Joint Petition of the Texas Mexican Railway Company and the Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction (TM-5/KCS-5, filed February 12, 1998)



Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.

1.2 Executive Summary

1.2.1 PTRA Neutral Switching Will Benefit All Carriers

My experience in Houston and in other cities such as St. Louis, tells me that neutral switching has worked here and elsewhere, will work in Houston again if implemented, and needs to be implemented in order to restore effective operations of the Houston terminal area. Many shippers have publicly reported dismal and prolonged experience with poor service from UP. Some even have adopted the practice of going to the UP yards themselves to locate cars and then informing the UP of a car's location so it can be delivered. This is clear evidence of the collapse of the UP service. Neutral switching is a very effective operating method which can be summed up in one statement: The customer comes first. The Tex Mex/KCS proposal to allow the Port Terminal Railroad Association ("PTRA") to function as the neutral switching carrier in Houston will provide all carriers serving Houston neutral access, multiplying service options and terminal operating efficiency.

In direct contrast to the beneficial effects of neutral switching, UP administered a crippling shock to the Houston system by dissolving the HBT. The Tex Mex/KCS plan will undo this damage and will restore proven neutral switching. PTRA's outstanding safety record as a switching carrier is by far more preferable, particularly in handling the chemical-intensive Houston traffic mix, to UP's post-merger safety record, which the Federal Railroad Administration and the National Transportation Safety Board ("NTSB") have concluded shows systemic safety management problems. The Tex Mex/KCS plan to allow PTRA to operate as the neutral switching carrier in Houston will alleviate significant safety concerns.

1.2.2 PTRA Neutral Dispatching Likewise Benefits All Carriers

UP dispatching has proven to be disastrous, apparently due to poor communication among the three levels of dispatch - Harriman Center dispatch, Spring, TX dispatch, and yardmaster control. Therefore, each interface between the three levels of dispatch sometimes becomes a barrier to movement and a potential threat to safety. Traversing Houston in the past was routinely accomplished in 2 to 4 hours. Now it often requires 12 - 18 hours and two crews.

The Tex Mex/KCS plan responds to these pressing concerns effectively, economically and efficiently. Tex Mex/KCS proposes institution of neutral dispatch - a concept which UP and BNSF tout but have not put in place. As part of the Tex Mex/KCS plan to restore service to Houston, a true neutral dispatching center will be established in Houston.

1.2.3 Tex Mex/KCS Plan Can Be Implemented Promptly

The Tex Mex/KCS plan can be implemented promptly because it basically restores a proven system that operated effectively with four carriers in the past. Booth Yard, which is underutilized by UP, can be upgraded promptly to increase its capacity, enabling it to be a productive pivot point for the Tex Mex/KCS operating plan. By contrast, UP's investment proposals stretch out over long periods of time and must be preceded by lengthy studies. Continued reliance on UP's promises and projections seems inadvisable given UP's dismal track record in making predictions.

1.2.4 Management, Not Capacity, Is the Issue

Based on my many years of experience with the successful operations in the Houston terminal, I believe that adequate infrastructure presently exists to handle Houston traffic. Traffic in Houston has grown steadily over the past several years but has not outrun the capacity of facilities in Houston to handle it. What has happened, however, is that UP's management of the capacity in Houston has been engulfed with persistent problems which were compounded by poorly-designed remedies and indecisiveness.

The remedies proposed by Tex Mex/KCS in this filing will almost immediately contribute to restoring normal service in Houston. My experience in terminal operations management in Houston, St. Louis and Chicago clearly shows that neutral switching and neutral dispatching works well. Decades of successful operations show that neutral switching and neutral dispatching like that proposed by Tex Mex/KCS:

- Is the most efficient means of serving customers in a large terminal area
- Makes the most efficient use of the infrastructure
- Capitalizes on the inherent synergies and efficiencies available from having multiple carriers serving a given area
- Avoids redundant and duplicative investment and operating costs
- Provides consistent and low cost competitive options to the customers.

Although Tex Mex/KCS does not believe that infrastructure needs are the heart of the problems in Houston, the Tex Mex/KCS plan also proposes adding infrastructure. For example, within the Houston terminal area, Tex Mex's operation of Booth Yard will increase capacity and decrease congestion by improving local service and providing another channel to drain off the congestion which has been plaguing the area since the UP/SP merger. Tex Mex also proposes to rehabilitate and construct a line from Rosenberg to Victoria, adding a new, more efficient route for NAFTA traffic. In fact, the entire Tex Mex/KCS plan is directed specifically toward improved service for Houston customers.

1.2.5 Summary Conclusions

The solutions offered by Tex Mex/KCS are critical to restoring and maintaining the long term ability of the Houston terminal area to function smoothly. Historically, neutral switching and neutral dispatching performed successfully in Houston. Restoring neutral switching and dispatching via the PTRA will recreate that efficient system and place it in the hands of a safe operator whose sole goal will be to assure smooth functioning of the terminal for all affected parties.

In the following pages, I will explain my conclusions about why UP has been unable to solve its own problems in managing its operations in Houston, and why those failures require the long term solution proposed by Tex Mex/KCS.

2 RESTORING NEUTRAL SWITCHING AND TRULY NEUTRAL DISPATCHING WILL BENEFIT ALL CARRIERS AND RAIL SHIPPERS IN THE HOUSTON TERMINAL.

2.1 PTRA Should Become The Neutral Switching And Dispatching Entity

The Tex Mex/KCS plan proposes to restore neutral switching and truly neutral dispatching for the Houston terminal area by establish the PTRA as the neutral switching and dispatching entity, akin to the functions of the former HBT. Neutral switching will benefit all carriers serving Houston by eliminating the potential for discrimination that exists when linehaul carriers also perform switching and by allowing the terminal to be operated more efficiently by an entity managed with its sole focus on handling Houston traffic effectively. Truly neutral dispatching will assure that all carriers operating through the Houston terminal are treated impartially and are routed through the terminal on the most efficient route. Neutral switching and dispatching will not interfere with UP's operations.

2.1.1 The Purpose Of A Switching Carrier

The purpose of a switching carrier is to move rail shipments between shippers in a terminal area and linehaul carriers transporting shipments between that terminal area and other places. In order to do this, the switching carrier must operate yard facilities to gather and sort cars received from different shippers and linehaul carriers. These facilities are used to deliver the cars as efficiently as possible to their next destination, whether that be a manufacturing plant or the yard of a linehaul railroad. The switching carrier's goal is to move all of the cars between the linehaul carriers and the shippers using as few train movements as possible, because each train movement is an expense in terms of crews, fuel, equipment maintenance and the like. In other words, the switching carrier's primary goal is moving the necessary railcars as efficiently as possible.

The switching carrier's goal of efficient terminal operations is different from the primary goal of a linehaul carrier who also performs switching. Efficiency in moving cars is a goal of a linehaul carrier performing switching, but that goal takes second place to the linehaul carrier's primary goal of getting its freight to destination. One significant reason for that difference is the reporting hierarchy of the switching carrier versus that of the linehaul carrier. With a switching carrier, particularly a neutral switching carrier, the highest operating officer of the company is responsible for fulfilling the switching carrier's primary responsibility - efficient operation of the terminal. By contrast, the linehaul carrier may have a local person responsible for management of the local switching operation, but that person ultimately has supervisors whose responsibility is to see that the linehaul carrier's freight moves, regardless of competing linehaul carriers' freight.

2.1.2 A Neutral Switching Carrier Is Preferable

While the officers of a neutral switching carrier are ultimately responsible to a group comprised of representatives of the owning railroads, day-to-day decisionmaking is in the hands of the person whose responsibility it is to make the entire system work as effectively as possible. Attempts by any of the owning carriers to obtain preferred treatment at the hands of the switching carrier are subject to check by the other owning carriers through a governing board or similar control mechanism.

Having a linehaul carrier switch a competing linehaul carrier's cars can often result in dilatory switching by the linehaul/switching carrier. This effect is illustrated by an example given by Patrick L. Watts in a verified statement filed in the Tex Mex/KCS petition to revoke the notices of exemption granted UP, SP and BNSF which led to the abolition of the HBT. Mr. Watts' statement said:

> UP has claimed that for operational reasons Tex Mex is no longer permitted to operate over the East Belt. Instead, UP directs the Tex Mex over the West Belt Line and requires Tex Mex to set out the PTRA cars it is moving at Congress Yard rather than setting them out at Basin Yard, on the East Belt, where Tex Mex is supposed to interchange them to PTRA. All of the cars which UP has forced the Tex Mex to set out at Congress Yard instead of at Basin Yard **are still sitting in Congress Yard** and **have not been moved by the UP** to Basin Yard as originally intended.

It is my understanding from Mr. Watts that the cars he referred to remained in Congress Yard[2] for approximately 6 days. From my experience as the President of the HBT for 14 years, I cannot recall any instance in which HBT would have allowed cars tendered to it for delivery to sit in a yard for that length of time.

2.1.3 The Neutral Switching Carrier Preserves Competitive Alternatives

I am also reasonably confident that a 6 day wait in a yard was not representative of the time that it took UP to deliver the cars it moved to or from Houston or even to and from Congress Yard during the period in question. The incident Mr. Watts describes is indicative of the type of second class status that the cars of one linehaul carrier often get if they need to be switched by a competing linehaul carrier.

2.1.4 The Neutral Switching Carrier Improves Terminal Efficiency

A neutral switching carrier improves terminal operations by eliminating the possibility for the linehaul carrier performing switching service to treat its traffic preferentially, whether intentionally or by virtue of different upper management priorities, over that of competing linehaul carriers. Presently, UP acts as the switching carrier for over 80 percent of the tracks of

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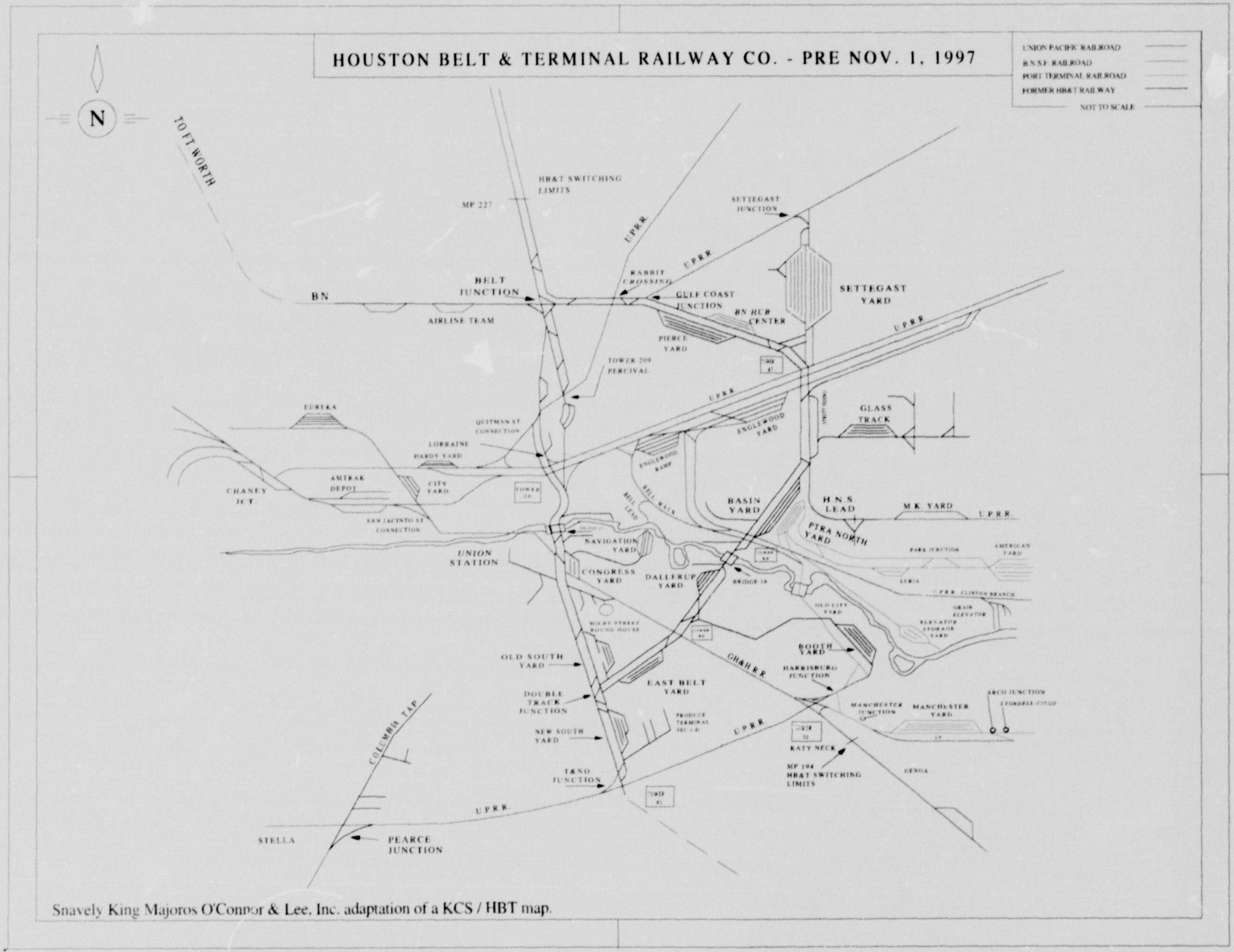
[2] Congress Yard and Basin Yard are among the many Houston area rail yards shown on the Houston Terminal Map included in my statement.

the former HBT. BNSF acts as the switching carrier for the remaining small, southern portion of the HBT belt lines. This switching arrangement arose last Fall, when UP and BNSF, as owners of the HBT, decided to carve up the HBT's assets. The former configuration of the HBT is shown on the map on the next page.

As described elsewhere in this Tex Mex/KCS filing, UP's switching of cars in Houston has resulted in a clear pattern of discrimination against Tex Mex trains by UP personnel dispatching and switching Tex Mex trains attempting to pick up or set out cars in, or even merely to transit, Houston.

Another efficiency of a neutral switching carrier is cost-sharing. Costs of terminal operations are apportioned among carriers based on use. Therefore, no one carrier is saddled with the economic burden of making improvements in infrastructure, for example, that benefit all carriers. Economies of scale inherent in this form of cost sharing will actually encourage infrastructure investment.


HOUSTON BELT & TERMINAL RAILWAY CO. - PRE NOV. 1, 1997
UNION PACIFIC RAILROAD
B.N.S.F. RAILROAD
PORT TERMINAL RAILROAD
FORMER HB&T RAILWAY
NOT TO SCALE
N
TO FT WORTH
HB&T SWITCHING LIMITS
MP 227
UPRR
SETTEGAST JUNCTION
RABBIT CROSSING
BELT JUNCTION
BN
GULF COAST JUNCTION
BN HUB CENTER
SETTEGAST YARD
AIRLINE TEAM
PIERCE YARD
TOWER 209 PERCIVAL
EUREKA
GLASS TRACK
QUITMAN ST CONNECTION
ENGLEWOOD YARD
LORRAINE
HARDY YARD
ENGLEWOOD RAMP
AMTRAK DEPOT
CHANEY JCT.
CITY YARD
TOWER 26
BELL LEAD
BELL MAIN
BASIN YARD
H.N.S. LEAD
M.K. YARD
U.P.R.R.
SAN JACINTO ST CONNECTION
PTRA NORTH YARD
NAVIGATION YARD
PARK JUNCTION
AMERICAN YARD
UNION STATION
CONGRESS YARD
DALLERUP YARD
BRIDGE 16
LORIA
U.P.R.R. CLINTON BRANCH
OLD CITY YARD
GRAIN ELEVATOR
ELEVATOR STORAGE YARD
MILBY STREET ROUND HOUSE
BOOTH YARD
OLD SOUTH YARD
GH&H R.R.
HARRISBURG JUNCTION
EAST BELT YARD
DOUBLE TRACK JUNCTION
MANCHESTER JUNCTION
MANCHESTER YARD
ARCO JUNCTION
LYONDELL-CITGO
PRODUCE TERMINAL
NEW SOUTH YARD
KATY NECK
COLUMBIA TAP
MP 194 HB&T SWITCHING LIMITS
GENOA
T&NO JUNCTION
STELLA
PEARCE JUNCTION
Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.

2.1.5 The Neutral Switching Carrier Can Minimize Operations Problems

Neutral switching carriers have an inherent advantage in their ability to minimize not only the treatment that resulted in occurrences such as that described in Mr. Watts' statement quoted above. In addition, other problems have occurred in Houston such as:

- Lost and misrouted cars,
- Cars which mysteriously are never delivered to the shipper after interchange to UP but are routed loaded back to their origin,
- A linehaul switching carrier's tendency to exacerbate inefficient car usage, such as by being unwilling to find competing lines' cars in the terminal area and to switch them to a customer, forcing the competing line to locate a car from outside the terminal area and to interchange it to the switching carrier for delivery to the competing line's shipper, and
- Empty cars tendered for delivery upon a Tex Mex shipper's request that instead make their way into the hands of a UP shipper and are loaded and routed UP rather than being tendered to and loaded by the Tex Mex customer to whom Tex Mex intended the cars to be delivered.

As an example of the last point, Commercial Metals, a Tex Mex shipper, requested Tex Mex to provide it with empty gondola cars for loading and shipment to Laredo. Tex Mex tendered the cars to UP and directed that they be delivered to Commercial Metals. However, the cars were tendered by UP to a UP customer for loading, leaving Tex Mex's customer unable to ship Tex Mex.

To combat preferential treatment that UP's dispatcher and switch crews give UP in terms of access to Houston trackage, Tex Mex has been forced at times to put on a special train. This special train is designed to separate the Houston bound traffic that suffers the worst discrimination from the through traffic. This train is permitted to run between Houston and Beaumont only under the temporary rights granted Tex Mex in the Board's Emergency Service Order No. 1518. Although this additional train has been costly to Tex Mex, it is often the only means available to Tex Mex to reduce the effect on Tex Mex's trains transiting Houston of the severe discrimination that Tex Mex suffers when transiting Houston.

2.1.6 Neutral Switching Is A Common And Effective Solution For Terminal Operations

The neutral switching carrier concept is a common concept for terminal operations, and one which I believe, that the STB or the ICC must view as beneficial to terminal operations based upon the number of currently existing terminal railroads. Prior to my long tenure in Houston terminal operations, I also was involved with terminal operations in St. Louis and Chicago. In each of these cities, the neutral switching carrier concept is implemented so that linehaul carriers are not performing the switching in the crowded terminal area.

Likewise, a similar concept has been proposed by CSX and Norfolk Southern as part of their plan to acquire Conrail. CSX and NS have proposed "shared assets areas," where a single Conrail entity would remain to provide neutral service within specified metropolitan areas such as in New Jersey and Detroit. Within the shared asset area, each shipper has the right to select its line haul railroad. It is my belief that the shared asset concept is based, in part, on the fact that duplicate infrastructure would not be economical. Since the economics did not support overlapping operations by competing linehaul carriers throughout those metropolitan areas, CSX and NS agreed to allow a single entity to operate in that area. This seems to be an adaptation to the neutral terminal carrier concept which used to exist in Houston and still exists elsewhere.

2.1.7 HBT Proved That A Neutral Switching Carrier System Works in Houston

The ultimate proof that neutral switching will work in Houston is shown by the fact that HBT functioned successfully and safely in that capacity for nearly 90 years, until it was recently