

STB FD 32769 (Sub 28) 11-24-98 D 192388

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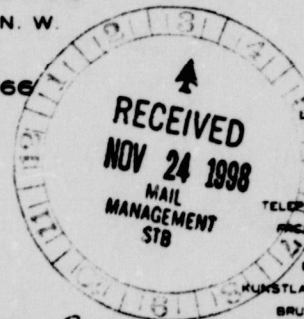
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November 24, 1998



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BY HAND

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

Office of the Secretary

NOV 25 1998

Part of
Public Record

FD 32760 26 192386
" 27 192387
" 28 192388
" 29 192389
" 30 192390
" 31 192391
" 32 192392

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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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/Plaistow 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/Plaistow "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/Plaistow 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/Plaistow 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/Plaistow 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 elects 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/Plaistow 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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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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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.

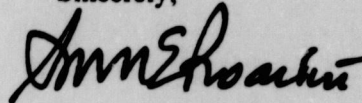
Undeterred by the fact that the SPI charts are unreliable, misleading and mislabelled, KCS/Tex Mex nevertheless urge the Board to use them. KCS/Tex Mex baldly assert, based on the charts, that UP "service levels today are grossly inferior compared to pre-merger levels." (P. 17.) Particularly as applied 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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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 fluid and cursive, with the first name "Arvid" being more prominent.

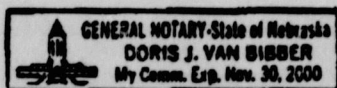
Arvid E. Roach II

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

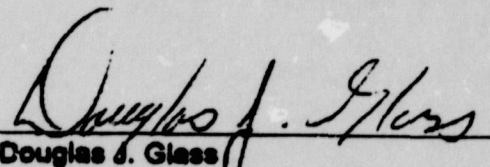
Doris J. Van Bibber
Notary Public

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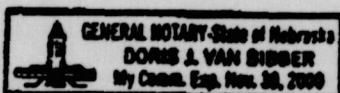
VERIFICATION

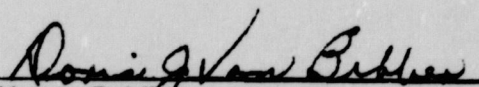
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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 32769 (Sub 28) 11-24-98 D 192380

TROUTMAN SANDERS LLP

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Office of the Secretary

William A. Mullins NOV 24 1998

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November 24, 1998



HAND DELIVERY:

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FD 32760 - 26-192378
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)*

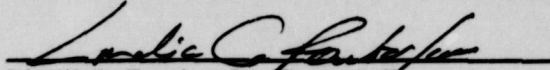
**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
— CONTROL AND MERGER —
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER
AND RIO GRANDE WESTERN RAILROAD COMPANY**

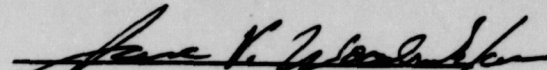
HOUSTON/GULF COAST OVERSIGHT PROCEEDING

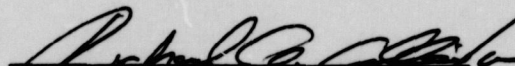
NOTICE OF INTENT TO PARTICIPATE IN ORAL ARGUMENT


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,



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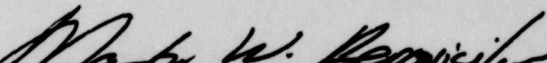

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ATTORNEYS FOR THE SOCIETY OF PLASTICS
INDUSTRY, INC.

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 28) 10-16-98 D 191670

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William A. Mullins

October 16, 1998

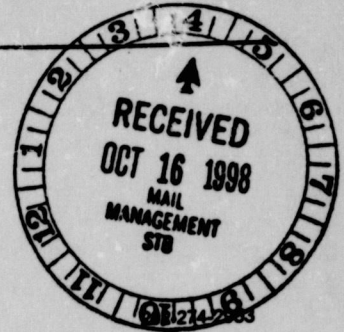
HAND DELIVERY

Honorable Vernon A. Williams
Case Control Unit
Attn: STB FD 32760 (Sub-Nos. 26-32)
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28

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

FOR COMPLETE TEXT OF THIS FILING SEE FD-32760 SUB 26 FILING #191655

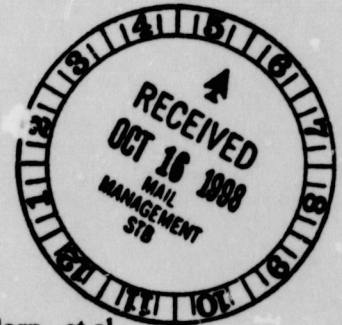
STB FD 32760 (Sub 28) 10-16-98 D 191649

October 15, 1998

Commonwealth
Consulting
Associates

Office of the Secretary
Case Control Unit

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



Re: STB Finance Docket No. 32760 (Sub-No. 26)
Union Pacific Corp., et al. - Control & Merger - Southern Pacific Corp., et al.

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

(Sub-No. 28) Burlington Northern and Santa Fe Railway Company—
Terminal Trackage Rights—Texas Mexican Railway Company

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

(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan

Dear Secretary Williams:

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

Copies of this Joint Rebuttal are also concurrently served on all other parties of record.

Respectfully submitted,

David L. Hall

RECEIVED
Office of the Secretary

OCT 19 1998

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.**

**FINANCE DOCKET NO. 32760
UNION PACIFIC CORP., ET AL. -- CONTROL & MERGER --
SOUTHERN PACIFIC RAIL CORP., ET AL.
HOUSTON/GULF COAST OVERSIGHT PROCEEDING**

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

**(Sub-No. 28) Burlington Northern and Santa Fe Railway Company—
Terminal Trackage Rights—Texas Mexican Railway Company**

**(Sub-No. 29) Burlington Northern and Santa Fe Railway Company—
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area**

**(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan**

**JOINT REBUTTAL OF
SHELL OIL COMPANY AND SHELL CHEMICAL COMPANY
IN SUPPORT OF REQUESTED CONDITIONS**

Due Date: October 16, 1998

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

BEFORE THE
SURFACE TRANSPORTATION BOARD

WASHINGTON, D. C.

FINANCE DOCKET NO. 32760
UNION PACIFIC CORP., ET AL. -- CONTROL & MERGER --
SOUTHERN PACIFIC RAIL CORP., ET AL.
HOUSTON/GULF COAST OVERSIGHT PROCEEDING

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Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan

JOINT REBUTTAL OF SHELL OIL COMPANY AND SHELL CHEMICAL
COMPANY IN SUPPORT OF REQUESTED CONDITIONS

Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell"), in response to the opportunity afforded by the Surface Transportation Board (Board or STB) by its Decision served August 4, 1998 in Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al., Houston/Gulf Coast Oversight Proceeding, hereby file a joint rebuttal in support of certain of the requested conditions which have been accepted for consideration by the Board. Both companies are Corporations, the address of which is One Shell Plaza, Post Office Box 2463, Houston, Texas 77252.

I-INTRODUCTION

Shell interest in Gulf Coast Region rail operations stems from the fact that Shell ships and/or receives in excess of 20,000 rail cars to and from the region annually. Approximately 12,500 of these shipments occur to and from our petrochemical plant at Deer Park, Texas. The balance of the Shell rail traffic ships to or from other Houston/Gulf Coast region facilities.

Shell operations were significantly impacted by the UP service meltdown in the western United States and particularly in the Houston/Gulf Coast region. For this reason Shell participated in the STB Emergency Service Order Proceedings related to the UP service failure. We saw the introduction of competition on a limited basis provide a measure of relief from the crisis.

Shell recognized the need for a permanent solution to the concentration of market power in the hands of one railroad which contributed to this crisis. Therefore when the Board instituted this proceeding Shell seized the opportunity to participate in a process which would result in the implementation of policies which will ensure that Gulf Coast shippers never have to endure a disaster of the magnitude of the UP service meltdown.

In that vein the Shell Companies filed a Joint Request for New Remedial Conditions in this proceeding on July 8, 1998. Shell also filed Joint Comments on September 18, 1998 pertaining to the requests for new conditions which were submitted by (1) the Texas Mexican Railway Company (Tex Mex), Kansas City Southern Railway Company (KCS), certain shipper and governmental interests (jointly referred to herein as "Consensus Group"); (2) the Burlington Northern and Santa Fe Railway Company (BNSF); and (3)

certain individual shippers. Those filings supported, by and large, the objectives and operational strategies of the plan filed by the Consensus Group (Consensus Plan) on July 8, 1998. We also expressed support for certain new conditions requested by the BNSF (BNSF Plan) which was filed on the same date.

Shell has reviewed the comments of various parties on the conditions proposed in the Consensus Plans, BNSF Plan and the individual shipper plans. This Joint Rebuttal addresses the Opposition to Condition Applications filed by UP, as well as some the comments filed by BNSF, CSX and NS. Support for the Shell recommendations which follow is found in the Verified Statement of David L. Hall, attached hereto.

OPPOSITION TO CONDITION APPLICATIONS

The comments which were submitted by UP and other railroads in opposition to the conditions contain nothing which casts doubt on the support for the positions we espoused in our September 18 filing. In its comments UP refuses to take any major level of responsibility for the service meltdown, placing the blame on other railroads, economic conditions and infrastructure, among other things. UP does however take full credit in its comments for solving the crisis.

The main objective of the UP comments seems to be to protect its monopoly franchise. The UP opposes every condition proposed by the Consensus Group and BNSF. It justifies this opposition with claims that it can handle all the traffic which it has mishandled in the past.

UP declares the service crisis over, as it has done so many times in the past. It even claims that service is back to "normal." Perhaps by redefining normal to use 1997 as a baseline, UP can justify this statement. However, Shell does not consider that its transit times have returned to normal when they are not yet as good as those provided by the "decrepit" SP which UP derided throughout its comments.

BNSF comments are interesting in that while BNSF wants to protect its part of the Houston pie from KCS/Tex Mex, it also wants to apply the Consensus Group principles to compete in the UP monopoly franchises. CSX and NS filed statements in order to preclude the establishment of a precedent where the Board rectifies problems created by unforeseen ramifications of merger decisions.

As previously stated, none of the comments submitted by railroad opponents to new conditions are more than self serving attempts to protect their monopoly franchises obtained through recent railroad consolidations. Those comments should be considered by the Board in that light.

CONCLUSION

Shell supports the railroad realignment proposal for Houston and the Gulf Coast Area that has been submitted by the Consensus Group. Shell has always advocated the need for rail competition to provide a level of service that meets the shipping public's need, consistent with a reasonable level of rates that adequately compensates the railroads performing the service. Implementation of the portions of the Consensus Plan we supported in our September 18 filing would help alleviate the dangerous concentration of market power which contributed to the Gulf Coast Region rail service disaster. The sole exception to Shell support for the Consensus Plan was to the possibility that the implementation of any of the items in the plan would involve the taking of property. We reiterate that position in this filing. Shell does not condone the taking of property nor support the forced sale of assets.

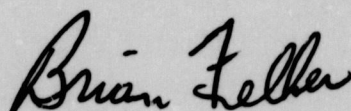
Shell also supports the principle of directional trackage rights espoused by BNSF. A carrier which has been granted trackage rights between two points must not be required to fight the flow of traffic when directional running is established. In such a case the tenant must be granted access to the lines necessary to participate in directional traffic flows between the two points for which traffic rights were originally granted.

Finally, Shell believes that the principles of competition can best be advanced through access to a third railroad, neutral switching and neutral dispatching, and not through solutions crafted solely for individual industry shippers.

It is the responsibility of the Board to take the action necessary to insure that the conditions which contributed to the Gulf Coast Region railroad service meltdown are altered in such a way that we are never faced with another such disaster. The opportunity is before the Board to rectify the lack of competition which contributed to the meltdown of Gulf Coast Region railroad service. We urge the Board to take advantage of that opportunity by approving the requested conditions as recommended above.

Respectfully submitted,

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

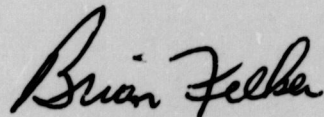
A handwritten signature in cursive script, reading "Brian Felker".

Brian P. Felker
One Shell Plaza
Houston, Texas 77252

Dated: October 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 1998, copies of the Joint Rebuttal in Support of Requested Conditions of Shell Oil Company and Shell Chemical Company were served by first class mail, postage prepaid, in accordance with the rules of the Surface Transportation Board on Arvid E. Roach II, Esq., Covington & Burling, Administrative Law Judge Stephen Grossman, Federal Energy Regulatory Commission and all other parties of record.



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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 32760
UNION PACIFIC CORP., ET AL. -- CONTROL & MERGER --
SOUTHERN PACIFIC RAIL CORP., ET AL.
HOUSTON/GULF COAST OVERSIGHT PROCEEDING**

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**(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan**

VERIFIED STATEMENT

OF

DAVID L. HALL

I. IDENTIFICATION AND QUALIFICATIONS OF AFFIANT

My name is David L. Hall. I am President of COMMONWEALTH CONSULTING ASSOCIATES, with offices at 13103 F.M. 1960 West, Suite 204, Houston, Texas, 77065. COMMONWEALTH CONSULTING ASSOCIATES provides management consulting services, including practice areas in logistics and information systems. A detailed statement of my qualifications may be found in Appendix A of my initial Verified Statement in this proceeding, dated September 18, 1998.

II. INTRODUCTION

This Verified Statement is submitted in support of the positions of Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell"), as set forth above by Brian P. Felker. The Joint Rebuttal is in response to the comments filed by certain parties of record¹ on September 18, 1998 regarding requests for new conditions which were accepted for consideration by the Surface Transportation Board (Board or STB) in its decision served August 4, 1998 in Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al., Houston/Gulf Coast Oversight Proceeding.

¹ Commonwealth received comments on the requests for new conditions filed by Allied Rail Unions, Angelina & Neches River Railroad Company, Brotherhood of Maintenance of Way Employees, Burlington Northern & Santa Fe Railway Company, CSX Corporation, Champion International Corporation and its subsidiary, Moscow, Camden & San Augustine Railroad, Greater Houston Partnership, National Association of Railroad Passengers, Norfolk Southern Corporation and Norfolk Southern Railway Company, Port of Houston Authority, Texas Mexican Railway Company, Union Pacific Corporation and its subsidiaries Union Pacific Railroad Company and Southern Pacific Rail Corporation, United States Department of Transportation and United Transportation Union.

The rebuttal of the Shell Companies addresses the comments which were submitted by (1) Union Pacific Corporation and its' subsidiaries Union Pacific Railroad Company and Southern Pacific Rail Corporation (UP); (2) Burlington Northern and Santa Fe Railway Company (BNSF); (3) Norfolk Southern Corporation and Norfolk Southern Railway Company (NS); and (4) CSX Corporation (CSX).

III - BACKGROUND

United States railroad industry consolidation has resulted in a concentration of market power that would be unimaginable in any other industry. Two duopolies have been created. West of the Mississippi River the UP and BNSF railroads dominate the market for rail services, with one or the other handling virtually every carload which moves in this region. A similar situation has been created in the East with the approval of the purchase of Conrail by CSX and NS.

However, these are not duopolies in the sense that in each market the consumer of rail services has a choice of carriers for each move such as might be the case in an airline duopoly. For example, if a duopoly existed in the air passenger market between two cities, the consumer would have a choice as to the carrier. In the same case the consumer of rail services would have to enjoy service from two carriers at both the origin plant and the destination customer facility. For the preponderance of the rail service in the U.S., this is not the case. In most cases the origin and/or the destination is served by only one carrier which precludes choice for the consumer of the service on either end.

Therefore, the majority of the origin-destination pairs within each of these duopolies actually represent monopoly franchises for a single carrier. That is the importance of this case to the UP. It is a concern for the preservation of the monopoly franchises they have been allowed to assemble and not whether their customers are receiving the best possible service, in the safest possible manner, at competitive prices.

While the other three major rail carriers have slightly different agendas in the instant case, the underlying purpose of their filings is the same; protection of monopoly franchises. The statements of each of the carriers are addressed below.

The STB, imposed a five year oversight condition on approval of the UP purchase of the SP and retained jurisdiction to impose additional remedial conditions on the merger if those already imposed proved insufficient. It is obvious from the events which have occurred since control of the SP was ceded to the UP in September, 1996 that the original conditions of the merger were grossly inadequate.

Lack of competition was, to a great degree, responsible for Gulf Coast Region service crisis which spread to other parts of the UP system. If adequate competition had been mandated for the Gulf Coast Region, a system meltdown would have been less likely for several reasons. First, competition forces companies to focus outward, on the customer, rather than inward. The merger with the SP eliminated much of UP's Gulf Coast Region competition. Rather than focusing on its customer base following purchase of SP, the UP focus was internal. Priority was placed on cost cutting and system rationalization in order to justify merger costs rather than focusing on customers and their requirements. When the crisis occurred, the UP internal focus became more intense

as management resources were trained on maintenance of monopoly franchises through the exclusion of other carriers.

Second, the concentration of resources in the hands of one carrier (UP) guaranteed regional meltdown in the event of severe service problems for that carrier. If adequate competition had been maintained in Houston and the surrounding region, other carriers would have been available to take up the slack as the UP began having problems. The regional service meltdown would have approached neither the breadth nor depth we experienced had railroad service alternatives had been immediately available to the effected shippers.

The Board, based on the best information available to it at the time, approved the merger of the UP and SP subject to competitive conditions which have now proved inadequate. However, there have been unforeseen ramifications from the decision which the Board must now correct. The inability of the UP to effectively operate the franchise it was granted and subsequently to fulfill its common carrier obligations as it gridlocked an entire region, make clear the mistake of concentrating such enormous market power in the hands of a single carrier.

The Board has rightfully provided the opportunity to correct this mistake. The desire of UP to protect its monopoly franchises notwithstanding, the correct course of action is to implement conditions which will preclude the occurrence of a disaster similar to the one the Gulf Coast Region has experienced over the past eighteen months.

UP's Opposition to Condition Applications

UP has shown its true concern throughout the service crisis which it created with its mishandling of the SP purchase and consolidation. When the Gulf Coast meltdown began to take shape in the first quarter of 1997, UP first denied that there was a crisis. As the crisis became worse during the summer of 1997, UP made excuses and consistently underplayed the significance of the meltdown in its public statements. In the fall UP fiercely resisted STB intervention in the form of an emergency service order. Throughout the term of the order, UP fought its extension, always claiming that operations would return to normal, by the next month.

The UP concern was not "the public interest," nor was it the financial losses suffered by its customers due to higher transportation prices, lower equipment utilization, lost business opportunities and plant shutdowns. The UP was solely preoccupied with protecting its monopoly franchises by resisting even emergency trackage rights for those carriers which could help alleviate the crisis caused by UP.

UP has filed predicable comments on the conditions requested by the Consensus Group, BNSF and others. The weight given these comments must be limited to the pounds of paper they consume however, as they represent a four volume effort to obscure the issues before the Board.

The UP filing is a monument of corporate self-absorption, filled with avoidance of responsibility, self-aggrandizement and historical revisionism. UP begins by praising STB for its actions in handling the UP service meltdown. Particularly citing STB Emergency Service Order 1518 the UP touts "measured but decisive action" by the

Board.² The praise continues for the next two pages. This is the same UP which fought vigorously against ESO 1518, maintaining that STB intervention was unnecessary.

The UP deflects responsibility for the service crisis to any and every other party that it could possibly blame, including the BNSF, SP, Mexican traffic, and "the economy" to name a few.³ It admits only two errors, "both of them reversed within two weeks."⁴

UP also takes full credit for solving the service crisis.⁵ No credit is given to the STB, to the other railroads which took the pressure off by handling part of its traffic or to shippers which were forced to find alternative modes. No, "...the crisis is over, and the merger deserves the credit for this good news."⁶ In fact the service crisis has diminished in the Houston/Gulf Coast area, though service is by no means back to normal. The improvement is due in no small part to many of the initiatives which were implemented as a result of ESO 1518 and that under consideration in this docket as permanent conditions. It is not because of the self serving action of the UP.

The UP backs up its assertions with Verified Statements from numerous consultants and railroad personnel. One such statement, by Mr. Dennis J. Duffy, Executive Vice President-Operations for UP, makes the claim that "[T]here is no-service related reason to grant the conditions requested by other railroads or customers in this proceeding."⁷ To back this up Mr. Duffy provides the Board with measurements of UP

² UP's Opposition to Condition Applications - Volume 1, Page 2

³ UP's Opposition to Condition Applications - Volume 1, Pages 63-70

⁴ UP's Opposition to Condition Applications - Volume 1, Page 68

⁵ UP's Opposition to Condition Applications - Volume 1, Pages 70-75

⁶ UP's Opposition to Condition Applications - Volume 1, Pages 74-75

⁷ UP's Opposition to Condition Applications - Volume 3, V.S of Dennis J. Duffy, Page 2

performance. It is important for the Board to realize that the way the railroad measures performance and the way shippers measure performance are very different. A railroad is interested in the on-time performance of its trains. Shippers are interested in transit time; how long it takes to move a car, from the time it is picked up until it is finally placed on the customer's track. When Shell instituted its "Railroad Performance Measurement" program covering nine major railroads serving Shell across the United States and asked railroads to provide transit time measurements the railroads invariably brought glowing statistics concerning the "on-time" percentage of their trains, much like Mr. Duffy presents in his statement. However, the transit time measurement on an individual cars or block of cars from date of shipment to constructive placement at destination is basis upon which Shell gauges on-time performance.

Mr. Duffy provides statistics for the movement of Shell products from Deer Park to the gateways of East St. Louis and New Orleans. According to Mr. Duffy "Service to Shell has returned to normal levels."⁶ In September 1998 Mr. Duffy reports that loaded cars were averaging 3.75 days from Deer Park to New Orleans. Prior to the merger when Shell shipped either via the UP or the SP it was taking 3 days from date of pickup to placement to constructive placement or placement for interchange in New Orleans, which is 25% higher than what transit time should be. We don't know whether Mr. Duffy is measuring train time from Deer Park to New Orleans or car time from the Shell plant to constructive placement. He may not have included the terminal time. As for loaded cars

⁶ UP's Opposition to Condition Applications - Volume 3, V.S of Dennis J. Duffy, Page 7

from Deer Park to East St. Louis all Mr. Duffy gives is a percentage improvement (78% since the worst month) which tells us absolutely nothing.

Mr. Duffy's was the only Shell specific testimony regarding UP performance. The bottom line is that UP performance will only reach optimal levels when they experience the pressure of competition.

Volume Four of the UP comments is a compilation of over 500 letters of support solicited by UP from other railroads, shippers and government officials. Many of the letters in that volume were drafted from a form letter that UP provided which talked about letting "UP fight its way out" of problems and that we should not "weaken UP at a time when it has already suffered large financial and traffic losses." Most of the letters are not even from entities connected in any way with, or affected by, rail competition in the Gulf Coast Region. This entire volume should be given no weight.

The BNSF comments seek to preclude the Consensus Group from obtaining any of the conditions sought. BNSF comments are interesting in that while BNSF wants to protect its part of the Houston pie from KCS/Tex Mex, it also wants to apply the Consensus Group principles to compete in the UP monopoly franchises. CSX and NS filed statements in order to preclude the establishment of a precedent where the Board rectifies problems created by unforeseen ramifications of merger decisions.

The statements filed by the railroads as comments in opposition to the proposed conditions in this proceeding provide no basis for rejecting those conditions. Despite lofty rhetoric in its comments about "public interest," private property and the constitution, the UP objective remains the same; preservation of its monopoly franchises. The Board

should ignore the UP rhetoric and take action which would prevent a recurrence of the UP service disaster, as recommended in the statement of Brian P. Felker heretofore.

VERIFICATION

COUNTY OF HARRIS)

) ss:
STATE OF TEXAS)

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

Signed: _____

David L. Hall

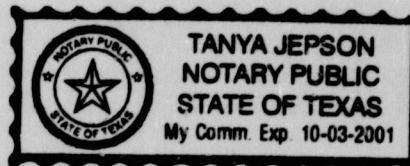
Subscribed and sworn to before me this 15th day of October, 1998

Tanya Jepson
Notary Public

My Commission expires:

10/3/01

(SEAL)



STB FD 32760 (Sub 28) 10-16-98 D 191632

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D

LAW OFFICES
REA, CROSS & AUCHINCLOSS
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KEITH G. O'BRIEN
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OCT 18 1998

Public Record

October 16, 1998



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

RE: STB Finance Docket No. 32760 (Sub-Nos. 26 and 28),
Union Pacific Corp., et al. -- Control and Merger --
Southern Pacific Corp., et al.

[Houston/Gulf Coast Oversight]

Notice of Address Change

Dear Secretary Williams:

Submitted herewith in the above-captioned proceeding are an original and 25 copies of the verified statement of Lorenzo E. Cantu, President and Chief Operating Officer of the Brownsville & Rio Grande International Railroad ("BRGI"). A copy of Mr. Cantu's verified statement is to be included with The Burlington Northern and Santa Fe Railway Company's ("BNSF") Rebuttal to the Union Pacific Railroad's Reply, which we understand will be filed today with the Board. As a party of record in this proceeding, BRGI has elected to file the enclosed verified statement independent of the BNSF filing out of an abundance of caution.

Copies of the enclosed verified statement will be served upon all parties of record in the above-captioned proceeding.

I note that several parties in this proceeding are sending filings to me at our firm's previous address at 1920 "N" Street. I would request that the Board and all other parties of record review their service records and, if necessary, revise them to reflect our correct address, which is as follows:

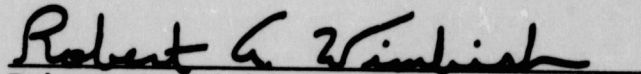
Hon. Vernon A. Williams
October 16, 1998
Page Two

Robert A. Wimbish
REA, CROSS & AUCHINCLOSS
1707 "L" Street, N.W.
Washington, D.C. 20036

Counsel for the Brownsville & Rio Grande
International Railroad

Thank you for your attention. Please do not hesitate
to contact me, if you have any questions concerning this
submission.

Sincerely,


Robert A. Wimbish

Counsel for Brownsville & Rio Grande
International Railroad

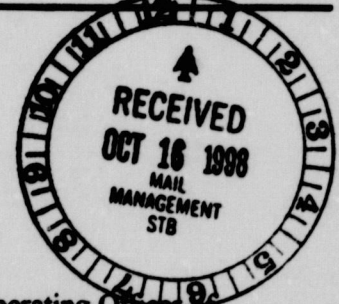
Enclosure

cc: All parties of record



**BROWNSVILLE AND RIO GRANDE
INTERNATIONAL RAILROAD**

P.O. Box 3818
Brownsville, Texas 78523-3818
Phone: (210) 831-7731
Fax: (210) 831-2142



Re: Finance Docket. No. 32760 (Sub-Nos. 26 and 28)

My name is Lorenzo "Larry" E. Cantu. I am the President & Chief Operating Officer of the Brownsville & Rio Grande International Railroad ("BRG"). The BRG is located at the Port of Brownsville, Texas and serves as a terminal switching carrier for this area.

I am filing this Verified Statement in support of the Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line. I believe that this request will benefit our railroad and our shippers and will result in service improvement, needed operational flexibility and the ability to avoid adding unnecessary traffic to the Houston terminal area.

As the Board is already aware, I previously submitted a verified statement in this proceeding, in which I stated my support for BNSF's requests for conditions in the Harlingen-Brownsville area. (Clearly, the Brownsville area conditions would directly enhance BRG operations.) I have since had further discussions with representatives of BNSF, and they have persuaded me that I should state my support for other specific portions of BNSF's recent proposals to the STB in this proceeding — specifically, (1) BNSF's request for permanent bi-directional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line, and (2) BNSF's request that it be granted the right, wherever in the Houston/Gulf Coast area UP institutes directional operations impacting BNSF's operations over trackage rights lines, and BNSF has trackage rights over some, but not all of the directional routes UP establishes, to join in those directional flows via additional trackage rights over UP.

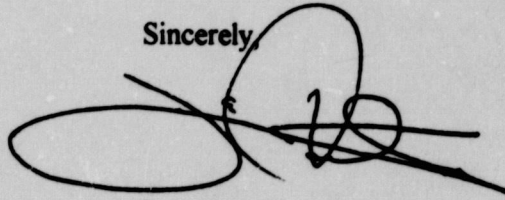
I offer my support to the two enumerated BNSF proposals (in addition to the Brownsville area relief for which I already have stated my support), because I recognize that the requested conditions could contribute greatly to improved BNSF service to and from the Brownsville area. Indeed, BNSF's proposed bi-directional rights on UP's Caldwell-Flatonia-Placedo line would keep BNSF trains out of the Houston area, thus avoiding potential congestion, and shortening BNSF's route to Brownsville by approximately 100 miles in each direction. Naturally, I support any operating proposal that enhances service to and from the Brownsville area.

For all these reasons, the Board should grant BNSF's request to maintain these bi-directional overhead trackage rights on a long-term basis. This would benefit our railroad and our shippers and will result in service improvements for both the UP and BNSF to provide greater operational flexibility and reduce congestion in the Houston terminal area.

Verified statement
Lorenzo "Larry" E. Cantu
Page Two

I certify under penalty of perjury that the foregoing is true and correct. Executed this 15th day of October, 1998.

Sincerely,

A handwritten signature in black ink, appearing to be "Lorenzo Cantu", written over a horizontal line.

Lorenzo "Larry" Cantu



Mayra H. Leal

STB FD 32769 (Sub 28) 10-16-98 D 191625



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

28
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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

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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.

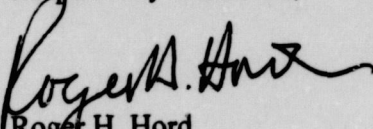
HOUSTON/GULF COAST OVERSIGHT

Dear Secretary Williams:

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

**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:

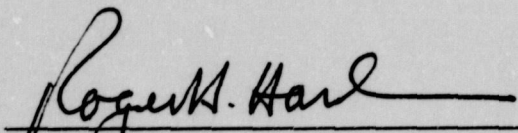
- 1) The STB should provide a mechanism for all railroads serving Houston to buy trackage rights and access rights at an equitable price to the following areas to provide greater competition for Houston area shippers:

- a) The trackage currently owned by the Port of Houston and operated by the Port Terminal Railroad Association (PPTA);
 - b) The trackage historically owned by the Houston Belt and Terminal RR prior to it 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 PTTRA 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 PTTRA 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 PTTRA, and all long haul railroads serving Houston should be full and equal voting members of the PTTRA 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).



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STB FD 32760 (Sub 28) 9-18-98 D 191229

September 17, 1998

Commonwealth
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Associates

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



Re: STB Finance Docket No. 32760 (Sub-No. 26)
Union Pacific Corp., et al. - Control & Merger - Southern Pacific Corp., et al.

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

(Sub-No. 28) Burlington Northern and Santa Fe Railway Company—
Terminal Trackage Rights—Texas Mexican Railway Company

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

(Sub-No. 30) Texas Mexican Railway Company, et al.—
Request For Adoption of Consensus Plan

Dear Secretary Williams:

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

Copies of these Joint Comments are also concurrently served on all other parties of record.

Respectfully submitted,

David L. Hall

ENTERED
Office of the Secretary

SEP 21 1998

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STB FD 32760 (Sub 28) 9-18-98 D 191202

191200

PORT OF HOUSTON AUTHORITY

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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:

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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

191200
191201
191202
191203
191204
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191206

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

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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 PTRA, 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 PTRA 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 Barbour's 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 Gaicna 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.

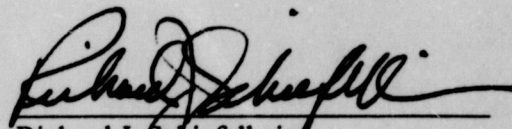
This example demonstrates the efficiency of using PTR A's North Yard, which is adjacent to the Clinton Branch, to handle traffic for the Clinton Branch rather than using UP's Englewood Yard, which is more distant.

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 mail, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26).


Richard J. Schiefelbein

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STB FD 32760 (Sub 28) 9-18-98 D 191195



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,

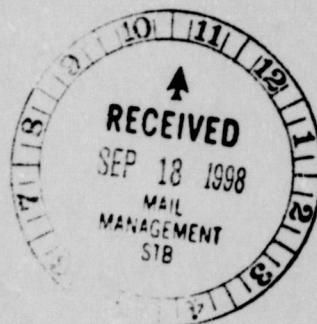
Roger H. Hord
713 844-3625

1 71193

**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



**ENTERED
Office of the Secretary**

SEP 18 1998

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Public Record**

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

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.

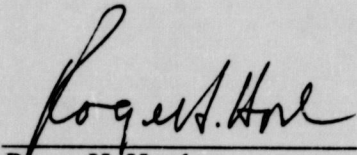
The conditions described above, which have been requested in the Consensus Plan, are similar to the GHP Board of Directors' resolution on *Competition in Houston Freight Rail Service*. The GHP Board's resolution emphasizes that Houston's rail system performance must be "in the top tier of United States 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 main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26).

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

Roger H. Hord
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STB FD

32760

(Sub 28)

8-28-98

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Office of the Secretary

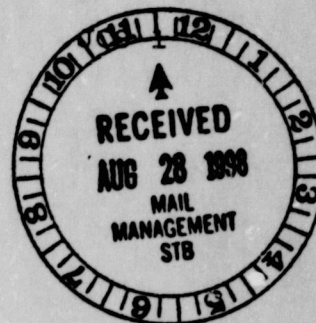
AUG 28 1998

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 Transporta-
tion Union-Illinois Legislative Board, gives notice of intent to
participate. 63 Fed. Reg. 42482-86. (August 7, 1998).

Gordon P. MacDougall
GORDON P. MacDOUGALL
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).

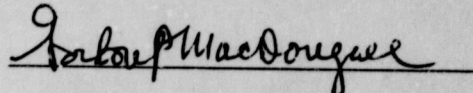
^{2/}Illinois Legislative Director for United Transportation Union,
with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

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:

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Stephen Grossman, ALJ
Federal Energy Regulatory Comm.
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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

32760

(Sub 28)

8-27-98

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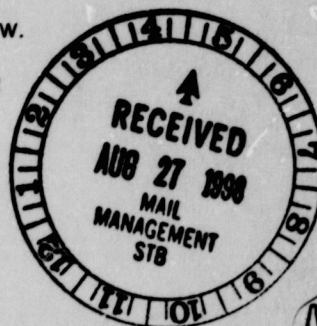
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Office of the Secretary

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August 27, 1998



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VIA HAND DELIVERY

Office of the Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 32760 (Sub-Nos. 26, 28, 29 & 30)

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five (25) copies of The Burlington Northern and Santa Fe Railway Company's Notice of Intent to Participate (BNSF-6). Also enclosed is a 3.5-inch disk containing the text of the filing in WordPerfect 6.1 format.

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

Sincerely,

Erika Z. Jones ^{KEO}

Erika Z. Jones

Enclosures

cc: Parties of Record

ENTERED
Office of the Secretary

AUG 28 1998

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

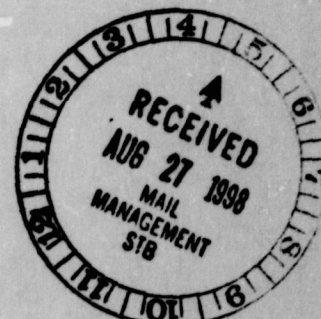
FINANCE DOCKET NO. 32760

(Sub-No. 26) - 190783

(Sub-No. 28) - 190784

(Sub-No. 29) - 190785

(Sub-No. 30) - 190786



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 OF THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

The Burlington Northern and Santa Fe Railway Company hereby files its notice of
intent to participate in these proceedings as a party of record.

Please enter the appearances in these proceedings of the below-named attorneys on behalf of The Burlington Northern and Santa Fe Railway Company and place them on the service list, at the addresses provided, to receive all pleadings and decisions in these proceedings.

Respectfully submitted,

Jeffrey R. Moreland
Richard E. Weicher
Michael E. Roper
Sidney L. Strickland, Jr.

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and Santa Fe Railway Company
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Attorneys for The Burlington Northern and Santa Fe Railway Company

August 27, 1998

STB FD 32760 (Sub 28) 8-27-98 D 190762

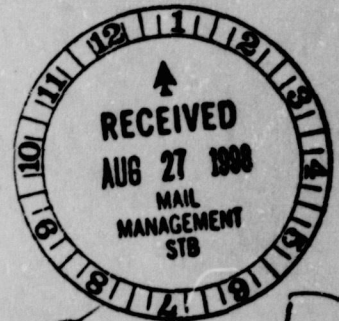
AUG 28 1998

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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,

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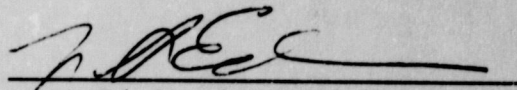
August 27, 1998

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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 (SUB28) 8-19-98 D ID-190595

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SHIRLEY A. COFFIELD
MICHAEL F. MORRONE
JOHN S. RICHARDS
JEAN SAVIGNY
JOHN B. DUBECK
PETER L. DE LA CRUZ
MELVIN S. DROZEN
LAWRENCE P. HALPRIN
RALPH A. SIMMONS
RICHARD F. HANN

C. DOUGLAS JARRETT
SHEILA A. MILLAR
GEORGE G. MISKO
GAREN E. DODGE
PATRICK J. HURD
JUDITH SAPP
DAVID S. SARVADI
CATHERINE R. NIELSEN
JEAN-PHILIPPE MONTFORT
JUSTIN C. POWELL
JONATHAN R. SPENCER
AMY N. RODGERS
ELLIOT BELLOS
MARK L. ITZKOFF
ARTHUR S. GARRETT III
ROBBIE S. PITT
ELIZABETH H. HARRISON
JOHN S. RODGERS
CAROL MOORE TOTH
JOAN C. SYLVAIN
HARSHA E. MARRAPESE
JOHN E. REESE

NICOLE S. DONATH
DEBORAH ROSEN WHITE
DAVID R. JOY
FREDERICK A. STEARNS
TODD A. HARRISON
JOHN F. FOLEY
TONY RUSSELL EPPS
THOMAS C. BERGER
RACHIDA SEMAL
JOHN F. C. LUEDKE
KORAL J. KERSHBERG
PAULA DEZA
MICHAEL C. HOCHMAN
JOHN S. O'LOUGHLIN, JR.
JENNIFER A. GOLDSTEIN
DEVON W. HILL
DANIEL QUINTART
DAVID CH. LASHWAY
TASHIR 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)
HOLLY MUTMIRE FOLEY
JANETTE HOUK, Ph. D.
LESTER BORODINSKY, Ph. D.
THOMAS C. BROWN
MICHAEL T. FLOOD, Ph. D.
ANDREW P. JOVANOVIK, 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 Pacific Rail Corp.
STB Finance Docket No. 32760 (Sub-Nos. 26-32)

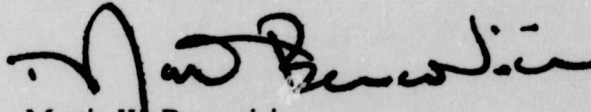
Dear Secretary Williams:

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.

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U.S. DEPT. OF TRANSPORTATION
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(202) 434-4144
Bercovici@khlaw.com

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STB FD-32760 (SUB28) 7-13-98 D ID-190509

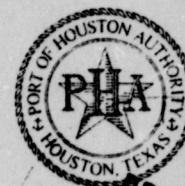
PORT OF HOUSTON AUTHORITY

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

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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 28

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

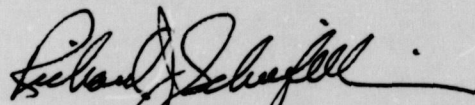
The Port of Houston Authority intends to participate in the above-captioned proceedings. Please include Richard J. Schiefelbein on the service list as a party of record representing the Port of Houston Authority, at the following address:

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 (SUB28) 8-11-98 D ID-190491

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

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Office of the Secretary

AUG 11 1998

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William A. Mullins

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

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

202-274-2953

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

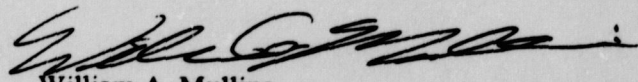
Dear Secretary Williams:

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

STB FD-32760 (SUB28) 8-11-98 D ID-190467



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

August 10, 1998

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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:

STB Finance Docket 32760 (Sub-No. 27)
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)
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)
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)
Texas Mexican Railway Company, et al.
Request for Adoption of Consensus Plan

Notice of Intent to Participate

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August 10, 1998
Page 2

STB Finance Docket 32760 (Sub-No. 31) - 190476
Houston & Gulf Coast Railroad
Application for Trackage Rights and Forced Line Sales

Notice of Intent to Participate

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

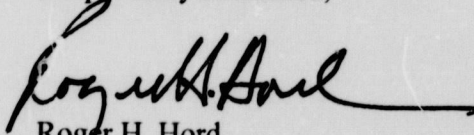
Roger H. Hord
Greater Houston Partnership
1200 Smith, 7th Floor
Houston, Texas 77002

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, Scoult & Rasenberger, L.L.P.

STB

FD-32760 (SUB 28)

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208336

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

208336

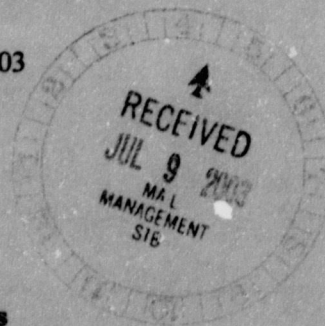
401 NINTH STREET, NW
SUITE 1000
WASHINGTON, DC 20004-2134
WWW.TROUTMANSANDERS.COM

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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JUL 09 2003
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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

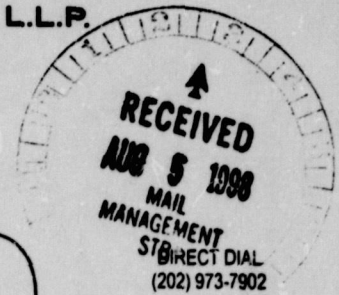
Docket No. Ex Parte No. or Finance Docket No.	List of Proceedings Before the STB
Docket No. AB-468 (Sub-No. 5X)	Paducah & Louisville Railway, Inc. - Abandonment Exemption - In McCracken County, KY
F.D. No. 34342	Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern 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-3260 (UB28) 8-5-98 D ID-190392

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

Dear Secretary Williams:

Sub 28

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 28) 9-28-98 D 191362

September 21, 1998



Commonwealth
Consulting
Associates

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

Re: STB Finance Docket No. 32760 (Sub-No. 26) - 191361
Union Pacific Corp., et al. - Control & Merger - Southern Pacific Corp., et al.

(Sub-No. 26) Houston/Gulf Coast Oversight Proceeding

(Sub-No. 28) Burlington Northern and Santa Fe Railway Company— 191362
Terminal Trackage Rights—Texas Mexican Railway Company

(Sub-No. 29) Burlington Northern and Santa Fe Railway Company— 191363
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

(Sub-No. 30) Texas Mexican Railway Company, et al.— 191364
Request For Adoption of Consensus Plan

Dear Secretary Williams:

Pursuant to Board decision dated, September 10, 1998 in this proceeding, Shell Oil Company and Shell Chemical Company hereby give notice that they have served all parties of record with copies of previously filed pleadings.

Respectfully submitted,

David L. Hall
C.C.

David L. Hall

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Office of the Secretary

SEP 28 1998

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July 7, 1998

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**Commonwealth
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Associates**

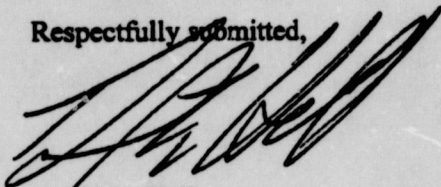
Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No.26)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

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

Respectfully submitted,



David L. Hall

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.

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

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

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

Due Date: July 8, 1998

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

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.

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FINANCE DOCKET NO. 32760 (SUB-NO. 26)
UNION PACIFIC CORP., et al. -- CONTROL & MERGER --
SOUTHERN PACIFIC RAIL CORP., et al.
HOUSTON/GULF COAST OVERSIGHT PROCEEDING

SHELL OIL COMPANY
AND
SHELL CHEMICAL COMPANY

REQUEST FOR NEW REMEDIAL CONDITIONS

Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell"), in response to the opportunity afforded by the Surface Transportation Board (Board or STB) by its Decision served May 19, 1998 in Finance Docket No. 32760 (Sub-No. 26), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al., Houston/Gulf Coast Oversight Proceeding, hereby file a joint request for new remedial conditions. Both companies are corporations, the address of which is One Shell Plaza, Post Office Box 2463, Houston, Texas 77252.

SHELL INTEREST

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

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

RECOMMENDATIONS FOR NEW REMEDIAL CONDITIONS

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

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

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

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

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

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

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

CONCLUSIONS

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

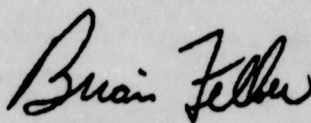
The Board is charged with ensuring a safe and efficient rail system (49 USC 10101(3)). The rail system in the west, and particularly in the Houston/Gulf Coast region has been neither safe nor efficient. This is due in large part to the reduction in competition as a western duopoly was granted through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

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

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

Respectfully submitted,

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

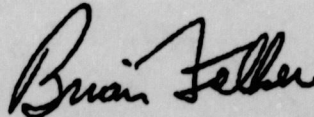
A handwritten signature in cursive script, reading "Brian Felker".

Brian P. Felker
One Shell Plaza
Houston, Texas 77252

Dated: July 7, 1998

CERTIFICATE OF SERVICE

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



**Brian P. Felker
Manager of Products Traffic
Shell Chemical Company
One Shell Plaza
Post Office Box 2463
Houston, Texas 77251**

August 10, 1998

**Commonwealth
Consulting
Associates**

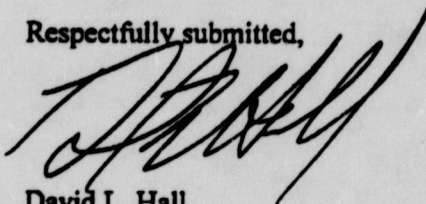
Honorable Vernon A. Williams
Office of The Secretary
Case Control Unit
Attn: STB Finance Docket No. 32760 (Sub-No.26)
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Please accept this letter as Notice of Intent to Participate in the proceeding referenced above and add my name to the service list as a party of record. Commonwealth Consulting Associates will file comments on behalf of Shell Chemical Company and Shell Oil Company.

Respectfully submitted,



David L. Hall
Commonwealth Consulting Associates
13103 F.M. 1960 West
Suite 204
Houston, TX 77065

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