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FD-32760 (SUB 27)

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TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

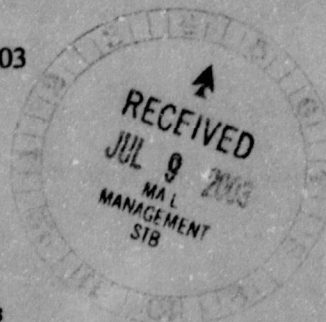
401 NINTH STREET, NW
SUITE 1000
WASHINGTON, DC 20004-2134
WWW.TROUTMANSANDERS.COM

William A. Mullins
william.mullins@troutmansanders.com

Direct Dial: 202-274-2953
Direct Fax: 202-654-5621

July 9, 2003

Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001



RE: Change of Counsel/Change of Address

Dear Secretary Williams:

Effective Monday, July 14, 2003, William A. Mullins and David C. Reeves will join the law firm of:

Baker & Miller PLLC
915 Fifteenth Street, NW
Suite 1000
Washington, DC 20005-2318
TEL: (202) 637-9499
FAX: (202) 637-9394
wmullins@bakerandmiller.com
dreeves@bakerandmiller.com

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Office of Proceedings
JUL 09 2003
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Public Record

Please update the Board's records to substitute Baker & Miller PLLC as counsel of record for all proceedings included on the enclosed list, and to reflect that Troutman Sanders LLP will no longer be counsel of record for clients represented by Messrs. Mullins and Reeves as noted on the enclosed list of proceedings in which either or both have entered an appearance. However, with respect to Finance Docket No. 33388 and 33388 (Sub No. 91), Baker and Miller should be shown as counsel of record for Gateway Western Railway Company and Troutman Sanders LLP should remain as counsel of record for New York State Electric and Gas.

Copies of any STB notices, pleadings or other correspondence related to these proceedings after July 11, 2003 should be sent to the attention of Messrs. Mullins or Reeves at Baker & Miller PLLC (at the address listed above).

All known parties of record in the proceedings listed on the enclosure have been sent a copy of this change of counsel/change of address notification.

Sincerely yours,

William A. Mullins

and

David C. Reeves

Enclosure

**Change of Counsel/Change of Address Notification
for**

William A. Mullins and David C. Reeves

Effective Monday, July 14, 2003

**Baker & Miller PLLC
915 Fifteenth Street, NW
Suite 1000**

Washington, DC 20005-2318

TEL: (202) 637-9499

FAX: (202) 637-9394

Docket No. Ex Parte No. or Finance Docket No.	List of Proceedings Before the STB
Docket No. AB-468 (Sub-No. 5X)	Paducah & Louisville Railway, Inc. - Abandonment Exemption - In McCracken County, KY
F.D. No. 34342	Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern Railway Company, And The Texas Mexican Railway Company
F.D. No. 34335	Keokuk Junction Railway Company - Feeder Railroad Development Application - Line Of Toledo, Peoria & Western Railway Corporation Between La Harpe And Hollis, IL
F.D. No. 34178	Dakota, Minnesota & Eastern Railroad Corporation And Cedar American Rail Holdings, Inc. - Control - Iowa, Chicago & Eastern Railroad Company
F.D. No. 34177	Iowa, Chicago & Eastern Railroad Company - Acquisition And Operation Exemption - Lines Of I&M Rail Link, LLC
F.D. No. 34015	Waterloo Railway Company - Acquisition Exemption - Bangor and Aroostook Railroad Company and Van Buren Bridge Company
F.D. No. 34014	Canadian National Railway Company - Trackage Rights Exemption - Bangor and Aroostook Railroad Company and Van Buren Bridge Company
F.D. No. 33740 and F.D. No. 33740 (Sub-No. 1)	The Burlington Northern and Santa Fe Railway Company - Petition For Declaration Or Prescription Of Crossing, Trackage Or Joint Use Rights and For Determination Of Compensation and Other Terms
F.D. No. 33388	CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation
F.D. No. 33388 (Sub-No. 91)	CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation (General Oversight)
F.D. No. 32760	Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company
F.D. 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
F.D. 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

STB FD 32760 (Sub 27) 11-24-98 D 192387

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE (202) 662-6291

ARVID E. ROACH II

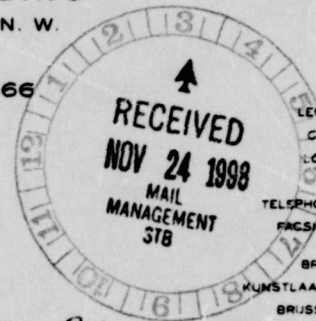
DIRECT DIAL NUMBER

(202) 662-5388

DIRECT FACSIMILE

(202) 778-5388

November 24, 1998



LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
TELEPHONE 44-171-495-5695
FACSIMILE 44-171-495-3101
BRUSSELS OFFICE
KUNSTLAAN 44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE 32-2-549-5230
FACSIMILE 32-2-502-1598

BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

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Office of the Secretary

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Public Record

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" 31 192391
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Re: Finance Docket No. 32760 (Sub-No. 26*), Union Pacific Corp. -- Control
& Merger -- Southern Pacific Rail Corp. -- Houston/Gulf Oversight

Dear Secretary Williams:

We have received the motion to strike and sur-rebuttal filed by the KCS/Tex Mex on November 10, 1998 in response to UP's October 27, 1998 letter to the Board. This letter will serve as our reply.

In its October 27 letter, UP noted that two items of evidence contained in the rebuttal submitted in support of the "Consensus Plan" were not proper rebuttal testimony. UP thus requested that if the Board considered those points, it also consider UP's brief reply. In their November 10 pleading, KCS/Tex Mex claim that the evidence to which UP responded was proper rebuttal, and thus UP's response should be ignored. We strongly disagree. The new evidence, including the further sur-rebuttal submitted with the November 10 filing, should be stricken, or at the very least the Board should also consider UP's reply.

I.

KCS/Tex Mex say that evidence offered by Messrs. Grimm and Plaistow in the form of a study purporting to calculate UP and BNSF shares of "2-to-1" traffic in the Houston BEA was permissible rebuttal because UP witnesses pointed out in their testimony that KCS/Tex Mex had improperly treated as a homogenous lump the traffic involved in their studies of the Houston "market." See, e.g., Barber V.S., pp. 22-25; Peterson V.S., pp. 19-22. This new study cannot be considered permissible rebuttal. KCS/Tex Mex could have and should have presented in their opening evidence any study taking account of the differing competitive circumstances

• Including related sub-dockets.

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Page 2

affecting Houston-area traffic. Their failure to do so constituted a severe flaw in their case, as UP's witnesses pointed out. The fact that UP witnesses pointed out this fundamental flaw cannot transform KCS/Tex Mex's new study into "rebuttal." KCS/Tex Mex's position -- that a party is entitled to fill, through purported "rebuttal," basic gaps in its affirmative case if its opponent points out those gaps -- makes a mockery of the rules regarding proper rebuttal testimony, and would encourage improper strategic behavior.

Moreover, the new Grimm/Plastow study cannot be considered permissible rebuttal because it did not in fact respond to the criticisms raised by UP's witnesses in their testimony. The original Grimm/Plastow "studies" involved a misguided effort to compare pre- and post-merger shares of traffic that BNSF moved from the Houston area to various regions of the country. UP criticized those studies because it is misleading to lump together in a single so-called "market" categories of traffic having radically different competitive characteristics ("1-to-1," "2-to-1," and "3-to-2"). The new Grimm/Plastow testimony did not counter this point; it simply offered a belated (and fundamentally flawed) study of "2-to-1" shipments alone.

The present situation is thus far different from the case that KCS/Tex Mex rely on to argue that the new Grimm/Plastow study is proper rebuttal. In that case, in the main UP/SP merger proceeding, the Board rejected KCS' motion to strike various portions of UP's rebuttal testimony because UP was able to demonstrate that the testimony at issue responded to specific claims that could not have been anticipated and that other parties had raised in their testimony. See Decision No. 37, served May 22, 1996. Here, as explained above, the new study does not respond to any evidence -- UP did not offer a study of Houston "2-to-1" traffic in isolation -- and KCS/Tex Mex should and could have performed this type of analysis as part of their affirmative case.

In their November 10 pleading, the Consensus Parties not only attempt to justify the new Grimm/Plastow study as proper rebuttal, but they also attempt to answer the criticisms contained in UP's October 27 letter by correcting their study and presenting yet another new study. Again, UP believes all of this should be stricken, but offers a few short points in response should the Board elect to consider this still further study. These points are verified by Richard B. Peterson, UP's Senior Director-Interline Marketing and the individual at UP who is principally responsible for the identification of "2-to-1" traffic.

1. KCS/Tex Mex have no answer at all to UP's most basic criticism of the Grimm/Plastow purported Houston "2-to-1" study: the evidence demonstrates that there has been vigorous competition between UP and BNSF for "2-to-1" traffic, and that all of the major "2-to-1" shippers in the Houston area have benefitted from new competition, though they have elected, after vigorous UP-BNSF competition, to leave most of their traffic with UP. See UP/SP-345, Confidential Appendix C. No "2-to-1" shipper has come forward in this proceeding to claim that there is not effective competition, and many have said there is.

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2. KCS/Tex Mex respond to UP's criticism that their data included not only shippers that are not "2-to-1" shippers but also shippers that do not even have facilities at the locations described by explaining that they constructed their list of "2-to-1" shippers using data that UP placed in its merger depository in late 1995. KCS/Tex Mex apparently used computer files relating to very early UP efforts to identify "2-to-1" shippers as part of the traffic diversion study for the merger application. However, those data were highly preliminary and inexact, given time and information constraints, as Mr. Peterson explained when he was deposed by KCS, Tex Mex and others during the merger proceeding concerning the ongoing process of arriving at a precise listing of "2-to-1" facilities. KCS/Tex Mex state that they have now corrected the new Grimm/Plaistow study to account for UP's criticisms, but we did not attempt to provide an exhaustive list of shippers that were improperly included or excluded, and thus efforts to correct the study based on the information provided in our October 27 letter were unsuccessful (as we note further below).¹ KCS/Tex Mex also try to avoid the systemic flaws in the Grimm/Plaistow study by arguing (p. 8) that UP should be "estopped" from saying that shippers appearing in UP's early, unrefined data are not "2-to-1" shippers. This is a truly bizarre proposition, because many of the facilities simply do not exist at all and the facility list used by Grimm and Plaistow bears no resemblance to the list that is actually governing, in the real world, BNSF's access to "2-to-1" traffic.²

¹ KCS/Tex Mex also attempt to respond to our criticism that the study was not representative by expanding their study to include the entire Western United States. This newer study, like the earlier version, pervasively misidentifies "2-to-1" shippers. It includes shippers that UP identified in its October 27 letter as non-existent, and it also includes an unexplained further addition of 1.2 million tons to UP's LCRA volumes, see Exhibit E, Terminating Traffic, p. 4, none of which should have been in the study in the first place. (The LCRA traffic accounts for nearly 25% of the UP terminated traffic in the new, purported Western U.S. study). In addition, the new study incorrectly includes traffic originating and terminating at Laredo, Shreveport, Sparks, Reno, Texarkana and West Lake Charles, despite the fact that there are no "2-to-1" facilities at those locations. The study also includes thousands of cars of intermodal and auto traffic that is not "2-to-1." Finally, the expanded study -- a further attempt to bootstrap new and untested evidence into this proceeding long after the record has closed -- ignores the overall traffic data that show that, by BNSF's own calculations of the available market for its trackage rights, BNSF's share is approaching 50%.

² KCS/Tex Mex's misunderstanding of the data they are using provides an excellent example of why this type of study is not appropriate rebuttal -- it would allow presentation of new "evidence" without allowing other parties the opportunity to point out its fundamental flaws. The basic problem appears to be that KCS/Tex Mex have gathered data by first identifying "2-to-1" points and then including all traffic of shippers that moved traffic to and from those points. This process creates two types of errors. First, not all facilities at "2-to-1" points are "2-to-1" facilities -- it depends on whether they had access to both UP and SP prior to the merger. Second, the party listed as the consignee in connection with a particular origination or

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3. KCS/Tex Mex respond to UP's observation that none of the "2-to-1" shippers identified in the Grimm/Plaistow study filed a statement supporting the Consensus Plan by arguing that they have received shipper support from some of the shippers listed in the study. But the shippers to which they refer -- Solvay and Lyondell-Citgo Refining -- are not shippers with "2-to-1" facilities at the locations listed, and never should have been on the list in the first place.

II.

KCS/Tex Mex claim that the data submitted by SPI's Larry Thomas regarding transit times were permissible rebuttal because they were "essentially the same" data that Mr. Thomas had previously submitted, but then explain two ways in which the data were different -- the more important of which is that Mr. Thomas added four months of new data in order to make the new claim that UP's service remains far below pre-merger levels (KCS Sur-Rebuttal, p. 13). As we explained in our October 27 letter, those data are so flawed as to be meaningless. Even after UP pointed out these flaws, however, KCS/Tex Mex continue in their sur-rebuttal to misrepresent the facts surrounding the data. We simply ask that if the Board considers these matters, it also consider the following facts:

UP invited the Board to view KCS/Tex Mex's use of charts purportedly comparing UP's pre-merger and post-merger performance on plastics shipments as a test of KCS/Tex Mex's credibility and commitment to honest dealing with the Board. Letter dated October 27, 1998 from A. Roach to V. Williams. KCS/Tex Mex's sur-rebuttal shows that they have failed that test.

KCS/Tex Mex now admit that the charts, prepared by SPI on the basis of data from fewer than a half dozen shippers, measure transit times for a traffic mix that very significantly changed at least three times during the comparison period. From one period to the next, the origins changed, the routings changed, and the number of shippers expanded. This is like complaining that United Airlines' service from its Chicago hub deteriorated because United's average flight time increased as it added flights to international designations such as Paris and Hong Kong. Statistically, this is a meaningless exercise. KCS/Tex Mex presented these charts to the Board, to numerous Congressional offices, and to state and local officials without disclosing any of the inconsistencies and defects that render the charts worthless. Undaunted, KCS/Tex Mex continue to ask the Board to rely on them.

All factual statements below are verified by Douglas J. Glass, UP's Assistant Vice President/Business Director, who communicated with SPI for the last year.

termination is not always the party with the facility at that point, and including all of that consignee's traffic compounds the error.

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November 24, 1998

Page 5

The SPI charts purport to compare UP's pre-merger service with its post-merger service. In fact, they are useless for that purpose. KCS/Tex Mex concede that they filed SPI charts containing at least the following flaws. We suspect there are others, but UP does not have underlying workpapers that would allow us to identify the additional errors.

- KCS/Tex Mex admit that the mix of shipments and routes measured for the pre-merger periods of 1995 and 1996 differ from the mix of shipments and routes measured for the post-merger periods of 1997 and 1998. KCS/Tex Mex admit that the five shippers who provided data to SPI have differing abilities to provide historical information and thus that "participation for 1995 and 1996 is less extensive than for 1997 and 1998." (P. 15.) In fact, the data for 1995 pertain to shipments by only two shippers; the 1996 data are for four shippers; the 1997 data are for five shippers; and KCS/Tex Mex now admit that additional shipments and routes were added at the end of 1997. (P. 15.) As a result, the SPI charts compare a small set of shipments in 1995 with a larger set of shipments from different origins to different destinations in 1996 with a still larger set of shipments from different origins to different destinations in 1997 and still a larger set of shipments in 1998.
- KCS/Tex Mex also acknowledge that the SPI charts include shipments from points not on the Texas Gulf Coast, a fact they did not voluntarily disclose to the Board or other public officials when they presented these charts. They include, for example, shipments from an Iowa origin that represents 7% of the total production capacity reflected in the data. (P. 15.) Significantly, KCS/Tex Mex also acknowledge that these Iowa shipments were not included in the SPI data for pre-merger years, but were added only after December 1997, again skewing the data unpredictably. (*Id.*) KCS/Tex Mex argue that it is reasonable to look at shipments that originate outside the Gulf Coast area, but it certainly is not reasonable to (a) include those shipments only in the post-merger half of the comparison, or (b) claim that the resulting charts reflect the quality of UP service in Texas.
- KCS/Tex Mex acknowledge that they presented to the Board charts labelled "UP Only" even though the transit times are not "UP only" data. The transit times are origin-to-destination transit times over all railroads for whatever traffic mix was being measured at a particular moment. In other words, delays could have occurred anywhere in the United States on any railroad. KCS/Tex Mex counsel, on the basis of no data or other information, assert that all delays must have occurred on UP and that delays on "on the lines of other carriers . . . were of short duration." (*Id.* at 17.) The Board has no reason to believe this self-serving assertion, which ignores events such as a major hurricane that wiped out CSX

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Page 6

operations east of New Orleans and chronic service problems on CSX in the Southeast this year.³

KCS/Tex Mex essentially claim that UP forced KCS/Tex Mex to publish these charts by refusing to provide better data. In itself, this is an admission that the charts are inferior. The notion that UP made KCS/Tex Mex give illegitimate comparisons to the Board, Congress and other officials needs no response.

The assertion that UP "declined" to provide transit time information from UP's data files is simply false. When SPI and UP began meeting in December 1997, SPI said it wanted to gather complete transit times from origin to destination and back regardless of carrier. UP did not then compile origin-to-destination transit time data that included transit times on connecting carriers. A few SPI members did. Moreover, some SPI members indicated that they would feel more comfortable relying on shipper data. The official notes of the first UP-SPI meeting, prepared and distributed by SPI executive director (and KCS/Tex Mex witness) Maureen Healey, state that the parties "agreed" that SPI members were to compile the transit time information, not UP. Had SPI members wanted to use UP's more limited "UP only" data, they already had it. UP was then providing, and continues to provide, on-line transit data to many SPI members showing UP service on all their major shipping corridors. SPI chose not to use UP data.

KCS/Tex Mex also claim that UP failed to point out to SPI the defects in the SPI data. (P. 14.) This is highly misleading. SPI members repeatedly told UP that they were gathering data only to show "directional trends" for all railroads. UP repeatedly stressed that the SPI data could not be used to measure "UP only" performance. SPI members told UP "not to worry" about such misuse of the data. KCS/Tex Mex then reneged on that assurance.

Once UP learned that SPI's charts were being circulated publicly, and that KCS/Tex Mex were using them improperly for the purpose of describing UP on-line performance, it objected strongly. It particularly objected to SPI's labelling of the charts as "UP Only" when the transit times included service over all connecting lines throughout the United States.

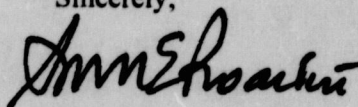
Undeterred by the fact that the SPI charts are unreliable, misleading and mislabelled, KCS/Tex Mex nevertheless urge the Board to use them. KCS/Tex Mex baldly assert, based on the charts, that UP "service levels today are grossly inferior compared to pre-merger levels." (P. 17.) Particularly as applied to chemical shipments from the Texas Gulf Coast, this is a false and irresponsible statement. While UP reports incidents beyond control that

³ We cannot make sense of the 1995 transit times in the SPI charts. The average transit time was as low as only 6 days, well below any average that could include transit times over connecting carriers to the Northeast and Southeast.

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Page 7

affect service for these shipments, such as recent Texas floods that affected shipments to California and continuing congestion on CSX via New Orleans, UP's service for Texas chemical shippers has otherwise been reliable, consistent, and equal to or better than pre-merger service. For example, UP service for Dow Chemical and Exxon is demonstrably better today than before the merger.

Sincerely,

A handwritten signature in black ink, appearing to read "Arvid E. Roach II". The signature is written in a cursive, flowing style with a large initial "A".

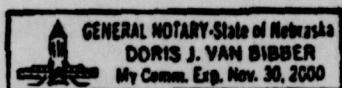
Arvid E. Roach II

cc: All Parties of Record

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Richard B. Peterson, Senior Director-Interline Marketing of Union Pacific Railroad Company, state that the factual information contained in Part I of the foregoing document was compiled by me or individuals under my supervision, that I know its contents, and that to the best of my knowledge and belief those contents are true as stated.



Richard B. Peterson
RICHARD B. PETERSON

Subscribed and sworn to before me
this 24th day of November, 1998

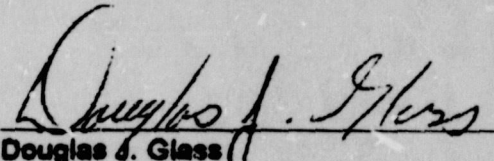
Doris J. Van Bibber
Notary Public

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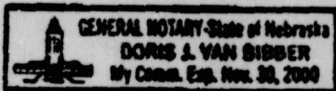
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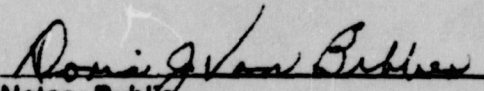
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Douglas J. Glass, being first duly sworn, deposes and says that he is Assistant Vice President /Business Director in the Marketing & Sales Department of Union Pacific Railroad in Omaha, Nebraska, and that he has read Part 2 of the foregoing document, knows the facts asserted therein, and that the same are true as stated.


Douglas J. Glass

Subscribed and sworn to before me this 18th day of November, 1998.




Notary Public

My Commission Expires:

Nov. 30, 2000

STB FD 32760 (Sub 27) 11-24-98 D 192379

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

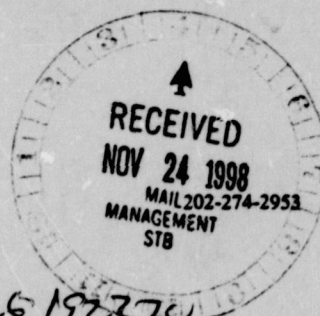
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

ENTERED
Office of the Secretary

William A. Mullins NOV 24 1998

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November 24, 1998



HAND DELIVERY:

Honorable Vernon A. Williams
Case Control Unit
Attn: STB FD 32760 (Sub-No. 26)
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20006

FD 32760-26192378
FD 32760-27-192379
FD 32760-28-192380
FD 32760-29-192381
FD 32760-30-192382
FD 32760-31-192383
FD 32760-32-192384

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

Dear Secretary Williams:

Enclosed for filing in above captioned proceeding are an original and twenty-six copies of CMA-11/RCT-10/TM-27/SPI-11/TCC-11/KCS-18, Notice of Intent to Participate in Oral Argument.

Please date and time stamp one copy of the Petition enclosed herewith for return to our offices. Included with this filing is a 3.5-inch Word Perfect, Version 5.1 diskette with the text of the pleading.

ENTERED
Office of the Secretary

NOV 24 1998

Part of
Public Record

Sincerely,

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

cc: Parties of Record

* and embraced sub-dockets

CMA-11 SPI-11
RCT-10 TCC-11
TM-27 KCS-18

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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



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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

NOTICE OF INTENT TO PARTICIPATE IN ORAL ARGUMENT

**THE CHEMICAL MANUFACTURERS
ASSOCIATION**

**THE SOCIETY OF THE PLASTICS INDUSTRY,
INC.**

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS CHEMICAL COUNCIL

THE TEXAS MEXICAN RAILWAY COMPANY

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

November 24, 1998

(* and embraced sub-dockets)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

-- CONTROL AND MERGER --

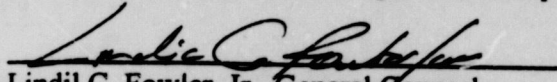
**SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER
AND RIO GRANDE WESTERN RAILROAD COMPANY**

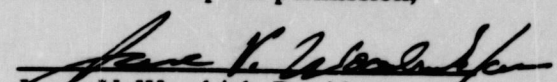
HOUSTON/GULF COAST OVERSIGHT PROCEEDING

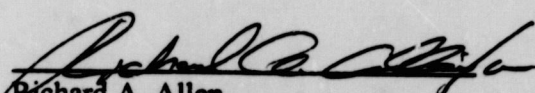
NOTICE OF INTENT TO PARTICIPATE IN ORAL ARGUMENT

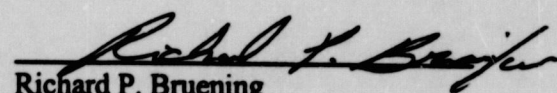
Pursuant to Decision No. 7 in Finance Docket No. 32760 (Sub-No. 26), STB served November 23, 1998, the Consensus Parties hereby give notice of their intent to participate in the oral argument scheduled for December 15, 1998 in this proceeding. On the day of the oral argument, the Consensus Parties will inform the Secretary of the identities of the speakers and the portion of the thirty (30) minutes of time allotted to each speaker. In addition, the Consensus Parties will file a summary of their oral argument, pursuant to Decision No. 7, by 2:00 p.m. on December 11, 1998.

Respectfully submitted and signed on each party's behalf with express permission,

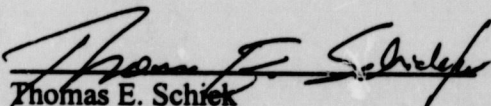

Lindil C. Fowler, Jr., General Counsel
THE RAILROAD COMMISSION OF TEXAS
1701 Congress Avenue
P.O. Box 12967
Austin, Texas 78711-2967
Tel: (512) 463-6715
Fax: (512) 463-8824



James V. Woodrick, President
THE TEXAS CHEMICAL COUNCIL
1402 Nueces Street
Austin, Texas 78701-1586
Tel: (512) 477-4465
Fax: (512) 477-5387


Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939
Tel: (202) 298-8660
Fax: (202) 342-0683

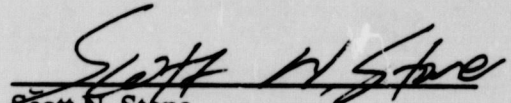

Richard P. Bruening
Robert K. Dreiling
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 983-1392
Fax: (816) 983-1227

ATTORNEYS FOR THE TEXAS MEXICAN
RAILWAY COMPANY

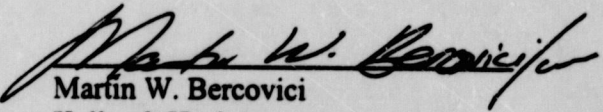

Thomas E. Schiek
The Chemical Manufacturers Association
1300 Wilson Boulevard
Arlington, VA 22209
Tel: (703) 741-5172
Fax: (703) 741-6092


William A. Mullins
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
Tel: (202) 274-2950
Fax: (202) 274-2994

ATTORNEYS FOR THE KANSAS CITY SOUTHERN
RAILWAY COMPANY


Scott N. Stone
Patton, Boggs L.L.P.
2550 M Street, NW
Washington, D.C. 20037
Tel: (202) 457-6335
Fax: (202) 457-6315

ATTORNEYS FOR THE CHEMICAL
MANUFACTURERS ASSOCIATION


Martin W. Bercovici
Keller & Heckman
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001
Tel: (202) 434-4144
Fax: (202) 434-4651

ATTORNEYS FOR THE SOCIETY OF PLASTICS
INDUSTRY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **NOTICE OF INTENT** was served this 24th day of November, 1998, by first class mail upon all parties of record in the Sub-No. 26 oversight proceedings.



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

STB FD 32760 (Sub 27) 10-16-98 D 191669

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 600 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2917

INTERNET: william.mullins@troutmansanders.com



William A. Mullins

October 16, 1998

HAND DELIVERY

Honorable Vernon A. Williams
Case Control Unit
Attn: STB FD 32760 (Sub-Nos. 26-32)
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20006

ENTERED
Office of the Secretary

OCT 19 1998

Part of
Public Record

27

RE: Finance Docket No. 32760 (Sub-Nos. 26 - 32),
*Union Pacific Corp., et al. - Control & Merger - Southern Pacific Rail Corp.,
et al. - Houston/Gulf Coast Oversight*

191655 191659 191670 191671 191672 191673 191674

Dear Secretary Williams:

Enclosed for filing in above captioned proceeding are an original and twenty-six copies of the Rebuttal Evidence And Argument In Support Of The Consensus Plan, Volumes 1 - 3 ("Consensus Rebuttal"), filed on behalf of The Chemical Manufacturers Association, The Society of Plastics Industry, Inc., The Railroad Commission of Texas, The Texas Chemical Council, The Texas Mexican Railway, and The Kansas City Southern Railway Company (collectively, the "Consensus Parties"). Please note that Volume 3 enclosed herewith contains material designated by the parties as Highly Confidential, and is being submitted under seal pursuant to the protective order issued by the Board in this proceeding. Also, included with this filing are a set of 3.5-inch diskettes containing the text of the pleading in WordPerfect format and containing tables in Microsoft Excel format.

Please date and time stamp one copy of the Consensus Rebuttal for return to our offices.

Sincerely,

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

cc: Parties of Record
Honorable Stephen J. Grossman

STB FD 32760 (Sub 27) 10-16-98 D 191624



GREATER HOUSTON PARTNERSHIP

Chamber of Commerce • Economic Development • World Trade

COPY

October 15, 1998

The Honorable Vernon Williams
Case Control Unit

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



RE:

STB Finance Docket No. 32760 (Sub-Nos. 26-32)

Union Pacific Corporation, et. al.

-- Control and Merger --

Southern Pacific Rail Corporation, et. al.

HOUSTON/GULF COAST OVERSIGHT

191623
191624
191625
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191629

Dear Secretary Williams:

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

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

Respectfully submitted,

Roger H. Hord
713-844-3625

Office of the Secretary

OCT 16 1998

Part of
Public Record



GREATER HOUSTON PARTNERSHIP

Chamber of Commerce • Economic Development • World Trade

October 15, 1998

The Honorable Vernon Williams

Case Control Unit

Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)

Surface Transportation Board

1925 K. Street, N.W.

Washington, DC 20423-0001



RE:

STB Finance Docket No. 32760 (Sub-Nos. 26-32)

Union Pacific Corporation, et. al.

-- Control and Merger --

Southern Pacific Rail Corporation, et. al.

HOUSTON/GULF COAST OVERSIGHT

Dear Secretary Williams:

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Respectfully submitted,

Roger H. Hord
713-844-3625

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

HOUSTON/GULF COAST OVERSIGHT

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

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

The Greater Houston Partnership

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

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

GHP Maintains Position

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

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

The GHP restates the following recommendations:

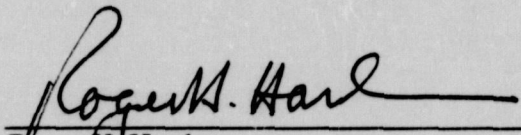
- 1) The STB should provide a mechanism for all railroads serving Houston to buy trackage rights and access rights at an equitable price to the following areas to provide greater competition for Houston area shippers:

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

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

CERTIFICATE OF SERVICE

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



Roger H. Hord
713 844-3625

SERVICE LIST

Richard A Allen
Zuckert Scout Rasenberger
888 17th Street N. W. Ste 600
Washington, DC 20006-3939

George A Aspatore
Norfolk Southern Corp
Three Commemercial Place
Norfolk, VA 23510

Donald G. Avery
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036-3003

Martin W. Bercovici
Keller & Heckman
1001 G ST NW Suite 500 West
Washington, DC 20001

Abby E. Caplan
1800 Massachusetts Ave. NW Suite 500
Washington, DC 20036-1883

Ross B. Capon
National Assoication of Railroad
Passengers
900 2nd ST NE Suite 308
Washington, DC 20002

Paul D. Coleman
Hoppel Mayer & Coleman
1000 Connecticut Ave. NW Suite 400
Washington, DC 20036

Sean T. Connaughton
Eckert Seamans & Mellott LLC
1250 24th Street NW 7th Floor
Washington, DC 20037

Kenneth B. Cotton
3203 Areba
Houston, TX 77091

Nicholas J. DiMichael
Donelan Cleary Wood & Maser PC
1100 New York Ave N. W. Ste 750
Washington, DC 20005-3934

Richard D. Edelman
O'Donnell Schwartz & Anderson PC
1900 L. Street NW Suite 707
Washington, DC 20036

Daniel R. Elliott III
United Transportation Union
14600 Detroit Ave
Cleveland, OH 44107

Brian P. Felker
P.O.Box 2463
Houston, TX 77252-2463

Lindil Fowler, Jr.
Railroad Commission of Texas
P.O.Box 12967
Austin, TX 78711-2967

Robert K. Glynn
Hoisington Chamber of Commerce
123 North Main Street
Hoisington, KS 67544-2594

Andrew P. Goldstein
McCarthy Sweeney Harkaway, PC
1750 Pennsylvania Ave NW. STE
1105
Washington, DC 20006

Donald F. Griffin
Brotherhood of Maintenance Way
Employees
10 G. Street NE Ste 460
Washington, DC 20002

David L. Hall
Commonwealth Consulting
Associates
13103 FM 1960 West Suite 204
Houston, TX 77065-4069

Roger H. Hord
Greater Houston Partnership
1200 Smith, Suite 700
Houston, TX 77002

Erika Z. Jones
Mayer Brown & Platt
2000 PA Av NW
Washington, DC 20006-1882

Richard Kerth
Champion International Corp
101 Knightsbridge Drive
Hamilton, OH 45020-0001

Albert B. Krachman
Bracewell & Patterson LLP
2000 K St NW Ste 500
Washington, DC 20006-1872

John H. Leseur
Slover & Loftus
1224 17th Street NW
Washington, DC 20036-3081

Gordon P. MacDougall
1025 Connecticut Ave. NW Suite
410
Washington, DC 20036

Douglas Maxwell
CSX Transportation J-150
500 Water Street
Jacksonville, FL 32202

David L Meyer
Covington & Burling
1201 Pennsylvania Av. NW
Washington, DC 20044-7566

Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036

Jeffrey O. Moreno
Donelan Cleary Wood Master
1100 New York Ave. NW, Suite
750
Washington, DC 20005-3934

William A. Mullins
Troutman Sanders LLP
1300 I Street NEW Suite 500 East
Washington, DC 20005 3314

David M. Perkins
Angelina & Neches River Railroad
Company
P.O.Box 1328 2225 Spencer Street
Lufkin, TX 79502

Joseph J. Plaistow
Snaveley, King Majoros O'Connor & Lee,
Inc.
1220 L. Street NW Ste 410
Washington, DC 20005

J. W. Reinacher
15 Riverside Ave
Wesport, CT 06880

Arvid E. Roach, II
Coveington & Burling
P.O.Box 7566
Washington, DC 20044-7566

Thomas E. Schick
1300 Wilson Boulevard
Arlington, VA 22209

Richard J. Schiefelbein
Woodharbor Associates
P.O.Box 137311
Fort Worth, TX 76179

Thomas A. Schmitz
Fieldston Co Inc.
1800 Massachusetts Ave. NW Ste
500
Washington, DC 20036

Richard G. Slattery
Amtrak
60 Massachusetts Ave. NE
Washington, DC 20002

William L. Slover
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036-3003

Paul Smuel Smith
US Department of Transportation
400 Seventh Street SW, room 4102 C-30
Washington, DC 20590

William W. Whitehurst Jr.
WW Whitehurst & Associates, Inc.
12421 Happy Hollow Road
Cockeysville, MD 21030

Robert A. Wimbish ESQ
Rea Cross & Auchincloss
1707 L. Street NW Suite 570
Washington, DC 20036

Frederic Wood
Donelan Cleary Wood & Maser PC
1100 New York Ave. NW Suite 750
Washington, DC 20005-3934

James V. Woodrick
1402 Nueces Street
Austin, TX 78701-1586

STB FD 32760 (Sub 27) 9-18-98 D 191201

191200

PORT OF HOUSTON AUTHORITY

EXECUTIVE OFFICES: 111 EAST LOOP NORTH • HOUSTON, TEXAS 77029-4327
MAILING ADDRESS: P.O. BOX 2562 • HOUSTON, TEXAS 77252-2562
TELEPHONE: (713) 670-2400 • FAX: (713) 670-2429



September 17, 1998

Honorable Vernon Williams
Case Control Unit

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



Re:

27

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

HOUSTON/GULF COAST OVERSIGHT

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Dear Secretary Williams:

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

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

Respectfully submitted,

Richard J. Schiefelbein
817-236-6841

ENTERED
Office of the Secretary

SEP 18 1998

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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



HOUSTON/GULF COAST OVERSIGHT

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

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

The Port of Houston Authority

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

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

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

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

Summary

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

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

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

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

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

Emergency Service Order Provisions

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

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

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

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

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

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

Neutral Switching on HB&T by PTRA

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

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

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

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

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

Expansion of Neutral Switching Area

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

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

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

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

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

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

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

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

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

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

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

Neutral Dispatching Performed by PTR A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tex Mex Yard in Houston

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

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

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

Additional Track between Houston and Beaumont

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

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

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

PTRA Operation of the Clinton Branch

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

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

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

No Change in Competitive Access

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

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

Service to the Elevator

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

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

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

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

Service to Woodhouse Terminal

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

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

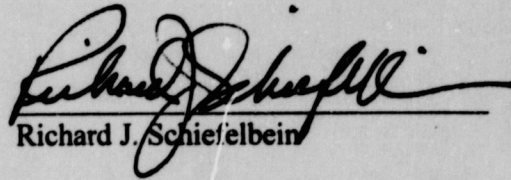
This example demonstrates the efficiency of using PTR A's North Yard, which is adjacent to the Clinton Branch, to handle traffic for the Clinton Branch rather than using UP's Englewood Yard, which is more distant.

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

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

CERTIFICATE OF SERVICE

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



Richard J. Schiefelbein

SERVICE LIST

Lindil Fowler, Jr.
Railroad Commission of Texas
P.O.Box 12967
Austin, TX 78711-2967

Richard A Allen
Zuckert Scout Rasenberger
888 17th Street N. W. Ste 600
Washington, DC 20006-3939

George A Aspatore
Norfolk Southern Corp
Three Commemercial Place
Norfolk, VA 23510

Donald G. Avery
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036-3003

Martin W. Bercovici
Keller & Heckman
1001 G ST NW Suite 500 West
Washington, DC 20001

Abby E. Caplan
1800 Massachusetts Ave. NW Suite 500
Washington, DC 20036-1883

Ross B. Capon
National Association of Railroad Passengers
900 2nd ST NE Suite 308
Washington, DC 20002

Paul D. Coleman
Hoppel Mayer & Coleman
1000 Connecticut Ave. NW Suite 400
Washington, DC 20036

Sean T. Connaughton
Eckert Seamans & Mellott LLC
1250 24th Street NW 7th Floor
Washington, DC 20037

Kenneth B. Cotton
3203 Areba
Houston, TX 77091

Nicholas J. DiMichael
Donelan Cleary Wood & Maser PC
1100 New York Ave N. W. Ste 750
Washington, DC 20005-3934

Richard D. Edelman
O'Donnell Schwartz & Anderson PC
1900 L. Street NW Suite 707
Washington, DC 20036

Daniel R. Elliott III
United Transportation Union
14600 Detroit Ave
Cleveland, OH 44107

Brian P. Felker
P.O.Box 2463
Houston, TX 77252-2463

Robert K. Glynn
Hoisington Chamber of Commerce
123 North Main Street
Hoisington, KS 67544-2594

Andrew P. Goldstein
McCarthy Sweeney Harkaway, PC
1750 Pennsylvania Ave NW. STE 1105
Washington, DC 20006

Donald F. Griffin
Brotherhood of Maintenance Way Employees
10 G. Street NE Ste 460
Washington, DC 20002

David L. Hall
Commonwealth Consulting Associates
13103 FM 1960 West Suite 204
Houston, TX 77065-4069

Roger H. Hord
Greater Houston Partnership
1200 Smith, Suite 700
Houston, TX 77002

Erika Z. Jones
Mayer Brown & Platt
2000 PA Av NW
Washington, DC 20006-1882

Richard Kerth
Champion International Corp
101 Knightsbridge Drive
Hamilton, OH 45020-0001

Alibert B. Krachman
Bracewell & Patterson LLP
2000 K St NW Ste 500
Washington, DC 20006-1872

John H. Leseur
Slover & Loftus
1224 17th Street NW
Washington, DC 20036-3081

Gordon P. MacDougall
1025 Connecticut Ave. NW Suite 410
Washington, DC 20036

David L Meyer
Covington & Burling
1201 Pennsylvania Av. NW
Washington, DC 20044-7566

Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036

Jeffrey O. Moreno
Donelan Cleary Wood Master
1100 New York Ave. NW, Suite 750
Washington, DC 20005-3934

William A. Mullins
Troutman Sanders LLP
1300 I Street NEW Suite 500 East
Washington, DC 20005 3314

David M. Perkins
Angelina & Neches River Railroad Company
P.O.Box 1328 2225 Spencer Street
Lufkin, TX 79502

Joseph J. Plaistow
Snively, King Majoros O'Connor & Lee, Inc.
1220 L. Street NW Ste 410
Washington, DC 20005

J. W. Reinacher
15 Riverside Ave
Wesport, CT 06880

Arvid E. Roach, II
Coveington & Burling
P.O.Box 7566
Washington, DC 20044-7566

Thomas E. Schick
1300 Wilson Boulevard
Arlington, VA 22209

Richard J. Schiefelbein
Woodharbor Associates
P.O.Box 137311
Fort Worth, TX 76179

Thomas A. Schmitz
Fieldston Co Inc.
1800 Massachusetts Ave. NW Ste 500
Washington, DC 20036

Richard G. Slattery
Amtrak
60 Massachusetts Ave. NE
Washington, DC 20002

William L. Slover
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036-3003

Paul Smuel Smith
US Department of Transportation
400 Seventh Street SW, room 4102 C-30
Washington, DC 20590

William W. Whitehurst Jr.
WW Whitehurst & Associates, Inc.
12421 Happy Hollow Road
Cockeysville, MD 21030

Robert A. Wimbish ESQ
Rea Cross & Auchincloss
1707 L. Street NW Suite 570
Washington, DC 20036

Frederic Wood
Donelan Cleary Wood & Maser PC
1100 New York Ave. NW Suite 750
Washington, DC 20005-3934

James V. Woodrick
1402 Nueces Street
Austin, TX 78701-1586

STB FD 32760 (Sub 27) 9-18-98 D 191194



GREATER HOUSTON PARTNERSHIP

Chamber of Commerce • Economic Development • World Trade

ENTERED
Office of the Secretary

SEP 18 1998

**Part of
Public Record**

September 17, 1998

Honorable Vernon Williams
Case Control Unit

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

Re:

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

HOUSTON/GULF COAST OVERSIGHT



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Dear Secretary Williams:

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

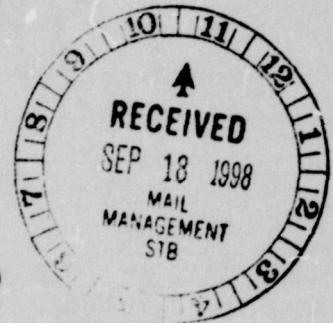
An original and 25 copies are enclosed, together with a 3.5-inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Roger H. Hord
713 844-3625

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

HOUSTON/GULF COAST OVERSIGHT

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

**ENTERED
Office of the Secretary**

SEP 18 1998

**Part of
Public Record**

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

The Greater Houston Partnership

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

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

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

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

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

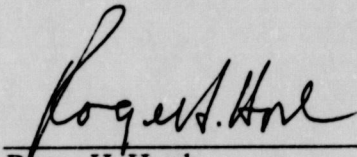
The conditions described above, which have been requested in the Consensus Plan, are similar to the GHP Board of Directors' resolution on *Competition in Houston Freight Rail Service*. The GHP Board's resolution emphasizes that Houston's rail system performance must be "in the top tier of United States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

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

September 17, 1998

CERTIFICATE OF SERVICE

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

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

Roger H. Hord
713 844-3625

SERVICE LIST

Lindil Fowler, Jr.
Railroad Commission of Texas
P.O.Box 12967
Austin, TX 78711-2967

Richard A Allen
Zuckert Scout Rasenberger
888 17th Street N. W. Ste 600
Washington, DC 20006-3939

George A Aspatore
Norfolk Southern Corp
Three Commemercial Place
Norfolk, VA 23510

Donald G. Avery
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036-3003

Martin W. Bercovici
Keller & Heckman
1001 G ST NW Suite 500 West
Washington, DC 20001

Abby E. Caplan
1800 Massachusetts Ave. NW Suite 500
Washington, DC 20036-1883

Ross B. Capon
National Association of Railroad Passengers
900 2nd ST NE Suite 308
Washington, DC 20002

Paul D. Coleman
Hoppel Mayer & Coleman
1000 Connecticut Ave. NW Suite 400
Washington, DC 20036

Sean T. Connaughton
Eckert Seamans & Mellott LLC
1250 24th Street NW 7th Floor
Washington, DC 20037

Kenneth B. Cotton
3203 Areba
Houston, TX 77091

Nicholas J. DiMichael
Donelan Cleary Wood & Maser PC
1100 New York Ave N. W. Ste 750
Washington, DC 20005-3934

Richard D. Edelman
O'Donnell Schwartz & Anderson PC
1900 L. Street NW Suite 707
Washington, DC 20036

Daniel R. Elliott III
United Transportation Union
14600 Detroit Ave
Cleveland, OH 44107

Brian P. Felker
P.O.Box 2463
Houston, TX 77252-2463

Robert K. Glynn
Hoisington Chamber of Commerce
123 North Main Street
Hoisington, KS 67544-2594

Andrew P. Goldstein
McCarthy Sweeney Harkaway, PC
1750 Pennsylvania Ave NW. STE 1105
Washington, DC 20006

Donald F. Griffin
Brotherhood of Maintenance Way Employees
10 G. Street NE Ste 460
Washington, DC 20002

David L. Hall
Commonwealth Consulting Associates
13103 FM 1960 West Suite 204
Houston, TX 77065-4069

Roger H. Hord
Greater Houston Partnership
1200 Smith, Suite 700
Houston, TX 77002

Erika Z. Jones
Mayer Brown & Platt
2000 PA Av NW
Washington, DC 20006-1882

Richard Kerth
Champion International Corp
101 Knightsbridge Drive
Hamilton, OH 45020-0001

Albert B. Krachman
Bracewell & Patterson LLP
2000 K St NW Ste 500
Washington, DC 20006-1872

John H. Leseur
Slover & Loftus
1224 17th Street NW
Washington, DC 20036-3081

Gordon P. MacDougall
1025 Connecticut Ave. NW Suite 410
Washington, DC 20036

David L Meyer
Covington & Burling
1201 Pennsylvania Av. NW
Washington, DC 20044-7566

Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036

Jeffrey O. Moreno
Donelan Cleary Wood Master
1100 New York Ave. NW, Suite 750
Washington, DC 20005-3934

William A. Mullins
Troutman Sanders LLP
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Washington, DC 20005 3314

David M. Perkins
Angelina & Neches River Railroad Company
P.O.Box 1328 2225 Spencer Street
Lufkin, TX 79502

Joseph J. Plaistow
Snavey, King Majoros O'Connor & Lee, Inc.
1220 L. Street NW Ste 410
Washington, DC 20005

J. W. Reinacher
15 Riverside Ave
Wesport, CT 06880

Arvid E. Roach, II
Coveington & Burling
P.O.Box 7566
Washington, DC 20044-7566

Thomas E. Schick
1300 Wilson Boulevard
Arlington, VA 22209

Richard J. Schiefelbein
Woodharbor Associates
P.O.Box 137311
Fort Worth, TX 76179

Thomas A. Schmitz
Fieldston Co Inc.
1800 Massachusetts Ave. NW Ste 500
Washington, DC 20036

Richard G. Slattery
Amtrak
60 Massachusetts Ave. NE
Washington, DC 20002

William L. Slover
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036-3003

Paul Smuel Smith
US Department of Transportation
400 Seventh Street SW, room 4102 C-30
Washington, DC 20590

William W. Whitehurst Jr.
WW Whitehurst & Associates, Inc.
12421 Happy Hollow Road
Cockeysville, MD 21030

Robert A. Wimbish ESQ
Rea Cross & Auchincloss
1707 L. Street NW Suite 570
Washington, DC 20036

Frederic Wood
Donelan Cleary Wood & Maser PC
1100 New York Ave. NW Suite 750
Washington, DC 20005-3934

James V. Woodrick
1402 Nueces Street
Austin, TX 78701-1586

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Office of the Secretary

AUG 28 1998

Part of
Public Record

Before the

SURFACE TRANSPORTATION BOARD

ORIGINAL



Finance Docket No. 32760 (Sub-No. 26)^{1/}

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]

NOTICE OF INTENT TO PARTICIPATE

Joseph C. Szabo,^{2/} for and on behalf of United Transportation Union-Illinois Legislative Board, gives notice of intent to participate. 63 Fed. Reg. 42482-86. (August 7, 1998).

Gordon P. MacDougal
GORDON P. MACDOUGAL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Joseph C. Szabo

August 28, 1998

^{1/}Embraces also Finance Docket No. 32760 (Sub-Nos. 27 thru 32).

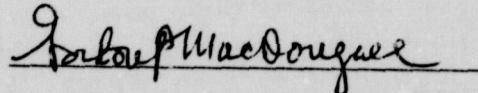
^{2/}Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the foregoing upon the following in accordance with the decision served August 4, 1998 by first class mail postage-prepaid:

Arvid E. Roach II
Covington & Burling
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington DC 20044

Stephen Grossman, ALJ
Federal Energy Regulatory Comm.
888 First St., N.E.-#11F
Washington DC 20426

A handwritten signature in dark ink, appearing to read "Gordon P. MacDougall", is written over a horizontal line.

GORDON P. MacDOUGALL

Dated at
Washington DC
August 28, 1998

STB FD

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BEFORE THE
SURFACE TRANSPORTATION BOARD **Part of
Public Record**

Finance Docket No. 32760 (Sub-No. 26)
[and Sub. Nos. 27-31]

UNION PACIFIC CORP. et al.
--Control and Merger--
SOUTHERN PACIFIC RAIL CORP. et al.
[HOUSTON/GULF COAST OVERSIGHT]



NOTICE OF INTENT TO PARTICIPATE

Pursuant to the Board's Decision No.6 in these proceedings, the Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders Blacksmiths Forgers and Helpers; National Council of Firemen and Oilers/SEIU; and Sheet Metal Workers International Association, give notice of their intention to participate in these proceedings through their counsel O'Donnell, Schwartz & Anderson. These organizations will participate together in this proceeding and they will be referred to collectively herein as the "Allied Rail Unions" or "ARU". Service of filings in this case on the ARU should be provided to Richard S. Edelman, Of Counsel, O'Donnell, Schwartz & Anderson, as counsel for the ARU.

Respectfully submitted,

Richard S. Edelman
Of Counsel
O'Donnell, Schwartz & Anderson
1900 L Street, N.W.
Suite 707
Washington, D.C. 20036
(202) 898-1824

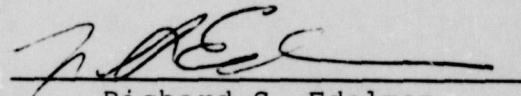
August 27, 1998

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CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. this 27th day of August, 1998.


Richard S. Edelman

STB

FD-32760

(SUB27)

8-19-98

D

ID-190594

LAW OFFICES

KELLER AND HECKMAN LLP

1001 G STREET, N.W.
SUITE 500 WEST
WASHINGTON, D.C. 20001
TELEPHONE (202) 434-4100
FACSIMILE (202) 434-4646

—
25 RUE BLANCHE
B-1060 BRUSSELS
TELEPHONE 32(2) 541 05 70
FACSIMILE 32(2) 541 05 80

—
WWW.ENLAW.COM

JOSEPH E. KELLER (1907-1994)
JEROME H. HECKMAN
WILLIAM M. BORGHESEANI, JR.
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WAYNE V. BLACK
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DANIEL QUINTART
DAVID CH. LASHWAY
TAMAR J. LEE
AMY E. FORTENBERRY

*NOT ADMITTED IN D.C.
*RESIDENT BRUSSELS

SCIENTIFIC STAFF

DANIEL S. DIXLER, Ph.D.
CHARLES V. BREDER, Ph.D.
ROBERT A. MATHEWS, Ph.D., D.A.B.T.
JOHN P. MODDERMAN, Ph.D.
(1944-1998)
MOLLY HUTMIRE FOLEY
JANETTE HOUK, Ph.D.
LESTER BORODINSKY, Ph.D.
THOMAS C. BROWN
MICHAEL T. FLOOD, Ph.D.
ANDREW P. JOVANOVIICH, Ph.D.
ANNA GERGELY, Ph.D.
STEFANIE M. CORBITT
JUSTIN J. FREDERICO, Ph.D.
RACHEL F. JOYNER

TELECOMMUNICATIONS
ENGINEER
RANDALL D. YOUNG

WRITER'S DIRECT ACCESS

August 19, 1998

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW, Room 700
Washington, DC 20423-0001

Re: Union Pacific Corp. — Control and Merger — Southern Rail Corp.
STB Finance Docket No. 32760 (Sub-Nos. 26-32)

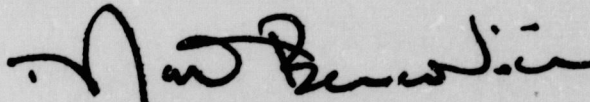
Dear Secretary Williams:

Pursuant to Decision No. 6 issued in the above-referenced matter, The Society of the Plastics Industry, Inc., hereby submits its Notice of Intent to Participate. Please include the undersigned on the service list in this proceeding, as follows:

Martin W. Bercovici
Keller and Heckman, LLP
1001 G Street, NW
Suite 500 West
Washington, DC 20001
Attorney for The Society of the Plastics Industry, Inc.

Copies of this letter are being served upon all parties on the service list to the Board's oversight proceeding.

Respectfully submitted,


Martin W. Bercovici
Attorney for The Society of the Plastics Industry, Inc.

(202) 434-4144
Bercovici@khlaw.com

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FD-32760 (SUB27)

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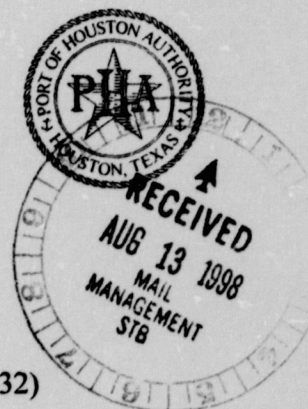
PORT OF HOUSTON AUTHORITY

EXECUTIVE OFFICES: 111 EAST LOOP NORTH • HOUSTON, TEXAS 77029-4327
MAILING ADDRESS: P.O. BOX 2562 • HOUSTON, TEXAS 77252-2562
TELEPHONE: (713) 670-2400 • FAX: (713) 670-2429

ENTERED
Office of the Secretary

AUG 13 1998

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August 10, 1998

Office of the Secretary
Case Control Unit

ATTN: STB Finance Docket No. 32760 (Sub-Nos. 27, 28, 29, 30, 31, 32)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Sub 27

Dear Secretary Williams:

RE:

STB Finance Docket 32760 (Sub-No. 27) - 190508
Texas Mexican Railway Company & Kansas City Southern Railway
-- Construction Exemption --
Rail Line between Rosenberg and Victoria, TX

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 28) - 190509
Burlington Northern and Santa Fe Railway Company
-- Terminal Trackage Rights --
Texas Mexican Railway Company

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 29) - 190510
Burlington Northern and Santa Fe Railway Company
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 30) -190511
Texas Mexican Railway Company, et al.
Request for Adoption of Consensus Plan

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 31) -190512
Houston & Gulf Coast Railroad
Application for Trackage Rights and Forced Line Sales

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 32) -190513
Capital Metropolitan Transportation Authority
-- Responsive Application --
Interchange Rights

Notice of Intent to Participate

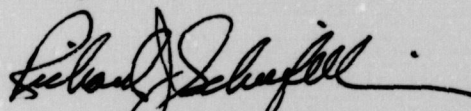
The Port of Houston Authority intends to participate in the above-captioned proceedings. Please include Richard J. Schiefelbein on the service list as a party of record representing the Port of Houston Authority, at the following address:

Richard J. Schiefelbein
Woodharbor Associates
7801 Woodharbor Drive
Fort Worth, Texas 76179-3047
Represents: Port of Houston Authority

Phone: 817-236-6841
Fax: 817-236-6842

An original and 20 copies of this filing are enclosed.

Respectfully submitted,



Richard J. Schiefelbein
For: Port of Houston Authority

STB FD-32760 (SUB27) 8-11-98 D ID-190466



GREATER HOUSTON PARTNERSHIP

Chamber of Commerce • Economic Development • World Trade

August 10, 1998

Office of the Secretary
Case Control Unit

ATTN: STB Finance Docket No. 32760 (Sub-Nos. 27,28,29,30, 32, 32)
Surface Transportation Board
1925 K. Street N.W.
Washington, DC 20423-0001

Dear Secretary Williams:

RE:

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AUG 11 1998

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STB Finance Docket 32760 (Sub-No. 27) - 190466
Texas Mexican Railway Company & Kansas City Southern Railway
-- Construction Exemption --
Rail Line between Rosenberg and Victoria, TX.

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 28) - 190467
Burlington Northern and Santa Fe Railway Company
-- Terminal Trackage Rights --
Texas Mexican Railway Company

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 29) - 190468
Burlington Northern and Santa Fe Railway Company
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 30) - 190469
Texas Mexican Railway Company, et al.
Request for Adoption of Consensus Plan

Notice of Intent to Participate

August 10, 1998
Page 2

STB Finance Docket 32760 (Sub-No. 31) - 190470
Houston & Gulf Coast Railroad
Application for Trackage Rights and Forced Line Sales

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 32) - 190471
Capital Metropolitan Transportation Authority
-- Responsive Application --
Interchange Rights

Notice of Intent to Participate

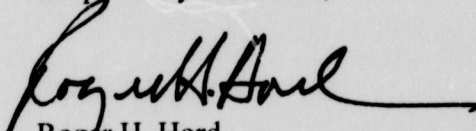
The Greater Houston Partnership intends to participate in the above-captioned proceedings. Please include Roger H. Hord on the service list as a party of record representing the Greater Houston Partnership at the following address:

Roger H. Hord
Greater Houston Partnership
1200 Smith, 7th Floor
Houston, Texas 77002

Phone: 713.844.3625
Fax: 713.844.0225

An original and 25 copies of this filing are enclosed.

Respectfully submitted,


Roger H. Hord

cc: Arvid E. Roach II, Esq., Covington & Burling
Judge Stephen Grossman, Federal Energy Regulatory Commission
Richard Allen, Zuckert, Scoutt & Rasenberger, L.L.P.

STB FD-32760 (SUB27) 8-11-98 D ID-190460

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

ENTERED
Office of the Secretary

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1300 I STREET, N.W.

SUITE 500 EAST

WASHINGTON, D.C. 20005-3314

TELEPHONE: 202-274-2950

FACSIMILE: 202-274-2994

william.mullins@troutmansanders.com

William A. Mullins

August 11, 1998

VIA HAND DELIVERY

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

RE: STB Finance Docket No. 32760 (Sub-Nos. 26-32)

Dear Secretary Williams:

Pursuant to Decision No. 6 in the above-referenced docket, The Kansas City Southern Railway Company ("KCS") hereby submits its notice of intent to participate. Please place the following representatives of KCS on the official service list in this proceeding:

William A. Mullins
David C. Reeves
Sandra L. Brown
Ivor Heyman
Samantha J. Friedlander
Troutman Sanders, L.L.P.
1300 I Street, N.W., Suite 500 East
Washington, DC 20005-3314
Phone: (202) 274-2950
Fax: (202) 274-2994

Enclosed with this original are twenty-six additional copies. Please date and time stamp one copy for return to our office. Also included is a 3.5 inch diskette containing the text of this document.

Sincerely yours,



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

cc: Robert K. Dreiling
Richard A. Allen
Parties of Record

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202-274-2953

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MAIL
MANAGEMENT
STB

STB FD-32760 (SUB27) 8-5-98 D ID-190391

LAW OFFICES

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

888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE: (202) 298-8660
FACSIMILES: (202) 342-0683
(202) 342-1316



RICHARD A. ALLEN

August 4, 1998

VIA HAND DELIVERY

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

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Office of the Secretary

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**Re: Union Pacific Corp. -- Control and Merger - Southern Pacific Rail Corp.,
STB Finance Docket No. 32760 (Sub-Nos. 26 - 32)**

Dear Secretary Williams:

Sub 27

Pursuant to Decision No. 6 issued in the above-referenced docket, The Texas Mexican Railway Company ("Tex Mex") hereby submits its notice of intent to participate. Please place the following representatives of Tex Mex on the official service list in this proceeding:

Richard A. Allen
Scott M. Zimmerman
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W., Suite 600
Washington, DC 20006-3939

Copies of this letter are being served on all the representatives of all persons who have filed appearances in this proceeding, including UP's representatives.

Sincerely,

Richard A. Allen
Counsel to The Texas Mexican Railway
Company

STB FD 32760 (Sub 27) 10-23-98 I 191823

ENTERED
Office of the Secretary

OCT 26 1998

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TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2917

INTERNET: william.mullins@troutmansanders.com

William A. Mullins

October 23, 1998

HAND DELIVERY

Honorable Vernon A. Williams
Case Control Unit
Attn: STB FD 32760 (Sub-Nos. 26-32)
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20006

RE: Finance Docket No. 32760 (Sub-Nos. 26 - 32),
*Union Pacific Corp., et al. - Control & Merger - Southern Pacific Rail Corp.,
et al. - Houston/Gulf Coast Oversight*

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are an original and twenty-six copies of the Consensus Parties' Request for Oral Argument, CMA-9, *et al.*, filed on behalf of The Chemical Manufacturers Association, The Society of Plastics Industry, Inc., The Railroad Commission of Texas, The Texas Chemical Council, The Texas Mexican Railway, and The Kansas City Southern Railway Company (collectively, the "Consensus Parties"). Also enclosed is 3.5-inch diskette containing the text of the pleading in WordPerfect format.

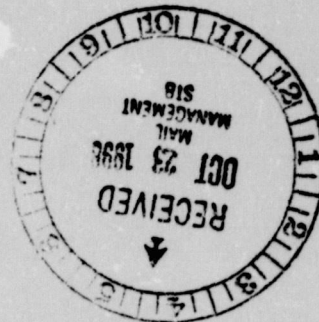
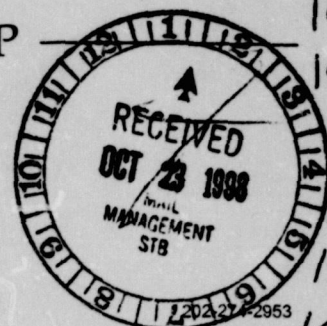
Please date and time stamp one copy of the enclosed Consensus Parties' Request for Oral Argument for return to our offices.

Sincerely,



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

cc: Parties of Record
Honorable Stephen J. Grossman



ENTERED
Office of the Secretary

OCT 26 1998

Part of
Public Record

CMA-9 SPI-9
RCT-8 TCC-9
TM-25 KCS-16



BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

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CONSENSUS PARTIES' REQUEST FOR ORAL ARGUMENT

THE CHEMICAL MANUFACTURERS
ASSOCIATION

THE SOCIETY OF THE PLASTICS INDUSTRY,
INC.

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS CHEMICAL COUNCIL

THE TEXAS MEXICAN RAILWAY COMPANY

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

October 23, 1998

(and embraced sub-dockets)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

CONSENSUS PARTIES' REQUEST FOR ORAL ARGUMENT

The Chemical Manufacturers Association ("CMA"), The Society of the Plastics Industry, Inc. ("SPI"), The Texas Chemical Council ("TCC"), The Railroad Commission of Texas ("RCT"), The Texas Mexican Railway Company ("Tex Mex"), and The Kansas City Southern Railway Company ("KCS") (collectively, the "Consensus Parties") hereby petition the Surface Transportation Board ("STB" or "Board") to conduct oral argument in this proceeding to allow the Board give and take with the parties to clarify the wide-ranging and complex issues in this important proceeding. The Consensus Parties request that the Board schedule oral argument the week of November 30, 1998, unless the Board determines that briefs are required prior to the argument, in which case oral argument during the week beginning December 7 is suggested. The Consensus Parties request 90 minutes' argument each for the Consensus Parties and for Union Pacific Railroad Company ("UP"), with 40 minutes allocated to The Burlington Northern and

Santa Fe Railway Company ("BNSF") and such lesser periods allocated to other interested parties as may be appropriate.

SUMMARY

Because of the importance and complexity of this proceeding, the Board should give this matter its full attention through the give and take of oral argument. The issues presented in this proceeding are very important, as demonstrated by the damage caused by the western rail service crisis stemming from UP's failure to maintain fluid rail operations in Houston, by the scope of damage UP alleges it would incur if the Consensus Plan were granted, and by the cost of the proposed infrastructure investments at stake. The complexity of this proceeding results from the number and diversity of the issues, with matters ranging from economic theory and Constitutional law to how well a particular switching plan will function and how great an increase in effective capacity will result from double-tracking the Lafayette Subdivision, and from the size of the written record. The importance and complexity of this proceeding, which seeks to determine the relationship between UP's consolidation of market power in Houston and the service crisis, and whether a change in conditions to the merger is needed to remedy that relationship, dictate the need for oral argument of these matters before the Board.

ARGUMENT SUPPORTING PETITION

Oral argument is warranted in proceedings which, because of the significance and complexity of issues they present, call for full consideration by the Board through the give and take of oral argument. This is such a proceeding.¹

¹ This petition is submitted pursuant to 49 C.F.R. Parts 1116 and 1117.

Oral argument normally is conducted in proceedings which, like the instant matter, involve complex and significant issues, particularly those involving major rail mergers. Oral argument is a standard feature of major merger or control proceedings before the Board. See generally *Canadian National Railway Company, et al.—Control—Illinois Central Corporation, et al.*, STB Finance Docket No. 33556, Decision No. 11, served Oct. 2, 1998 at 8, and *CSX Corporation, et al.—Control and Operating Leases/Agreements—Conrail Inc., et al.*, STB Finance Docket No. 33388, Decision No. 6, served May 30, 1997 at 9 (each including oral argument as part of the basic procedural schedule for the matter). Indeed, the Board scheduled five hours of argument time to allow its full consideration of the original UP/SP merger application, with the argument itself lasting much longer because of the valuable give and take between parties and the Board. See *Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Railroad Corporation, et al.*, STB Finance Docket No. 32760 (and embraced sub dockets), Decision No. 41, served June 19, 1996 at Appendix A. Other, non-merger matters have also been subject to oral argument before the Board and its predecessor in recent years because of their importance. See, e.g., *Central Power and Light Company v. Southern Pacific Transportation Company*; *Pennsylvania Power & Light Company v. Consolidated Rail Corporation*; *Midamerican Energy Company v. Union Pacific Railroad Company And Chicago And North Western Railway Company*, Nos. 41242, 41295 and 41626 (STB served Aug. 27, 1996) (“Bottleneck Cases”) (rate reasonableness issues for bottleneck rail transportation considered); *City Of Detroit v. Canadian National Railway Company, et al.*; *Canadian Pacific Limited v. Canadian National Railway Company, et al.*, Finance Docket Nos. 32243 and 32266 (ICC served Sept. 9, 1993) (“Detroit Tunnel”) (scope of the ICC’s jurisdiction under 10901 considered); and *Wilmington Terminal Railroad, Inc. --*

Purchase And Lease --CSX Transportation, Inc. Lines Between Savannah And Rhine, and Vidalia And Macon, GA, Finance Docket No. 31530 (ICC served Jan. 22, 1990)

(“*Wilmington Terminal*”) (important rail labor issues raised). *See also Rail Service in the Western United States*, Ex Parte No. 573 (STB served Oct. 2, 1997) (ordering public hearing and oral presentations by affected parties due to severity of rail service emergency). Thus, in proceedings raising important issues, and particularly in merger-related matters, the Board commonly holds oral argument to allow a complete exploration of the issues.

The issues in this proceeding are important and require oral argument. First, this proceeding is an outgrowth of the UP/SP merger proceeding, and involves issues related to those argued before the Board in that matter. The relationship between the issues that were important enough to require oral argument in the original merger and the issues involved here, plus the fact that this proceeding arises as part of ongoing oversight of the UP/SP merger, weighs in favor of oral argument.²

Second, the impact of the issues at stake here is comparable to that of other proceedings in which the Board or the ICC conducted oral argument. The Board has conducted oral argument in cases such as the *Bottleneck Cases* and *Detroit Tunnel*, for example, because the decisions in those cases have the potential to impact large numbers of parties. The western rail service crisis has graphically demonstrated that rail operations in Houston have the ability to impact shippers and railroads throughout much of the country, as even UP conceded. “System

² The 90 minute argument periods requested for the Consensus Parties and UP and the lesser periods suggested for other parties reflect the argument time allocations of the original UP/SP merger argument. *See Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corporation, et al.*, STB Finance Docket No. 32760 (and embraced sub dockets), Decision No. 41, served June 19, 1996 at Appendix A.

congestion started in the Gulf Coast region and spread throughout the system as the Registrant shifted resources . . . Traffic slowed further as rail yards in the Gulf Coast region filled, slowing access into and out of the yards and forcing trains to be held on sidings." UP 10-K dated March 30, 1998, filed with the Securities and Exchange Commission at 2 - 3. Because the Board's decision in this matter will affect an important rail corridor where fluidity of rail operations can have widespread effects, oral argument is warranted.

Third, the practical and financial impact of matters at issue here also call for full exploration of the issues through oral argument. The service crisis of the past year started in Houston. That crisis has had huge financial impacts across the nation. As early in the crisis as February 1998, economists were already estimating the damages to Texas shippers alone at more than \$1.1 billion, and at \$2.0 billion nationally. *See Consensus Plan*³ at 192 and 210. Losses of this magnitude in current dollars effectively cancel out even the optimistic projections of future shipper logistics benefits that UP's merger application predicted would result after full implementation of the merger. *See generally* Railroad Merger Application, UP/SP-22, Volume 1, filed November 30, 1995 in Finance Docket No. 32760 at 8.⁴ The Consensus Plan is designed to help assure that the crisis and deteriorated rail service that western U.S. rail shippers have endured for more than a year do not recur. It will do so in part by adding many millions of

³ *Request for Adoption of a Consensus Plan In Order to Resolve Service and Competitive Problems in the Houston/Gulf Coast Area*, CMA-2, SPI-2, RCT-2, TCC-2, TM-2, KCS-2, Finance Docket No. 32760 (Sub-No. 26), filed July 8, 1998 ("Consensus Plan").

⁴ The discounted current value of those approximately \$90 million in deferred shipper logistics benefits is far less than the costs already inflicted on shippers by the UP service meltdown; that is, even if UP's projected shipper logistics benefits ever arose, they never could make up the losses shippers already have suffered. Moreover, the Consensus Parties' rebuttal shows that UP's projected shipper logistics benefits will not materialize. *Rebuttal Evidence and Argument in Support of the Consensus Plan*, CMA-4, SPI-4,

dollars' worth of new Gulf Coast infrastructure, and by ensuring that Houston rail operations do not become gridlocked again as has happened during the past year. Because of the economic impact throughout the West of such changes,⁵ and because of the size of the new infrastructure investment which the Consensus Plan offers, the Consensus Plan and UP's response thereto deserve thorough consideration by the Board. Oral argument will facilitate that consideration.

Oral argument also is needed in this matter because the issues in this proceeding are complex, wide-ranging and hotly disputed. Issues presented range from economic issues of what conditions encourage infrastructure investment to Constitutional "takings" issues raised by UP (and rebutted by the Consensus Parties) to nuts and bolts issues of how effectively a particular type of switching operation will function or the extent to which the proposed double tracking of the Lafayette Subdivision will increase the effective capacity of that line. Thus, issues presented range from somewhat esoteric economic and legal questions to very practical issues of how best to utilize or augment existing rail facilities. Because of the diversity and complexity of these issues, the give and take of oral argument would be an effective tool for the Board.

That the parties have not briefed this proceeding even more strongly suggests the need for oral argument. The Consensus Parties and UP each have presented over 1000 pages of written material for the Board's consideration. Oral argument in this matter would be especially useful for distilling that large volume of material. Indeed, the give and take between the Board and the parties at oral argument would be very effective in that respect because the parties could directly address the issues that are of the most concern to the Board, focusing the Board's examination on

RCT-3, TCC-4, TM-20, KCS-11, Finance Docket No. 32760 (Sub-No. 26 and embraced sub dockets), filed Oct. 16, 1998, Vol. 1 at 81-2, Vol. II at 110.

crucial points.⁶ Again, oral argument is an effective and necessary tool available for the Board's use in this complex matter.

The ultimate issue in this proceeding - "whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred here, and, if so, whether the situation should be addressed through additional remedial conditions"⁷ - is as hotly disputed as it is complex. Unquestionably, the Consensus Parties have answered the Board's question affirmatively; that is, that UP's accumulation of market power through its merger with SP is related to the rail service crisis, and that additional remedial conditions proposed by the Consensus Plan are necessary to prevent a recurrence of the crisis and to deliver benefits to rail shippers that UP has promised but cannot deliver. UP, on the other hand, takes exactly the opposite view. Because the views of the principal parties are so diametrically opposed, the Board needs to test those views and the evidence that underlies them through the direct interchange of questions and answers that only oral argument will allow.

CONCLUSION

The importance of this proceeding and the complex and wide-ranging issues it presents dictate the need for oral argument before the Board. The unprecedented western rail service crisis stemmed from the inability of Union Pacific Railroad Company ("UP") to maintain fluid

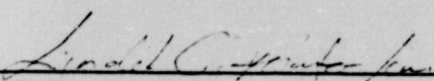
⁵ Including UP's claims of prospective financial losses if the Consensus Plan is implemented.

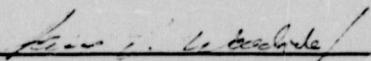
⁶ "[T]he purpose of the oral argument is . . . to summarize and emphasize the key points of each party's case and to provide an opportunity for questions from Members of the Board." *CSX Corporation, et al.—Control and Operating Leases/Agreements—Conrail Inc., et al.*, STB Finance Docket No. 33388, Decision No. 80, served May 12, 1998, 1998 WL 331620 at *1.

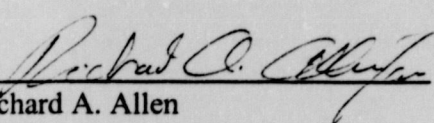
⁷ *Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corporation, et al., Oversight*, STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 12, served March 31, 1998 at 8.

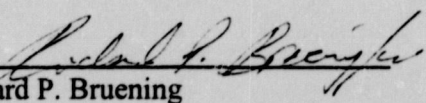
rail operations in Houston. The result of that crisis was a loss to Texas businesses alone by February 1998 of more than \$1.1 billion, with estimates of damage to shippers nationwide during the past 15 to 18 months being much larger. The scope of those damages, their effective nullification of the shipper logistics benefits which UP projected would result from the merger, and the many millions of dollars in new infrastructure investment riding on the outcome of this proceeding require the Board's utmost attention by all available means, including oral argument. The complexity and diversity of the issues involved and the size of the written record also call for distillation of the crucial issues through the medium of oral argument.

Respectfully submitted and signed on each party's behalf with express permission,

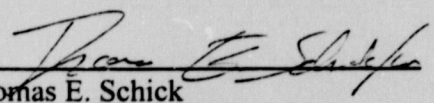

Lindil C. Fowler, Jr., General Counsel
THE RAILROAD COMMISSION OF TEXAS
1701 Congress Avenue
P.C. Box 12967
Austin, Texas 78711-2967
Tel: (512) 463-6715
Fax: (512) 463-8824



James V. Woodrick, President
THE TEXAS CHEMICAL COUNCIL
1402 Nueces Street
Austin, Texas 78701-1586
Tel: (512) 477-4465
Fax: (512) 477-5387


Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939
Tel: (202) 298-8660
Fax: (202) 342-0683

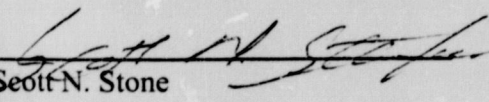

Richard P. Bruening
Robert K. Dreiling
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 983-1392
Fax: (816) 983-1227

ATTORNEYS FOR THE TEXAS MEXICAN
RAILWAY COMPANY

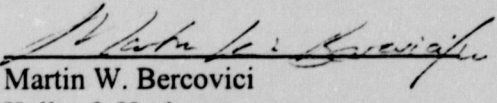

Thomas E. Schick
The Chemical Manufacturers Association
1300 Wilson Boulevard
Arlington, VA 22209
Tel: (703) 741-5172
Fax: (703) 741-6092


William A. Mullins
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
Tel: (202) 274-2950
Fax: (202) 274-2994

ATTORNEYS FOR THE KANSAS CITY SOUTHERN
RAILWAY COMPANY


Scott N. Stone
Patton, Boggs L.L.P.
2550 M Street, NW
Washington, D.C. 20037
Tel: (202) 457-6335
Fax: (202) 457-6315

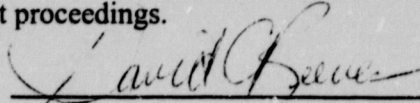
ATTORNEYS FOR THE CHEMICAL
MANUFACTURERS ASSOCIATION


Martin W. Bercovici
Keller & Heckman
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001
Tel: (202) 434-4144
Fax: (202) 434-4651

ATTORNEYS FOR THE SOCIETY OF PLASTICS
INDUSTRY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the "**CONSENSUS PARTIES' REQUEST FOR ORAL ARGUMENT**" was served this 23rd day of October, 1998, by hand delivery to counsel for Union Pacific Railroad Company and Burlington Northern and Santa Fe Railway Company and on Judge Grossman, by overnight delivery service to the Port Terminal Railway Association and the Houston Belt & Terminal Railway Company, by first class mail upon all other known parties of record in the Sub-No. 26 oversight proceedings.



David C. Reeves
Attorney for The Kansas City Southern
Railway Company

STB FD 32769 (Sub 27) 11-10-98 I 192184

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FAX: 202-274-2994
INTERNET: sandra.brown@troutmansanders.com



William A. Mullins, Esq.

FD 32760 26-32
November 10 1998 192183

HAND DELIVERY

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

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(27) 192184
(28) 192185
(29) 192186
(30) 192187
(31) 192188
(32) 192189

I

Re: Finance Docket No. 32760 (Sub 26-32)

Enclosed for filing in the above captioned docket are the original and twenty six copies of the Motion to Strike Union Pacific's October 27, 1998 Letter, or alternatively, Sur-rebuttal in Support of the Consensus Plan

Also enclosed is a 3.5-inch computer disk containing the enclosed motion in WordPerfect 5.1 format.

Please date stamp the enclosed extra copy of the pleading and return it to the messenger for our files.

Sincerely yours,

ENTERED
Office of the Secretary

NOV 12 1998

Part of
Public Record

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

Enclosures

CMA-10 SPI-10
RCT-9 TCC-10
TM-26 KCS-17

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

**MOTION TO STRIKE UNION PACIFIC'S OCTOBER 27, 1998
LETTER, OR ALTERNATIVELY, SUR-REBUTTAL IN
SUPPORT OF THE CONSENSUS PLAN**

**THE CHEMICAL MANUFACTURERS
ASSOCIATION**

**THE SOCIETY OF THE PLASTICS INDUSTRY,
INC.**

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS CHEMICAL COUNCIL

THE TEXAS MEXICAN RAILWAY COMPANY

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

November 10, 1998

(* and embraced sub-dockets)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

**MOTION TO STRIKE UNION PACIFIC'S OCTOBER 27, 1998
LETTER, OR ALTERNATIVELY, SUR-REBUTTAL IN
SUPPORT OF THE CONSENSUS PLAN**

INTRODUCTION AND SUMMARY

On October 27, 1998, counsel for Union Pacific, submitted a letter to Secretary Vernon Williams (hereinafter "UP Letter") in the above referenced docket number. The express purpose of the letter was to constitute a "reply" to the October 16 rebuttal filing by the Consensus Parties. The Consensus Parties move to strike the UP Letter on the grounds that it constitutes an impermissible reply to a reply prohibited under 49 C.F.R. 1104.13(c).

While UP claims it is "strongly adverse to burdening the Board and the record by tendering additional, sur-reply materials," UP nonetheless then proceeds to do just that and replies to the Consensus Parties' rebuttal on the grounds that it is entitled to do so because the Consensus Parties' rebuttal contained "two items of [new] evidence." UP Letter at 1. The Consensus Parties emphatically disagree with UP's characterization that any portion of the

Consensus Parties' rebuttal contained "new" evidence. In the event the Board does not strike the UP Letter, the Consensus Parties believe they are entitled to file sur-rebuttal and therefore respectfully request that the Board accept the following evidence and argument in rebuttal of the UP Letter.

ARGUMENT

The Board's rule prohibiting a reply to a reply is very clear and emphatically states that "[a] reply to a reply is not permitted." 49 C.F.R. 1104.13(c). While the Consensus Parties recognize that the Board and its predecessor sometimes have waived this rule in the interest of developing a complete record, UP's inaccurate allegations do not provide sufficient grounds to waive this long standing rule. Neither Messrs. Grimm, Plaistow nor Thomas presented any new evidence as part of their rebuttal verified statements (hereinafter "R.V.S. Grimm/Plaistow" and "R.V.S. Thomas"). Even a cursory look at the opening filings in this proceeding made on March 30, 1998 and July 8, 1998, combined with a look at the Replies made on September 18, 1998 plainly indicates that all of the rebuttal testimony presented by these rebuttal witnesses was proper rebuttal testimony.

The evidence in the R.V.S. Grimm/Plaistow rebuttal was in direct response to UP's criticism filed on September 18, 1998. See V.S. Barber at 4-8, 14-53 and V.S. Peterson at 2-5, 19-22. For example, Mr. Barber states that all "2-to-1" shippers have benefited from competition between BNSF and UP. V.S. Barber at 23-24. Mr. Barber then goes on to attack the value of Messrs. Grimm and Plaistow's competitive analysis because they have aggregated the traffic data including the "2-to-1" traffic. V.S. Barber at 24, including footnote 4. Mr. Peterson echoes Mr. Barber's view on the aggregated "2-to-1" traffic analysis. V.S. Peterson at 19-22. As a result, it

is proper rebuttal for Messrs. Grimm and Plaistow to submit a study separating out the "2-to-1" traffic and rebutting UP's allegations made in its September 18, 1998 filing.

Accordingly, while the R.V.S. Grimm/Plaistow "study" was new, the study was done in direct rebuttal of UP's arguments raised in its reply. This is similar to the original UP/SP proceeding where KCS moved to strike the rebuttal statements of Mr. LaLonde and Mr. Uremovich on the grounds that they were new studies and/or were inappropriate for rebuttal testimony. *Union Pacific, et al. -Control and Merger - Southern Pacific, et al.*, Finance Docket No. 32760, Decision No. 37 (STB served May 22, 1996) at 2. The Board rejected KCS's argument, finding that "each [study] [could] be properly characterized as generally rebutting some evidence, argument, or testimony submitted ... by an opponent." *Id.* at 4. The Board went on to conclude, in Decision 37, that "[i]f all 'new' testimony, evidence, and argument were stricken from the record, applicants could not properly respond to the opposition." *Id.* at 4.

UP also claims that the rebuttal evidence presented by Grimm/Plaistow on the "2-to-1" issue could have been presented in the July 8th filing. This is incorrect. In UP's reply, both Messrs. Barber and Peterson strongly criticized Grimm/Plaistow's use of second half 1997 data in the July 8th filing. V.S. Barber at 26 and V.S. Peterson at 19-20. However, UP was not required to provide first half 1998 data until July 15, 1998, a full week after the requests for new remedial conditions were due at the STB. In addition, UP did not actually forward the first half 1998 traffic data to the Consensus Parties until August 5, 1998. Thus, none of the 1998 data could have been used in the opening testimony. Grimm and Plaistow took note of UP's criticisms and updated their study to include 1998 data in their rebuttal verified statement and to take issue with UP's claims regarding 2-1 traffic. This is precisely the purpose and point of rebuttal, and was entirely proper.

Furthermore, as the party with the burden of proof, the Consensus Parties are entitled to close their case. See *UP/SP*, Finance Docket No. 32760, Decision No. 40 (STB served June 13, 1996) at 12. Equally important to note, is that the Board instituted a procedural schedule in this proceeding on May 19, 1998. See Decision No. 1 of *Union Pacific et al. – Control and Merger – Southern Pacific et al.*, Finance Docket No. 32760 (Sub-No. 26) (STB served May 19, 1998) (Houston/Gulf Coast Oversight).¹ Under that procedural schedule, the close of evidence and argument occurred on October 16, 1998, unless or until the Board determines that briefing, oral argument, and voting conference are necessary. Decision No. 1 at 8. As a result, UP's attempt to submit additional argument should also be stricken as untimely.

For the above cited reasons, UP's October 27, 1998 Letter should be stricken from the record.

ALTERNATIVELY, if the Board considers UP's Letter and agrees with the rationale for UP's tendering of a sur-reply, then fundamental due process requirements and prior ICC and Board precedent require that the Consensus Parties be given an opportunity to submit sur-rebuttal. The Board and its predecessor have previously accepted sur-rebuttal testimony in cases such as *Shell Chemical Company, et al. v. Boston Maine Corp., et al.*, No. 41670, (STB served Dec. 8, 1997) (accepting both a reply to a reply and surrebutal) 1997 STB LEXIS 394 at *3-4 and *Gateway Western Railway Company -- Construction Exemption -- St. Clair County, IL.*; *Gateway Western Railway Company -- Petition Under 49 U.S.C. 10901(d)*, Finance Docket No. 32158 (Sub-No. 1), (ICC Served May 11, 1993), finding that "liberal construction of our rules is permitted where necessary to develop an adequate record." 1993 ICC LEXIS 88 at *3. See also

¹ The Board first instituted the procedural schedule in Decision No. 12 of *Union Pacific et al. – Control and Merger – Southern Pacific et al.*, Finance Docket No. 32760 (Sub-No. 21) (STB served March 31, 1998) (Oversight). The proceeding was subsequently re-designated the Houston/Gulf Coast oversight proceeding as cited above.

Association of P&C Dock Longshoremen v. The Pittsburgh Conneaut Dock Co., et al., Finance Docket No. 31363 (Sub-No. 1), 8 I.C.C.2d 280 (January 3, 1992), 1992 ICC LEXIS 27 at *13 (reply and sur-rebuttal allowed "to assure fairness and a complete factual record.")² Accordingly, the Consensus Parties offer the following sur-rebuttal to the inaccurate claims of UP in its October 27, 1998 Letter:

A. SURREBUTTAL TO THE CURTIS GRIMM/JOSEPH J. PLAISTOW REBUTTAL VERIFIED STATEMENT

UP makes four points in an effort to provide additional argument against the joint R.V.S. Grimm/Plaistow. Each of these points will be addressed in turn.

1. **Identification of "2-to-1" traffic.** UP claims that the R.V.S. Grimm/Plaistow includes as "2-to-1" shippers many companies that do not have "2-to-1" facilities, or any facilities at all, at the indicated locations. As examples, UP claims the following shippers are incorrectly labeled as maintaining Baytown facilities: Chevron, Fina, Advanced Aromatics, Air Products, ALCOA, Hi Port, Jim Huber, Texas Petrochemicals. UP also claims that although Carlisle Plastics at Victoria is a "2-to-1" point, it is not a "2-to-1" shipper. UP Letter at 1.

² Sur-rebuttal has been allowed "to complete the record" in numerous other ICC proceedings, e.g., *National Railroad Passenger Corporation and Consolidated Rail Corporation -- Application under Section 402(a) of the Rail Passenger Service Act for an Order Fixing Just Compensation*, Finance Docket No. 32467 (ICC Served January 19, 1996) 1995 ICC LEXIS 338 at *2, fn.4; *CSX Transportation, Inc. -- Abandonment -- Between South Hardeeville & North Savannah in Jasper County, SC and Chatham County, GA*, Docket No. AB-55 (Sub-No. 469), (ICC Served December 10, 1993), 1993 ICC LEXIS 270 at *21 and 27; *Coal, Wyoming to Redfield, AR*, No. 37276 (Sub-No. 1), (December 7, 1984) 1984 ICC LEXIS 85 at *1; *Potomac Electric Power Co. v. Consolidated Rail Corp.*, No. 36114 (Sub-No. 1), 367 I.C.C. 532 (July 22, 1983) 1983 ICC LEXIS 22 at *8; *Increased Rates on Coal, Midwestern Railroads, August 1979*, No. 37246, 364 I.C.C. 29 (June 16, 1980) 1980 ICC LEXIS 79 at *5; *Trainload Rates on Radioactive Materials, Eastern Railroads*, Docket No. 9205, 362 I.C.C. 756 (April 11, 1980) 1980 ICC LEXIS 98 at *5 and 9-10; *Radioactive Materials, Special Train Service, Nationwide*, No. 26325, 359 I.C.C. 70 (March 8, 1978) 1978 ICC LEXIS 88 at *17; *Investigation of the Railroad Rate Structure -- Lumber and Lumber Products [Part 1 of 2]*, Ex Parte No. 270 (Sub-No. 7), 345 I.C.C. 2552, 1977 ICC LEXIS 61 at *5; *Determination of Cost Reimbursement Under Section 405(f) of the Rail Passenger Service Act, as Amended*, Finance Docket No. 27194 347 I.C.C. 325 (Dec. 18, 1972) 1972 ICC LEXIS 1 at *6.

Notably, as shown in more detail below, eliminating these nine shipper locations from the analysis results in BNSF's market share of terminations actually falling to 2% and UP's market share rising to 98% of terminated traffic. Nevertheless, the response as to why each of these nine shippers and locations were included is the same.

It was Union Pacific, Southern Pacific and Burlington Northern Santa Fe that identified each of these locations as "2-to-1" points. In late 1995, UP and SP furnished records which purported to list all their "2-to-1" traffic as defined by them (that is, traffic served by UP and SP only before the merger and by the merged applicants post-merger). This traffic was contained in 4 files, 2 per railroad.³ The files received from UP and SP were designated by Grimm/Plastow as follows and the relevant portions⁴ of these files are attached to this filing as Highly Confidential Exhibits:⁵

UPO2 = UP traffic originated from "2-to-1" industries as defined by UP/SP, attached as Exhibit A;

SPO2 = SP traffic originated from "2-to-1" industries as defined by UP/SP, attached as Exhibit B;

UPD2 = UP traffic terminated at "2-to-1" industries as defined by UP/SP, attached as Exhibit C; and

SPD2 = SP traffic terminated at "2-to-1" industries as defined by UP/SP, attached as Exhibit D.

³ It should be noted that the lists provided in 1995 did not include many shippers that should have been designated 2-to-1 shippers because nearly a year before the actual merger application was filed (but during the period in which UP and SP were negotiating their merger), SP closed many locations to reciprocal switching by UP. This action then allowed UP and SP to treat, in the merger application, these locations as "exclusive SP shippers" and not 2-to-1 shippers, even though they had been prior to the merger served by both UP and SP.

⁴ Exhibits A-D are excerpts of Houston "2-to-1" traffic from the traffic files provided by UP and SP back in 1995 and which were previously filed with the Board in their complete form.

⁵ All of the Highly Confidential Exhibits to this Motion have only been attached to the copies of the Motion filed with the STB and those copies served on counsel known to have signed the Highly Confidential Undertaking in this proceeding.

The nine shippers and locations were identified in the UP/SP files as a "2-to-1" location as follows: Chevron at East Baytown: Exhibits A and B; Fina at East Baytown: Exhibits A, B, and D; Advanced Aromatics at Baytown: Exhibits A and C; Air Products at Baytown: Exhibits A, B, and D; ALCOA at Baytown: Exhibits A and C; Hi Port at Baytown: Exhibits A; Jim Huber at Baytown: Exhibits A, B, and D; Texas Petrochemicals at Baytown: Exhibit C; and Carlisle Plastics at Victoria: Exhibits C, B, and D.

The Consensus Parties believe that UP should be estopped from declaring that these locations are not now "2-to-1" locations. UP's claim here is analogous to UP's attempt to deny BNSF access to the South Texas Liquid Terminal, Inc. which the Board recently rejected. *See UP/SP*, Finance Docket No. 32760, Decision No. 81 (STB served Oct. 5, 1998). Nevertheless, as shown more fully below, removing the disputed shippers from the R.V.S. Girm/Plastow calculation makes little change in UP's market share, and, in some cases, actually increases UP's market share.

UP also disputes the inclusion of the Lower Colorado River Authority ("LCRA") at Halsted, Texas as a "2-to-1" shipper. UP asserts that LCRA was not subject to the Board's "2-to-1" contract reopener condition, and, because of a contractual provision, the vast majority of LCRA's traffic has not yet become available to BNSF. Importantly, UP does not dispute that LCRA is a "2-to-1" shipper, because LCRA is listed as a "2-to-1" location on Exhibits A and C; the UP-BNSF Settlement Agreement dated September 25, 1995, Appendix A, page 2 included at page 342 of UP/SP-22, UP's "Railroad Merger Application", Volume 1, Finance Docket No. 32760; and the UP-BNSF Supplemental Agreement, dated November 18, 1995, Appendix A, page 2 included at page 359 of UP/SP-22, UP's "Railroad Merger Application", Volume 1, Finance Docket No. 32760.

UP claims that BNSF's market share is so low at LCRA because LCRA was not subject to the Board's "2-to-1" contract reopener provision. Even accepting this criticism, BNSF's overall market share of "2-to-1" traffic to the Houston BEA is virtually the same with or without the LCRA traffic. Therefore, UP's market share does not significantly change whether or not LCRA traffic is included.

Next, UP argues that the Grimm/Plaistow rebuttal statement allegedly contains data for shippers not located in the Houston BEA. For example, UP states that Mobil's Amelia, Texas, facility is located in the Port Arthur/Beaumont BEA, not the Houston BEA. Mobil's Amelia facility was included in the Grimm/Plaistow rebuttal because it was identified from BNSF's "2-to-1" customer list included as Attachment 9 to BNSF-PR-5, October 1, 1997 without the BEA identifier. Locating Amelia on the map suggested that it was either included in, or was very close to the Houston BEA. However, exclusion of the Amelia facility from the listing does not affect BNSF's market share significantly. In fact, excluding the Amelia facility would actually increase UP's overall market dominance.

As a final point under UP's issue number one in the October 27th letter, UP seems baffled that the Grimm/Plaistow rebuttal would list shippers that moved no traffic on either UP or BNSF and for which UP claims are not "2-to-1" shippers. First, as to whether or not these shippers which moved no traffic were "2-to-1" points, a simple inspection of Exhibits A-D establishes that in 1995, UP and SP identified them as "2-to-1" locations. Second, these shippers are listed simply because UP/SP identified them in 1995 as being "2-to-1" shippers. Figures 8 and 9 of the R.V.S. Grimm/Plaistow were intended to be comprehensive lists of all Houston BEA "2-to-1" shippers. If Figures 8 and 9 had not comprehensively listed all known "2-to-1" shippers, UP surely would have objected to that as well.

To further address UP's objections to the Grimm/Plastow "2-to-1" market share analysis, Messrs. Grimm and Plastow eliminated every shipper to which UP expressed an objection. The results are shown in Table 1 below which reproduces Figure 3 from the R.V.S. Grimm/Plastow statement after eliminating the shippers subject to UP's objections. Significantly, as pointed out above, BNSF's market share of terminations actually falls to 2% and UP's market share rises to 98% of terminated traffic.

Table 1

		Origin ations		Terminations	
		Cars	Tons	Cars	Tons
UP Modified	BN	9.2%	9.1%	1.7%	1.5%
	UP	90.8%	90.9%	98.3%	98.5%
	Total	100.0%	100.0%	100.0%	100.0%
Original Market Shares	BN	8.8%	8.7%	9.3%	9.4%
	UP	91.2%	91.3%	90.7%	90.6%
	Total	100.0%	100.0%	100.0%	100.0%

2. **Comparison of Houston BEA v. Western U.S.** In its second point, UP argues that the Grimm/Plastow rebuttal is not representative of the experiences of "2-to-1" shippers throughout the Western United States. UP Letter at 2. UP does not substantiate this claim and it merely states that Grimm/Plastow's Houston BEA "2-to-1" shippers cannot be representative because there are a fewer number of shippers in the Houston BEA than in the entire Western United States. Nevertheless, the actual number of shippers included does not significantly change the percentages of market share between UP and BNSF. Table 2 below is another reproduction of Figure 3 from the R.V.S. Grimm/Plastow, but it includes a comparison of the comparable market shares from the entire Western United States, as well as the Houston BEA. The detail of the Western US market share data, which was obtained from UP and BNSF traffic data, is attached as Highly Confidential Exhibit E.

Table 2

Region		Origin ations		Termi nations	
		Cars	Tons	Cars	Tons
Houston BEA	BN	8.8%	8.7%	9.3%	9.4%
	UP	91.2%	91.3%	90.7%	90.6%
	Total	100.0%	100.0%	100.0%	100.0%
Western US	BN	11.0%	13.5%	8.2%	10.6%
	UP	89.0%	86.5%	91.8%	89.4%
	Total	100.0%	100.0%	100.0%	100.0%

Obviously, UP dominates all "2-to-1" traffic regardless of location or commodity and the figure confirms the prior Grimm/Plastow analysis for the Houston/Gulf Coast area. Such UP market dominance makes it clear that regardless of the attempts to make BNSF a full competitive alternative to UP, the conditions imposed by the Board to preserve the pre-merger levels of competition are not working.

3. **Shipper Support.** In Item 3 of UP's October 27th letter, UP appears to argue that the fact that certain shippers have filed letters supporting the UP/SP merger unquestionably proves that BNSF has been an effective competitor to UP. The Grimm/Plastow market share analysis proves that BNSF has not, in fact, been able to compete successfully using trackage rights over the UP landlord's rail lines. The market share analysis for both the Houston BEA and for the Western United States proves this point

UP also argues that "none of the shippers on the Grimm/Plastow list ... has filed a statement supporting the "Consensus Plan." UP Letter at 2. This is incorrect. Solvay Polymers, Inc. (shown on the attached Exhibits A and B) has written to the Board regarding its support for the Consensus Plan principles. The Solvay letter was also included in Volume I, CMA-4/SPI-4/RCT-3/TCC-4/TM-20/KCS-11 at page 364. In addition, the sister company of the

Baytown shipper shown on Exhibits A, B and D, the Lyondell-Citgo Refining Comp. Ltd. has filed a letter supporting the Consensus Plan's principles. The Lyondell letter can be found at page 293 of Volume I, CMA-4/SPI-4/RCT-3/TCC-4/TM-20/KCS-11. More importantly, broad shipper support for the Consensus Plan is apparent from the make up of the Consensus Parties which includes CMA, SPI and TCC. A complete analysis of the individual shipper support was addressed in the Rebuttal Verified Statement of Margaret Kinney found in Volume II of CMA-5/SPI-5/RCT-4/TCC-5/TM-21/KCS-12 at page 85.

4. **Service Crisis.** Item 4 of UP's October 27th letter references the impact of the service crisis. Specifically, UP states, that "[i]t is therefore not surprising that traffic did not shift from UP to BNSF – it reflects operating realities resulting from the service crisis, not a failure of competition related to the merger conditions." UP Letter at 2. UP's reference to "operating realities" is the precise proof the Consensus Parties cited as to why the STB-prescribed conditions are not working sufficiently well to preserve the pre-merger levels of competition or to provide shippers an outlet during such service crises. Any competitor needs a competitive route independent of the UP route if it is to provide a viable alternative to UP during a service crisis or even under "normal" operating conditions. Conditions prescribed in the merger decision require BNSF and Tex Mex to depend upon UP tracks and facilities, UP switching, and UP dispatching practices. As such, neither BNSF nor Tex Mex is able to provide effective competitive alternatives and to maintain the pre-merger level of competition. The Consensus Plan remedies that shortcoming.

B. SURREBUTTAL TO THE LARRY L. THOMAS REBUTTAL VERIFIED STATEMENT

UP asserts that the data submitted by Larry L. Thomas, President of SPI, in his Rebuttal Verified Statement ("R.V.S. Thomas"), regarding UP transit times is "new evidence" and further

alleges the information "is grossly misleading." UP Letter at 2. Both statements are erroneous.

In the July 8th Request for Adoption of a Consensus Plan, Mr. Thomas stated:

Indeed, our members' experience with UP service, even before the onset of the service meltdown, reflect a progressive erosion of transit times following UP's agreement to merge with the Southern Pacific. This fact is demonstrated in **Exhibit D**, a graph showing average transit time for outbound plastics movements on the Union Pacific from January 1995 to May 1998.

See CMA/RCT/TM/ SPI/TCC/KCS-2 at 120 and 125, July 8, 1998. Exhibit D to that statement at page 141 of the July 8th filing, is essentially the same graph as Exhibit A to the R.V.S. that Mr. Thomas filed on October 16. The differences are the fact that Exhibit D to the July 8th Verified Statement was presented in linear form, while Exhibit A to the Mr. Thomas' October 16 Rebuttal Verified Statement is presented on a calendar-year basis, with each year shown in a different color. Another difference is that the July 8th Exhibit D covered the period January 1995 through May 1998 while the October 16 Exhibit A extends 1998 data through September.⁶ Accordingly, this data is not "new evidence," and UP had an ample opportunity to refute this service evidence in its September 18 reply by presentation of factual evidence. UP did not take this opportunity and instead relies upon erroneous and non-verified argument of its counsel in the UP Letter.

UP's assertion that it has "repeatedly pointed out to SPI the defects of this data, and has repeatedly supplied correct information to SPI" also is erroneous. UP Letter at 2. When the joint SPI/UP Task Force was established, SPI asked UP to provide transit time information from shipment origin to destination for single-line movements and to gateways for interline movements. This is information which UP necessarily has in its car location message data files. The Union Pacific declined to do so. Instead, UP suggested that SPI develop the data from its members. As was recognized at that time, the ability of SPI members to retrieve historical data

⁶ The same UP outbound data also is shown on Exhibits E and F of the R.V.S. Thomas.

varies by company. With full recognition of these circumstances, the Joint UP/SPI Task Force went forward and developed the data collection program.

The joint Task Force effort was initiated in January 1998. Since that time, there have been close to a dozen meetings and conference calls involving both SPI members and UP representatives. Representatives of both organizations were involved in development of the survey form. After the transit time data was developed and began to receive industry and public attention, UP in one instance did tender to the Task Force its own very selective data to indicate that service is improving. That information reflected selective movements which were not representative of a broad cross-section of UP's service to the plastics industry. Furthermore, the type of information UP tendered to the Task Force, in an effort to rebut the claims of poor service, is the same type of information which Dow and Formosa informed the Board in their rebuttal statements was not representative of UP service to their facilities. *See Reply to UP/SO's Opposition to Dow's Request for Additional Conditions, DOW-2 and Reply Comments of Formosa Plastics Corp. USA*, filed October 16, 1998. In no case has UP - "repeatedly" or otherwise - "pointed out to SPI the defects in these data," nor "supplied correct information to SPI, which SPI has ignored."

UP has offered four specific criticisms of the transit time survey data. Each of those criticisms is unwarranted. First, UP alleges that the data consists of a comparison of "apples to oranges to pineapples," entailing different mixes of shippers and different routes. UP Letter at 3. Five member companies are participating in the survey data. These companies represent 30% of the plastics resin production capacity nationwide, and more than 32% of the Gulf Coast resins

production capacity.⁷ As noted above, some companies had limitations in retrieving historical data; and accordingly, participation for 1995 and 1996 is less extensive than for 1997 and 1998. Nonetheless, those submitting data for 1996 represent more than 25% of the Gulf Coast production capacity. The data measured was average transit time for UP, including UP's traffic, the former SP traffic, and traffic switched to the UP or SP by the PTR. No effort is made to collect data by route. The data is comparable from period to period, and UP's criticisms are unwarranted and misleading.

Second, UP asserts that some shipments measured do not originate in Texas at all and include shipments "originating, for example, in Clinton, Iowa." UP Letter at 3. Again, this is an unwarranted and misleading criticism. From the beginning of this program it was mutually agreed that the survey was intended to measure UP service performance system-wide. Specifically, non-Texas origins were to be included, although it also was recognized that the overwhelming majority of shipments were from the Gulf Coast, and particularly Texas.

UP objects to the inclusion of a 'P exclusively-served plastics producer at Clinton, Iowa because that producer is not in the Houston/Gulf Coast area. However, the inclusion of that data properly reflects UP's service to the plastics industry. Nevertheless, the Clinton production capacity represents less than two percent of the total U.S. plastics production capacity, and less than seven percent of the production capacity of the producers participating in the survey. Moreover, data for the Clinton plant has been included only since December 1997, following a business combination involving that producer and one of the reporting companies and the

⁷ The calculation of market share represented, and similar calculations in this section of the sur-rebuttal, are based upon the industry data submitted in the Verified Statement of Larry D. Ruple, Comments of The Society of the Plastics Industry, Inc., UP/SP merger, Verified Statement at Exhibit 1 (SPI-11, Mar. 29, 1996).

consolidation of those operations. UP's intimation that there are other non-Gulf production points included in the survey further confuses the record regarding UP's service performance.

Third, UP alleges that the Joint Task Force's data shows identical transit times for shipments from origin to final destination as for shipments from origin to interchange. SPI, for the Joint Task Force, did not collect data to interchange points. As discussed above, UP refused to provide data from origin to gateway; and in order to obtain consistent information for each of the participating producers, the Task Force determined to utilize origin to destination data. One entry on the data survey forms provides transit information for movements from origin, *i.e.*, production plants, to destination inside Houston. These movements typically entail product moving from production plants to contract packagers since most plants load all production directly into hopper cars. What this data reveals is that transit times for local movements purely within Houston may be equal to movements that move half way across the country, and which require an interchange. While UP attributes this situation to 1995 and 1996, in fact some data reports in 1997 and even 1998 reflect that average transit times for movements within Houston were similar to — and even greater than — the average for all UP shipments, reflecting the serious problems UP experienced in the Houston terminal area.

Finally, UP criticizes SPI's characterization of the transit time as "UP only," asserting that 70% of the traffic is interline business. The "UP only" designation, as agreed by the Task Force, reflects that UP was the origin line-haul carrier, whether handled by UP itself, the former SP or the PTRC and switched to the UP or SP. Again, the data reflects origin to destination movements since that was the data that was most readily available to the member companies after UP had declined to provide transit information from its records which could have limited the transit time analysis to UP service only (single-line movements and origin to interchange).

UP further attempts to attribute its own delays, without quantification or specification, to problems on other railroads ("transit times for this traffic often reflect congestion, delays, flooding and other problems"). In fact though, whatever delays may have been experienced on the lines of other carriers, they were of short duration and in no way explain the continual erosion of UP service from the Fall of 1995 and continuing into 1998.

The data presented by Mr. Thomas reflects exactly what it is stated to portray: that rail service on the Union Pacific has deteriorated since the Fall of 1995 and that service levels today are grossly inferior compared to pre-merger levels. Considering that approximately 90% of plastics resins capacity exists in the Gulf Coast; that UP has access to approximately 90% of that Gulf Coast production and UP exclusively serves almost 40% of that traffic;⁸ and considering the public record concerning the UP service meltdown, there can be no doubt that the graphs attached to the R.V.S. Thomas accurately depict UP service quality in Houston and the Gulf Coast generally. This evidence clearly shows that UP's Houston/Gulf Coast area service problems are not over, contrary to the assertion in the UP Reply. All of these issues were raised in the opening testimony and were then replied to by UP, making them proper for rebuttal. UP's criticisms of the Joint Task Force's transit time data are erroneous. Furthermore, UP having declined to provide comprehensive data from its car location message records, it should not now be heard to complain that the Joint Task Force survey data does not accurately report the quality of UP's performance.

⁸ See *Ruple V.S.* at Exhibits 2 and 3.

CONCLUSION

For the forgoing reasons, Union Pacific's October 27, 1998 letter to the Board should be stricken from the record in this proceeding. Alternatively, if the Board decides not to strike UP's letter, then the preceding sur-rebuttal should be entered into the record.

VERIFICATION

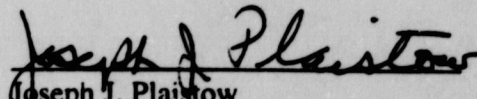
I, Dr. Curtis M. Grimm, affirm under penalty of perjury that the facts of Part A of the foregoing Sur-rebuttal statement are true and correct based on my knowledge, information and belief.

Curtis M. Grimm
Dr. Curtis M. Grimm

Date: 11/10/98

VERIFICATION

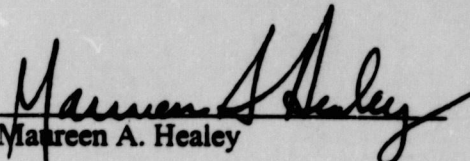
I, Joseph J. Plaistow, affirm under penalty of perjury that the facts of Part A of the foregoing Sur-rebuttal statement are true and correct based on my knowledge, information and belief.


Joseph J. Plaistow

Date: 11/10/98

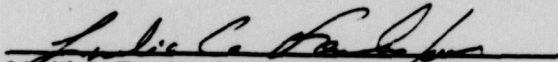
VERIFICATION

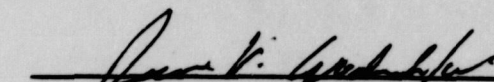
I, Maureen A. Healey, state that I am the Director of Transportation at The Society of Plastics Industry, Inc. and I am responsible for the management of the Joint Task Force data collection and I affirm under penalty of perjury that the facts of Part B of the foregoing Sur-rebuttal statement are true and correct based on my knowledge, information and belief.

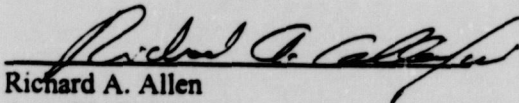

Maureen A. Healey

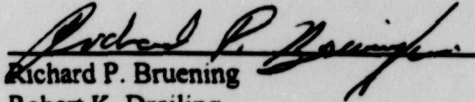
Date: 11/10/98

Respectfully submitted and signed on each party's behalf with express permission.

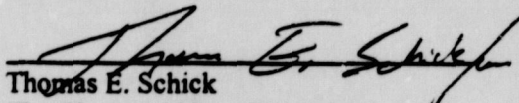

Lindil C. Fowler, Jr., General Counsel
THE RAILROAD COMMISSION OF TEXAS
1701 Congress Avenue
P.O. Box 12967
Austin, Texas 78711-2967
Tel: (512) 463-6715
Fax: (512) 463-8824

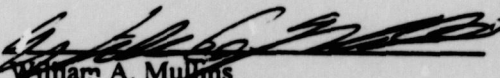

James V. Woodrick, President
THE TEXAS CHEMICAL COUNCIL
1402 Nueces Street
Austin, Texas 78701-1586
Tel: (512) 477-4465
Fax: (512) 477-5387


Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939
Tel: (202) 298-8660
Fax: (202) 342-0683

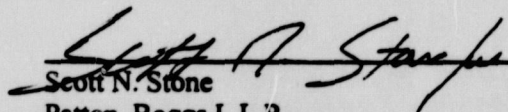

Richard P. Bruening
Robert K. Dreiling
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 983-1392
Fax: (816) 983-1227

ATTORNEYS FOR THE TEXAS MEXICAN RAILWAY
COMPANY

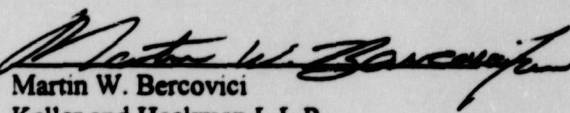

Thomas E. Schick
The Chemical Manufacturers Association
1300 Wilson Boulevard
Arlington, VA 22209
Tel: (703) 741-5172
Fax: (703) 741-6092


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

ATTORNEYS FOR THE KANSAS CITY SOUTHERN
RAILWAY COMPANY


Scott N. Stone
Patton, Boggs L.L.P.
2550 M Street, NW
Washington, D.C. 20037
Tel: (202) 457-6335
Fax: (202) 457-6315

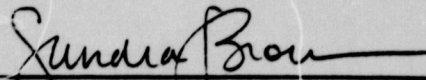
ATTORNEYS FOR THE CHEMICAL
MANUFACTURERS ASSOCIATION


Martin W. Bercovici
Keller and Heckman L.L.P.
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001
Tel: (202) 434-4144
Fax: (202) 434-4651

ATTORNEYS FOR THE SOCIETY OF PLASTICS
INDUSTRY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the "MOTION TO STRIKE UNION PACIFIC'S OCTOBER 27, 1998 LETTER, OR ALTERNATIVELY, SUR-REBUTTAL IN SUPPORT OF THE CONSENSUS PLAN" was served this 10th day of November, 1998, by hand delivery to counsel for Union Pacific Railroad Company, counsel for Burlington Northern and Santa Fe Railway Company and by first class mail upon all other parties of record in the Sub-No. 26 oversight proceedings.

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

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

STB

FD

32760

(Sub 27)

12-17-98

J

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2917

INTERNET: william.mullins@troutmansanders.com

WILLIAM A. MULLINS

FILE IN DOCKET

FD-32760

(Sub-No 26-30)

202-274-2953

December 16, 1998

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
The Mercury Building
1925 K Street, N.W.
7th Floor
Washington, D.C. 20423

RECEIVED
SURFACE TRANSPORTATION
BOARD
DEC 17 9 45 AM '98
OCT 17 1998

RE: Finance Docket Number 32760 (Sub-No. 26-30)

Dear Chairman Morgan:

I would again like to take this opportunity to thank you for holding oral argument with respect to the Houston/Gulf Coast oversight proceeding. In yesterday's argument, there were numerous discussions over the issues of infrastructure and competition. Additionally, there were several references to negotiations between BNSF and Tex-Mex. Quite surprisingly, even UP's counsel seemed to know the scope and extent of these discussions, mentioning it several times. I write today to clarify that the discussions between Tex-Mex and BNSF, even if successful, will do little to help Tex Mex and KCS restore competition to the Houston Gulf Coast market or add needed infrastructure.

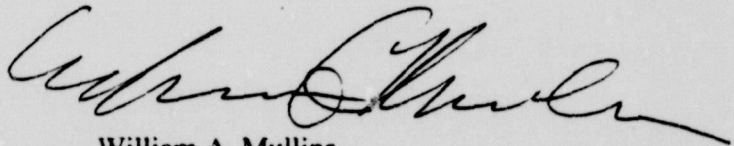
The attached letter from the principal executive officers of the parent companies of Tex Mex and KCS makes it abundantly clear that the only way to restore competition and add infrastructure is to lift the restriction placed on Tex Mex's trackage rights granted in the original UP/SP merger decision.

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

The Honorable Linda J. Morgan
December 16, 1998
Page 2

I intended to submit the attached letter for the record in yesterday's oral argument, but did not receive a facsimile signed copy until today. Please place the attached letter in the public docket.

Sincerely,

A handwritten signature in dark ink, appearing to read 'William A. Mullins', with a long, sweeping horizontal stroke at the end.

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

Enclosure

cc: Vice Chairman Owen
Parties of Record

**Transportacion Maritima Mexicana
Kansas City Southern Industries**

Jose F. Serrano
Chairman and Chief Executive Officer
Transportacion Maritima Mexicana
Av del la Cuspide 6755
Colonia Parques del Pedregal
Delegacion Tlalpam C.P.
Mexico 14040

Landon H. Rowland
Chairman, President and CEO
Kansas City Southern Industries
116 West 11th Street
Kansas City, MO 64105-1806

December 7, 1998

The Honorable Linda J. Morgan
Chairperson, Surface Transportation Board
The Mercury Building
1925 K Street NW
Washington, DC 20423

Dear Chairman Morgan:

The Board currently is considering in the UP Oversight Proceeding proposals to address competition in Houston, Texas. One set of proposals has been presented by the Consensus Parties, of which The Texas-Mexican Railroad Company is a member. As the Board has recognized, Tex-Mex, our jointly owned subsidiary, is instrumental to competition for rail traffic moving under the North American Free Trade Agreement ("NAFTA").

The Tex-Mex, as part of the Plan, would add new rail infrastructure for Houston traffic and acquire rail lines of its own (between Rosenberg and Victoria and between Houston and Beaumont). However, we wish to stress the absolute necessity of one other feature of the Consensus Plan, without which the infrastructure additions and new rail lines will not be feasible.

Tex-Mex's current access to Houston is restricted to traffic having a prior or subsequent move over Tex-Mex's line between Corpus Christi and Laredo. The Consensus Plan proposes the removal of that restriction. Without the Board's removal of that restriction, Tex-Mex will not be able to afford the infrastructure improvements and line acquisitions it proposes. Thus, removal of the restriction is the linchpin for the success of these other proposals. We urge you to account for this fact in your consideration of the Consensus Plan.

Sincerely yours,

Jose F. Serrano

Sincerely yours,

Landon H. Rowland

STB

FD

32760

(Sub 27)

11-20-98

J

MOCH



Office of the Chairman

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

November 20, 1998

The Honorable Gene Green
United States House of Representatives
Washington, DC 20515-4329

FD-32760 Sub 27

Re: Union Pacific Texas/Gulf Coast Oversight Proceeding

Dear Congressman Green:

Thank you for your letter regarding the rail situation in the Houston/Gulf Coast area. In your letter, you note that service in the area has improved, but you state that further improvements are still needed. You also express the view that future service problems can be prevented only if the infrastructure in the Houston area is upgraded. You ask the Board to keep these considerations in mind as it considers the various suggestions for changes to the way in which rail service is provided in the area.

At this time I cannot address in any detail the issues that you have raised, because, as you know, the Board is conducting formal proceedings, in the context of its oversight of the UP/SP merger, to consider the matters. The Board has in the past, however, stated that it shares your view that upgraded infrastructure is vital for the Houston area. I assure you that as it considers proposals for changes affecting the UP service area, and for regulatory changes applicable to the industry in general, the Board will remain cognizant of the need for vigorous competition along with strong competitors in the West and throughout the Nation, and it will remain committed to issuing decisions that are in the interest of railroads, shippers, and the Nation as a whole.

I am having your letter and this response placed in the formal docket in the UP/SP Houston/Gulf Coast oversight proceeding. If I can be of assistance to you in this or any other matter, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

GENE GREEN

29TH DISTRICT, TEXAS

COMMITTEE ON COMMERCE

• SUBCOMMITTEE ON
TELECOMMUNICATIONS, TRADE AND
CONSUMER PROTECTION

• SUBCOMMITTEE ON HEALTH AND
ENVIRONMENT

**Congress of the United States
House of Representatives
Washington, DC 20515-4329**

November 2, 1998

CHAIRMAN MORGAN

Nov 6 2 10 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

- 2429 RAYBURN
WASHINGTON, DC 20515
(202) 225-1688
- 256 N. SAM HOUSTON PKWY. EAST
SUITE 29
HOUSTON, TEXAS 77060
(281) 999-5879
- 11811 I-10 EAST
SUITE 430
HOUSTON, TEXAS 77029
(713) 330-0761

Ms. Linda Morgan
Chairman
Surface Transportation Board
Office of the Secretary
12th Constitution Ave. NW
Washington, D.C. 20423

Dear Ms. Morgan:

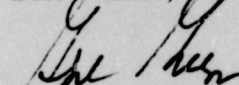
There is no doubt that the success of the petrochemical industry in Houston, one of the strongest in the world, relies on the strength of the railroad industry. After the merger of Union Pacific and Southern Pacific Railroads, the quality of rail service in Texas and the Gulf Coast deteriorated rapidly. The severe rail crisis that ensued had disastrous effects on the petrochemical industry and the Port of Houston, which lie within my Congressional District.

Both the length and severity of the rail crisis exacerbated its impact on the Houston Ship Channel's industries. As the Member of Congress representing this area, I remain concerned with the long-term reliability of service the plastic and chemical shippers receive. Substantial progress in correcting the rail problems has been made and the overall system has sufficiently rebounded from the earlier depths of the crisis. Yet, further improvements still need to occur.

I have closely monitored this situation for its duration and believe that long term solutions, including the construction of more infrastructure, should be implemented to prevent similar situations in the future. There is a critical need for the railroad industry to improve and expand the rail infrastructure in Houston and the Gulf Coast. In addition to making significant capital investments in Texas, the railroads serving Houston should upgrade the service they offer to the petrochemical industry and all customers along the Gulf Coast corridor.

Throughout this rail crisis, I have repeatedly communicated my concerns to the Surface Transportation Board. It is imperative that Houston and Texas have a rail system strong enough to withstand a similar meltdown in the future. I urge you to take these recommendations into consideration in the Board's pending decision in the Houston/Gulf Coast Oversight hearing.

Best Wishes,



Gene Green
Member of Congress

GG:krt

STB FD 32760 (Sub 27) 11-20-98 J MOCSS



Office of the Chairman

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

November 20, 1998

The Honorable Pat Roberts
United States Senate
Washington, DC 20510-1605

FD-32760 Sub 27

Re: Union Pacific Houston/Gulf Coast Oversight Proceeding

Dear Senator Roberts:

Thank you for your letter regarding the requests of a variety of interests to obtain additional access to customers served by the Union Pacific Railroad (UP) in the Houston/Gulf Coast area. In your letter, you note that there have been service problems in the recent past in the Houston area, and you suggest that the "Consensus Plan," under which UP's lines would be opened up to other railroads, would restore the competitive alignment that existed before the Union Pacific/Southern Pacific merger.

At this time I cannot address in any detail the issues that you have raised, because, as you know, the Board is conducting formal proceedings, in the context of its oversight of the UP/SP merger, to consider the matters. I assure you, however, that as it considers proposals for changes affecting the UP service area, and for regulatory changes applicable to the industry in general, the Board will remain cognizant of the need for vigorous competition along with strong competitors in the West and throughout the Nation, and it will remain committed to issuing decisions that are in the interest of railroads, shippers, and the Nation as a whole.

I am having your letter and this response placed in the formal docket in the UP/SP Houston/Gulf Coast oversight proceeding. If I can be of assistance to you in this or any other matter, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

PAT ROBERTS
KANSAS

302 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1605
202-224-4774

COMMITTEES:
ARMED SERVICES
AGRICULTURE
INTELLIGENCE
ETHICS

United States Senate

WASHINGTON, DC 20510-1605

November 2, 1998

Ms. Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street NW
Washington, DC 20423

OFFICE OF LINDA J. MORGAN

NOV 6 2 10 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

Dear Ms. Morgan:

I have been closely monitoring rail service during the 105th Congress and worked with a number of my colleagues on the Commerce Committee to improve shippers ability to seek competitive rail service.

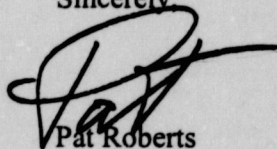
During our correspondence last year, I pointed out that Kansas relies upon railroads for the movement of agricultural commodities and manufactured goods in a timely and efficient manner. Last year, service problems in Houston greatly slowed down the ability to get Kansas grain to export facilities.

I hope the Board will use this proceeding to demonstrate that it will protect the public's interest and utilize its oversight authority to restore competition that existed prior to the merger. Specifically, the Consensus Plan developed by shippers and the Texas-Mexican Railway would permit more access to shippers by providing a third railroad to handle traffic in and out of Houston to the north and east. The Consensus Plan is a win-win design that would restore competition without undoing the benefits of the merger.

Because Kansans are concerned about rail service, I look forward to working with you to ensure that our rail transportation system remains competitive.

With every best wish,

Sincerely,



Pat Roberts

PR:ky

STB FD 32760 (Sub 27) 10-5-98 J 191464

ENTERED
Office of the Secretary

OCT - 6 1998

Part of
Public Record

Greater Corpus Christi Business Alliance

Chamber of Commerce • Conventions & Visitors • Economic Development • Small Business Development



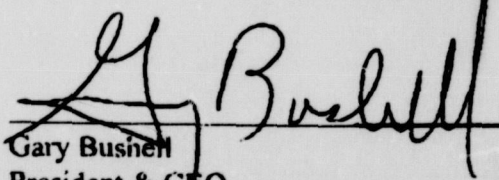
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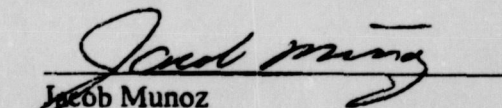
Resolution in Support of the Consensus Plan as filed by the Texas Railroad Commission, the Texas Chemical Council et. al. and Endorsed by the Port Industries of Corpus Christi in an Effort to Gain Relief from the On-going Rail Crisis

- WHEREAS, the mission of the Greater Corpus Christi Business Alliance is to serve as a catalyst for diverse business opportunities and community well being;
- WHEREAS, a competitive rail system is essential to providing efficient, low cost delivery of products to the consumer and for U.S. companies, including those operating out of the Port of Corpus Christi, to effectively compete in a global market;
- WHEREAS, the merger of the Union Pacific and Southern Pacific Rail Roads has restricted competition resulting in lost sales, reduced output and higher shipping costs to the detriment of local industry;
- WHEREAS, the Consensus Plan filed with the Surface Transportation Board identifies several specific actions which, if implemented, would alleviate the negative effects of the current rail system, by
1. Giving TexMex additional authority to serve the Houston area,
 2. Providing for "neutral switching" and "neutral dispatching" throughout the Houston area,
 3. Requiring UP to sell to TexMex its line between Rosenberg & Victoria,
 4. Requiring UP to sell or lease an existing yard in Houston to TexMex,
 5. Requiring UP to allow TexMex/KCS to construct a new rail line on UP's right-of way to give TexMex permanent access to Beaumont;

NOW THEREFORE BE IT RESOLVED that the Governmental Affairs Directors Council of the Greater Corpus Christi Business Alliance urges the Surface Transportation Board to accept the proposed Consensus Plan in the interest of competitive rail service and industry.

ADOPTED BY THE GOVERNMENTAL AFFAIRS DIRECTORS COUNCIL OF THE
GREATER CORPUS CHRISTI BUSINESS ALLIANCE
THIS 15TH DAY OF SEPTEMBER, 1998.


Gary Bushnell
President & CEO


Jacob Munoz
Chairman, Directors Council

STB

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ENVIRONMENTAL DOCUMENT

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

March 18, 1998

Mr. John R. Molm, Esquire
Troutman Sanders LLP
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005-3314

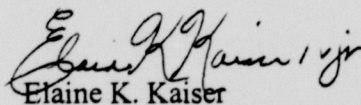
Re: Finance Docket No. 33568, Texas Mexican Railway Company and
Kansas City Southern Railway Company -- Construction and Operation
Exemption -- Rail Line between Rosenberg and Victoria, Texas

Dear Mr. Molm:

Your request for approval under 49 CFR 1105.10(d) for retention of Ms. Jo Carole Dawkins as a third party consultant is approved. Ms. Dawkins will prepare the appropriate environmental document on behalf of the Board in connection with the proposed reconstruction and operation of an approximately 75-mile long rail line from Rosenberg to Victoria, Texas. We have appended a disclosure statement and ask that you have Ms. Dawkins complete it and return it to us. As we discussed, the Board's Section of Environmental Analysis will direct, supervise, review, and approve all environmental documents prepared by the third party contractor.

If we can be of further assistance, please contact either Harold McNulty at (202) 565-1539 or myself at (202) 565-1538.

Sincerely yours,



Elaine K. Kaiser

Chief

Section of Environmental Analysis

SURFACE TRANSPORTATION BOARD

DISCLOSURE STATEMENT

I, Jo Carole Dawkins, certify that I have no financial or other interest in the outcome of the prospective petition for exemption to be filed on behalf of Texas Mexican Railway Company and Kansas City Southern Railway Company to reconstruct and operate a former Southern Pacific rail line from Rosenberg to Victoria, Texas.

Signed _____

Date _____