STB FD 32760 (Sub 29) 9-29-98 A 191393

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Office of the Secretary
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BY HAND

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

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

Dear Secretary Williams:

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

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

Sincerely,

Scott M. Zimmerman

Scott M. Zimmerman

Enclosures

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ORIGINAL

TM-19

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT

ERRATA TO THE CONSENSUS PLAN

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

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

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

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

ERRATA

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

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

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

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

Respectfully submitted,

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

Attorneys for the Texas Mexican Railway Company

Dated: September 29, 1998

CERTIFICATE OF SERVICE

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

Erika Z. Jones
Adrian L. Steel, Jr.
Kathryn A Kusske
Kelley E. O'Brien
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
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and by first class mail upon all other parties of record in the Houston/Gulf Coast Oversight proceeding, Finance Docket No. 32760 (Sub-No. 26 *et al.*).

Scott M. Zimmerman
Attorney for the Texas Mexican Railway Company

Exhibit No. JJP-3
July 8, 1998

Base Case
Balance Sheet
(Revised)

The Texas Mexican Railway Company

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

Exhibit No. JJP-4
July 8, 1998

Base Case
Income Statement
(Revised)

The Texas Mexican Railway Company

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

Base Case
Sources and Applications of Funds
(Revised)

Exhibit No. JJP-5
July 8, 1998

The Texas Mexican Railway Company

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

Exhibit No. JJP-6
July 8, 1998

Consensus Plan
Balance Sheet
(Revised)

The Texas Mexican Railway Company

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

Exhibit No. JJP-7
July 8, 1998

Consensus Plan
Income Statement
(Revised)

The Texas Mexican Railway Company

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

Exhibit No. JJP-8
July 8, 1998

Consensus Plan
Sources and Applications of Funds
(Revised)

The Texas Mexican Railway Company

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

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MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

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July 8, 1998

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-No. ~~26~~ 29)

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 Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area, and a check for $5,000 to cover the applicable filing fee. 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

Erika Z. Jones

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Enclosures

cc: Parties of Record

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. ~~26~~ 29)

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]

APPLICATION FOR ADDITIONAL REMEDIAL CONDITIONS REGARDING THE HOUSTON/GULF COAST AREA

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

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Attorneys for The Burlington Northern and Santa Fe Railway Company

July 8, 1998

BEFORE THE

SURFACE TRANSPORTATION BOARD

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

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

[Houston/Gulf Coast Oversight]

APPLICATION FOR ADDITIONAL REMEDIAL CONDITIONS REGARDING THE HOUSTON/GULF COAST AREA

Pursuant to the Surface Transportation Board's ("Board") Decision No. 1 in Finance Docket No. 32760 (Sub-No. 26), The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby submits its Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area.

INTRODUCTION

When the Board approved the merger of UP and SP in Decision No. 44 in Finance Docket No. 32760, it granted extensive trackage rights to BNSF as a condition of the merger and added several other conditions designed to "permit BNSF to replace the competition that will be lost when SP is absorbed into UP." Dec. No. 44, at 116.

However, in so doing, the Board imposed an oversight condition on the merger pursuant to which it retained jurisdiction (i) to monitor the competitive consequences of the merger; (ii) to re-examine whether the conditions imposed by the Board on the merger have effectively addressed the consequences they were intended to remedy; and (iii) to impose additional remedial conditions if the conditions that were imposed proved insufficient. Dec. No. 1, at 5.

In Decision No. 1, the Board recounted the recent history of the UP/SP service difficulties, which the Board characterized as having precipitated a "rail service crisis in the western United States caused, in large measure, by severely congested UP/SP lines in the Houston/Gulf Coast region." Dec. No. 1, at 3. In response to this crisis, the Board made substantial, but temporary, changes in the way service is provided in and around Houston. STB Service Order No. 1518 (various decisions). In its February 25, 1998 Decision extending the Service Order to August 2, 1998, the Board observed "that the infrastructure throughout the West may be increasingly incapable of handling growing traffic volumes." The Board went on to note that "ton-mile growth on the SP system over that 10-year period [ending in 1996] was 71 percent, while revenue growth was only 18 percent during the corresponding period. It would appear that this profitless growth contributed heavily to the inadequacy of SP's Houston area infrastructure because there were few funds available to invest in the infrastructure." Service Order No. 1518 Decision, February 25, 1998 at 5, n. 7.

In Decision No. 1, the Board further observed that, "although merger implementation issues were involved, a key factor causing the service emergency was the inadequate rail facilities and infrastructure in the region..." Dec. No. 1, at 4. Since the temporary changes ordered by the Board in Service Order No. 1518 were authorized by the emergency service provisions of the statute (49 U.S.C. § 11123), that provision of the law limits the effectiveness of the emergency orders to a period of time not to exceed 270 days (currently set to expire on August 2, 1998). The Board thus invited interested persons to present "proposals for longer-term solutions to the service situation -- including those seeking structural industry changes based on perceived competitive inadequacies -- in formal proceedings outside of Section 11123, particularly in the UP/SP merger oversight process." Dec. No. 1, at 4.

BNSF has carefully considered the Board's analysis and has concluded that the Board is correct about the current inadequacy of the Houston area rail infrastructure to handle the current and projected traffic. In evaluating this issue, and the proposals for structural relief that follow in this Application, the Board must consider the fact that current traffic and congestion patterns are masking the potential risks at Houston, because summer rail traffic volumes are routinely lower than autumn and winter traffic volumes. In the next several weeks, predictable seasonal traffic fluctuations will lead to increased traffic through Houston. At the same time, the Service Order is about to expire, forcing the return through Houston of train movements that have been able to avoid Houston as a result of the temporary relief afforded under the Service Order. With the expiration of the Service Order on top of the seasonal increases in traffic that can reasonably be anticipated for Houston in the near future, the Board has no basis to presume that the service crisis will not be exacerbated this autumn.

BNSF believes that the Board should act to ensure, to the extent possible, that competitive problems induced by the service crisis do not recur by making certain structural changes in certain of the conditions imposed on the UP/SP merger. The structural changes sought by BNSF in this Application are necessary both to assure adequate competitive service to shippers served by BNSF in the affected region, as well as to protect the value of the trackage and other rights obtained by BNSF in its settlement agreement with UP/SP in the original merger proceeding. Throughout this Application, BNSF will refer to the need to correct "structural deficiencies" in the trackage and other rights it obtained in the original merger proceeding. By that term, BNSF means that the trackage and other rights it received, while sound when originally conceived, have degraded substantially as a result of the unanticipated service and related problems in and around Houston and the Gulf Coast area and as a result of unanticipated changes in the structure of the Mexican rail market (including Tex Mex's unwillingness to negotiate competitive service arrangements with BNSF for Mexican traffic). BNSF has limited its requests for relief to those minimally necessary to address these "structural deficiencies" and does not seek access to any additional shippers by its Application.

As the record in Service Order No. 1518 reflects, the service crisis has seriously affected BNSF's ability to provide competitive service on its trackage rights lines and at "2-to-1" points in Houston and, indeed, throughout the West, as the Houston congestion problems have radiated outward. In BNSF's view, the Board should act to allow permanent reroutes of Western traffic to avoid Houston, where possible to do so. In this

Application, BNSF seeks some modest additional trackage rights to allow such permanent rerouting for some traffic.

In addition, the Board should act to ensure adequate competition for shippers seeking access to (or from) Mexico via Brownsville and Laredo. BNSF seeks additional conditions solely for the purpose of assuring the adequacy of competition already anticipated by the Board when it imposed Brownsville and Laredo conditions in the original merger proceeding.

SUMMARY OF EVIDENCE AND ARGUMENT

As explained in this Application and in the Verified Statements of Peter J. Rickershauser, Ernest L. Hord and Joseph P. Kalt submitted herewith, the ability of BNSF to provide reliable, dependable and consistent service to shippers under the conditions imposed by the Board on the UP/SP merger to preserve competition is being thwarted (i) by structural deficiencies in certain of the rights which BNSF received as a result of the UP/SP merger on UP's lines in the Houston and Gulf Coast area, and (ii) by UP's practice of favoring its trains over the trains of other carriers in situations where the continuing congestion and service problems on UP's lines preclude normal operations. In addition, other post-merger developments involving the relationship between Tex Mex and KCS and the structure of the Mexican rail system have adversely affected BNSF's ability to provide rail shippers a viable competitive alternative to UP at Laredo, TX. Accordingly, structural realignments of certain of BNSF's rights are required to shift BNSF traffic to less congested, lower density routes, to enable BNSF to access the Laredo gateway directly, and to enable BNSF to provide shippers with the effective and efficient competitive options envisioned by the Board when it approved the UP/SP merger.

As described below and in the accompanying Verified Statements of Messrs. Rickershauser and Hord, BNSF's proposed conditions are focused on operational changes needed to assure that shippers retain fully effective competitive options. They are not designed to increase access by any carrier, including BNSF, to shippers to which the carrier does not already have access. The Board has initiated various proceedings, including Ex Parte Nos. 573 and 628, to examine issues relating to competitive access, and BNSF believes that such issues are properly dealt with in those proceedings.

As described in the Verified Statement of Professor Kalt, the appropriate standard to be applied in this proceeding is whether the remedial conditions requested would implement the competitive thrust of the Board's prior orders -- preserving the pre-merger levels of competition, rather than reopening the basic competitive decisions of those orders. Two sets of circumstances would justify adjustment of the original conditions. First, given the recent service problems of UP, the specific operational rights granted to a carrier such as BNSF may not be sufficient to maintain pre-merger levels of competitive service to specific groups of shippers. Second, exogenous events, unrelated to the post-merger UP's actions and unanticipated by the Board, may have adversely affected the ability of the conditions imposed by the Board to protect competition. In both cases, the Board would be justified in adjusting the conditions it originally imposed in order to maintain competitive service to the shippers those conditions were intended to protect.

Because of the structural deficiencies and UP's practice of favoring itself, BNSF, despite extensive efforts, remains a long way from providing the effective competitive service to shippers in the Houston and Gulf Coast area that they expect and desire. UP's congestion and service problems are continuing and are likely to persist in the future. BNSF, other carriers and Houston area shippers are now experiencing alternating cycles of several days of sporadic improvement in UP service followed by a number of days when service returns to near crisis levels. It is difficult for BNSF to provide the vigorous competition the Board anticipated in such an environment of unpredictable and unreliable service.

Because it is BNSF's preference to work first directly with UP to address and resolve these types of problems whenever possible, senior BNSF management met with senior UP management on June 1, 1998, to present several proposals for the structural realignment of BNSF's merger condition rights to enable it to provide rail shippers with effective competitive service. BNSF's representatives explained their view that congestion in Houston could be substantially lessened by the rerouting of BNSF traffic neither originating nor terminating in Houston so as to bypass Houston on less congested routes, i.e., a significant amount of BNSF traffic currently routed through Houston could be routed through Temple or elsewhere, and they discussed several proposals for achieving that result with UP's representatives. BNSF's representatives also identified several other proposals designed to overcome severe operational handicaps that are being imposed on BNSF's ability to compete elsewhere in south Texas outside of the Houston area by rerouting BNSF traffic to less congested UP routes and by joining UP directional operations in additional corridors. To date, UP has refused to accept any of BNSF's proposals.

In addition to the structural problems and UP favoritism which have prevented BNSF from providing fully competitive alternative service to shippers, KCS' acquisition of a 49 percent ownership interest in Tex Mex and KCS' influence over Tex Mex have affected BNSF's ability to replace the competition provided by SP at Laredo as an interline carrier with Tex Mex in ways not anticipated at the time of the UP/SP merger. When the merger was approved and BNSF was given the right to serve Laredo via Tex Mex, it was assumed that Tex Mex would continue to act -- as it had in the past -- as an independent, neutral carrier with an incentive to work with BNSF as a replacement for SP. However, as discussed below, that assumption has turned out to be incorrect.

As BNSF previously advised the Board in its April 1, 1998 and July 1, 1998 Progress Reports, BNSF has conducted extensive negotiations with Tex Mex in an attempt to reach a long-term agreement that would make a BNSF/Tex Mex routing via Laredo competitive to UP's service. The absence of such an agreement on commercially reasonable terms precludes BNSF from offering long-term commitments to shippers and is a substantial impediment to BNSF's use of its Mexico-related rights to provide a competitive discipline on UP at Laredo. In fact, as Mr. Rickershauser reports in his Verified Statement, in a number of instances, BNSF has had to turn away Laredo gateway traffic because of the level of divisions Tex Mex has offered to BNSF. A long-term agreement is also necessary to protect the capital investments BNSF will need to make in order to establish a long-term viable competitive alternative to UP for Mexico traffic at that critical gateway.

BNSF's negotiations with Tex Mex have been unsuccessful.[1/] BNSF believes that Tex Mex's ability to cooperate with BNSF may be impeded by an only recently-disclosed provision in a December 1995 agreement between KCS and Transportacion Maritima Mexicana ("TMM"). That provision apparently has limited Tex Mex's ability to accept the terms under discussion in the BNSF/Tex Mex negotiations.[2/] In BNSF's view, the

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[1/] Negotiations between BNSF and Tex Mex, completed during May, resulted in a proposed short-term agreement for interline pricing to and from the Laredo gateway. Tex Mex can unilaterally cancel this agreement during the second year. The short-term agreement would not ensure and enhance competition in that it does not provide for long-term stable pricing structures or service commitments. As a result, BNSF declined to agree to the proposed terms, and negotiations have not formally resumed.

[2/] BNSF was unaware of provision in the December 1995 contract until Mr. Michael R. Haverty, President and CEO of KCS, sent a letter on March 9, 1998, to Mr. Robert D. Krebs, Chairman, President and CEO of BNSF. A copy of Mr. Haverty's letter is attached hereto as Attachment 1. According to Mr. Haverty, some possible outcomes of the BNSF/Tex Mex negotiations could result in a breach by TMM, the 51 percent owner of Tex Mex, of the December 1995 agreement and could render BNSF liable for tortious interference with the KCS-TMM contractual relationship. In a March 12, 1998 response to Mr. Haverty's letter (a copy attached hereto as Attachment 2), Mr. Krebs expressed his concern that the Board, when it was considering the important question of how to replace the competition that would be lost at Laredo when UP and SP merged, was not informed that Tex Mex might be restricted in its ability to cooperate with any Class I carrier other than KCS. In response to Mr. Krebs' letter, Mr. Haverty wrote to Mr. Krebs on March 13, 1998, and Mr. William A. Mullins, KCS's counsel, wrote to Chairman Morgan on March 16, 1998. Copies of Mr. Haverty's letter and Mr. Mullins' letter are attached hereto as Attachments 3 and 4, respectively. In their letters, Messrs. Haverty and Mullins asserted that nothing in the KCS-TMM agreement precludes a Tex Mex/BNSF interchange agreement but that, in Mr. Haverty's words, "such an agreement cannot contain provisions which are in derogation of our rights." As explained in the text above, KCS apparently interprets this to mean that any agreement that would enable BNSF to compete effectively with KCS for Laredo traffic would be "in derogation of [KCS'] rights."

revenue divisions and agreement term that it has proposed in those negotiations would merely ensure that customers using a BNSF/Tex Mex routing would have access to rates and service competitive in the market with those provided by other carriers, including KCS.[3/] KCS is, however, interpreting the provision in the KCS-TMM agreement to preclude Tex Mex from agreeing to revenue divisions and an agreement term with BNSF that would (KCS claims) undermine the KCS-TMM partnership. Indeed, in a March 16, 1998 letter from KCS' counsel, William A. Mullins, to Chairman Morgan (Attachment 4), Mr. Mullins suggested that "rather than constantly complaining about the 'lack of cooperation' by Tex Mex" in BNSF's efforts to establish a viable, long-term competitive presence at Laredo, "BNSF should spend time developing the Eagle Pass and Brownsville gateways". Since that letter, KCS has maintained its position that BNSF should not be afforded competitive equal access to the Mexican market via Tex Mex. As a result of KCS's position and influence on Tex Mex, a long-term competitive BNSF/Tex Mex service offering via Laredo is yet to be established. Because of the critical importance of that gateway to shippers in the U.S. and Mexico, action needs to be taken to restore the level of competition that such shippers enjoyed before the UP/SP merger, when there was competition at Laredo between UP and SP/Tex Mex.

[3/] A provision in any contract between BNSF and Tex Mex assuring BNSF that its divisions will be no worse than those afforded any other carrier interlining with Tex Mex would be manifestly <u>pro</u>competitive. <u>See</u> Verified Statement of Professor Kalt at 16-17. It would allow shippers to choose between BNSF/Tex Mex service and KCS/Tex Mex service based on which of BNSF or KCS provided better rates for its portion of the haul, not based on an attempt by Tex Mex to favor one or the other.

Beyond BNSF's less-than-expected ability to exert competitive discipline on UP at Laredo through strong intragateway competition, UP also enjoys increased market power at Laredo because of a reduction in intergateway competition from pre-merger levels. Specifically, Eagle Pass has become a less attractive alternative to Laredo for many shippers than it was pre-merger, thus further insulating UP's Laredo operations from market discipline. This change results from unforeseen developments in Mexico. Although it was well known at the time of the UP/SP merger that the then-government-owned Mexican rail system would be privatized, competition between the two resulting northern privatized regional networks via trackage rights and reciprocal switching was expected at major common points within Mexico. Such competition has not materialized. Instead, those two networks remain closed systems, interlining but not competing head-to-head, with many Mexican customers served by only one carrier.

This lower-than-expected level of competition in Mexico means that the gateways between Mexico and the United States have become increasingly segmented and differentiated by the serving Mexican carrier to a degree that was not expected before the merger. It is of increasing importance to shippers which Mexican carrier will carry their traffic to/from its destination/origin and which border crossing will be used. As a result, the ability of BNSF service at Eagle Pass to discipline UP service at Laredo has been reduced. Therefore, the importance of providing competition in servicing Laredo north of the border for Transportacion Ferroviara Mexicana ("TFM") customers has likewise increased, and the Board should act to assure that competition to that gateway is vigorous and viable for BNSF as a post-merger replacement for SP.

BNSF's proposed conditions properly reflect the appropriate scope of the oversight stage of a merger proceeding. As discussed in the Verified Statement of Professor Kalt, BNSF has first identified specific impediments to its ability to fulfill the post-merger competitive role envisioned by the Board as a replacement for SP. Second, BNSF has requested conditions which, without expanding its access to shippers, would improve its ability to provide competitive service by directing traffic away from Houston and congested Gulf Coast lines, coordinating BNSF's operations with UP's changing practices (such as directional running), and improving the switching and dispatching in areas where problems have been identified. Third, with respect to the Laredo gateway, BNSF has requested conditions which respond narrowly to the unique combination of UP's post-merger service problems, the constraints on competition created by the KCS/Tex Mex relationship, and the failure of competition to develop in Mexico.

In sum, when the UP/SP merger was approved, the Board contemplated that BNSF would be able to provide effective competition to UP under the conditions it imposed on the merger. The problems and concerns discussed above threaten to undercut that competition. Accordingly, consistent with standard set forth in the Board's Decision No. 1, BNSF proposes several structural realignments that will permit BNSF to provide such competition and efficient service to shippers, without expanding its access to shippers beyond that previously authorized by the Board. The probative evidence contained in this Application, including the statements of support by shippers and others for BNSF's structural realignments, demonstrates the "legitimacy and viability of longer-term proposals . . . as they pertain to service and competition" in the Houston/Gulf Coast area. Dec. No. 1 at 5.

BNSF'S REQUESTS FOR STRUCTURAL REALIGNMENTS

The structural realignments that BNSF proposes are of two types. The majority of the proposals are designed to make long-term contributions toward overcoming the structural deficiencies discussed above, eliminating UP's favoritism, and relieving the congestion and service problems in the Houston area and elsewhere by permitting BNSF to bypass the congested areas and by modifying BNSF's rights and UP's operating practices. In addition, they will provide competitive alternatives to shippers that are not now available by shifting traffic from congested lines with low service quality to less congested lines over which BNSF can provide better and more competitive service to shippers. These proposals are:

1) In order to provide BNSF with the long-term operational flexibility necessary to avoid the highly-congested UP lines between Temple and San Antonio, TX and between Algoa and Corpus Christi, TX, grant BNSF permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo lines;

2) In order to enable BNSF to begin effective and competitive trackage rights service to both Brownsville and the TFM connection at Matamoros, replacing UP's erratic and often substantially delayed haulage service in this corridor, and because of the current unique rail routes in the Brownsville area resulting from an incomplete rail bypass project, allow BNSF to operate via trackage rights over both the UP line and the SP line between Harlingen and Brownsville, TX (until such time that UP constructs a connection between the UP and SP lines at Brownsville, thereby completing the rail bypass project) and the Brownsville & Rio Grande International Railroad ("BRGI") to act as BNSF's agent for such service;

3) In order to enable BNSF to avoid congestion on the UP lines between Temple and Taylor, and Taylor and Sealy, and to provide a less circuitous

routing to shippers, grant BNSF overhead trackage rights on the UP Taylor-Milano line;

4) Because UP's local switch service via haulage and reciprocal switch between BNSF and its customers has been unacceptable, order neutral switching supervision on the former SP Baytown and Cedar Bayou Branches and on the former SP Sabine and Chaison Branches serving the Beaumont-Port Arthur, TX area. The neutral switching supervisor would be selected by the parties unless they were unable to agree, in which event the neutral switching supervisor would be selected by an arbitrator;

5) In order to eliminate significant delays caused by UP to BNSF's trains providing service to the Houston Public Elevator, order the Port Terminal Railroad Association ("PTRA") operation of the UP Clinton Branch in Houston;

6) In order to enable BNSF to provide efficient competitive operations and to compete with UP, grant BNSF overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines in corridors where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows, including, specifically, over the Fort Worth to Dallas, TX line (via Arlington);

7) In order to enable BNSF to avoid the continuing congestion in the Houston terminal area, grant BNSF trackage rights on additional UP lines for BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, including the SP route between West Junction and Tower 26 via Chaney Junction; and

8) Because of the increasing congestion in the corridor and the need to better coordinate BNSF and UP trains arriving and departing the Houston area on UP lines north of Houston, order the coordinated dispatching of operations over the UP and SP routes between Houston and Longview, TX, and Houston and Shreveport, LA, by the Spring Consolidated Dispatching Center.

Unless BNSF's proposed realignments are undertaken, BNSF will not be able to provide the reliable and dependable competitive service that shippers have a right to expect and that the Board envisioned when it approved the merger. The requested additional conditions are also required to enhance the effectiveness of directional running and other operational changes in the Gulf Coast area adopted by UP in an effort to increase capacity and reduce congestion. Further, the proposals will lessen the infrastructure and capital investment needed in the Houston area by decreasing the amount of traffic going through Houston, and they will allow capital that otherwise might be required in Houston to be used for other equally critical rail purposes. The realignments will also benefit UP and shippers on UP by removing traffic from its congested lines and by enabling it to provide more reliable and efficient service to its own shippers over those lines.

BNSF's other proposal -- overhead trackage rights over UP's line between San Antonio and Laredo -- is designed to assure that competition at this critical Mexican gateway does not continue to be adversely impacted by (1) the unnecessary routing of traffic through Houston, UP's south Texas congestion and service problems and UP's favoritism of its own business, and (2) the unforeseen changes in market structuring, including the influence of KCS on Tex Mex's ability to work with BNSF at Laredo and the unexpected lack of direct competition in the privatized Mexican rail system. The conditions requested by BNSF would ensure that these conditions do not prevent shippers from receiving fully competitive service at that gateway. In the event the Board determines that such trackage rights should not be granted, BNSF alternatively requests that Tex Mex be required to provide interline service to BNSF at rates and service levels the same or better than those offered by Tex Mex to any other interline carrier.

BNSF's proposals for structural realignments will not expand its access to shippers and will not substantially affect Tex Mex or UP traffic levels. BNSF's information indicates that the level of traffic that Tex Mex has gained since the merger of UP/SP has been substantial and that the overall level of traffic Tex Mex would continue to participate in if BNSF were to be granted trackage rights to Laredo would not be substantially affected. Indeed, through the ownership arrangements of Tex Mex by KCS and TMM, as well as Tex Mex's access to Houston and a connection with KCS at Beaumont, Tex Mex has more than replicated its pre-merger Corpus Christi connection with SP. It now has a second direct interchange connection with U.S. Class I carrier (KCS) in addition to its connection with BNSF, and it gained access to customers in Houston, one of the largest rail originating and terminating stations in the United States for business moving to and from its primary market, Mexico. In addition, a recently announced marketing agreement between Canadian National ("CN"), Illinois Central ("IC"), and KCS will channel additional business to and from Mexico via Tex Mex and the Laredo gateway. Tex Mex's negotiations with BNSF over the past year, at the direction of its owners, have shown BNSF that Tex Mex is neither interested in, particularly wants, nor needs BNSF's Laredo gateway traffic, and that, given a choice between U.S. connecting carriers, it has chosen to be KCS dependent and linked rather than be an interline partner with BNSF. BNSF's analysis of train flows also shows that BNSF is likely to gain at most one train per day from UP.

Finally, UP has proposed various infrastructure improvements for the Houston and Gulf Coast area in its May 1, 1998 "Report on Houston and Gulf Coast Infrastructure" filed in the Ex Parte No. 573 and Service Order No. 1518 proceedings that might eventually help relieve the congestion and service problems if they are in fact implemented. There is, however, no commitment by UP to many of the capital investments proposed in its report, and any relief for shippers resulting from the proposed projects, even if completed, may be years in the future. Notwithstanding UP's proposed infrastructure projects, the present inability of BNSF to efficiently implement the Board's conditions designed to provide competitive alternatives to shippers calls for immediate and permanent remedial action.

SUPPORTING INFORMATION FOR APPLICATION PURSUANT TO 49 C.F.R. § 1180

This Section contains supporting information for BNSF's request for structural realignments of the conditions previously granted by the Board in Decision No. 44. For the convenience of the Board, BNSF has organized its supporting information according to the Board's regulations at 49 C.F.R. § 1180, as applicable to its request.

Description Of The Proposed Structural Realignments (§ 1180.6(a)(1)(i)).

A comprehensive description of BNSF's proposal for structural realignments is set forth in the accompanying Verified Statements of Messrs. Rickershauser and Hord. In summary, BNSF proposes that the following additional conditions be imposed by the Board:

1) Grant BNSF permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio (from MP 30.8 at Caldwell to MP 219.1 at Heafer Junction) and Caldwell-Flatonia-Placedo lines (from MP 30.8 at Caldwell in UP's Ennis Subdivision to MP 14.2 at Placedo in UP's Victoria Subdivision);

2) Allow BNSF to operate via trackage rights over both the UP line and the SP line (from MP 172.6 to MP 205.2) between Harlingen and Brownsville, TX (until such time that UP constructs a connection between the UP and SP lines at Brownsville, completing the rail bypass project) and BRGI to act as BNSF's agent for such service;

3) Grant BNSF overhead trackage rights on the UP Taylor-Milano line from MP 109.90 at Milano to MP 144.4 at Taylor;

4) Order neutral switching supervision on the former SP Baytown Branch and Cedar Bayou Branch and on the former SP Sabine Branch and Chaison Branch serving the Beaumont and Port Arthur, TX area. The neutral switching supervisor would be selected by the parties, unless they were unable to agree, in which event the neutral switching supervisor would be selected by an arbitrator;

5) Order PTRA operation of the UP Clinton Branch in Houston;

6) Grant BNSF overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows, including, specifically, over the Fort Worth to Dallas, TX line (via Arlington);

7) Grant BNSF trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, including, but not limited to, the former SP route between West Junction and Tower 26 via Chaney Junction;

8) Order the coordinated dispatching of operations over the UP and SP routes between Houston and Longview, TX and Houston and Shreveport, LA, by the Spring Consolidated Dispatching Center; and

9) Grant BNSF overhead trackage rights on UP's San Antonio-Laredo line between MP 264.3 at South San Antonio and MP 412.51 at Laredo.

The granting of these structural realignments will ensure that the Board's intent in granting BNSF certain conditions to ameliorate the anticompetitive effects of the UP/SP merger will be fully realized.

In conjunction with its request for trackage rights on UP's line to Laredo, BNSF is also seeking terminal rights over the International Bridge in Laredo.

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

The Burlington Northern
and Santa Fe Railway Company
3017 Lou Menk Drive
P.O. Box 961039
Ft. Worth, Texas 76161-0039
(817) 352-2353

The names and addresses of BNSF's counsel to whom questions concerning this proceeding can be addressed are:

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Proposed Time Schedule For Consummation Of
The Structural Realignments (§ 1180.6(a)(1)(ii)).

BNSF is committed to implementing the requested structural realignments as soon as practicable upon imposition by the Board.

Purpose Sought To Be Accomplished By
The Remedial Conditions (§ 1180.6(a)(1)(iii)).

The purpose sought to be accomplished by the proposed structural realignments is fully discussed in the accompanying Verified Statements.

The Nature And Amount Of Any New Securities
Or Other Financial Arrangements (§ 1180.6(a)(1)(iv)).

BNSF does not plan to issue any new securities or need special financial arrangements in order to implement the requested structural realignments.

Public Interest Justifications(§ 1180.6(a)(2)).

As more fully discussed, the accompanying Verified Statements of Messrs. Rickershauser, Hord and Kalt, the structural realignments BNSF proposes will enhance BNSF's ability to provide reliable, dependable and consistent service in the Houston, south Texas and Gulf Coast areas. BNSF has not been able to provide such service to shippers in these areas because of the congestion in and around the Houston area and on UP lines in south Texas and because of post-merger developments involving the relationship between Tex Mex and KCS and the structure of the Mexican rail system. Absent imposition of such realignments, the Board's intent to ameliorate the anticompetitive impacts of the UP/SP merger by granting BNSF rights will not be realized. The interests of the shipping public would be served by the requested structural realignments.

Effect On Competition (§ 1180.6(a)(2)(i)).

The effect of the structural realignments on intramodal competition is discussed in the Verified Statements of Messrs. Kalt and Rickershauser. The structural realignments will provide BNSF with the necessary tools to compete effectively against UP as the Board envisioned in the UP/SP merger.

Financial Consideration (§ 1180.6(a)(2)(ii)).

The structural realignments will result in operating economies, including operating savings, from the rerouting of current BNSF traffic over shorter distances and from operation flexibility. There is also expected to be an increase in traffic, and resulting increased BNSF revenues and earnings available for fixed charges and net earnings.

Effect Of The Increase, If Any, Of Total Fixed Charges Resulting From The Structural Realignment (§ 1180.6(a)(2)(iii)).

There is not expected to be any increase in the total fixed charges as a result of the structural realignments.

Effect Upon Adequacy Of Transportation Service To The Public (§ 1180.6(a)(2)(iv)).

The proposed structural realignments will improve the adequacy of transportation service to the public by providing BNSF with less congested routing options for its traffic, as well as freeing up needed capacity on congested routes for UP and Tex Mex traffic. As a result, shippers who have been experiencing service problems due to the congestion in and around Houston will benefit from all three carriers' increased ability to provide more reliable and improved operations in the region.

Effect Upon Employees (§ 1180.6(a)(2)(v)).

BNSF does not anticipate that any BNSF employees will be adversely affected by the proposed structural realignments.

Effect Of Inclusion (Or Lack Of Inclusion)
Of Other Railroads In The Territory (§ 1180.6(a)(2)(vi)).

Inclusion is not a relevant consideration in this proceeding because the structural realignments proposed do not involve the merger or control of at least two Class I railroads. Cf. 49 U.S.C. § 11324 (b)(2). It will not result in harm to essential service provided by BNSF, and therefore there is no basis for ordering the inclusion of any carrier.

Other Supporting Or Descriptive Statements (§ 1180.6(a)(3)).

Numerous shippers and others support BNSF's requests for additional remedial conditions. Verified Statements of support, received to date, are attached hereto as Exhibit 5.

A List Of States In Which Any Part Of
The Property Of Applicant Is Situated (§ 1180.6(a)(5)).

The states in which the real property of Applicant BNSF is situated and in which it conducts railroad operations are as follows:

> Alabama, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, and the Canadian Province of British Columbia.

Map (§ 1180.6(a)(6)).

BNSF is submitting with this Application various maps which depict other rail lines in the territory and principal geographic points in the region, as well as the routes involved in the additional remedial conditions BNSF has requested.

Explanation Of The Transaction (§ 1180.6(a)(7)(i)).

The nature and terms of the proposed structural realignments are described in the Verified Statements of Messrs. Rickershauser and Hord. With respect to the trackage rights to be granted to BNSF, BNSF proposes that UP be compensated under the same terms as were approved in the BNSF Settlement Agreement.

Agreements (§1180.6 (a)(7)(ii)).

BNSF proposes that PTRA's operation of the UP Clinton Branch in Houston would be governed by the dispatching protocol required under the Chemical Manufacturers Association Agreement dated April 18, 1996 (hereinafter referred to as "dispatching protocol"). With respect to the provision of neutral switching on the Baytown, Cedar Bayou, Sabine, and Chaison Branches, BNSF proposes that those operations also be governed by the dispatching protocol. In addition, BNSF proposes that the trackage rights it has requested would be governed by agreements similar to those entered into between BNSF and UP for the trackage rights granted BNSF in Decision No. 44.

Consolidated Company Information (§ 1180.6(a)(7)(iii)).

This section of the regulations does not apply to BNSF's proposal since it does not involve a merger or consolidation.

Court Order (§ 1180.6(a)(7)(iv)).

BNSF is the real party in interest; this section is therefore inapplicable.

Property Included In The Proposed Remedial Conditions (§ 1180.6(a)(7)(v)).

The property included in BNSF's proposal for structural realignments involves property of UP, Tex Mex and PTRA located in Texas as further detailed in the maps attached to the Verified Statement of Mr. Hord.

Description Of The Principal Routes And
Termini Of The Lines Involved (§ 1180.6(a)(7)(vi)).

See Operating Plan as set forth in the Verified Statement of Mr. Hord.

Government Assistance (§ 1180.6(a)(7)(vii)).

No governmental financial assistance is involved in the proposal.

Environmental Data (§ 1180.6(a)(8)).

Based upon the traffic studies and other analysis accompanying this filing, BNSF does not expect that the rerouting of BNSF existing rail traffic and additional traffic from diversions that is reasonable and likely to be associated with the proposed structural realignments will result in any significant changes in operations of the lines at issue that would exceed the thresholds in 49 C.F.R. § 1105.7(e)(4)or (5).

More specifically, the proposed structural realignments will not involve the diversion from rail to motor carriage of more than (i) 1000 rail carloads a year, or (ii) an average of 50 rail carloads per mile per year for any part of the affected line. 49 C.F.R. § 1105.7(e)(4). Nor will the proposed structural realignments involve:

> (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) An increase in rail yard

activity of at least 100 percent (measured by carload activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment.

49 C.F.R. § 1105.7(e)(5).

No historic report is required under 49 C.F.R. § 1105.8 because the trackage rights proposed under BNSF's structural realignments will not substantially change the level maintenance of railroad property. See 49 C.F.R. § 1105.8(b)(3).

Market Impact Analysis (§ 1180.7).

BNSF has analyzed the traffic flows as they existed prior to the filing of this Application and as they would exist if BNSF's Application were granted. This analysis is presented in the Verified Statements of Messrs. Rickershauser and Richard W. Brown. Further, a market impact analysis of BNSF's request for trackage rights from San Antonio to Laredo is found at Attachment 1 to the Verified Statement of Mr. Brown.

Operating Plan (§ 1180.8).

The Operating Plan, set forth in the Verified Statement of Mr. Hord, describes BNSF's planned operations under the proposed structural realignments.

CONCLUSION

BNSF's efforts to provide reliable, dependable and consistent service over its trackage rights lines are continuing to be hampered by the structural deficiencies in BNSF's rights discussed above and by the disproportionate impact, whether intentional or not, that the congestion and service problems on UP's lines are having on BNSF's operations. In addition, other post-merger developments involving the relationship between Tex Mex and KCS and the structure of the Mexican rail system have adversely affected BNSF's ability to provide rail shippers a viable competitive alternative to UP at Laredo, TX. BNSF's proposals -- designed to divert traffic away from Houston and other congested areas and to ensure timely and reliable switching in the Houston area and along the Gulf Coast -- would allow BNSF to effectively offer competitive service in the areas in which the Board intended BNSF to be a competitive replacement for the former SP. Those proposals are not designed to increase BNSF's access to any additional shippers, but instead are those which BNSF believes are minimally necessary to ensure that the competition which the Board envisioned when it approved the UP/SP merger can be achieved.

Respectfully submitted,

Erika Z. Jones/als

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Ft. Worth, Texas 76161-0039
(817) 352-2353

and

1700 East Golf Road
Schaumburg, Illinois 60173
(847) 995-6887

Attorneys for The Burlington Northern and Santa Fe Railway Company

July 8, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application For Additional Remedial Conditions Regarding the Houston/Gulf Coast Area is being served, by first-class mail or hand delivery, on all parties of record in this proceeding.

Adrian L. Steel, Jr.

July 8, 1998

ATTACHMENT 1

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
114 WEST ELEVENTH STREET
KANSAS CITY, MISSOURI 64105-1804

MICHAEL R. HAVERTY
PRESIDENT
AND
CHIEF EXECUTIVE OFFICER

March 9, 1998

VIA FAX 817-3527100

Mr. Robert D. Krebs
Chairman, President & CEO
Burlington Northern Santa Fe
2650 Lou Menk Drive
Ft. Worth, TX 76131-2830

Dear Rob:

It occurs to me in listening to and reading your comments concerning BNSF's proposed relationship with Tex-Mex, you may not have considered the Kansas City Southern/Tex-Mex relationship. The Kansas City Southern and Transportación Maritima Mexicana entered into a Joint Venture Agreement on December 1, 1995, in which it was agreed that each party would use its best efforts to develop Mexican traffic via Tex-Mex and the KCS rail system in the United States. Indeed, the Joint Venture Agreement specifically provides that "it is understood and agreed between the parties hereto that the joint venture shall be the exclusive agency of both parties in the creation, development and enhancement of such rail traffic between the United States and Mexico." Other implementing agreements underscore the parties' obligation not to engage in activities in competition with or adverse to the joint venture concept.

Systematic activity which is aimed at devaluing the KCS franchise through interference with a valuable contractual business relationship violates the law. We are prepared to take whatever action that may be required to protect our franchise, to enforce our contractual rights and to prevent the disruption of our relationships.

You should also be aware that the authority of Tex-Mex executives to execute an agreement with BNSF covering Tex-Mex's handling of BNSF traffic is limited and will require Tex-Mex board approval if certain parameters are exceeded.

There is ample opportunity for BNSF to operate very profitably in connection with Tex-Mex without the degradation of the KCS and without disruption of the KCS-Tex-Mex-TFM partnership. I remain hopeful that the BNSF will choose to act lawfully and cooperatively.

Sincerely,

Mike Haverty

Michael R. Haverty

cc: Richard P. Bruening
Allan Van Fleet, Esq., Vinson & Elkins

ATTACHMENT 2

BNSF

Robert D. Krebs
Chairman, President and
Chief Executive Officer

Burlington Northern Santa Fe
Corporation

PO Box 961052
Fort Worth TX 76161-0052
2650 Lou Menk Drive 2nd Floor
Fort Worth TX 76131-2830
817-352-6400
817-352-7100 Fax

March 12, 1998

Mr. Michael R. Haverty
President and
Chief Executive Officer
The Kansas City Southern Railway Company
114 West Eleventh Street
Kansas City, Missouri 64105-1804

Dear Mike:

This is in response to your letter of March 9, which frankly took me by surprise. When the Surface Transportation Board approved the UP/SP merger in 1996, one of the conditions of approval was that BNSF be given access to Tex Mex so that BNSF could compete with the merged UP/SP for traffic over Laredo. Since that time, BNSF has been working hard to establish a durable relationship with Tex Mex in accordance with the Board's conditions and expectations.

You now seem to be asserting that there is a contract, executed in 1995, that very substantially limits the ability of Tex Mex to cooperate with BNSF, in accordance with the Board's expectations. To the best of my knowledge, that contract was never previously brought to the attention of BNSF or the Surface Transportation Board. It is not possible for BNSF to analyze the limitations, if any, that the 1995 contract places on Tex Mex's ability to cooperate with BNSF unless you supply a copy of that contract to us. I therefore request that you send me a copy as soon as possible.

In the meantime, BNSF and Tex Mex will -- in fact, must -- continue to cooperate as interline partners, which necessarily requires them to agree with each other on basic terms such as divisions to provide effective service to shippers. I assume that you are not taking the position that such cooperation, which is the essence of the condition imposed by the Board, violates any agreement between KCS and TMM (or any other party).

Once you have supplied me with a copy of the 1995 contract and any implementing agreements, our lawyers will analyze it to determine what limitations, if any, it places on BNSF and what actions, if any, BNSF should request from the Surface Transportation Board.

I can assure you that the policy of BNSF is to compete vigorously but lawfully.

Sincerely,

RD Krebs

Robert D. Krebs

cc: Hon. Linda Morgan w/enc.
Hon. Gus Owen w/enc.
Hon. Vernon Williams w/enc.

ATTACHMENT 3

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
114 WEST ELEVENTH STREET
KANSAS CITY, MISSOURI 64105-1804

MICHAEL R. HAVERTY
PRESIDENT
AND
CHIEF EXECUTIVE OFFICER

March 13, 1998

Mr. Robert D. Krebs
Chairman, President and CEO
Burlington Northern Santa Fe Corporation
2650 Lou Menk Drive
Ft. Worth, TX 76131-2830

VIA FAX 817-352-7100

Dear Rob:

In response to your letter of March 12, I must say that I am puzzled by your expressions of "surprise" and believe that you seriously misunderstand our purpose in writing you.

The relationship between TFM, Tex Mex, and KCS was thoroughly discussed at meetings in late 1996 attended by BNSF personnel at the highest level. My letter was not intended to inform you of the nature of our relationship, of which you already were aware, but merely to note that it had been specified in formal contract.

Your letter seems to indicate that Tex Mex's role under the UP/SP merger conditions is to operate as BNSF's minion, at whatever cost to Tex Mex, and that the STB intended and expected such a structure. We believe that conditions granted Tex Mex in the UP/SP proceeding are for the benefit of the Tex Mex, of shippers, and of competition. Any attempt to characterize the STB's order as requiring unlimited acquiescence to BNSF demands is simply unjustified and improper. I have directed our legal counsel to address these issues and to inform the STB of our position.

We did not say in our letter, and you are wholly unjustified in stating, that our contract rights "very substantially limit the ability of the Tex Mex to cooperate with BNSF." We believe that it is in the best interests of BNSF and Tex Mex that negotiations continue. We further believe that there is absolutely no reason that a "cooperative" agreement cannot be reached between Tex Mex and BNSF that is profitable to both parties and improves rail service. We remain firm in our position, however, that such an agreement cannot contain provisions which are in derogation of our rights.

We are enclosing pertinent sections of our joint venture agreement with TMM. We trust that BNSF is willing to continue discussion with Tex Mex while respecting the agreement between its owners.

Sincerely,

Michael R. Haverty

cc: Honorable Linda Morgan
Honorable Gus Owen
Honorable Vernon Williams

JOINT VENTURE AGREEMENT

This Joint Venture Agreement is made as of the 1st day of December, 1995 by and between Transportacion Maritima Mexicana, S.A. de C.V., a Mexican corporation ("TMM") and Kansas City Southern Industries, Inc., a Delaware corporation ("KCSI").

W I T N E S S E T H :

WHEREAS, KCSI recognizes and values TMM's experience and expertise as an international freight carrier and TMM, in turn, recognizes and values KCSI's experience and expertise, through its highly efficient rail subsidiary, The Kansas City Southern Railway Company, as a Class I railroad in the United States;

WHEREAS, the government of the United Mexican States has announced its intention to sell certain interests in rail systems in the United Mexican States (each such interest being referred to herein as a "Rail System") through a bidding process on terms and conditions to be announced by the United Mexican States government;

WHEREAS, TMM and KCSI are desirous of forming a joint venture to make an offer to purchase an interest in the Rail Systems and thereafter to operate the Rail Systems;

WHEREAS, TMM and KCSI are also desirous of providing support to Mexrail, Inc., a Delaware corporation ("Tex-Mex"), owned by TMM and KCSI; and

WHEREAS, TMM and KCSI also desire to explore additional projects related to the ownership and operation of rail systems.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

Purpose

1.1. Formation and Purpose. TMM and KCSI hereby agree to form a joint venture, the purposes of which are as follows: (i) to conduct comprehensive due diligence of the Rail Systems, including with respect to the financial, operational and legal aspects thereof, (ii) if TMM and KCSI each agree following the completion of such due diligence analysis, to prepare a written bid to purchase one or more Rail Systems, as and when such Rail Systems are offered for sale in accordance with the guidelines established by the Mexican government; (iii) if an interest in the Rail Systems has been acquired, to operate the Rail Systems for the purpose of developing a north/south railway system connecting the purchased Rail Systems with the rail systems operated by KCSI in the United

States (the "KCSI Rail System") and the rail system operated by Tex-Mex (the "Tex-Mex Rail System"); (iv) to work together to further the interests of TMM and KCSI in connection with any rail mergers in the United States, including with respect to the proposed Union Pacific/Southern Pacific merger; (v) to develop opportunities to enable TMM and KCSI to enhance rail traffic between Mexico and the United States and, in this regard, it is understood and agreed between the parties hereto that the joint venture shall be the exclusive agency of both parties in the creation, development and enhancement of such rail traffic between the United States and Mexico; (vi) to provide support to Tex-Mex including, the use of the Tex-Mex Rail System to carry freight into and out of Mexico; and (vii) to pursue such other projects as are hereafter agreed to by TMM and KCSI.

ARTICLE IV

Covenants

4.1. <u>Joint Covenants</u>. Subject to the provisions of this Agreement, TMM and KCSI hereby covenant with each other as follows:

(a) Each party shall use its best efforts to further the purposes of this joint venture. In connection therewith, TMM will use its best efforts to obtain rail freight to be delivered from Mexico to those states in the United States currently served by KCSI, to the extent economically practicable, to be transported on the purchased Rail Systems in Mexico, the Tex-Mex Rail System, and KCSI Rail System in the United States. KCSI will use its best efforts to obtain rail freight to be delivered by it from the United States to Mexico, to the extent economically practicable, to be transported on the purchased Rail Systems and the Tex-Mex Rail System.

ATTACHMENT 4

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

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

202-274-2953

March 16, 1998

HAND DELIVERY

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Suite 820
Washington, D.C. 20423

RE: Mr. Krebs' March 12 Letter To Mr. Haverty

Dear Chairman Morgan:

On March 9, Mr. Haverty sent a letter to Mr. Krebs to remind him of the fact that the parent companies of Tex Mex and KCS had, on December 1, 1995, entered into a Joint Venture Agreement whereby each party agreed to use their best efforts to develop NAFTA traffic that would flow over the KCS/Tex Mex system. On March 12, Mr. Krebs replied to that letter and surprisingly, sent copies to both you and Vice Chairman Owen. Today, Mr. Haverty has replied to Mr. Krebs' March 12 letter and has sent copies of that reply to you and Vice Chairman Owen. I write to clarify the record with respect to certain incorrect assertions made by Mr. Krebs regarding the scope and intent of the Board's decision in the UP/SP merger proceeding.

Despite the fact that BNSF has been aware of the existence of the KCS, Tex Mex, TFM, joint venture since late 1996, he asserts that the "contract was never previously brought to the attention of BNSF or the Surface Transportation Board." Neither Tex Mex nor KCS were under any statutory obligation to disclose to BNSF the existence of the joint venture during the course of the UP/SP merger proceeding. BNSF could easily have filed discovery and made its existence an issue during the merger. BNSF did neither; the reason being that the existence of the agreement had no relevance to the UP/SP merger.

Mr. Krebs letter continually asserts that Tex Mex was to cooperate with BNSF "in accordance with the Board's expectations" and that cooperation between BNSF and Tex Mex was "the essence of the [Tex Mex] condition imposed by the Board." There is absolutely no reference in any of the STB decisions that the STB was granting Tex Mex the condition in order to help BNSF or encourage cooperation between Tex Mex and BNSF. Indeed, in Decision No. 47, served Sept. 10, 1996, BNSF asserted that, pursuant to the UP/BNSF settlement agreement, any agreement implementing the Tex Mex trackage rights condition required BNSF's written consent, which BNSF asserted would be forthcoming only on terms acceptable to BNSF. The Board rejected BNSF's position and specifically stated that "those rights are not contingent upon BNSF's approval." Decision No. 47 at 4. This is not language consistent with the assertion that the "essence" of the Tex Mex condition was intended to foster cooperation between BNSF and Tex Mex.

Reading Decision No. 44 at 147-151, it is clear that the Board granted the condition not to favor either BNSF or KCS, but to ensure that Tex Mex survived as a carrier and to ensure that NAFTA shippers, using either UP, BNSF, or KCS, had alternative routings into Mexico through Laredo. Contrary to Mr. Krebs' assertions, the decision indicates that rather than using a BNSF/Tex Mex routing as the primary alternative to UP for NAFTA traffic, the Board fully intended BNSF to compete against UP by using its Eagle Pass and Brownsville gateways, *see* Decision No. 44 at 147, 148, n. 181, and 149.

If the "essence" of the Board's decision was to establish a BNSF/Tex Mex routing into Mexico, which is what Mr. Krebs is basically asserting, then one must ask why BNSF opposed those rights in the first instance and continues to oppose those rights in court. BNSF consistently argued that Tex Mex's trackage rights were not needed because BNSF would be an effective competitor without Tex Mex getting any trackage rights. BNSF should spend time developing the Eagle Pass and Brownsville gateways rather than constantly complaining about the "lack of cooperation" by Tex Mex.

While Tex Mex has a statutory obligation to interchange with carriers it connects with, nothing in the statute or the UP/SP Decision requires that Tex Mex provide equal or neutral rates to all interchange carriers. Nothing in the Joint Venture Agreement prohibits a Tex Mex/BNSF routing or a joint marketing agreement, and Tex Mex and KCS will continue to cooperate with BNSF to encourage BNSF to route its traffic to Tex Mex. Indeed, given Tex Mex's precarious financial situation, it is in Tex Mex's and KCS's self interest to put as much traffic as possible over the Tex Mex and TFM.

Sincerely yours,

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

cc: Vice Chairman Owen
Secretary Williams
Mr. Robert Krebs
Mr. Jeffrey Moreland
Ms. Erika Jones

1

VERIFIED STATEMENT
OF PETER J. RICKERSHAUSER

The purpose of this Verified Statement is to describe how The Burlington Northern and Santa Fe Railway Company's ("BNSF") ability to provide shippers in the Houston and Gulf Coast area with reliable, dependable and consistent service over the lines and at the points to which BNSF gained access as a condition of the UP/SP merger has been significantly impeded by structural deficiencies in certain of the rights BNSF received over those lines and at those points, and by UP's practice of favoring itself when the continuing congestion and other service problems on those lines preclude normal operations. Further, this Verified Statement will describe how post-merger developments involving the relationship between Tex Mex and KCS and the structure of the Mexican rail system have adversely affected BNSF's ability to provide rail shippers with a viable competitive alternative to UP at Laredo, TX. Finally, this Verified Statement will describe BNSF's proposals to ensure that it is able to provide shippers in Houston and the Gulf Coast area with effective competitive service.

A.

BACKGROUND AND QUALIFICATIONS

I am Vice President, Marketing of BNSF for the UP/SP Lines and the Mexico Business Unit. My business address is 2650 Lou Menk Drive, Fort Worth, Texas 76131.

I joined BNSF in October 1996 as Vice President, Marketing, UP/SP Lines. In this capacity, I am responsible for coordinating the marketing and implementing of the new service opportunities that BNSF offers to shippers as a result of the merger of UP and SP. BNSF gained access to more than 4,200 miles of UP and SP track through a combination of trackage rights and line purchases as a condition of the September 1996 UP/SP merger. With the formation of a Mexico Business Unit at BNSF during the third quarter of 1997, I was given the additional responsibility of overseeing the start-up and business development activities of this group. This relates directly to BNSF's dealings with Mexican rail carriers and Tex Mex, as well as BNSF's use of and business growth relating to the lower Rio Grande border crossing points with Mexico, to which BNSF gained access as a result of the settlement agreements and conditions in the UP/SP merger proceeding.

Prior to joining BNSF, I was Vice President, Sales, with SP in Denver, Colorado, where I directed SP's field carload sales force in the United States and Canada. From 1991 to 1995, I was Managing Director, Regional Sales-Midwest, in Lisle, Illinois, for SP. My responsibilities in that position included planning and directing sales activities for SP's largest domestic carload sales region.

From 1982 to 1991, I held a number of sales and marketing management positions with Norfolk Southern Corporation, including Vice President, Sales and Marketing, for Triple Crown Services, Inc., a Norfolk Southern subsidiary; Director, Intermodal Marketing; and district sales manager positions. Previous to that, I held a series of positions in railroad operations and maintenance-of-way departments with Conrail predecessors Central Railroad Company of New Jersey and the New York & Long Branch Railroad Co. in the Northeast, followed by sales representative and district sales manager positions in Iowa with the Norfolk & Western Railway Co.

I earned a Bachelor of Arts degree from Franklin & Marshall College in 1971, and a Master of Arts degree in 1974 from Syracuse University.

B.

IMPEDIMENTS TO BNSF'S ABILITY TO PROVIDE FULLY EFFECTIVE COMPETITION

As I discuss in detail below, BNSF has encountered numerous impediments to full utilization of the rights it received in the UP/SP merger proceeding. These impediments arise principally from the fact that the trackage rights that BNSF received in the UP/SP merger require a significant amount of the traffic to which BNSF gained access to unnecessarily be routed through the Houston terminal area or other congested areas on UP's system in south Texas and along the Gulf Coast, when alternative, potentially less congested routes are available. As the Board has recognized, there are significant infrastructure and capacity problems in these areas, and, by being required to route this traffic through the Houston area, BNSF's ability to provide service competitive to UP's service is hindered.

While BNSF has made continuing efforts to bring the problems it is facing as a result of these impediments to the attention of UP and its senior management and has proposed solutions that would result in benefits to not only BNSF's customers but also to UP's customers, UP has so far refused to adopt any of those BNSF proposals. Indeed, UP's current practices dealing with these problems, whether intentional or not, are having the effect of favoring UP's interests over those of all other affected parties and are creating a competitive advantage in UP's favor. These practices have resulted in a troubling number of instances of UP's traffic being favored over BNSF's traffic, with

BNSF unable to properly utilize the rights it obtained over UP to provide the necessary service in order to compete effectively with UP. Further shippers using BNSF service over the trackage rights lines to which BNSF gained access as a result of the UP/SP merger are disadvantaged. While UP has taken the position in its discussions with BNSF that the service problems BNSF is facing are no worse than the service problems UP itself has to deal with, that is not a sufficient answer. Even if true, shippers are still not receiving the effective competitive service envisioned by the Board when it approved the UP/SP merger and directed BNSF to fill the service and competitive gaps created in the market by the exit of an independent SP.

Another area of concern centers around the switching services UP provides to BNSF and its customers, both in terminal areas and for "2-to-1" and other customers gaining access to BNSF as a result of the UP/SP merger. In the Houston terminal, UP's continued operation and supervision of the isolated Clinton Branch has led to traffic backups and delays impacting BNSF, the Houston Port Authority, and grain shippers as well as other shippers throughout much of the terminal area. On the Baytown Branch, where customers gained access to BNSF as a result of merger agreements and conditions, as well as through the February 12, 1998 Term Sheet Agreement between BNSF and UP (the "Term Sheet Agreement"), switching options provided by the settlement agreement which was imposed as a condition in the UP/SP merger (the "BNSF Settlement Agreement") are insufficient to provide customers access to consistent and competitive BNSF service when UP haulage and reciprocal switch services at the beginning or end of a shipment. Indeed, direct switching of facilities by BNSF as well as UP on a daily basis is not workable for many customers, and the addition of BNSF local operations on top of UP local operations in an area with limited infrastructure could worsen, not alleviate, operating congestion.

It is my opinion that the continuing congestion and service problems in and around Houston and the Gulf Coast area are largely attributable to structural problems in the trackage and other rights granted to BNSF by the Board in approving the UP/SP merger and by UP's consistent practice of favoring its trains when congestion and service problems on its lines preclude normal operations. These problems, which BNSF believes can be cured through the modifications to those rights and to UP's operating practices that it is proposing, are preventing BNSF from providing vigorous and effective competition to UP. In the current situation, BNSF and its customers cannot rely upon UP to provide it with the service BNSF needs in order to compete effectively with UP.

As mentioned, other post-merger developments involving the relationship between Tex Mex and KCS and the structure of the Mexican rail system have adversely affected BNSF's ability to provide rail shippers a viable competitive alternative to UP at the critical Laredo gateway. Because Tex Mex, under KCS's apparent guidance and direction, has refused to agree to long-term revenue divisions that would enable customers using a BNSF-Tex Mex routing to receive rates and service competitive with those provided by other carriers in the Laredo market, including KCS, BNSF is unable to offer long-term commitments to shippers on competitive terms, and its inability to do so is a substantial impediment to BNSF's competitiveness at Laredo. BNSF's ability to compete at Laredo has also been adversely affected by the lack of competition among the privatized

Mexican railroads which, in the past 13 months, have replaced the operations of the single nationalized system, Ferrocarriles Nacionales de Mexico ("FNM"), that served all significant Mexican markets in conjunction with all major U.S.-Mexico international rail interchanges. The failure of such competition to materialize has caused shippers to increasingly differentiate between the various Mexican gateways, and the adverse effects of the other problems BNSF is facing have been magnified by these unexpected developments.

My analysis of traffic data indicates that the structural realignments which BNSF is proposing would substantially lessen congestion in Houston and the Gulf Coast area by routing traffic away from the more heavily congested lines and opening up capacity in the near term for traffic moving for customers in the Houston and Gulf Coast areas. Restoring scheduled service for both local and through traffic in the Houston area, whether moving via BNSF, UP or Tex Mex, will enhance BNSF's ability to provide shippers with effective competitive alternatives to UP. Additionally, decreasing the amount of traffic traveling through Houston by shifting overhead business to other less congested lines will reduce the infrastructure and capital investment needed in the Houston area. Finally, rationalizing switching activities on the Clinton Branch in Houston, as well as on the former SP Baytown, Cedar Bayou, Sabine and Chaison Branches, should, near term, further reduce congestion and permit customers meaningful access to operationally competitive rail transportation service.

C.

BNSF's PROPOSED STRUCTURAL REALIGNMENTS

BNSF's proposed structural realignments, which are more fully described in the Verified Statement of Ernest L. Hord submitted herewith, are of two types.

The first proposals are primarily designed to provide shippers with improved competitive service and reduce congestion on UP lines in and around Houston and along the Gulf Coast primarily by diverting traffic away from Houston and other congested areas and by otherwise modifying BNSF's rights and UP's operating practices involving both through train operations as well as local switching service. These proposals are:

1) In order to provide BNSF with the long-term operational flexibility necessary to avoid the highly-congested UP lines between Temple and San Antonio, TX and between Algoa and Corpus Christi, TX, grant BNSF permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo lines;

2) In order to enable BNSF to begin effective and competitive trackage rights service to both Brownsville and the TFM connection at Matamoros, replacing UP's erratic and often substantially delayed haulage service in this corridor, and because of the current unique rail routes in the Brownsville area resulting from an incomplete rail bypass project, allow BNSF to operate via trackage rights over both the UP line and the SP line between Harlingen and Brownsville, TX (until such time that UP constructs a connection between the UP and SP lines at Brownsville, thereby completing the rail bypass project) and the Brownsville & Rio Grande International Railroad ("BRGI") to act as BNSF's agent for such service;

3) In order to enable BNSF to avoid congestion on the UP lines between Temple and Taylor, and Taylor and Sealy, and to provide a less circuitous routing to shippers, grant BNSF overhead trackage rights on the UP Taylor-Milano line;

4) Because UP's local switch service via haulage and reciprocal switch between BNSF and its customers has been unacceptable, order neutral switching supervision on the former SP Baytown and Cedar Bayou Branches and on the former SP Sabine and Chaison Branches serving the

Beaumont-Port Arthur, TX area. The neutral switching supervisor would be selected by the parties, unless they were unable to agree, in which event the neutral switching supervisor would be selected by an arbitrator;

5) In order to eliminate significant delays caused by UP to BNSF's trains providing service to the Houston Public Elevator, order PTRA operation of the UP Clinton Branch in Houston;

6) In order to enable BNSF to provide efficient competitive operations and to compete with UP, grant BNSF overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines in corridors where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows, including, specifically, over the Fort Worth to Dallas, TX line (via Arlington);

7) In order to enable BNSF to avoid the continuing congestion in the Houston terminal area, grant BNSF trackage rights on additional UP lines for BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, including the SP route between West Junction and Tower 26 via Chaney Junction; and

8) Because of congestion in the corridor and the need to better coordinate BNSF and UP trains arriving and departing the Houston area on UP lines north of Houston, order the coordinated dispatching of operations over the UP and SP routes between Houston and Longview, TX, and Houston and Shreveport, LA, by the Spring Consolidated Dispatching Center.

These proposals will ensure that trains of all involved carriers can move over trackage rights lines with minimum delay and ensure timely and reliable switching of shippers' facilities. Shippers should see an immediate improvement in service, and the decreased congestion on UP lines will both (i) allow BNSF to provide effective competition to UP in those areas where BNSF is serving as a competitive replacement to the former SP, and (ii) increase the likelihood that UP will also be able to offer its own shippers timely and reliable service.

The final proposal is designed to restore the pre-merger competitive situation at the Laredo gateway to Mexico. BNSF's proposal that it be granted overhead trackage rights on UP's San Antonio-Laredo line will enable BNSF not only to overcome the structural deficiencies in BNSF's rights and UP's favoritism to its own traffic but also the congestion and service problems that are inhibiting BNSF's ability to compete through use of the UP's Brownsville Subdivision between Algoa, Corpus Christi and Robstown, TX for Laredo gateway traffic. It will also enable BNSF to provide competitive service to the gateway notwithstanding recent unforeseen post-merger developments involving Tex Mex's relationship with KCS and the privatization of the Mexican rail system.

D.

IMPACT OF BNSF'S PROPOSED STRUCTURAL REALIGNMENTS ON BNSF's OPERATIONS

The following is a summary of ways in which the proposed structural realignments would allow BNSF to route traffic away from Houston and congested UP lines, improve the efficiency of switching services for rail users as well as BNSF (and UP), improve dispatching over lines on which both UP and BNSF operate, or otherwise preserve and restore the pre-merger competition that existed between UP and SP.

1. Structural Deficiencies and UP's Practices

__Houston and Gulf Coast Area__. Since the end of the second quarter of 1997, BNSF's rail operations in and around Houston have been adversely affected (i) by structural deficiencies in certain of BNSF's rights on UP's lines in the Houston and Gulf Coast area, and (ii) by UP's practice of favoring its trains over the trains of other carriers on lines subject to UP's sole operational control and in situations where the continuing congestion and service problems on UP's lines preclude normal operations. Although there have been some periods of sporadic improvement, it is clear that the service problems are continuing and are likely to persist. The establishment of the Spring Consolidated Dispatching Center ("Spring Center")[1/] has significantly helped the situation, but, in many cases, BNSF's trains are still being delayed due to the volume of trains moving through the Houston area, and UP's handling of trains beyond the Spring Center's control. As a result, BNSF has been unable to provide the consistent and reliable service to former SP shippers and other Houston area shippers that they deserve and expect and is necessary for BNSF to serve as a long-term transportation provider for those shippers. It is necessary for BNSF, in terms of the use of its assets -- locomotives, cars, and employees -- and for its customers in terms of managing their assets and meeting their customers' needs, to bring BNSF's scheduled service to its scheduled and committed running times to, from, and through the Houston area and along the Gulf Coast.

Customers seeking to use BNSF service from points BNSF gained access to as a result of the UP/SP merger, or other customers accessed by BNSF in the Houston area via reciprocal switch service from UP, continue to find that their traffic is being delivered unreliably and late. In some cases, these delays are attributable to congestion on UP lines over which BNSF has trackage rights operations. UP admitted this fact in

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[1/] The Spring Center was established pursuant to the Term Sheet Agreement as a regional dispatching center located at UP's command center in Spring, TX. It became operational on March 15, 1998, and BNSF completed its relocation to the Spring Center on April 26, 1998.

its July 1, 1998 Progress Report, where it stated ". . . BNSF's trackage rights operations were often affected by the congestion just as UP's own operations were" (p. 80). For example, because the Algoa to Corpus Christi route is heavily congested with the through trains of UP, BNSF and Tex Mex, as well as with substantial local switching activity by UP for major chemicals and metals customers along the Gulf Coast, traffic moving over this route is frequently delayed and additional crews are required. In other cases, traffic has been delayed because UP has failed to adequately perform its switching or haulage functions for BNSF and its customers. For example, Baytown Branch shipments moving via haulage on the UP have often been delayed because UP gives preference to its trains over BNSF trains, otherwise fails to switch BNSF trains in a timely manner, or does not deliver outbound cars to BNSF at the Dayton, TX interchange. As discussed below, while service to customers on the branch has recently improved, that is due to intensive management of individual shipments by a BNSF customer service team. UP service on the branch has not changed.

Because of the congestion and service problems in the Houston area, BNSF is still a long way from providing reliable, dependable and consistent service to the shippers to which it gained access in the UP/SP merger proceeding. UP's problems are continuing and are likely to persist and reoccur. BNSF, other carriers and Houston area shippers are now experiencing alternating cycles of several days of sporadic improvement in UP service followed by a number of days when service returns to near crisis levels. UP's own weekly service recovery reports, filed with the Board, reflect cycles of improvement and decline in Houston yards and other key facilities supporting

Gulf Coast customers and operations. It is difficult for BNSF to provide the vigorous competition the Board anticipated as a replacement for SP in such an environment of unpredictable and unreliable service.

Because it is BNSF's preference to work first with UP to address and resolve these types of problems whenever possible, senior BNSF management met with senior UP management on June 1, 1998, to present several proposals for the structural realignment of BNSF's merger condition rights to enable it to provide rail shippers with effective competitive service. BNSF's representatives explained their view that congestion in Houston could be substantially lessened by the rerouting of BNSF traffic neither originating nor terminating in Houston so as to bypass Houston on less congested routes, i.e., a significant amount of BNSF traffic currently routed through Houston could be routed through Temple or elsewhere, and they discussed several proposals for achieving that result with UP's representatives. BNSF's representatives also identified several other proposals designed to overcome severe operational handicaps that are being imposed on BNSF's ability to compete elsewhere in south Texas by rerouting BNSF traffic to less congested UP routes and by joining UP directional operations in additional corridors. To date, UP has refused to accept any of BNSF's proposals.

Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo Lines. As a result of the BNSF Settlement Agreement, BNSF received trackage rights over UP between Temple and Sealy through Smithville, and between Smithville and San Antonio, TX.[2] BNSF intended to use these trackage rights to serve San Antonio "2-to-1" customers, to access the Eagle Pass gateway to Mexico, and to reach coal fired electric generating stations at Halsted and Elmendorf, TX. However, as UP admitted in its May 1, 1998 filing on Houston and Gulf Coast infrastructure, a portion of this route, north of San Antonio, TX, is "possibly the most congested segment on the railroad" (p. 43).

In an effort to address the service problems caused by this congestion for customers of both railroads, and recognizing that BNSF did not have access to any customers along these routes and therefore operated on an overhead basis, UP and BNSF voluntarily agreed to temporary trackage rights between Caldwell and San Antonio via Flatonia in July 1997.[3] This 22 mile longer but less congested route which BNSF has been able to use to take trains off the shorter Temple-Smithville-San Antonio route opened up capacity on the shorter route for UP to handle its own traffic and meet the needs of online shippers. Additionally, it has allowed BNSF to carry traffic from Temple to San Antonio with one crew, freeing up BNSF crew resources for use elsewhere or on additional trains.

BNSF's Caldwell-Flatonia-San Antonio trackage rights are, however, cancelable on 15 days' notice. While UP is adding capacity north of San Antonio on the San Marcos-San Antonio line, it is unclear whether this additional capacity will eliminate the

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[2] Ironically, these trackage rights replaced trackage rights BNSF had secured from SP to reach the Eagle Pass gateway, as part of SP's settlement with BNSF during the BN/Santa Fe merger proceeding.

[3] Because of capacity limitations on the UP routes, a weight restriction was imposed on BNSF, which carried over to the route to Flatonia, even though the Flatonia route does not have the same capacity restrictions.

possibility for congestion on that line. BNSF therefore requests that its temporary overhead trackage rights over the Caldwell-Flatonia-San Antonio line be made permanent to allow BNSF to retain the option to carry traffic over either route, depending on UP congestion.

BNSF also is requesting that its temporary overhead southbound trackage rights over the UP Caldwell-Flatonia-Placedo line, which are currently in effect as long as UP continues directional operations between Algoa, Flatonia, and Placedo, TX, be made permanent and bidirectional if UP discontinues directional operations from Flatonia to Placedo. Because the trackage rights are temporary, if UP discontinues directional operations in this area, BNSF traffic that presently travels through Flatonia would revert to BNSF's permanent trackage rights, received as a result of the UP/SP merger, through Algoa. This circuitous Algoa routing is 96 miles longer for BNSF bidirectional traffic between Temple and origins or destinations at south Texas "2-to-1" points. More importantly, however, moving this traffic through Algoa would add congestion to the Houston area and to UP's Algoa-Brownsville line. This would have considerable adverse impacts on UP's local customers along the Algoa route, "2-to-1" customers BNSF has access to, and on UP and BNSF customers shipping traffic via the Brownsville gateway to or from Mexico.

Additionally, granting BNSF permanent bidirectional trackage rights over the Caldwell-Flatonia-Placedo route would permit BNSF and UP to plan for long-term capacity improvement issues on this route. This would ensure that, if UP's directional operations (in which BNSF and Tex Mex participate) end, service for BNSF and UP (and Tex Mex) customers would not be adversely impacted.

Numerous shippers have submitted Verified Statements in support of BNSF's requests. See Exhibit 5 attached to the Application.

Brownsville Service. Pursuant to the BNSF Settlement Agreement, BNSF received access to Brownsville, TX (a "2-to-1" point), Transportacion Ferroviara Mexicana ("TFM") at Matamoros, and the Brownsville & Rio Grande International Railroad ("BRGI") (a "2-to-1" shortline) via trackage rights over UP between Robstown and Brownsville. BNSF has been relying on UP haulage service for handling traffic to and from Brownsville, Matamoros and BRGI since September 1996. However, both BNSF and its customers have found that UP's extremely poor haulage service in this corridor is causing unacceptable delays. Therefore, many customers have reverted to using UP for Brownsville service. As a result, BNSF's traffic to and from Brownsville (including connection with TFM) and the Port of Brownsville for the first five months of 1998 is below 1997 levels. BNSF's service offering, via UP haulage, is clearly not what BNSF's customers expect or require to use BNSF competitively to and from this area. Therefore, BNSF is considering beginning trackage rights operations over these lines. However, although UP has indicated that it would allow BNSF to operate over the SP line from Harlingen to Brownsville instead of the UP line during the period of Emergency Service Order No. 1518 (i.e., until August 2, 1998), UP has stated that BNSF must select either the SP or the UP route between Harlingen and Brownsville. Because, as discussed below, the physical track layout in the Brownsville area makes it impractical to use only the UP or SP route to serve both the Brownsville and Mexico markets, BNSF has been unable to begin trackage rights operations.

Prior to their merger, UP and SP maintained parallel lines between Harlingen and Brownsville. The UP route runs west of downtown Brownsville and is the direct connection to the Brownsville & Matamoros Bridge Company's bridge (hereinafter referred to as the B&M Bridge) across the Rio Grande to interchange with TFM. However, traffic moving between UP's Harlingen-Brownsville line and the Port of Brownsville or Brownsville local customers located on UP's Port Lead track has to move along tracks laid in the center of city streets across downtown Brownsville creating congestion.

The SP route, which diverges from UP at Harlingen and includes a presently unused SP yard at Harlingen, runs east of the UP route. The SP track terminates at a point on the UP trackage in the middle of a street in downtown Brownsville.

In 1982 , in recognition of the congestion, capacity constraints, and public impact concerns inherent in the extensive rail use of streets in Brownsville, the railroads and governmental agencies agreed to construct a new bypass trackage north of Brownsville, connecting the UP route, the SP route, and the BRGI trackage serving the Port. The construction of the bypass trackage was intended to permit the eventual abandonment of the SP and UP lines in the downtown area and to improve infrastructure for access to the growing Port of Brownsville, served by BRGI. This new trackage is now complete between the SP track and the Port; however, the link between the UP track and the SP track, approximately three miles long, remains unfinished. The three mile link is not expected to be completed until late in 2000, if then. When it is completed, the UP and SP trackage in downtown Brownsville can be considered for removal.

BNSF is requesting temporary trackage rights over both the UP and SP lines between Harlingen and Brownsville until the bypass is completed. Unit train business with Mexico, primarily grain, would move via the UP route direct to the B&M Bridge, therefore avoiding circuitous movements through the congested downtown Brownsville area. All other business, primarily to the Port of Brownsville area, would move via the SP route between Harlingen and BRGI, also keeping traffic out of downtown Brownsville.

Absent the requested trackage rights, any BNSF trackage rights operations to Brownsville, the Port of Brownsville or the B&M Bridge would necessitate handling increasing volumes of rail carload traffic through the streets of downtown Brownsville, regardless of whether BNSF exercises its trackage rights over the UP or SP line. This would pose operational, traffic congestion and public impact concerns for the railroads and the community.

BNSF further requests the right to use BRGI as its agent on a permanent basis to handle BNSF's traffic between Harlingen, Brownsville and the connection with TFM at Matamoros, Mexico.

<u>Taylor-Milano</u>. BNSF received trackage rights in the UP/SP merger proceeding to handle shipments for Texas Crushed Stone and other customers at Kerr/Round Rock, TX served by the Georgetown Railroad, a "2-to-1" shortline. Until June 16, 1998, BNSF moved all of this traffic over its trackage rights on UP's line between Temple and Taylor. Heavy congestion on this route has caused considerable delays in BNSF's delivery of

stone and aggregates from Texas Crushed Stone. As a result, on June 16, BNSF began routing Texas Crushed Stone and other Georgetown Railroad traffic that was destined for Houston via its Taylor-Smithville-Sealy trackage rights to attempt to bypass congestion on the Temple-Taylor line. BNSF has continued to move east Texas traffic from Texas Crushed Stone and other Georgetown Railroad shippers over the Temple-Taylor line.

Initial operations via the alternative Taylor-Smithville-Sealy trackage rights route appear no more promising than use of the prior trackage rights route: of the first 12 trains operated between June 16 and July 4, fifty percent were delayed en route by UP congestion. Five other trains were impacted by lack of equipment, to which a number of factors contribute, including congestion delaying the return of empty equipment for loading.

BNSF's request for trackage rights on UP's Taylor-Milano line is supported by Texas Crushed Stone. See Verified Statement of William B. Snead, President, Texas Crushed Stone attached to the Application at Exhibit 5. As shown by Mr. Snead, Texas Crushed Stone is unable to fill all of its customer orders because of UP's congestion problems and BNSF's circuitous routing, thus forcing its customers to order crushed stone from other suppliers and resulting in the loss of business, as well as delaying public and private construction projects in Texas. Id. If BNSF were granted overhead trackage rights over UP's Taylor-Milano line, BNSF could provide Texas Crushed Stone with better, more efficient service by avoiding the congested and circuitous Temple-Taylor and Taylor-Sealy lines BNSF is currently using. It also would result in improved turnaround times for the cars being used to handle Texas Crushed Stone's traffic, also increasing capacity to handle additional traffic.

In short, the congested and circuitous route BNSF currently has available for handling Texas Crushed Stone's shipments for Houston and east Texas points could be avoided by moving the Texas Crushed Stone shipments over UP's line between Taylor and Milano, a less heavily used route. The routing between Taylor and Milano via UP's direct route over the Austin Subdivision would be 47.5 miles shorter than the prior routing via UP's line between Taylor and Temple and BNSF's line between Temple and Milano. In addition, use of the more direct route between Taylor and Milano would require BNSF's use of 3.5 miles less of UP trackage rights than the Temple route, and 81.8 miles less of UP trackage rights than the Sealy route, to provide competitive service to Georgetown Railroad customers. Congestion on the Temple-Taylor and Taylor-Smithville-Sealy lines would be reduced, benefiting UP, as well as shippers and BNSF, by diverting traffic away from heavily-congested UP lines.

Directional Operations. In a number of areas, BNSF has been adversely impacted by UP's decision to commence directional operations over its lines, and BNSF's subsequent inability to secure the trackage rights necessary to join in the directional flows. In such cases, BNSF trains are forced to run "against the flow" of UP on the trackage rights line. This has adversely impacted BNSF's operations in that trains are consistently delayed, and, when operated, contribute to UP congestion by consuming already scarce meeting and passing capacity on a non-directional basis.

For example, in the Dallas-Fort Worth area, BNSF has bidirectional trackage rights over UP's former SP route between Waxahachie and Fort Worth. UP plans to commence a northbound flow over this route, making BNSF's use of the trackage rights for southbound traffic potentially impractical -- as BNSF may not be able to consistently get its southbound trains out on this line. To move southbound traffic, BNSF will be required to run its trains from Fort Worth to Dallas over the DART commuter rail line, then south to Waxahachie on the line BNSF purchased from UP as part of the BNSF Settlement Agreement, a route longer than the SP route between Waxahachie and Fort Worth. Use of the DART line is not satisfactory, as BNSF schedules must be operated around windows for commuter train operations. Other routes where UP has commenced or plans to commence directional operations include UP's routes between Taylor and San Antonio, TX via Ajax, and on the Baytown Branch between Houston and Baytown.

In order to avoid congestion rather than cause it in these directional flow situations in the future and to ensure that the right of shippers to receive competitive service from BNSF is not hindered, UP should be required to provide BNSF with advance notice of its intent to implement directional operations on BNSF's trackage rights lines, to seek BNSF's concurrence in revised operations, and to provide BNSF with the alternative to join the directional flow with the appropriate trackage rights. If the parties are unable to agree upon a mutually acceptable plan for such operations, the issue could be submitted to arbitration or resolved by the Board.

2. Improved Switching Services

Two of BNSF's proposed structural realignments are designed to improve the efficiency of switching services.

Baytown/Cedar Bayou Branches and Sabine/Chaison Branches. BNSF is proposing neutral supervision of switching activities on both the Baytown and Cedar Bayou Branches and the Sabine and Chaison (Beaumont-Port Arthur) Branches. BNSF gained access to all industries on these branches as a result of the Term Sheet Agreement between BNSF and UP. Prior to February 12, 1998, BNSF had access to specific "2-to-1" and other customers on the Baytown and Cedar Bayou Branches.

BNSF has been working with UP and local customers to which BNSF has access on the Baytown and Cedar Bayou Branches to provide competitive service since shortly after the UP/SP merger became effective in September 1996. When BNSF commenced operations to and from the Baytown Branch,[4] BNSF relied on UP reciprocal switch and haulage between customers on the Baytown Branch and Houston for interchange to BNSF at Dayton, TX. Because of customers' desire for more directly competitive service and the opportunity for increased traffic, BNSF commenced operating a daily local Dayton-Houston and return commencing January 16, 1997. This local connected with BNSF road trains in Houston and with UP at Dayton for haulage shipments and empty equipment flows for Baytown Branch and Cedar Bayou Branch customers. To further

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[4] Prior to the Term Sheet Agreement, BNSF had access to "2-to-1" and build-in customers on the Baytown Branch, which amounted to approximately one half of the total customers on the line. The Term Sheet Agreement, however, granted BNSF access to all customers and facilities on the Baytown Branch.

VERIFIED STATEMENT

OF

RICHARD W. BROWN

My name is Richard W. Brown, and I am General Director, Merchandise Business Unit, for The Burlington Northern and Santa Fe Railway Company ("BNSF"). My business address is 2650 Lou Menk Drive, Fort Worth, TX 76131. In my position, I am responsible for the analysis of strategic franchise development issues, including rail and interline matters.

The purpose of my statement is to describe how the Market Impact Analysis (Attachment 1 to this Verified Statement) was conducted in connection with BNSF's Application for Additional Remedial Conditions Regarding the Houston Gulf/Coast Area. I was asked by Peter J. Rickershauser to determine what impact a grant of trackage rights to BNSF over the UP's lines from San Antonio, Texas, to Laredo, Texas, would have on BNSF, UP and Tex Mex. Attachment 1 to this Verified Statement sets forth in detail how the Market Impact Analysis was conducted, and I will not repeat the detail in this statement. Instead, I will briefly describe how the analysis was conducted and set forth the results.

The first part of the analysis looked at BNSF's 1997 traffic (1) interchanged to Tex Mex moving to the Laredo gateway and (2) moving from the Laredo gateway interchanged from Tex Mex to BNSF. In 1997, BNSF interchanged a total of 15,510 cars with Tex Mex. For purposes of this analysis, I assumed that 90% of this traffic would move over BNSF's trackage rights between San Antonio and Laredo if BNSF obtained those rights. That extension of BNSF's present line haul would produce an increase in gross revenue of approximately $4.3 million as shown in Attachment 1 to this Verified Statement based on 1997 traffic. I did not increase the estimates for future years since BNSF is not able to be competitive over the Laredo gateway using its present route via Tex Mex.

The second part of the analysis examined what traffic could be diverted from UP if BNSF obtained trackage rights between San Antonio and Laredo. I requested the consulting firm of Klick, Kent & Allen of Alexandria, VA, to prepare a data set from the 1996 1% Waybill Sample containing all Laredo traffic where BNSF did not participate in the route, but where BNSF had access to the non-Laredo origin, destination or junction. The data set was prepared on an aggregated basis to prevent identification of either the shipper or receiver.

I also studied data from the 1996 1% Waybill Sample involving traffic moving over UP via the San Antonio route. In determining how much traffic could be diverted to a BNSF route, I employed a number of diversion rules as set forth in Attachment 1 to this Verified Statement. For example, if a particular movement involved an origin and destination served by KCS or its partners (Canadian National/Illinois Central), then I assumed that no traffic would be diverted to a BNSF route because KCS and its partners could be involved in the entire route on a single line basis. BNSF could only be involved in such routings as a bridge carrier and KCS would have no incentive to work with BNSF. On the other hand, if the origin or destination is on the West Coast, I assumed that 50% of the traffic could be diverted to BNSF.

I also increased diverted traffic by 14% per year for three years to estimate 1999 traffic levels. The 14% was arrived at after discussion with persons in the BNSF marketing department who have responsibility for Mexico business, including Mr. Rickershauser. The increase represents what we feel is a reasonable estimate of growth in Mexican traffic based on past performance.

The result of this analysis indicates that approximately 77,473 cars with an estimated revenue of $102.7 million could be diverted to BNSF in 1999 (based on 1996 volumes increased by 14% per year) if BNSF obtained trackage rights between San Antonio and Laredo.

VERIFICATION

THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

Richard W. Brown, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.

Richard W Brown
Richard W. Brown

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

A. LISA TEMPLETON
NOTARY PUBLIC
State of Texas
Comm. Exp. 09-18-01

A. Lisa Templeton
Notary Public

My Commission expires:

09-18-01

ATTACHMENT 1

Laredo Trackage Rights Market Impact Analysis

The purpose of this analysis is to determine the business volumes that The Burlington Northern and Santa Fe Railway Company ("BNSF") could generate with a direct route to Laredo using trackage rights over UP. The analysis concluded that market impacts would come in two areas. First, BNSF would have a better service route making it more competitive for certain business that currently is handled by UP. The second area of market impact results from extended hauls on current BNSF business moving via Tex Mex through Laredo.

The analysis contains a summary of results, followed by a more detailed review of methodology.

A. Summary of Results

1. Traffic Diversions from UP:

Traffic was divided into three categories as shown below for purpose of diversion analysis. The table below shows expected BNSF carloads, based on 1996 volumes, increased by 14% per year to estimate 1999 levels.

	Cars	Revenue
Merchandise	17,743	$28,229,113
Automotive	16,653	$33,306,000
Intermodal	43,077	$41,224,689
Total	77,473	$102,759,802

2. Line extension on Current Business moving via Tex Mex

Line extensions were estimated based on the 1997 BNSF/Tex Mex business. The 1997 volume with Tex Mex was 15,510 cars. Because of the more direct route via San Antonio to Laredo, the analysis assumed that 90% of 1997 BNSF/Tex Mex interline traffic (13,297 cars) would move over the new BNSF direct route. Unlike the results of the UP diversion analysis, this volume was not increased at the average market increase of 14% since BNSF has not been able to be competitive via this route. Therefore, it is not likely the current BNSF/Tex Mex route would grow. Based on the 1997 traffic levels, BNSF could derive additional gross revenues of approximately $4.3 million. The Table below shows a breakdown of the traffic by commodity group by direction along with the potential diversions to the new BNSF direct route via San Antonio and Laredo:

	NB	SB	Total	Diverted
Ag	16.00	10,402	10,418	9376.00
chems	23.00	405.00	428.00	385.00
cons	123.00	3,387	3,510	3159.00
forest	43.00	140.00	183.00	165.00
metals	135.00	36.00	171.00	154.00
auto	64.00		64.00	58.00
Total	404.00	14,370	14,774	13297.00

B. The UP Diversion Analysis

The base data for the diversion analysis was the 1996 1% Waybill Sample. A data set of the Waybill Sample was created consisting of all Laredo traffic where BNSF did not participate in the route, but where it did have access to the non-Laredo origin or destination ("O/D") or junction. For example, traffic from Laredo destined to Las Vegas, NV, a solely served UP point, was not included in the base data. On the other hand, traffic moving to an NS connection at Memphis was included. In addition, any traffic moving solely on Tex Mex, such as Corpus Christi to Laredo, was excluded.

For regular carload and automotive traffic, traffic was categorized based on the attributes of the non-Laredo O/D or junction. The table below lists the categories and shows the diversion rules utilized in judging how much of particular categories of traffic could be diverted from UP. The diversion percentage based on those rules is also shown.

DIVERSION RULES TABLE

Category	Description	Diversion Percent	Reason
Adverse	O/D's served by KCS or new KCS family CN/IC	0.00	KCS will vigorously compete, and BNSF has no franchise value.
Trackage	O/D's on UP trackage rights between Laredo and Memphis	10%	No BNSF Franchise value, however some bundled business will have O/D's at these points
SE Connections	Junctions of New Orleans or Memphis	20%	Same as above, however franchise value less significant as pure overhead carrier. KCS will compete aggressively using Meridian Gateway.
Chicago St. Louis	Junctions at or near Chicago or St. Louis	30%	BNSF route via Chicago is competitive with UP route.
Mid West	O/D's at points on BNSF system excluding California, Oregon, Washington & Arizona.	40%	BNSF route structure will be competitive with UP's and longer hauls allow greater mitigation of the trackage rights penalty at Laredo.
West Coast	O/D's at California, Oregon, Washington and Arizona	50%	BNSF should be fully competitive with UP for these long haul moves.

In all cases, diverted traffic was increased by 14% per year for three years to represent 1999 volume levels. The 14% growth rate is representative of the past several years of growth in Mexican business and is felt by many to be representative of at least the short term future as well.

The following discussion sets forth further analysis of the diversions in the three major business groups:

1. General Merchandise Business

The diversion rules in the Diversion Rules Table were applied to this business group and volumes increased to 1999 levels. Southbound grain from Midwestern origins was treated slightly different since BNSF currently has a very strong position in that market, the diversion factor was assumed at 10%. That is, because BNSF is already a strong factor in that market, there likely would only be additional diversion of 10% instead of the 40% for other merchandise traffic. In all cases, growth of 14% per year for three years was included to estimate 1999 levels. The results of the diversion analysis are expressed in the table below.

	Northbound	Southbound	Diversion	three years at 14% cagr
Adverse	476.00	3064.00	0%	0.00
All Trackage	1788.00	9564.00	10%	1,682
SE connections	2240.00	5520.00	20%	2,299
Chicago/St Louis	4600.00	5280.00	30%	4,391
4Mid West	1120.00	27001.00	* 40%	8,152
West	720.00	560.00	50%	948.00
Total	10944.00	50989.00		17,473

* only 10% of midwest grain was diverted.

2. Automotive

This diversion methodology is identical to the merchandise methodology using the diversion table and the 14% per year growth to get to a 1999 level volume.

	Northbound	Southbound	Diversion	three years at 14% cagr
Adverse	1280.00	1320.00	0%	0.00
All Trackage	10160.00	226.00	10%	1,539
SE connections	1880.00	40.00	20%	569.00
Chicago/St Louis	16080.00	6596.00	30%	10,079
Mid West	2480.00	108.00	40%	1,534
West	3960.00		50%	2,933
Total	35840.00	8290.00		16,653

3. Intermodal

The Intermodal diversion analysis results in a 30% diversion of UP connection business at Memphis, St. Louis and Chicago. As with the carload, these diversion results are increased by 14% per year to reflect growth to a 1999 level of business. Current market plans do not anticipate intermodal service from Laredo to other parts of the country.

	Southbound	Northbound	Totals
Chicago	12,560	40,760	53,320
Chicago IC	80.00	160.00	240.00
Chicago *	28600.00	1120.00	29,720
St. Louis	3,520	3,880	7,400
St. Louis IC	80.00	440.00	520.00
Memphis	1,560	1,280	2,840
Memphis IC	120.00	1,240	1,360
Memphis *	600.00	920.00	1,520
Sub Total	47,120	49,800	96,920
Diversion	20,943	22,134	43,077

IC: Interchange
*: From/To stations in Weber County other than Laredo

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In the Matter of

Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR. Co.

— Control and Merger —

Southern Pacific Rail Corp., Southern Pacific Trans. Co.,

St. Louis Southwestern RW. Co., SPCSL Corp. and the Denver and Rio Grande Western Railway Co.

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

Verified Statement of

Joseph P. Kalt

I. INTRODUCTION

I.A Background and Qualifications

My name is Joseph P. Kalt. I am the Ford Foundation Professor of International Political Economy and former Academic Dean for Research at the John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts, 02138. I am also the Faculty Chairman of the Economics and Quantitative Methods Program at the Kennedy School. In addition, I work as an economic consultant with The Economics Resource Group, Inc., One Mifflin Place, Cambridge, Massachusetts, 02138. The Economics Resource Group is an economics consulting firm specializing in matters of antitrust and regulated industries.

I received my Ph.D. (1980) and my Master's (1977) degrees in economics from the University of California, Los Angeles, and my Bachelor's (1973) degree in economics from Stanford University. I am a specialist in the economics of regulation and antitrust, with particular emphasis on the natural resource, transportation, and financial sectors. I have published, taught, and testified extensively on the regulation of industry in the United States. Prior to joining the faculty at Harvard in 1978, I served on the staff of the President's Council of Economic Advisers (1974-75), with responsibility for economic analysis of regulated industries (including railroads). From 1978-86, I served as an Instructor, Assistant Professor, and Associate Professor of Economics in the Department of Economics, Harvard University. In these capacities, I had primary responsibility for teaching the graduate and undergraduate courses in the economics of antitrust and regulation. Since joining the faculty of the Kennedy School as a Professor in 1986, I have continued to teach on such matters in graduate courses covering microeconomics for public policy analysis and natural resource policy.

In addition to my research and teaching, I have testified in numerous legal, regulatory, and congressional proceedings concerning matters of competition and regulation. I have submitted expert verified statements before the Interstate Commerce Commission (ICC) and the Surface Transportation Board (STB or the Board) on a number of occasions, including proceedings related to the consolidation of the Burlington Northern and the Santa Fe and the consolidation of the Union Pacific and the Southern Pacific. I have also provided testimony as an expert on issues of competition and regulation before the U.S. Congress, the U.S. Federal Energy Regulatory Commission, the U.S. Department of Commerce, the U.S. Department of the Interior, various state public utility commissions, the Federal Court of Australia, and in numerous U.S. federal and state court proceedings. My complete curriculum vita is attached to this statement.

In the present oversight proceeding, The Burlington Northern and Santa Fe Railway Company (BNSF) is proposing changes to a limited number of the remedial conditions which were adopted by the Board to address competitive concerns raised by the Union Pacific/Southern Pacific (UP/SP) merger. Changes are requested in specific routing conditions imposed in the UP/SP merger proceeding in light of post-merger operational problems encountered by UP and unique problems arising at the Laredo, TX gateway. BNSF is not seeking conditions which would increase its access to shippers beyond that already granted by the Board or that would alter the competitive balance that the Board set forth in the UP/SP merger proceeding.

I have been asked by BNSF to assess the appropriateness and adequacy of these remedial changes given the post-merger experience, especially in Texas. In so doing, I first address the standards that, consistent with sound economic policy, should be applied to merger oversight.

I.B Economic Justifications for Revised Conditions and Summary of Findings

In initially approving the UP/SP merger, the Board imposed a number of conditions intended to preserve competition that might otherwise be eliminated as a result of the consolidation of two carriers into one. The merger approval process was employed to protect existing levels of competition; it was not the venue for using regulatory policy to try to inject expanded competition into affected rail markets.[1] A major part of the Board's conditions involved an extensive agreement between BNSF and UP that provided for a combination of trackage rights, haulage rights, line purchases, and build-in/build-out rights, with the bulk of the areas of concern addressed through trackage rights. The various conditions were intended to ensure that shippers served by two railroads prior to the consolidation of UP and SP would have access to two independent, vigorously competing railroads after the UP/SP merger. From an economic perspective, the Board's approach embodied the principle that regulatory oversight in merger proceedings is properly employed to prevent merger-related reductions in competition. As the Board considers revisions to the conditions it imposed on the UP/SP merger in light of UP's continuing service problems, this test remains the appropriate one to apply.

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[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

Reflecting uncertainty regarding the performance of the post-merger UP/SP system and the difficulty of anticipating post-merger developments in the marketplace, STB approval of the UP/SP consolidation was accompanied by a five-year oversight process during which the STB would evaluate the effects of the merger and the extent to which the remedial conditions were functioning as intended. This oversight process provides the opportunity for the Board to adjust the merger conditions in response to developments that were not originally anticipated. Making adjustments in this way is consistent with sound public policy for mergers, where the goal of protecting competition from harm is paramount. And it should be no surprise that it would be difficult to anticipate *ex ante* the performance of a merger and related remedial conditions in a case as far-reaching and economically important as the consolidation of UP and SP.

If the goal of the Board is, as it should be from an economic perspective, to preserve the pre-merger competitive alternatives of shippers, two sets of circumstances could justify changes in the existing conditions. First, the Board granted BNSF specific trackage and other rights in order to continue competitive service to specific "2-to-1" and other shippers. Given the recent service problems of UP, the specific operational rights of a carrier such as BNSF may well turn out to be insufficient to maintain pre-merger levels of competitive service to specific groups of shippers, as originally contemplated by the Board. In those cases, the Board would be justified in adjusting the specific trackage

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Corp., and the Denver Rio Grande Western Railroad Company, Surface Transportation Board, Finance Docket No. 32760, Decision No. 44, served August 12, 1996.

rights received by BNSF to serve such shippers in light of current operational difficulties faced by UP.

Second, exogenous events, unrelated to the post-merger UP's actions and unanticipated at the time of the UP/SP merger approval, may arise and adversely affect the ability of the conditions imposed by the Board to protect competition. In such situations, it again would be appropriate for the Board to adjust the conditions it imposed to take account of these developments.

In both cases, however, the Board's actions properly would be aimed at preserving the competitive goals it set in approving the UP/SP merger. In other words, the Board would appropriately review the tools it provided railroads and shippers to maintain competition, rather than reopen the question of whether the merger proceeding should be used to expand competition.

I have applied these principles in reviewing the appropriateness of the remedial conditions now proposed by BNSF. BNSF's proposed conditions properly reflect the appropriate scope for the adjustment of remedies in the review stages of a merger proceeding. First, BNSF has identified specific impediments to its capacity to exercise fully its post-merger role as a competitive alternative in areas where UP and SP would have otherwise competed. Second, as a group, BNSF's requested conditions properly are focused narrowly on responding to such impediments and do not seek increased access. The requested modifications of conditions are limited in scope. They have the effects of (1) directing traffic away from Houston and congested Gulf Coast lines onto less crowded

UP lines and onto less congested lines west of the Gulf Coast, (2) coordinating BNSF's operations with UP's new directional running, and (3) improving the switching and dispatching on BNSF's trackage rights lines. Third, with respect to the Laredo gateway, BNSF has requested conditions which respond to a combination of UP's operational problems in the U.S., the constraints on competition created by the inability of Tex Mex (apparently related to KCS' 49% ownership interest in Tex Mex) to enter into long-term, competitively viable agreements with BNSF, and the failure of competition to develop as expected in Mexico.

From an economic standpoint, the conditions proposed by BNSF will provide public benefits by improving the ability of BNSF to compete, by helping to relieve congestion and related service problems for numerous shippers who otherwise are experiencing poor rail service in the post merger environment, and by responding to the unique market structure problems of the Mexican gateways. The conditions requested by BNSF would not create a new competitive balance by, for example, extending remedial conditions imposed by the Board beyond the replacement of competition which otherwise would have disappeared as a result of the UP/SP merger. In other words, BNSF's conditions focus on properly implementing the competitive thrust of the Board's prior orders, rather than on reopening the basic competitive decisions of those orders.

II. UP's SERVICE PROBLEMS, POST-MERGER COMPETITION AND THE NEED FOR ADJUSTMENT OF EXISTING MERGER CONDITIONS

The performance problems of the merged UP/SP system are well-known, severe, and the subject of concern to shippers, railroads, and the STB. While problems have occurred throughout the system, the Houston, Texas and Gulf Coast areas have been the epicenter of these difficulties. Stark problems of congestion and scheduling have degraded the quality of the nation's rail service, as ripple effects have been transmitted to other railroads and distant parts of the country.

In response to this situation, the STB instituted a temporary emergency service order that directed the UP to make a number of operational changes and to release shippers from certain contracts so that BNSF and other railroads could better compete for shippers and begin to relieve service failures.[2] In addition, BNSF negotiated other changes, such as the joint ownership and operation of the Houston to Avondale line, joint dispatching in the Houston area, and additional trackage rights. These were intended to provide more efficient and less congested operations in the Gulf Coast area.[3]

Despite the efforts of the STB and UP, as well as the cooperation of other railroads, the serious service problems have proven to be particularly intractable. The sources of these problems have been much disputed, with blame placed both on inadequate rail infrastructure in the Houston and Gulf Coast area and on poor management in integrating the UP and SP systems. While the current situation appears to be less dire than just a couple of months ago—when UP took the extraordinary step of embargoing traffic to Laredo—serious service problems remain. These problems are

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[2] STB Service Order No. 1518, Joint Petition for Service Order, Surface Transportation Board, served October 31, 1997.

[3] Term Sheet Agreement Covering Ownership and Operation of Lines In and Around Houston, TX, signed by Union Pacific Railroad Company and the Burlington Northern and Santa Fe Railway Company, February 1998.

occurring despite continued imposition of conditions under the STB's temporary service order. Notwithstanding competing claims that the problems are solved or that they will persist in some form for years, reason suggests that it is difficult to know whether the current lessening of the extreme service problem is due to seasonal changes in local traffic demand, is the result of improvements by the UP, and/or reflects the workings of the Board's service order conditions. What is clear is that rail service in the Houston and Gulf Coast area is still suffering, and there are no reliable forecasts of when and if the UP will be able to meet its own service commitments and the needs of its shippers, or when the effects of UP's problems on other rail systems will fully recede.

From a competition perspective, the rail service problems emanating from UP's Gulf Coast operations become "merger related" when they start to adversely affect the ability of other railroads to compete vigorously and to provide the competitive replacement options that the Board envisioned upon accepting and imposing merger conditions on the UP/SP transaction. In order to compete effectively, a firm in any market must not only have the opportunity to price its products so as to attract customers away from rivals, it must also be able to provide the quality of service that customers demand. Thus, applied to the present context, the competition-protecting UP/SP merger conditions approved by the Board are thwarted to the extent that UP service problems ripple out and adversely affect the quality of service that other railroads, such as BNSF, can offer in competition with UP. The competitive playing field is tilted away from UP's rivals when UP—understandably responding to pressure from shippers, the Board, and even the media—takes steps to alleviate *UP's* service problems in ways that have the intended or unintended consequence of worsening the absolute *or* relative quality of service that its competitors can offer.

The largest group of conditions requested by BNSF, therefore, are designed to enable it to provide adequate, reliable and competitive service in light of UP's Houston-area problems and associated changes in UP's operating practices. As documented by BNSF[4] and the Verified Statements of Messrs. Rickershauser and Hord, the congestion on UP's facilities and UP's responses thereto have significantly reduced the efficiency and utility of BNSF's rights.

For example, many of the existing operating conditions result in routing BNSF's traffic through the heavily congested Houston-area, even though the traffic is not destined for Houston. Under BNSF's requested conditions, substantial non-Houston traffic would be routed around Houston. This would increase the efficiency and competitiveness of BNSF's service, while at the same time contributing to UP's recovery. Similarly, BNSF reports that UP practices adopted in response to its post-merger congestion and operational difficulties, such as directional running, have limited the competitive viability of BNSF's trackage rights. BNSF's requested conditions, in essence, would enable BNSF's trains to operate with UP's directional running, rather than against it. As a result, both BNSF's and UP's service would improve, to the benefit of shippers and competition.

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[4] Burlington Northern and Santa Fe Railway Company, *Quarterly Progress Report* in Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern PacificRail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver Rio Grande Western Railroad Company, Surface Transportation Board, Finance Docket No. 32760, July 1, 1998.

Furthermore, there is evidence that UP has a pattern of favoring its own trains when operating conditions limit the ability of its tracks to carry traffic,[5] and BNSF has proposed specific conditions to address these problems.

BNSF already has modified a number of the routes over which it obtains competitive access to shippers otherwise facing loss of multiple rail service under the UP/SP merger. This has been achieved both by private negotiation and by STB order. Operations have been further altered by joint agreements, unanticipated at the time of the UP/SP merger, between BNSF and UP in order to rationalize Houston dispatching and operations east of Houston. Nevertheless, UP's operational strategies have had far reaching impacts on BNSF's ability to compete, forcing it to adopt sub-optimal staging of grain movements out of the central U.S., limiting its ability to service automobile manufacturers shipping into the U.S. from Mexico, and generally impairing its ability to provide reliable and competitive service using the rights granted it in the UP/SP merger proceeding.[6]

As Mr. Rickershauser, Mr. Hord and BNSF[7] detail, UP's responses to its operational and congestion problems have compelled UP to make substantial modifications in its post-merger operating plan. Particularly in the Texas Gulf Coast region, these changes have impeded BNSF's ability to deliver service of the quality needed to allow it to fulfill its post-merger competitive role. Directional running by UP,

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[5] Verified Statement of Peter J. Rickershauser, at 9-10.

[6] *Id.* at 9-12.

[7] BNSF's July 1, 1998 *Quarterly Progress Report.*

for example, has negatively affected BNSF's competitive presence over traffic utilizing access rights over Algoa, TX to Placedo, TX, from Dallas to Fort Worth, and (together with other impediments) the Baytown Branch. Unforeseen operational strategies of UP, congestion, and logistics have similarly adversely affected BNSF's ability to provide competitive service over Temple to San Antonio, in accessing the Georgetown Railroad (GRR) (where BNSF now seeks modification of conditions enabling it to access GRR via the Taylor-Milano line, rather than the Temple-Taylor line), and in serving Harlingen and Brownsville, Texas and Matamoros, Mexico traffic (where post-merger options for multiple rail service have been constrained and logistically inadequate). Finally, UP's switching and dispatching practices on BNSF's trackage rights lines have disproportionately affected BNSF.

In cases where UP's directional running—or other unforeseen operational changes and incentives—render BNSF unable to effectively utilize trackage and haulage rights granted to it in the merger agreements, it is appropriate for the Board to grant BNSF access to alternative routes that allow it to provide the type of effective competition intended by the original provisions. In addition, BNSF is properly seeking protection in the future from operational changes or directional running that UP may impose that would otherwise degrade BNSF's ability to provide competitive service over trackage rights provided as part of the merger conditions. The provision of a general, flexible protection would satisfy the UP's needs for the flexibility required to organize its rail operations in a manner that it sees fit, while protecting shippers from any loss of competitive service provided by BNSF that UP operational changes might otherwise entail.

III. MAINTAINING COMPETITION AT AND BETWEEN MEXICAN GATEWAYS

In originally addressing the issue of preserving competition affecting Mexican traffic, the Board's conditions recognized that, absent remedial conditions, UP's consolidation with SP would leave UP with post-merger pre-eminence at each of the key Mexican gateways with access to central and eastern Mexico. Absent merger conditions, the post-merger UP would have provided service at both Eagle Pass and Laredo, with only BNSF haulage to Eagle Pass as a non-UP option.

Under BNSF's agreement with UP pursuant to the consolidation of UP and SP, however, BNSF received trackage rights on the UP Algoa-Brownsville line, enabling BNSF to replace SP as a competitor to UP on Laredo moves interlining with the Tex Mex and on moves going through Brownsville. The agreement also converted the haulage rights BNSF had on the Eagle Pass route to trackage rights. In short, the Board approved conditions enabling BNSF to replace SP's service at Eagle Pass, Texas and SP's interline service (via Tex Mex) to Laredo. The STB further added to the merger conditions a trackage rights grant to the Tex Mex so that KCS could link with the Tex Mex in Beaumont, TX.[8] Although Tex Mex also serves Laredo, it would not connect with any carrier other than UP, but for the trackage rights conditions the Board granted.

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[8] Decision No. 44, at 150.

The economic effect of the Board's conditions was to try to preserve directly competitive service at Laredo and intergateway competition between Eagle Pass and Laredo. However, as set forth in the BNSF application and the supporting statements of Messrs. Hord and Rickershauser, a unique combination of factors are adversely affecting BNSF's ability to provide viable competition-preserving service into and out of Mexico. Specifically, these factors include: (1) UP's operational problems, (2) the relationship between KCS and Tex Mex (which limits the willingness of Tex Mex to enter into long-term commercial relationships with BNSF), and (3) unforeseen developments in the organization of recently privatized Mexican railroads (which inhibit the ability of Eagle Pass to substitute for Laredo service). The condition proposed by BNSF—trackage rights access to UP's Laredo-San Antonio line—would enable BNSF to provide the service originally contemplated by the Board's conditioning of the UP/SP merger. In essence, BNSF would substitute trackage rights for the long-term commitment to interline service with Tex Mex. This change in conditions would, therefore, be consistent with the economic foundations of the Board's original merger approval.

Operational Impediments to Competition by BNSF: The intention of the trackage rights grant to BNSF was to protect the inter- and intra-gateway competition otherwise provided pre-merger by SP. BNSF's resulting trackage rights appear to mimic the network structure which SP had in the region. A number of unforeseeable market changes, however, have now altered the competitive setting since the UP/SP merger. To serve Laredo traffic, BNSF is currently operating under temporary trackage rights from UP over Caldwell-Flatonia-Placedo line for southbound traffic. This configuration is needed to accommodate directional running by UP. Northbound, BNSF is operating between Placedo and Algoa, although this route is heavily congested by through trains and local switching, and traffic moving from Laredo north through Algoa to reach BNSF's yard at Temple, TX passes through the Houston/Galveston area and adds to the area's congestion. The overall effect on BNSF is to restrict the quality of service that it can offer to shippers in competing for their business.

The trackage rights from San Antonio to Laredo that BNSF seeks here would allow BNSF to offer service of sufficient quality to make it competitive and would divert its traffic between Mexico and locations beyond the reach of Houston's congestion. This would constrain the ability of UP's operational strategies to adversely affect the quality, and, hence, the competitiveness of service that BNSF can offer. It would also contribute to easing the on-going congestion in the Houston and Gulf Coast region.[9]

Effects of the KCS/Tex Mex Relationship: The ability of BNSF to compete vigorously against UP at the Laredo gateway and for Mexican traffic in general is further impeded by constraints placed on the Tex Mex by its ownership relationship with KCS. KCS has acquired a 49% ownership stake in the Tex Mex (the intent of which was publicly announced in September 1995). Moreover, with Transportación Maritima Mexicana (TMM), KCS owns the Tex Mex and the Northeast concession of the recently privatized Mexican railroad. Specifically, on December 1, 1995, KCS and TMM established a Joint Venture Agreement (JVA). Though the general character of the relationship between TMM and KCS was known at the time of the UP/SP merger proceeding, the details of the joint venture were not known publicly. It now is clear that certain specific details of the JVA—undisclosed at the time of the Board's decision—and the economic incentives KCS has are relevant to the implementation of the merger, particularly to its competition-preserving conditions.

BNSF has been seeking to forge a long-term agreement with the Tex Mex so that it can make substantial capital investments and develop the long-term relationships that some shippers desire. Specifically, as explained by Mr. Rickershauser and as part of a long- term basis for interlining with Tex Mex, BNSF has sought non-discriminatory treatment from Tex Mex and a reasonable division of revenues.[10] In the negotiations between Tex Mex and BNSF, the non-discrimination clause sought by BNSF would, in essence, have guaranteed that BNSF's rate from Tex Mex on a joint movement would be no higher than that charged to any other interline partner (adjusting for factors such as length of haul). However, when BNSF and Tex Mex came close to signing an agreement, KCS took the position that the JVA precluded Tex Mex from offering "most-favored nations treatment."[11] KCS "reject[ed]...'most favored nation treatment,'"[12] and responded to BNSF's proposed agreement with Tex Mex with what BNSF interpreted as a threat of litigation against BNSF.[13]

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[9] Verified Statement of Ernest W. Hord, at 22-26.

[10] Verified Statement of Mr. Rickershauser, at 31-33.

[11] Correspondence from Michael R. Haverty, President and CEO of KCS, to Robert D. Krebs, Chairman, President, and CEO of BNSF, March 9, 1998, and March 13, 1998.

[12] Kansas City Southern, "Reply to the BNSF April 1, 1998 Quarterly Progress Report," KCS-10, Finance Docket No. 32760 (Sub-No. 21), April 24, 1998, at 4.

[13] See, e.g., correspondence from Robert D. Krebs, Chairman, President, and CEO of BNSF, to Michael R. Haverty, President and CEO of KCS, March 12, 1998.

It was under this perceived threat that BNSF found itself unable to consummate a new, long-term interline agreement with Tex Mex. Contrary to claims by Tex Mex and KCS in their filings in the UP/SP merger to the effect that BNSF would not want to compete "vigorously for a significant share" of the traffic to Mexico,[14] BNSF has been the party seeking to offer more competitive interline service with the Tex Mex to Mexico. In so doing, BNSF has met determined resistance from KCS, using the vehicle of the TMM-KCS JVA. This prospect was not raised for Board scrutiny in the initial UP/SP merger proceeding, but its implications warrant examination during this *ex post* review because of its role in inhibiting BNSF's ability to make long-term investments and attendant commitments to shippers desiring them.

KCS has argued that a most-favored nation (MFN) contract between Tex Mex and BNSF would be anticompetitive.[15] KCS' articulated basis for that argument is that an MFN constitutes "price-fixing" but that is a serious misuse of the term. What KCS must mean, if it intends to advance a serious economic argument, is that a non-discrimination clause between BNSF and Tex Mex would inhibit Tex Mex from seeking interline

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[14] See, e.g., Brad L. Skinner, Verified Statement on behalf of The Texas Mexican Railway Company, at 151-52; Finance Docket No. 32760, Sub No. 13; The Texas Mexican Railway Co. – Trackage Rights over Lines of the Union Pacific RR. Co. and Southern Pacific Trans. Co. Finance Docket No. 32760, Sub No. 14; The Texas Mexican Railway Company – Terminal Trackage rights over lines of the Houston Belt & Terminal Railway Co.; Responsive Application of the Texas Mexican Railway Company (March 29, 1996) [TM-23].

[15] 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 Rio Grande Western Railroad Company, Oversight Proceeding, Reply to the BNSF April 1, 1998 Quarterly Progress Report, April 24, 1998.

agreements with other carriers (e.g., KCS) since a lower price offered to another carrier would also have to be offered to BNSF. But such reasoning does not stand up to economic analysis here. Giving BNSF the opportunity to compete for traffic against KCS on pricing terms no worse than KCS would receive would improve BNSF's ability to attract shippers and reduce total transportation rates to shippers. Thus, in this circumstance, where BNSF competes directly with KCS for Laredo traffic and KCS has an ownership interest, if not *de facto* control, in Tex Mex, a non-discriminatory, most favored nation contract would properly be viewed as pro-competitive.

UP has noted that BNSF interlined traffic with Tex Mex is increasing.[16] However, this short-term trend may be misleading. First, traffic has shifted to BNSF in response to UP's service problems, which resulted, at one time, in an embargo on traffic at Laredo. Second, much of BNSF's interlined traffic moves under short-term contracts. Third, if current conditions prevail, the KCS/Tex Mex relationship will prevent BNSF from entering into long-term commercially viable arrangements with Tex Mex. Without the ability to make long-term commitments to shippers, BNSF cannot replicate and replace the competitive discipline SP imposed on UP pre-merger. Thus, the assertion that BNSF's current arrangement replicates pre-merger conditions is illusory.

In the current environment, the fact that BNSF can offer only short-term commitments may only be a limited handicap because UP itself is operating in an

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[16] 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 Rio Grande Western Railroad Company, Oversight Proceeding,

environment of post-merger uncertainty so severe that UP actually embargoed Mexican traffic for a time. However, BNSF's ability to compete over the long-term will deteriorate once UP's situation normalizes, unless BNSF can make competitive long-term offers to shippers. Selective citation of short-term traffic trends fails to address the question of whether or not BNSF can realize its full potential as a competitive force, as contemplated by the Board. Clearly, as documented by BNSF and Mr. Rickershauser, BNSF's potency as a competitor to UP is being weakened to the extent that BNSF cannot make long-term commitments and investments that service to at least some shippers require.[17]

The Course of Mexican Rail Privatization: UP's pre-merger service at Laredo also faced inter-gateway competition from traffic at Eagle Pass and Brownsville. For traffic originating and terminating in central Mexico, it was anticipated that the combination of then-pending privatization of the Mexican rail system and developments north of the border would yield a system in which substantial numbers of shippers would have competitive choice between at least two Mexican railroads—one serving via Eagle Pass and one serving through Laredo and Matamoros/Brownsville. Board approval of merger conditions providing for independent U.S. railroads serving competing Mexican counterparts, thus, promised to create at least two competing international corridors linking central and eastern Mexico with the U.S. heartland. Unfortunately for

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Quarterly Progress Report, July 1, 1998.

[17] Verified Statement of Mr. Rickershauser, at 31-32.

competition, the course of Mexican privatization has impeded this evolution of the marketplace.

Prior to the UP/SP merger, the government of Mexico divided the Ferrocarriles Nacionales de Mexico (FNM) system into three regional railroads to be auctioned after the UP/SP merger.[18] When the FNM sub-systems were auctioned to private companies, Transportación Ferroviarria Mexicana (TFM, a joint venture between Transportación Maritima Mexicana and Kansas City Southern Industries) won the bid for the Northeast railroad (serving Nuevo Laredo/Laredo and Matamoros/Brownsville). Grupo Mexico, Union Pacific, and Empresas ICA won the bid for the Northwest railroad, Ferrocarril Mexicano, S.A. De C.V. ("FXE") (which serves, among other gateways, Eagle Pass and El Paso).

Mexican policy has restricted the TFM and FXE routings' competitiveness with one another. Contrary to reasonable and widely-held expectations at the time of the UP/SP consolidation, the Mexican government's protections of competition have been disappointing. Of particular relevance, the law privatizing the national railroad gave ample recourse in the event of market power findings,[19] and it was anticipated at the time of the merger that the Mexican government would intervene wherever competitive alternatives were inadequate by granting trackage rights to at least one other carrier. As Tex Mex witness Skinner noted in 1996 while commenting on the UP/SP merger:

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[18] An additional component consisting of terminal railroads and shortlines was not auctioned.

[19] The *Ley Reglamentaria del Servicio Ferroviario* defines competition as "two or more viable rail or other alternatives," Capitulo I: Disposiciones Generales, Articulo 47.

> Based on discussions with Mexican officials, I believe that Mexico will not grant exclusive access to one company with respect to the three regional lines, but will require whatever company or group that acquires each line *to provide trackage rights at reasonable compensation* to at least one other company in order to ensure competition over that line....*If privatization is completed properly, as I believe it will be, it will result in every major city, border gateway, and port in Mexico having the choice of at least two railroads*, and those choices will stimulate efficiency, low cost productivity and economic development.[20]

However, this anticipated competition has not materialized in the time since privatization was consummated last year. Trackage rights, for example, do not yet offer a viable alternative to traffic destined for shippers not served by the gateway carrier. FXE, for example, serves the Eagle Pass gateway on the southern side of the border. As privatization has been implemented, however, I understand that FXE must pay at least $1.50 per loaded car mile for trackage rights to move cars to destinations on the TFM.[21] At this high rate, it cannot be assumed that FXE can compete with TFM for destinations solely served by TFM, which operates from the Laredo gateway southward. In contrast to expectations at the time of the merger, the two northern rail networks remain effectively closed systems.

The failure of Mexican privatization to establish conditions for effective competition south of the border concomitantly limits the extent of intergateway competition. The ability of BNSF service at Eagle Pass to discipline UP service at Laredo, for example, is reduced the more it matters to shippers which carrier on the Mexican side of the border carries the traffic to/from its Mexican destination/origin. This

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[20] Verified Statement of Mr. Skinner, *supra* , at 149 (emphasis added).

[21] Verified Statement of Mr. Rickershauser, at 33.

is contrary to expectations held at the time of the UP/SP merger, when the Board clearly recognized the special, important role played by the Laredo gateway to Mexico, and the pro-competitive role of the Eagle Pass gateway.[22] I understand that, prior to the UP/SP consolidation, SP had an equalization agreement with FNM that made rates to the interior of Mexico from Eagle Pass equal to those from Laredo, despite a difference in distances.[23] However, now that FNM has been privatized such that one railroad serves Laredo and one railroad serves Eagle Pass on the Mexican side, the equalization agreement has lapsed and traffic from Eagle Pass is now as much as 250-300 miles out of route economically.[24] Not only does this result in higher costs of power and rolling stock and in slower service times, the rates charged within Mexico are higher. This significantly weakens Eagle Pass as a competitive alternative.

Matters are being made even worse under UP ownership of the SP line from San Antonio to Eagle Pass. Previously, as owner of the line, SP had full discretion and control over the way in which it would compete with UP, whereas the post-merger BNSF must compete while being a tenant of UP. Were it not for discriminatory treatment in that role, BNSF might operate as effectively as the SP. Congestion, however, has forced BNSF into a capacity-limiting agreement with UP under which BNSF must hold volume to no more than 150 cars per day (with coal and coke traffic exempted).[25] UP is held to a

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[22] Decision No. 44, at 148.

[23] Verified Statement of Mr. Rickershauser, at 34.

[24] *Ibid.*

[25] *Ibid.*

200 car/day cap (with coal, coke and doublestack intermodal traffic exempted).[26] As a result, BNSF has had to delay trains in already inferior scheduling windows and has had to route north-bound empty cars to the less congested and BNSF-served El Paso gateway. This has increased the cost of providing service at Eagle Pass.[27] Moreover, the capacity constraints at the Eagle Pass gateway, like constraints elsewhere where UP and BNSF meet, have forced BNSF to alter its staging of cars bound for Mexico back upstream even to the origin. Both the cost and the quality of BNSF's service suffers – as does its concomitant ability to compete using the Eagle Pass gateway.

In summary, as far as service to Mexican traffic is concerned, the combination of UP's operating problems, the relationship between KCS and Tex Mex, and the failure of full competition to develop as Mexico has privatized its railroads have limited the effectiveness of the merger conditions imposed on UP/SP in protecting competition. BNSF's competitive capabilities at Laredo have been stunted by UP's congestion problems and operational strategies, and by the roadblocks to a long term relationship with Tex Mex that the KCS/Tex Mex relationship has created in the post-merger setting. In addition, capacity limits at Eagle Pass have combined with less-than-expected protection and promotion of competition among newly privatized railroads in Mexico. The result is that intergateway competition which would otherwise have been well protected by the Board's UP/SP conditions is falling short.

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[26] *Ibid.*

[27] *Ibid.*

Given these results in the marketplace, and given that such factors as Mexican government policy are beyond the reach of the Board, BNSF's request here for trackage rights access to UP's Laredo-San Antonio line is consistent with sound public policy and merger oversight. Such an alteration of the original merger conditions would directly counteract the block to competition that BNSF has encountered in dealing with the post-merger KCS/Tex Mex. Moreover, it would allow substantial traffic to be shifted away from the heavily congested Algoa-Brownsville line. Competition would be protected in the process by moving traffic from congested rail lines with low service quality to less congested lines over which BNSF can provide better service to shippers. Shippers into and out of Mexico would directly benefit from reduced congestion and a shortening of BNSF's otherwise circuitous access to Laredo. By moving traffic that does not need to go to the Houston area to the west of the area, Houston traffic congestion would also be improved. In so doing, the need for heavy capital investment would be at least partially abated and forestalled. This would represent a rational use of the nation's scarce resources, while at the same time promoting the protection of competition.

IV. CONCLUSION

In its original decision on the UP/SP merger, the Board accepted and imposed conditions designed to ensure that the merger did not result in a loss of competition to shippers. However, as UP's well-documented service problems have continued, the efficacy of the specific routing options approved by the Board has decreased, threatening the ability of BNSF and others to provide adequate, reliable and timely service as a competitive alternative to UP service. In addition, the impact of UP's general operational problems has been exacerbated for BNSF at the Laredo gateway by both KCS' apparent ability to veto the entry by Tex Mex into reasonable, and competitively viable, long-term commercial arrangements with BNSF, and the lagging progress toward fuller competition on Mexican railroads.

Therefore, it would be appropriate to modify the original UP/SP conditions by adopting substitute routings which enable BNSF and other railroads to restore and protect the quality service that can be offered when competing for shippers' business. The conditions proposed by BNSF meet this objective. They would not result in BNSF gaining access to additional shippers; they would contribute to a reduction of congestion in the critical Houston/Gulf Coast area; and they would protect competition for Mexican traffic.

VERIFICATION

THE STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

Joseph P. Kalt, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.

J P. Kalt
Joseph P. Kalt

Subscribed and sworn before me on this 8th day of July, 1998.

Lindie S. Joy
Notary Public

My commission expires: 3/13/00

LINDIE S. JOY
Commission # 1090142
Notary Public — California
Los Angeles County
My Comm. Expires Mar 13, 2000

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PROFESSIONAL EXPERIENCE

John F. Kennedy School of Government, Harvard University, Cambridge, MA
Ford Foundation Professor in International Political Economy, 1992 - present
Chair, Economics and Quantitative Methods Section, 1995 - present
Professor of Political Economy, 1986 - 1992

Areas of specialization include Industrial Organization, Economics of Antitrust and Regulation, Natural Resource Economics, Public Choice and Political Economy, Microeconomic Theory.

Co-Director, The Harvard Project on American Indian Economic Development, 1987 - present
Academic Dean for Research, 1992 - 1994
Chairman, Environment and Natural Resources Program, Center for Science and International Affairs, 1990 - 1994
Chairman of Degree Programs, 1990 - 1992
Assistant Director for Natural Resources, Energy and Environmental Policy Center, 1985 - 1990
Co-Director, Harvard Study on the Future of Natural Gas Policy (with Frank C. Schuller), Energy and Environmental Policy Center, John F. Kennedy School of Government, 1984-86

Department of Economics, Harvard University, Cambridge, MA
Associate Professor of Economics, 1983 - 1986
Assistant Professor of Economics, 1980 - 1983
Instructor in Economics, 1978 - 1980

Taught Economics of Antitrust and Regulation, Intermediate Microeconomics, and Principles of Economics.

President's Council of Economic Advisers, Washington DC
Junior Staff Economist, 1974 - 75

Analyzed federal energy, environmental, transportation, and tax policies.

EDUCATION

University of California, Los Angeles
Ph.D. in Economics, 1980
Dissertation: "Federal Control of Petroleum Prices: A Case Study of the Theory of Regulation"
M.A. in Economics, 1977

Stanford University, Stanford, CA
B.A. in Economics, 1973

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"The Capital Shortage: Concept and Measurement" (with George M. von Furstenberg), *The Journal of Economics and Business*, Spring/Summer 1977, pp. 198-210.

"Problems of Stabilization in an Inflationary Environment: Discussion of Three Papers," *1975 Proceedings of the Business and Economic Statistics Section: American Statistical Association Annual Meetings*, pp. 20-22.

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"An Economic Analysis of Electricity Industry Restructuring in New England" (with Adam B. Jaffe), The Economics Resource Group, Inc., funded by Northeast Utilities System Companies, April 1995.

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"The Redesign of Rate Structures and Capacity Auctioning in the Natural Gas Pipeline Industry," *Discussion Paper Series*, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, June 1988.

"The Redefinition of Property Rights in American Indian Reservations: A Comparative Analysis of Native American Economic Development," *Discussion Paper Series*, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, June 1987

"A Review of the Adequacy of Electric Power Generating Capacity in the United States, 1985-93 and 1993-Beyond" (with James T. Hamilton and Henry Lee), *Discussion Paper Series*, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, June 1986.

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"Possibilities for Competition in the Gas Industry: The Roles of Market Structure and Contracts," prepared for Harvard Study on the Future of Natural Gas Policy, Working Group Meeting, October 1985.

"Natural Gas Decontrol, Oil Tariffs, and Price Controls: An Intertemporal Comparison," Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, April 1985.

"Market Structure, Vertical Integration, and Long-Term Contracts in the (Practically) Deregulated Natural Gas Industry," *Discussion Paper Series*, Harvard Institute of Economic Research, Harvard University, April 1985.

"Can a Consuming Region Win under Gas Decontrol?: A Model of Income Accrual, Trade, and Stockholding" (with Robert A. Leone), *Discussion Paper Series*, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, February 1984.

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"Windfall Profits Tax Will Reap Bonanza—But For Whom?" (with Peter Navarro), *The Miami Herald*, December 23, 1979, editorial page.

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Proceedings of the Fourth Annual DOE-NARUC Natural Gas Conference, Orlando, FL, February 1995, publication forthcoming.

Keynote Address, "Sovereignty and American Indian Economic Development," Arizona Town Hall, Grand Canyon, AZ, October 1994.

"Is the Movement Toward a Less-Regulated, More Competitive LDC Sector Inexorable?, (Re)Inventing State/Federal Partnerships: Policies for Optimal Gas Use," U.S. Department of Energy and The National Association of Regulatory Utility Commissioners Annual Conference, Nashville, TN, February 1994.

"Cultural Evolution and Constitutional Public Choice: Institutional Diversity and Economic Performance on American Indian Reservations," Festschrift in Honor of Armen A. Alchian, Western Economic Association, Vancouver, BC, July 1994.

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"The Redesign of Rate Structures and Capacity Auctioning in the Natural Gas Pipeline Industry," Natural Gas Supply Association, Houston, TX, March 1988.

"Property Rights and American Indian Economic Development," Pacific Research Institute Conference, Alexandria, VA, May 1987.

"The Development of Private Property Markets in Wilderness Recreation: An Assessment of the Policy of Self-Determination by American Indians," Political Economy Research Center Conference, Big Sky, MT, December 4-7, 1985.

"Lessons from the U.S. Experience with Energy Price Regulation," International Association of Energy Economists Delegation to the People's Republic of China, Beijing and Shanghai, PRC, June 1985.

"The Impact of Domestic Regulation on the International Competitiveness of American Industry," Harvard/NEC Conference on International Competition, Ft. Lauderdale, FL, March 7-9, 1985.

"The Welfare and Competitive Effects of Natural Gas Pricing," American Economic Association Annual Meetings, December 1984.

"The Ideological Behavior of Legislators," Stanford University Conference on the Political Economy of Public Policy, March 1984.

"Principal-Agent Slack in the Theory of Bureaucratic Behavior," Columbia University Center for Law and Economic Studies, 1984.

"The Political Power of the Underground Coal Industry," FTC Conference on the Strategic Use of Regulation, March 1984.

"Decontrolling Natural Gas Prices: The Intertemporal Implications of Theory," International Association of Energy Economists Annual Meetings, Houston, TX, November 1981.

"The Role of Government and the Marketplace in the Production and Distribution of Energy," Brown University Symposium on Energy and Economics, March 1981.

"A Political Pressure Theory of Oil Pricing," Conference on New Strategies for Managing U.S. Oil Shortages, Yale University, November 1980.

"The Politics of Energy," Eastern Economic Association Annual Meetings, 1977.

WORKSHOPS PRESENTED

University of Indiana; University of Montana; Oglala Lakota College; University of New Mexico; Columbia University Law School; Department of Economics and John F. Kennedy School of Government, Harvard University; MIT; University of Chicago; Duke University; University of Rochester; Yale University; Virginia Polytechnic Institute; U.S. Federal Trade Commission; University of Texas; University of Arizona; Federal Reserve Bank of Dallas; U.S. Department of Justice; Rice University; Washington University; University of Michigan; University of Saskatchewan; Montana State University; UCLA; University of Maryland; National Bureau of Economic Research; University of Southern California

OTHER PROFESSIONAL ACTIVITIES

Chief Mediator *In the Matter of the White Mountain Apache Tribe v. United States Fish and Wildlife Service*, re: endangered species management authority, May-December, 1994

Steering Committee, National Park Service, 75th Anniversary Symposium, 1991-93

Board of Trustees, Foundation for American Communications, 1989 to present

Editorial Board, *Economic Inquiry*, 1988 to present

Advisory Committee, Oak Ridge National Laboratory, Energy Division, 1987 to 1989

Commissioner, President's Aviation Safety Commission, 1987-88

Principal Lecturer in the Program of Economics for Journalists, Foundation for American Communications, teaching economic principles to working journalists in the broadcast and print media, 1979 to present

Lecturer in the Economics Institute for Federal Administrative Law Judges, University of Miami School of Law, 1983 to 1991

Research Fellow, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, 1981 to 1987

Editorial Board, MIT Press Series on *Regulation of Economic Activity*, 1984 to 1992

Research Advisory Committee, American Enterprise Institute, 1979 to 1985

Editor, *Quarterly Journal of Economics*, 1979 to 1984

Referee for *American Economic Review, Bell Journal of Economics, Economic Inquiry, Journal of Political Economy, Review of Economics and Statistics, Science Magazine, Journal of Policy Analysis and Management, Social Choice and Welfare, Quarterly Journal of Economics*, MIT Press, North-Holland Press, Harvard University Press, *American Indian Culture and Research Journal*

TEACHING EXPERIENCE

Introduction to Environment and Natural Resource Policy (Graduate, Kennedy School of Government); Seminar in Positive Political Economy (Graduate, Kennedy School of Government); Intermediate Microeconomics (Graduate, Kennedy School of Government); Natural Resources and Public Lands Policy (Graduate, Kennedy School of Government); Economics of Regulation and Antitrust (Graduate); Economics of Regulation (Undergraduate); Introduction to Energy and Environmental Policy (Graduate, Kennedy School of Government); Graduate Seminar in Industrial Organization and Regulation; Intermediate Microeconomics (Undergraduate); Principles of Economics (Undergraduate); Seminar in Energy and Environmental Policy (Graduate, Kennedy School of Government)

HONORS AND AWARDS

Allyn Young Prize for Excellence in the Teaching of the Principles of Economics, Harvard University, 1978-79 and 1979-80

Chancellor's Intern Fellowship in Economics, 9/73 to 7/78, one of two awarded in 1973, University of California, Los Angeles

Smith-Richardson Dissertation Fellowship in Political Economy, Foundation for Research in Economics and Education, 6/77 to 9/77, UCLA

Summer Research Fellowship, UCLA Foundation, 6/76 to 9/76

Dissertation Fellowship, Hoover Institution, Stanford University, 9/77 to 6/78

Four years of undergraduate academic scholarships, 1969-1973; graduated with University Distinction and Departmental Honors, Stanford University

Research funding sources have included: The National Science Foundation; USAID (IRIS Foundation); Pew Charitable Trust; Christian A. Johnson Family Endeavor; The Ford Foundation; The Northwest Area Foundation; the U.S. Department of Energy; the Research Center for Managerial Economics and Public Policy, UCLA Graduate School of Management; the MIT Energy Laboratory; Harvard's Energy and Environmental Policy Center; the Political Economy Research Center; the Center for Economic Policy Research, Stanford University; the Federal Trade Commission; and Resources for the Future

5

STATEMENTS OF SHIPPERS AND OTHERS IN SUPPORT OF APPLICATION

SUPPORTER	NAME
American Natural Soda Ash Corporation	John W. Reinacher
Aqua Oceano, S.A. DE C.V.	Pedro Diaz Barreiro
Brownsville & Rio Grande International Railroad	Lorenzo E. Cantu
Degussa Mexico S.A. de C.V.	Karen Werner M.
Dynegy Inc.	Janice Rowland
Fimexpo Metales S.A. DE C.V.	Alejandro Cervantes R.
Grupo Vitro	Armando Diaz Orozco
IBP, Inc.	Perry M. Bourne
National By-Products, Inc.	Robert A. Blank
Port of Houston Authority	H. Thomas Kornegay
Roquette America Inc.	William R. Mudd
Texas Crushed Stone Company	William B. Snead
Tosco Refining Company	Charles W. Pegram
Ultramar Diamond Shamrock Corporation	Steve Geneva
United Salt Corporation	Mike Causseaux
Vitromex	Ing. Francisco J. Garza O. de M.

ANSAC

July 6, 1998

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

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

Dear Secretary Williams:

My name is John W. Reinacher, I am the Director of Distribution for the American Natural Soda Ash Corporation (ANSAC). I started with ANSAC in 1984 as the Company was being formed. Prior to then, I worked 21 years for Allied Chemical, an original owner of ANSAC, in various supervisory and management positions. My current responsibilities include all logistic functions for the export of ANSAC soda ash to the world market.

ANSAC is a cooperative which represents the United States Soda Ash industry for export. We are responsible for all Marketing, Sales, and Distribution activities as they relate to export. Our product is mined in Wyoming and California and is transported by rail to various port locations and to Mexico. In 1997 over 618,000 tons of soda ash were transported by rail to destinations in Mexico. In 1998, ANSAC entered into an agreement to transport a minimum of 100,000 tons on the Burlington Northern Santa Fe (BNSF) Railway to the Mexican gateways of Laredo, Eagle Pass, and Brownsville.

. . . / . . . continued

15 Riverside Avenue, Westport, CT 06880, USA Phone: 203-226-9056 Fax: 203-227-1484

This statement is submitted in support of BNSF's request for trackage rights from San Antonio to Laredo, Texas. With respect to our customers in Mexico, ANSAC currently ships our product on BNSF over either Brownsville gateway (via U.P. haulage) or on BNSF direct to Eagle Pass gateway. However, our Mexican customers prefer, and increasingly are insisting upon the use of the Laredo gateway, to interline with Transportation Ferrovirria Mexicana (TFM). This is because Laredo via the TFM is the shortest route to our customers. The distance from Eagle Pass to our customers is longer and the rates charged by FXE, the Mexican carrier serving the Eagle Pass gateway, are not competitive with the TFM.

Our experience also is that BNSF's rates for traffic which would interline with the Tex Mex over the Laredo gateway are not competitive with U.P.'s. Because BNSF has been unable to reach an agreement with Tex Mex, BNSF is understandably hesitant to make substantial capital investments and develop long-term commitments with shippers like us in order to provide competitive service.

Beyond the issue of non-competitive rates, the congestion problems associated with shipping traffic via BNSF over the Laredo gateway cause us great concern and have resulted in our decision not to use that gateway for our BNSF routed traffic. Our BNSF traffic does not need to go through the Houston or Gulf Coast areas, but since BNSF's only access to the Laredo gateway is by connecting with the Tex Mex via the heavily congested Algoa-Corpus Christi line, our traffic would be subject to considerable delay and congestion if we were to ship over the Laredo gateway via BNSF.

. . . / . . . continued

It is clear that in the very near term, our customers will require us to use the Laredo gateway for BNSF routed traffic. For that reason, and because of the problems associated congestion and delays at the other gateways to Mexico, we are concerned that absent the granting of overhead trackage rights to between San Antonio to Laredo, BNSF is not able to provide effective competition for us and other shippers at the Laredo gateway as a replacement for SP as was anticipated by the Board.

We appreciate the opportunity to share our views with the Board and respectfully request that the Board grant BNSF's request.

Under penalty of perjury, I state that I have read the foregoing document, know the facts asserted therein and that the same are true and correct as stated.

Sincerely yours,

ANSAC

J. W. Reinacher
Director of Distribution

JWR/dg

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AQUA OCEANO, S.A. DE C.V.
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July 2nd., 1998

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

Subject: Docket No. 32760
Sub-No. 26

Honorable Mr. Vernon A. Williams:

Who ever has to take a decision on the following matter must do it and fast.

It is just not possible that the busiest border in the world in regards of rail transportation don't have a competitor, and I specifically refer to the monopoly of UP/SP in that area.

As a consequence of this monopoly both countries are suffering the consequences, and we are forced to use truck when it is possible.

What our company would like is that BNSF gets the overhead track rights on UP-Laredo-San Antonio, as well in both ways, Caldwell-Flatonia-San Antonio, and Caldwell-Flatonia-Placedo lines, these bases on definitely terns (not temporarily).

The prices charge by Tex-Mex are rip off, and for companies like ours, where transportation is very sensitive it makes impossible, to use the services in the way that they are right now.

Delays, congestion, high price, stolen cars, damage cars, etc. are only the few of the consequences of this monopoly.

Our company will use approximately 1,000 rail cars for 1999, and a similar amount of trucks when it is impossible to use rail, due the reasons mentioned above.

Our company exports to USA and Canada Christmas decorated products on a exclusive long term contract, with Santa's Best which is the largest corporation in the world for these items.

We expect your imputes in this matter as soon as possible.

Thank you in advance for kind attention to the present.

Yours very truly,
Aqua Oceano

Pedro Diaz Barreiro
President

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facilitate the interchange with UP and reduce interchange congestion at Dayton, BNSF constructed two 9,000 foot interchange tracks adjacent to the Dayton storage-in-transit ("SIT") facility. These tracks opened for service in December 1997.

More recently, in order to bypass Houston and reduce congestion in the Houston terminal area, and in keeping with BNSF's theme of not moving traffic through Houston which need not go there, the BNSF Dayton-Houston local serving Baytown Branch customers was rerouted to operate between Dayton and Silsbee, TX, connecting at Silsbee with BNSF through manifest trains to points east, west, and north. This change was made May 9, 1998.

At approximately the same time that BNSF commenced operations with UP on the Dayton interchange tracks, UP announced plans to initiate directional operations on the Baytown and Cedar Bayou Branches, with inbound flows to customers on these lines moving via the UP Baytown Branch from Houston, and outbound flows moving via the SP Baytown Branch on to the Houston-Iowa Junction-Avondale line over which BNSF has trackage rights at Dayton. These directional operations commenced on December 16, 1997. UP's directional operations have limited BNSF's ability to exercise its right to switch Baytown Branch and Cedar Branch customers. Indeed, it is extremely difficult for BNSF to go against the directional flow of UP traffic in order to perform switching on the branches over its existing trackage rights. As a result of UP's operations changes, BNSF has been forced to interchange with UP at Houston for traffic destined to Baytown Branch and Cedar Bayou Branch customers. UP continues to interchange with BNSF at Dayton for business from the Baytown and Cedar Bayou Branches.

BNSF's Baytown Branch customers have not been satisfied with the service that BNSF has been able to provide using UP haulage and reciprocal switching. As evidenced by the graph attached hereto as Attachment 1, UP has not followed through on its commitment to BNSF that cars released and billed by customers on the branch by 5:00 PM on Day 1 would be available to BNSF at the Dayton interchange tracks by 11:59 PM on Day 2, and instead, has consistently delivered cars late or not at all.[5/] Further, on a number of occasions, BNSF shipments from Baytown Branch customers were delivered by UP to BNSF at Houston or other points, further increasing transit times. Accordingly, in February 1998, BNSF informed UP of its intention to offer direct switching of customers to which it had access on the Baytown Branch which desired such switching. BNSF began working with customers to provide direct switching service to their facilities and began direct service to Ultramar Diamond Shamrock in May.

[5/] In order to manage BNSF's commercial and operational service offerings to customers on the Baytown Branch, BNSF set up a team of marketing, customer service, operations and other personnel in April 1998, to: (a) determine BNSF's service capabilities for customers on the Baytown Branch, using a combination of UP reciprocal switch and haulage, and BNSF linehaul services; (b) monitor service through an intense car-by-car, day-to-day tracking of every shipment onto or off of the branch to identify causes for service failures and apply necessary "fixes," and (c) provide a competitive service using the terms of the Settlement Agreement and conditions which would meet BNSF's customers' expectations.

UP service to BNSF and BNSF's customers has improved considerably for Baytown Branch traffic. This improvement, however, is in large part attributable to BNSF's intense car-by-car management process which consumes large amounts of time and resources. Further, although there has been some improvement, UP's reciprocal switching still does not consistently meet the service standards necessary for BNSF to provide fully competitive service.

However, for a number of reasons, BNSF direct switching for many of these customers is not a practical or long-term solution to the need to provide shippers with competitive service to and from points such as those on the Baytown Branch, where previously customers had enjoyed switching service from only one carrier. At the local plant level, customers have concerns with allowing two carriers instead of one to switch their facilities. Among other things, customers are concerned with the implications of allowing twice as much switching activity through their facilities on a daily basis to secure competitive service; the need to separate shipments for two carriers rather than one; the potential for doubling the administrative work associated with switching services; and the potential need for additional track space to place shipments for one carrier versus another. Additionally, customers are concerned with the timing issue of fitting a second switching carrier into a plant's operational cycle at a different time of day or night to avoid impacting the switching cycle of the first carrier. For example, Bayer Corporation's facility at Eldon, TX can permit BNSF as well as UP to switch every day, provided the plant switching for both carriers is performed between midnight and 6:00 a.m. daily, a daunting challenge of coordination even under ideal circumstances.

Even the one shipper, Ultramar Diamond Shamrock Corporation, for which both BNSF and UP currently provide switching, supports BNSF's proposal of neutral supervision of switching activities on the Baytown Branch. See Verified Statement of Steve Geneva, General Manager, Transportation, Ultramar Diamond Shamrock Corporation attached to the Application at Exhibit 5. As explained in that Verified Statement, neutral switching supervision would enhance the efficiency of operations on the branch for that customer, including better coordination of activities and improved turnaround times for cars. Id. Other shippers located on the branch also support BNSF's request. See Exhibit 5 attached to the Application.

The issue of multiple switch carriers also affects the operation of the Baytown Branch itself. The Baytown Branch is not signaled and is congested by growing business and multiple train operations daily. BNSF has had to fit its local switch service in among UP's local operations without causing disruption to UP or its customers. Further, BNSF switching on the Baytown Branch adds additional trains to the line and potentially increases congestion. As indicated earlier, UP's operation on the Baytown Branch is directional, toward Dayton, which is BNSF's base of operations to switch customers on the Baytown Branch. In order to switch Baytown Branch customers, BNSF's local switcher has to operate "against the UP directional flow" in order to place and pull cars between Dayton, Baytown, and East Baytown. The window UP has provided for BNSF to operate its local switcher -- commencing at 10:00 p.m. with the expectation the switcher will begin its return to BNSF's Dayton operating tracks by about 4:30 a.m. -- limits BNSF to switching a few customers at Mont Belvieu and Eldon. This schedule, required so as to not conflict with UP operations on the line, precludes BNSF from switching customers at Baytown and East Baytown, whether or not such shippers could accommodate switching by both BNSF and UP in a 24-hour period.

The problems associated with two carrier switching could be resolved if operations on the Baytown and Cedar Bayou Branches were to be directed on a neutral basis by a third party using the UP and BNSF personnel already in place to conduct the switching operations. This would permit customers to revert to being served by a single local switch carrier, reduce train movements on the Baytown and Cedar Bayou Branches, and provide customers equal operational access to the line haul services of BNSF and UP. The Board should direct that the neutral switching supervisor should be selected by the parties or, absent agreement, by an arbitrator. The neutral switch management should be required to report its activities to the Board periodically.

In addition to requesting neutral switching supervision on the Baytown and Cedar Bayou Branches, BNSF is requesting neutral switching supervision of the Sabine and Chaison Branches. BNSF gained access to these branches as a result of the Term Sheet Agreement. This trackage is similar to the Baytown and Cedar Bayou Branches in that it serves major petrochemical complexes at a number of points. Although BNSF is not presently serving these branches, it intends to commence operations over the branches in the near future. BNSF is anticipating similar problems in providing customers with competitive service along this branch as have occurred on the Baytown and Cedar Bayou Branches. Therefore, BNSF is requesting the establishment of neutral switching supervision along these branches on the same terms and conditions as set forth above for the Baytown and Cedar Bayou Branches.

<u>Clinton Branch</u>. UP's Clinton Branch, located in Houston and Galena Park, TX is a 5.4 mile branch serving approximately 20 customers along the north side of the Houston Ship Channel, including the Port of Houston Authority Public Elevator #2 and the Port's Woodhouse Terminals. In order to service the Houston Public Elevator, a

trainload receiver, BNSF delivers cars to UP's North Yard. UP then delivers the cars to the Houston Public Elevator.

BNSF has been unable to provide timely, reliable and competitive service to the Houston Public Elevator under the current arrangement. On some occasions, UP has given its own trains preference over BNSF trains, thereby causing BNSF trains to experience considerable delays. On other occasions, BNSF trains have experienced delays because UP inefficiently coordinated operations on the Clinton Branch. For example, on May 8, 1998, a BNSF train was held for 5½ hours at the North Yard because UP was unable to contact the UP Yardmaster to receive clearance for the train. Further, when grain trains destined for the public elevator on the Clinton Branch are backed up, the congestion they present frequently backs up other traffic in the Houston terminal, both on UP and BNSF, and on the Port Terminal Railroad Association ("PTRA").

BNSF recommends the Clinton Branch be operated by the PTRA, which has trackage and yards adjacent to the Clinton Branch that can be used for staging trains destined to the branch, and which is in a better position than UP to monitor and manage on a neutral basis inbound grain train flows to the Houston Public Elevator, thereby reducing congestion on the branch and elsewhere in the Houston terminal area. Inasmuch as there are a number of facilities on this trackage not currently open via reciprocal switch to BNSF or others, BNSF recommends that operation of the Clinton Branch by the PTRA not include opening these facilities to reciprocal switch.

The Port of Houston Authority, which is owns and operates the Houston Public Elevator, fully supports BNSF's request that the Clinton Branch be operated by PTRA. See Verified Statement of H. Thomas Kornegay, Executive Director, Port of Houston Authority, attached to the Application at Exhibit 5. In its Verified Statement, The Port of Houston Authority describes how PTRA operation of the Clinton Branch would improve service to shippers. Id.

3. Alternative Routing and Improved Dispatching

In the Houston terminal, BNSF needs additional trackage rights, to be administered through the Spring Center, permitting it to operate over any clear through UP route available in Houston, improving velocity and easing congestion. Presently, BNSF operations through Houston are restricted to the former HB&T East and West Belt routes. When these routes are congested, though alternative routes are available, UP will not permit BNSF to use these lines unless prior trackage rights agreements are in place.

For example, a May 7, 1981 Supplement to the SP-ATSF Rosenberg-Virginia Point Agreement provided ATSF (and now BNSF) with the ability to operate grain trains on trackage rights over the former SP between Rosenberg and Englewood via West Junction, Chaney Junction, and Tower 26 for traffic moving to elevators on the Clinton Branch. By broadening these rights to permit all traffic to move on this route as required, business moving through the Houston terminal could be routed around congestion on the East and West Belt lines, leaving those routes clear for business moving to and from Houston locai and area customers.

BNSF also requests that the UP directional routes between Houston and Longview, TX and between Houston and Shreveport, LA, shared by BNSF and UP over which BNSF has trackage rights as well as access to "2-to-1" customers and new facilities be relocated to and coordinated at the Spring Center from the Harriman Dispatch Center in Omaha. There have been periodic reoccurrences in UP congestion on these routes which impacts BNSF's ability to provide scheduled through and local service to customers on these routes, as well as flows into and out of the Houston Terminal for both UP and BNSF. This situation could be improved if the routes were dispatched under neutral supervision by the Spring Center. Including these UP routes in the Spring Center would assist BNSF and UP in scheduling and coordinating movements over these lines both into and out of Houston, make the most utilization of the available track capacity for train movements in and out of the Houston terminal area, speed velocity, and reduce potential congestion for both carriers.

4. Laredo Gateway

As a condition of the UP/SP merger, BNSF received permanent trackage rights over a UP route to Tex Mex and the Laredo gateway via Algoa, Corpus Christi and Robstown, TX. BNSF's hub terminal for traffic moving to or from any of the south Texas gateways to Mexico, including Laredo, is Temple, TX. Presently, in order to accommodate UP's directional running, BNSF serves the Laredo gateway via temporary trackage rights on the Caldwell-Flatonia-Placedo line for southbound traffic. BNSF is operating northbound between Placedo and Algoa over permanent bidirectional trackage rights received as part of the BNSF Settlement Agreement, imposed as a condition of the UP/SP merger. The Algoa route, however, is heavily congested with the through trains of UP, BNSF and Tex Mex, as well as with substantial local switching activity by UP for major chemicals and metals customers along the Gulf Coast. Further, traffic moving northbound from Laredo through Algoa to reach BNSF's Temple, TX yard must traverse the Houston/Galveston area, over lines 96 miles longer than the Caldwell-Flatonia-Placedo southbound route, thereby adding to train movements and potentially congestion problems in the Houston area with traffic that need not move there.

Under BNSF's proposal for south Texas, BNSF would be to route a considerable amount of Laredo gateway traffic permanently off of the Robstown-Placedo-Algoa line and therefore away from Houston as well as the local activity occurring along this line to support online customers and the through traffic of Tex Mex. For example, traffic destined for the Laredo gateway on BNSF as well as UP could be funneled through UP's directional operations from Temple to San Antonio and then onto UP's San Antonio-Laredo route. Such a reroute would immediately remove one to two trains per day from the substantially more congested and more circuitous route now traveled by BNSF to reach Laredo. Customers shipping to and from Mexico would benefit through BNSF's use of an at least one hundred mile shorter route with potentially faster, more consistent transit times. Additionally, local customers and communities between Robstown and Algoa would benefit because the elimination of a portion of the through traffic on this busy UP route would improve local switch service to online industries by increasing the line's capacity without requiring additional investment.[6]

In addition, KCS' acquisition of a 49% ownership interest in Tex Mex has affected BNSF's ability to replace the competition provided by SP at Laredo as an interline carrier with Tex Mex in ways not anticipated at the time of the UP/SP merger. As BNSF previously advised the Board in its April 1, 1998 and July 1, 1998 Progress Reports, BNSF has conducted extensive negotiations with Tex Mex in an attempt to reach a long-term agreement that would make a BNSF/Tex Mex routing via Laredo competitive to UP's service and price offering. The absence of such an agreement on commercially reasonable terms precludes BNSF from offering long-term commitments to shippers and is a substantial impediment to BNSF's use of its Mexico-related rights to provide a competitive discipline on UP at Laredo as a replacement for SP. Such an agreement is also necessary to protect the capital investments BNSF will need to make in order to establish a long-term viable competitive alternative to UP for Mexico traffic at that critical gateway.

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[6] BNSF's ability to compete for Mexican traffic is also being hindered by UP's ownership of the former SP line from San Antonio to Eagle Pass. Congestion has required BNSF to enter into a capacity-limiting agreement with UP for traffic moving through Eagle Pass. Under that agreement, BNSF must limit its volume to no more than 150 cars per day through the gateway (with coal and coke traffic exempted). UP is limited to a 200-car per day cap (with coal, coke and double stacked intermodal traffic exempted). As a result, BNSF has been forced to delay trains and has had to route northbound empty cars through the less congested Eagle Pass gateway. In addition, capacity constraints at El Paso have seriously degraded BNSF's service via that gateway because it has been forced to stage cars bound for Mexico upstream as far back as their origin.

In a number of instances, BNSF has had to turn away northbound or southbound business opportunities for the Laredo gateway because of the level of Tex Mex's divisions offered to BNSF. Also, there have been instances where business solicited and secured by BNSF for joint BNSF-Tex Mex routings has been "back solicited" by KCS and Tex Mex to remove BNSF from the routing and substitute KCS.

BNSF's negotiations with Tex Mex have been unsuccessful.[7] BNSF believes that Tex Mex's ability to cooperate with BNSF may be impeded by an only recently-disclosed provision in a December 1995 agreement between KCS and Transportacion Maritima Mexicana ("TMM"). That provision apparently has limited Tex Mex's ability to accept the terms under discussion in the BNSF/Tex Mex negotiations. In BNSF's view, the revenue divisions and agreement term that it have proposed in those negotiations would merely ensure that customers using a BNSF-Tex Mex routing would have access to rates and service competitive in the market with those provided by other carriers, including KCS. KCS has, however, interpreted the provision in the KCS-TMM agreement to preclude Tex Mex from agreeing to revenue divisions and the agreement term with BNSF that would (in KCS' view) undermine the KCS/TMM partnership. Indeed, in a March 16, 1998 letter to Chairman Morgan, KCS's counsel suggested that "rather than constantly complaining about the 'lack of cooperation' by Tex Mex" in BNSF's efforts to establish a viable, long-

[7] Negotiations between BNSF and Tex Mex, completed during May, resulted in a proposed short-term agreement for interline pricing to and from the Laredo gateway. Tex Mex can unilaterally cancel this agreement during the second year. The short-term agreement does nothing to enhance competition in that it does not provide for long-term stable pricing structures or service commitments. As a result, BNSF declined to agree to the proposed terms, and negotiations have not formally resumed.

term competitive presence at Laredo, "BNSF should spend time developing the Eagle Pass and Brownsville gateways". Since that letter, KCS has maintained its position that BNSF should not be afforded competitive equal access to the Mexican market via Tex Mex. As a result of KCS's position and influence on Tex Mex, a long-term competitive BNSF/Tex Mex service offering via Laredo as a replacement to SP is yet to be established. Because of the critical importance of that gateway to shippers in the U.S. and Mexico, action needs to be taken to restore the competition that such shippers enjoyed before the UP/SP merger, when there was competition at Laredo between UP and SP-Tex Mex.

While it was well-known at the time of the UP/SP merger that the government-owned Mexican rail system, FNM, would be privatized, the competition between the two resulting northern privatized regional networks via trackage rights and reciprocal switching that had been expected at major common points within Mexico has not materialized. Instead, those two networks remain closed systems, interlining but not competing head-to-head, with many Mexican customers realistically served by only one carrier on traffic moving to and from the United States. For instance, I understand that Grupo Ferroviaria Mexicana ("FXE"), which serves the Eagle Pass gateway on the south side of the border, must pay at least $1.50 per loaded car mile to move cars via trackage rights to destinations on TFM.

This lower-than-expected level of competition in Mexico means that the gateways between Mexico and the United States have become increasingly segmented and differentiated by the serving Mexican carrier to a degree not expected prior to the merger and that it is of increasing importance to shippers which Mexican carrier will carry their traffic to/from its destination/origin, and which border crossing interchange will be used. In this regard, I understand that, prior to the UP/SP merger, SP had an equalization agreement with FNM that made rates from Eagle Pass equal to those from Laredo notwithstanding any differences in distances. That agreement has now lapsed, and traffic from Eagle Pass which must travel as much as an additional 250 to 300 miles to reach destinations in the interior of Mexico cannot be economically priced to compete with traffic moving over the Laredo gateway via TFM to the same destinations. Accordingly, the importance of providing competition in servicing Laredo north of the border for TFM customers has likewise increased, and the Board should act to assure that competition to that gateway is vigorous and viable for BNSF as a post-merger replacement for SP.

For all of these reasons, BNSF needs overhead trackage rights between San Antonio and Laredo to provide effective competition for rail shippers at the Laredo gateway as a replacement for SP as anticipated by the Board.[8/] Various shippers have

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[8/] The fact that BNSF interlined traffic with Tex Mex and overall Tex Mex traffic through Laredo to Mexico have increased does not contradict BNSF's position that it needs overhead trackage rights between San Antonio and Laredo to provide effective long-term competition as a replacement for SP. The recent volume numbers have been significantly impacted by UP's service problems and by UP's embargo for Laredo interchange traffic for TFM, not including automobile parts, finished automobiles, and intermodal, which was effective March 26, 1998, and canceled April 24, 1998. (Neither Tex Mex nor BNSF embargoed Laredo, though BNSF did resort to a "permit system" for southbound loads, which was effective March 30, 1998, and canceled on April 7, 1998.) The UP embargo occurred during a prolonged period of service disabilities on the UP system in south Texas, which led many customers to divert as much traffic as possible to alternative carriers, including BNSF, Tex Mex, and water and highway transport. It is reasonable to expect that, with cancellation of the UP embargo and improvements in submitted Verified Statements in support of BNSF's request.[9] In addition, because of the restructuring of the Mexican rail system, a carrier must be able to provide effective and viable service at all gateways in order to compete in Mexico, and BNSF's inability to provide such service at Laredo is hampering its overall ability to replace SP as a competitor in the Mexican market.

In the event the Board determines that such trackage rights should not be granted, BNSF requests that Tex Mex be required to provide interline service to BNSF at rates and service levels that are the same or better than those offered by Tex Mex to any other interline carrier.

E.

IMPACT OF BNSF'S PROPOSED STRUCTURAL REALIGNMENTS ON OTHER CARRIERS' OPERATIONS

To determine the market impact of overhead trackage rights between San Antonio and Laredo,[10] I asked Richard W. Brown of BNSF's Merchandise Business Unit to make an analysis of traffic that could be diverted to a new BNSF direct route to Laredo. Once Mr. Brown completed his analysis, he provided me with the results. I then looked at the

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UP operations, UP will be in a position to recover business and market share lost during the first half of 1998. It is also reasonable to conclude that UP's Laredo business for the first six months of 1998 was lower than it would otherwise have been but for these service-related reasons.

[9] Attached to the Application at Exhibit 5 are the Verified Statements of: American Natural Soda Ash Corporation; Aqua Oceano, S.A. DE C.V.; Degussa Mexico S.A. de C.V.; Fimexpo Metales S.A. DE C.V.; Grupo Vitro; National By-Products, Inc.; Roquette America Inc.; and Vitromex.

[10] None of BNSF's other proposed structural realignments would divert traffic from or otherwise adversely impact UP, Tex Mex or any other carrier.

results to see if they were consistent with my understanding of the involved markets. I have also reviewed Mr. Brown's Verified Statement that is being filed concurrently with my statement, and I agree with his conclusions as to possible diversions that could occur once BNSF's trackage rights and service were to be fully implemented.

In his analysis, Mr. Brown concluded that approximately 90% of current BNSF/Tex Mex traffic moving to and from Laredo would be diverted to the new BNSF direct route to Laredo. Because these are extensions of existing BNSF movements, these diversions could occur within the first year of BNSF operations over the new route. That is, based on 1997 traffic levels, BNSF could divert approximately 13,297 carloads to a new BNSF direct route via Laredo during the first year of operation.

With regard to potential diversions from UP, it is my opinion that a longer period of time would be required for such diversions to take place. For example, to handle the intermodal traffic identified in the market impact analysis, BNSF would need an intermodal facility in the Laredo area. Furthermore, it is unlikely that either Tex Mex or UP would make capacity in their existing facilities available to BNSF, and a new facility would probably have to be constructed before BNSF would be in a position to compete for the intermodal business identified in the analysis. In any event, it is unlikely that any substantial diversions of intermodal traffic would occur in the first year or two of operations under the trackage rights.

Diversions of other categories of non-intermodal traffic from UP identified in Mr. Brown's analysis could occur sooner. I expect that, based on current market conditions, BNSF could divert enough business in the first year to support operation of one train per day in each direction over this new route. Additional trains could be added as business increases, but I cannot say at this time when such increases would be necessary.

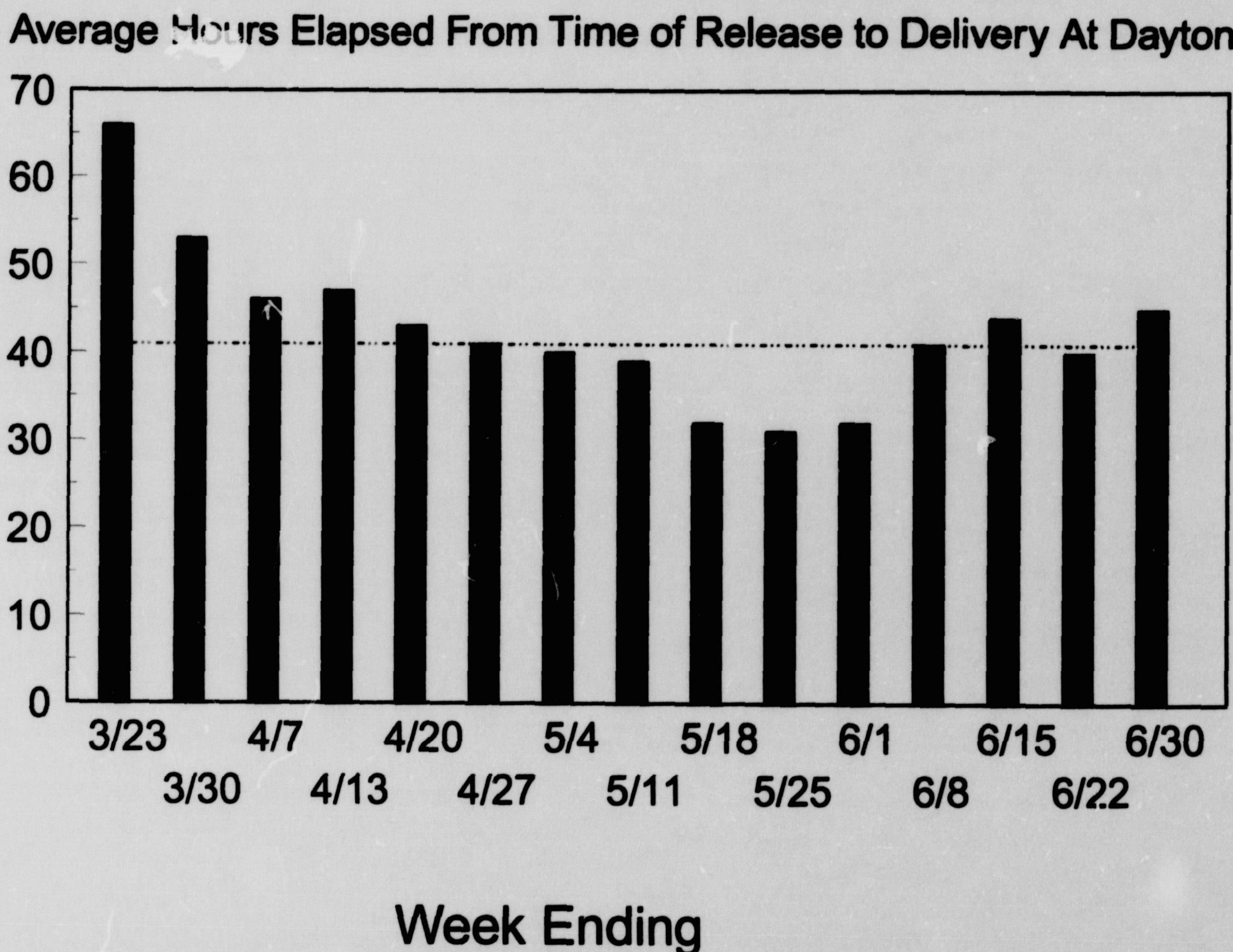
F.

CONCLUSION

The structural deficiencies in BNSF's merger condition rights and UP's favoritism to its own trains, particularly in the Houston and Gulf Coast area, have impeded BNSF from offering a reliable, dependable and consistent service in that area. Indeed, unless sufficient steps are taken to remedy the Houston area problems, BNSF's ability to maintain its current level of competition with UP, let alone the level that shippers deserve and expect, on the trackage rights lines will continue to degrade, and shippers will lose the benefits of the competitive options the Board anticipated BNSF could and would provide in this region. However, BNSF's proposals -- designed to divert traffic away from Houston and ensure timely and reliable switching in the Houston area and along the Gulf Coast -- would allow BNSF to effectively offer competitive service in the areas in which the Board intended BNSF to be a competitive replacement to the former SP. Further, BNSF's proposed structural realignments would not significantly impact UP, Tex Mex or any other carrier.

ATTACHMENT 1

Baytown Branch Operating Trends



July 7, 1998

VERIFICATION

THE STATE OF TEXAS

COUNTY OF TARRANT

Peter J. Rickershauser, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.

Peter J. Rickershauser

Subscribed and sworn to before me this 26th day of June, 1998.

SHARON D. BOSSIER
Notary Public
STATE OF TEXAS
My Comm. Exp. 09/15/2001

Notary Public

My Commission expires:

2

VERIFIED STATEMENT
OF
ERNEST L. HORD

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

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

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

The purpose of this statement is to describe BNSF's proposed operations designed to remedy the continuing service deficiencies facing shippers in and around Houston, south Texas and the Gulf Coast area by shifting traffic away from Houston and off of the highly congested UP Gulf Coast lines onto less congested lines as well as by improving the efficiency of switching services and improving dispatching over the lines on which both UP and BNSF operate.

I. NATURE OF PROBLEM

As a result of certain structural deficiencies in the rights BNSF received in the UP/SP merger proceeding and UP's practice of favoring itself when congestion and other service problems occur, BNSF is unable to provide reliable, dependable and consistent service to shippers in and around Houston and the Gulf Coast area. In many cases, BNSF's trains are still being delayed. I fully anticipate that, without some changes to current structure of BNSF's rights and UP's operating practices, the problems that have prevented BNSF from offering fully competitive service to shippers in Houston, south Texas and the Gulf Coast area will continue and periodically reoccur.

In order to address these problems, BNSF is proposing a series of structural realignments to its trackage rights. The first set of proposals are primarily designed to route traffic away from Houston and other highly-congested UP lines in south Texas and to otherwise modify BNSF's rights and UP's operating practices. Imposition of these realignments would provide shippers with the effective competition that the Board originally envisioned in Decision No. 44. The remaining proposal is intended to restore the pre-merger competitive situation at the Laredo, TX gateway to Mexico.

II. PROPOSED OPERATIONS TO ENSURE COMPETITIVE SERVICE

BNSF proposes that the Board require the following:

1) Grant BNSF permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo lines;

2) Allow BNSF to operate via trackage rights over both the UP line and the SP line between Harlingen and Brownsville, TX (until such time that UP constructs a connection between the UP and SP lines at Brownsville) and BRGI to act as BNSF's agent for such service;

3) Grant BNSF overhead trackage rights on the UP Taylor-Milano line;

4) Order neutral switching supervision on the former SP Baytown and Cedar Bayou Branches and on the former SP Sabine and Chaison Branches serving the Beaumont and Port Arthur, TX area. The neutral switching supervisor would be selected by the parties, unless they were unable to agree, in which event the neutral switching supervisor would be selected by an arbitrator;

5) Order PTRA operation of the UP Clinton Branch in Houston;

6) Grant BNSF overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows, including, specifically, over the Fort Worth to Dallas, TX line (via Arlington);

7) Grant BNSF trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center ("Spring Center"), including the SP route between West Junction and Tower 26 via Chaney Junction;

8) Order the coordinated dispatching of operations over the UP and SP routes between Houston and Longview, TX and Houston and Shreveport, LA by the Spring Center; and

9) Grant BNSF overhead trackage rights on UP's San Antonio-Laredo line.

As I describe below, these structural realignments will provide shippers with reliable, dependable and consistent service in Houston and along the Gulf Coast. In my view, each of the proposals is operationally feasible and will result in operational efficiencies and savings. Further, the proposals will not result in any abandonments or discontinuances, and none of the proposals will interfere with the operations of UP, Tex Mex or another carrier.

A. Trackage Rights On Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo Lines

Caldwell-Flatonia-San Antonio

1. **Current and Planned Operations.** As a condition of the UP/SP merger, BNSF gained permanent trackage rights over the UP Temple-Smithville-San Antonio line in order to allow BNSF to offer shippers competitive service in the San Antonio market and for shipments via Eagle Pass to and from Mexico.[1] However, congestion on the UP line between San Marcos and San Antonio near New Braunfels has prevented BNSF from being able to provide that service.[2] Additionally, BNSF has been unable to move cars weighing over 268,000 lbs. on the Temple to San Marcos line via Smithville, although the Caldwell-Flatonia-San Antonio trackage rights this routing replaced did not have a 268,000 lbs. restriction. Accordingly, BNSF currently is operating over temporary overhead trackage rights on the former SP line between Caldwell-Flatonia-San Antonio, with a weight restriction of 268,000 lbs. Both the Temple-Smithville-San Antonio line and the Caldwell-Flatonia-San Antonio line are depicted on Map 1 attached hereto. The temporary trackage rights have afforded BNSF the operational flexibility to avoid the congestion on the UP line by routing traffic over the Caldwell-Flatonia-San

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[1] These trackage rights were negotiated by UP, on the premise of allowing BNSF to operate over a shorter route between Temple and San Antonio, to replace trackage rights BNSF received from SP from Caldwell to Flatonia to San Antonio to serve Eagle Pass, TX, as part of BNSF's settlement with SP that preceded the BN/Santa Fe merger.

[2] Indeed, UP itself has acknowledged that its line north of San Antonio line is "possibly the most congested segment of the railroad." See Union Pacific Report on Houston and Gulf Coast Infrastructure, Ex Parte No. 573, pp. 42-43 (filed May 1, 1998).

Antonio line. These rights, however, are temporary and can be canceled on fifteen days' notice.

The UP line between San Marcos and San Antonio is part of UP's main line route to Laredo. The Flatonia-San Antonio segment of the former SP line is part of SP's Sunset route to Houston. These are two of the busiest, most congested routes on the UP system. In order to ensure that BNSF has the operational flexibility necessary to offer fully competitive service to Temple-San Antonio shippers and Mexican shippers, BNSF proposes that its temporary overhead rights over the Caldwell-Flatonia-San Antonio line from MP 30.8 at Caldwell to MP 219.1 at Heafer Junction be made permanent and that it retain its rights over the Temple-Smithville-San Antonio line. This alternative access will benefit San Antonio area shippers, Mexico shippers, the CPSB Elmendorf Generating Station, and the LCRA Halsted Generating Station. BNSF would also need to retain access to the Temple-Smithville-San Antonio line, as access to this line is necessary in order for BNSF to interchange with Longhorn Railroad at Elgin.

If its trackage rights on the Caldwell-Flatonia-San Antonio line were made permanent, BNSF anticipates that it would continue to use the line to move general merchandise, automotive, grain and other agricultural traffic. BNSF would use the Temple-Smithville-San Antonio line to move unit coal trains to the CPSB Elmendorf Generating Station and the LCRA Halsted Generating Station as well as for operational flexibility.

In its May 1, 1998 "Report On Houston and Gulf Coast Infrastructure" filed in the Ex Parte No. 573 and Service Order No. 1518 proceedings (hereinafter referred to as

"Infrastructure Report"), UP indicated its intent to upgrade the line north of San Antonio. Specifically, UP proposes to reconstruct 17 miles of the former MKT main line in the New Braunfels area to provide a double track. Installation of this double track -- assuming that it is installed as UP has proposed at some undetermined time in the future -- may address some of the congestion problems along the line, thus providing shippers with effective competitive options; however, BNSF would still need the flexibility to avoid congestion on the Temple-Smithville-San Antonio line by opting to handle San Antonio shipments over the Caldwell-Flatonia-San Antonio line.

2. **Train Service.** BNSF currently operates an average of one and one-half through trains per day in each direction between Caldwell-Flatonia-San Antonio, and it serves Elgin through local train service from Temple an average of twice weekly. This level of service would not change if BNSF's proposal that its trackage rights on the Caldwell-Flatonia-San Antonio line be made permanent is granted. If BNSF is granted trackage rights on UP between San Antonio and Laredo, BNSF would add one through train per day in each direction between Caldwell-Flatonia and two trains per day between Flatonia-San Antonio.

BNSF would continue its use of the same yard in San Antonio. Because BNSF is currently operating over the Caldwell-Flatonia-San Antonio line on a temporary basis, no change in yard activity other than normal rates of growth is anticipated if BNSF's proposal that its trackage rights on the Caldwell-Flatonia-San Antonio line be made permanent is granted.

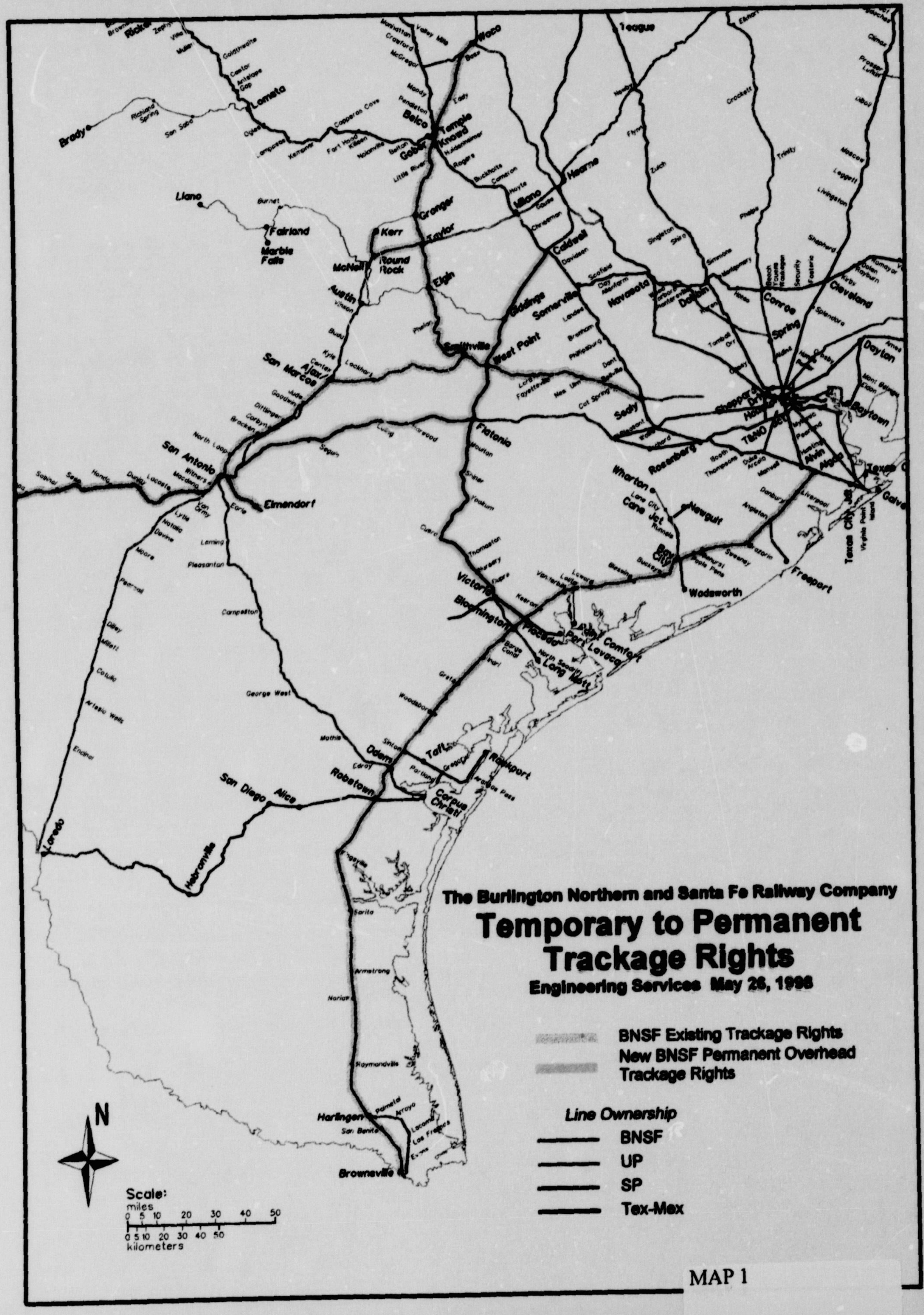
In the event BNSF is granted trackage rights between San Antonio and Laredo, the additional six trains per day through the yard at San Antonio are not expected to result in yard activity in excess of 20 percent above current levels. Indeed, when UP completes construction of the connection between the former SP line and the UP line at Heafer Junction, BNSF would not move any trains through the yard at San Antonio.

3. <u>Implementation.</u> BNSF would install a crew district between Victoria and Corpus Christi. Crews would operate between Temple and Victoria, and Victoria and Corpus Christi. Because BNSF would continue to operate in the same manner that it is presently operating over its temporary rights, no connections or construction projects are necessary, and BNSF does not anticipate any changes in equipment utilization.

4. <u>Impacts.</u> There are no local commuter operations on the Caldwell-Flatonia-San Antonio line, and thus the trackage rights would have no impact on commuter operations. Amtrak operates six trains per week over the Flatonia-San Antonio line. BNSF does not anticipate that its operations would have any impact on Amtrak's operations.

Caldwell-Flatonia-Placedo

1. <u>Current and Planned Operations.</u> BNSF has temporary overhead trackage rights over the former SP Caldwell-Flatonia-Placedo line from MP 30.8 at Caldwell in UP's Ennis Subdivision to MP 14.2 at Placedo in UP's Victoria Subdivision. This line is depicted on Map 1 attached hereto. These rights allow BNSF to route its southbound traffic away from the congestion in and around Houston and on the Algoa route, thereby improving the transit times for traffic destined for Corpus Christi and


The Burlington Northern and Santa Fe Railway Company
Temporary to Permanent
Trackage Rights
Engineering Services May 26, 1998
BNSF Existing Trackage Rights
New BNSF Permanent Overhead
Trackage Rights
Line Ownership
BNSF
UP
SP
Tex-Mex
N
Scale:
miles
0 5 10 20 30 40 50
0 5 10 20 30 40 50
kilometers
Waco
Teague
Lometa
Brady
Belco
Temple
Gober
Llano
Fairland
Marble Falls
Granger
Taylor
Kerr
McNeil
Round Rock
Elgin
Austin
Hearne
Milano
Caldwell
Giddings
Somerville
Navasota
Dobbin
Conroe
Cleveland
Spring
Dayton
Baytown
Smithville
West Point
San Marcos
San Antonio
Elmendorf
Flatonia
Sealy
Rosenberg
Wharton
Cane Jct
Newgulf
Bay City
Wadsworth
Freeport
Alvin
Algoa
Victoria
Bloomington
Placedo
Point Comfort
Port Lavaca
Long Mott
Taft
Rockport
Odem
Robstown
Corpus Christi
Alice
San Diego
Hebbronville
Laredo
Harlingen
Brownsville

MAP 1

Laredo. BNSF's northbound traffic continues to move over the Algoa route. BNSF's trackage rights over the Caldwell-Flatonia-Placedo line are temporary, and extend only as long as UP operates directionally between Houston, Flatonia and Placedo. UP can cancel the temporary trackage rights on thirty days' notice. Thus, absent the requested condition, if UP ceases its directional operations, BNSF will have to move its Corpus Christi and Laredo southbound traffic back to the Algoa route. This would only serve to increase congestion in Houston and along the Gulf Coast.

BNSF therefore requests that its temporary overhead rights be made permanent so that BNSF has the option of bidirectional operations over the Caldwell-Flatonia-Placedo line if UP discontinues directional operations in this corridor in order to avoid the congestion on the Algoa route and to enable it to offer more fully competitive service to its south Texas and Mexico customers.

BNSF anticipates that, if its request is granted, it would continue to use the Caldwell-Flatonia-Placedo line to move unit trains (primarily grain) as well as general merchandise and other carload traffic.

2. **Train Service.** BNSF currently operates one train per day southbound between Caldwell-Flatonia-Placedo, and its northbound trains operate over the Algoa route. No change in this service is anticipated if BNSF's rights over the Caldwell-Flatonia-Placedo line are made permanent. If, however, BNSF is granted trackage rights on UP between San Antonio and Laredo, BNSF would shift a majority of the traffic that is currently handled over the Caldwell-Flatonia-Placedo route for interchange with the Tex Mex to UP's San Antonio to Laredo route. This would reduce BNSF's operations

on the Caldwell-Flatonia-Placedo route to one train per day six days per week. Northbound trains would continue to operate over the Algoa route.

BNSF would continue to use the terminal facilities at Corpus Christi. Because BNSF is currently operating over the Caldwell-Flatonia-Placedo line on a temporary basis, no increase in yard activity beyond normal rates of growth is expected.

3. **Implementation.** BNSF would maintain the crew districts currently used for the Caldwell-Flatonia-Placedo line. Additionally, because BNSF would continue to operate in the same manner that it is presently operating over its temporary rights, no connections or construction projects are necessary, and BNSF does not anticipate any changes in equipment utilization.

4. **Impacts.** There are no local commuter operations or Amtrak operations on the Caldwell-Flatonia-Placedo line, and thus the trackage rights would have no impact on passenger rail operations.

B. BNSF Trackage Rights Over Both the UP Line and the SP Line from Harlingen to Brownsville

1. **Current and Planned Operations.** As a condition of the UP/SP merger, BNSF received access to Brownsville, TX (a "2-to-1" point), TFM at Matamoros, and the Brownsville & Rio Grande International Railroad ("BRGI") (a "2-to-1" shortline) via trackage rights over the UP line between Robstown and Brownsville. Currently, BNSF traffic destined for Brownsville is delivered to UP at either Flatonia (unit trains) or Houston (other traffic) for haulage to Brownsville. UP's haulage operations have been erratic and untimely and have not allowed BNSF to provide customers with a viable competitive alternative to UP.

BNSF could eliminate this haulage by operating over its trackage rights to Brownsville. If UP completed the construction of a connection between the UP line and the SP line at Brownsville that it has promised, BNSF would be able to use its trackage rights to offer competitive service to both the Mexico and Brownsville markets. Until this connection is completed, however, BNSF would be required to operate over downtown city streets in order to serve Brownsville shippers and the Port of Brownsville if it elects to use its trackage rights on UP's line.

BNSF could instead provide direct service to shippers in Brownsville and the Port of Brownsville by operating over the SP Harlingen-Brownsville route.[3] However, if BNSF used this route -- and not the UP route -- it would have to take Mexico-bound trains from Harlingen into downtown Brownsville and then move these trains through downtown Brownsville to reach the UP tracks for interchange to Mexico. Map 2 depicting both the UP and SP lines from Harlingen to Brownsville is attached hereto. Map 3 depicting the Brownsville area is also attached hereto.

UP has stated that it would allow BNSF to operate over the SP line from Harlingen to Brownsville instead of the UP line during the period of Emergency Service Order No. 1518 (i.e., until August 2, 1998), but UP has refused to allow BNSF to operate over both the UP and the SP lines to Brownsville.

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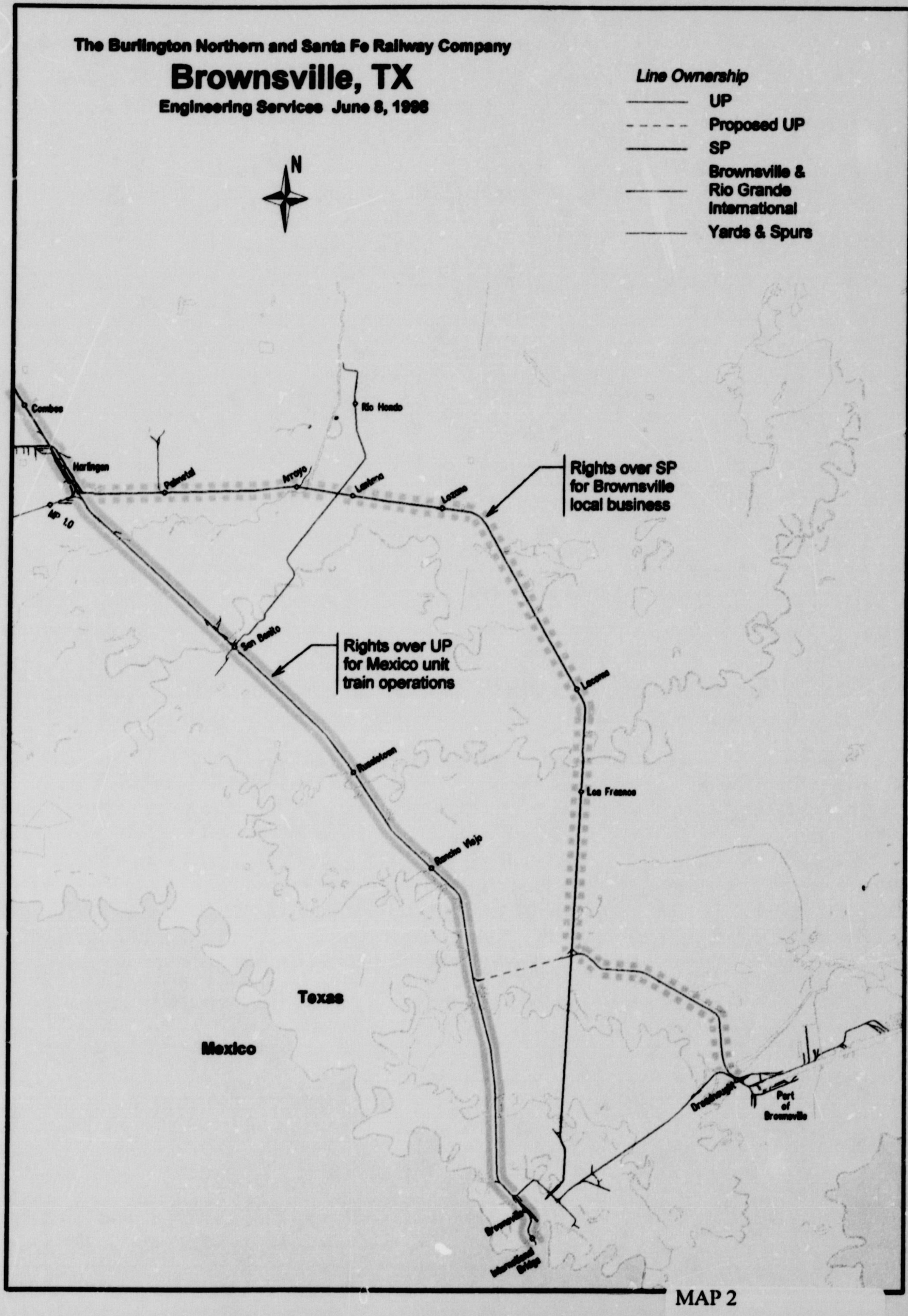
[3] It is my understanding that Brownsville, the Port of Brownsville and SP agreed that SP would remove its track that runs through downtown Brownsville. In the event that this is done, BNSF would need trackage rights over the SP line in order to access Brownsville and the Port of Brownsville, as it would be impossible for BNSF to access Brownsville from its trackage rights over the UP line.

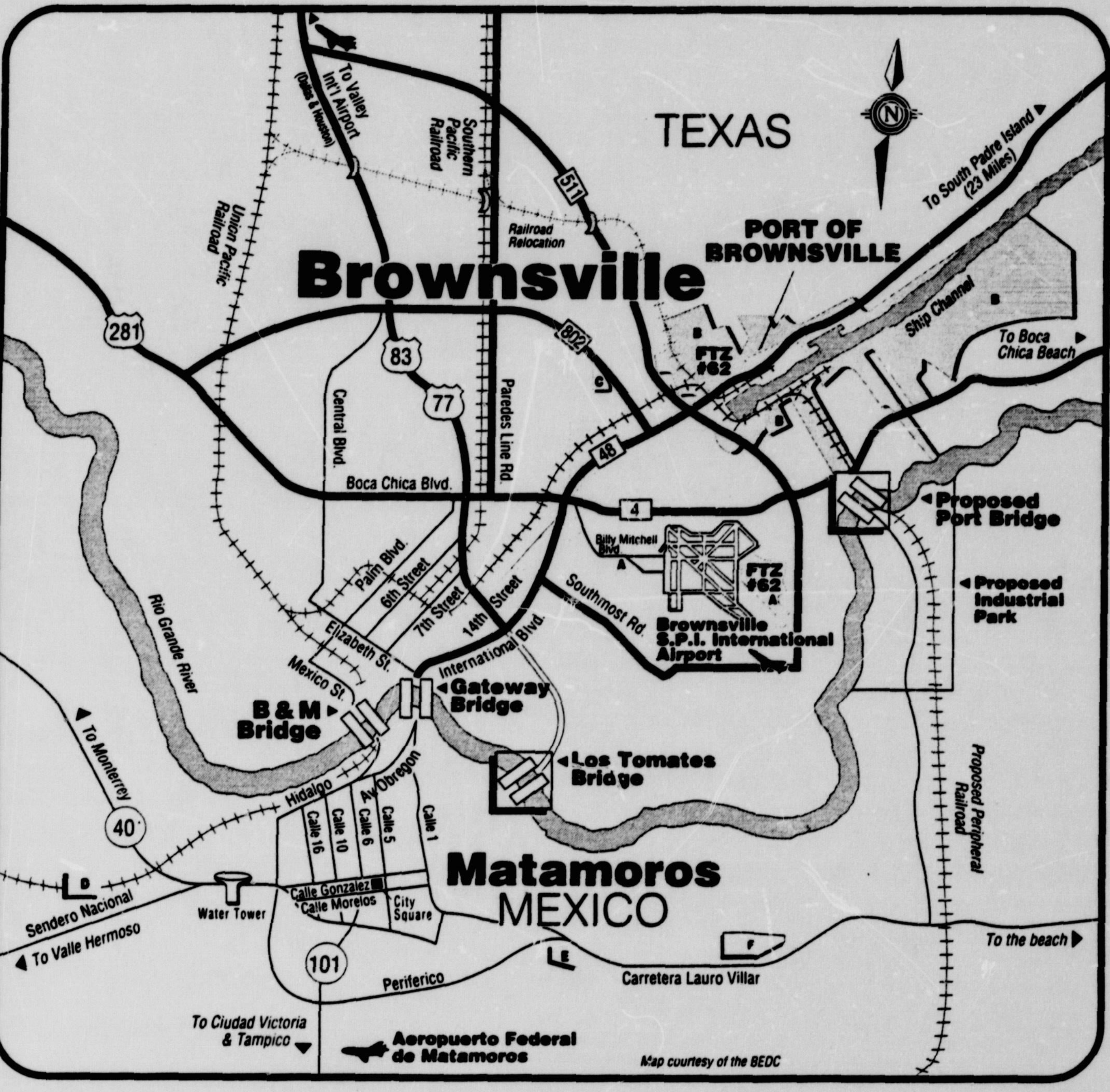


The Burlington Northern and Santa Fe Railway Company
Brownsville, TX
Engineering Services June 8, 1996
Line Ownership
UP
Proposed UP
SP
Brownsville & Rio Grande International
Yards & Spurs
N
Combes
Harlingen
Rio Hondo
Arroyo
Lozano
MP 1.0
Rights over SP for Brownsville local business
San Benito
Rights over UP for Mexico unit train operations
Los Fresnos
Rancho Viejo
Texas
Mexico
Port of Brownsville
Brownsville
International Bridge

MAP 2

PORT OF BROWNSVILLE
HOME PORT TO NAFTA

1000 Foust Rd. / Brownsville, Texas 78521 / (956) 831-4592
1-800-378-5395 / Marketing Fax: (956) 831-6185



INDUSTRIAL POINTS OF INTEREST

Brownsville Industrial Parks

A. Airport Industrial Park
B. Brownsville Navigation District
C. 802 Industrial Park

Brownsville Enterprise Zone

Matamoros Industrial Parks

D. FINSA
E. CYLSA
F. C.I.M.A.

MAP 3

In order to allow BNSF to directly serve the Mexico and Brownsville markets in an efficient manner, BNSF requests that it be permitted to retain its current trackage rights over the UP line and be granted temporary trackage rights, under the compensation terms and other conditions set forth in the BNSF Settlement Agreement, over the SP line from MP 172.6 to MP 205.2 at Brownsville. Additionally, BNSF would use BRGI as its agent for all traffic moving south of Harlingen, and BRGI has indicated that it is willing to do so and has the support of numerous shippers located in and around the Port of Brownsville. See Verified Statement of Lorenzo E. Cantu, President and Chief Operating Officer of BRGI, and Shippers' Petition attached to the Application at Exhibit 5. Traffic would be interchanged with BRGI at the Harlingen Yard and carried by BRGI to Brownsville, the Port of Brownsville and Mexico. BNSF would move all unit trains of Mexico traffic over the UP line from Harlingen to Brownsville. BNSF would use the SP line to move Brownsville and Port of Brownsville traffic, consisting primarily of other export traffic and general merchandise and other carload traffic.

Trackage rights over the SP line would only be necessary until UP completes construction of the connection from the UP line to the SP line north of Brownsville. Once this connection is complete, BNSF could use its trackage rights over the UP line to access the connection for traffic destined for Brownsville and the Port of Brownsville.

2. **Train Service.** BNSF would operate two unit trains per week over the UP line from Harlingen to Brownsville for interchange at Mexico. BNSF would interchange four trains per week with BRGI for service over the SP line to Brownsville and the Port of Brownsville. BRGI would also handle single cars of Mexican export traffic over the

SP line for BNSF. BNSF would continue to use UP's yard at Harlingen for handling unit trains. BNSF would deliver other traffic directly to BRGI at the former SP yard at Harlingen. BNSF does not anticipate that yard activity would increase more than 20% over its present levels.

3. **Implementation.** If approved by the Board, BRGI would serve as BNSF's agent at Brownsville. BRGI would use its crews to operate BNSF's trains, using BNSF's power. In addition to the implementation discussed herein, I have read Mr. Cantu's Verified Statement and believe that the operations described to be carried out by BRGI are feasible.

4. **Impacts.** There are no local commuter operations or Amtrak operations on either the UP or SP lines from Harlingen to Brownsville, and thus the trackage rights would have no impact on passenger rail operations.

C. BNSF Trackage Rights On UP's Taylor-Milano Line

1. **Current and Planned Operations.** BNSF received trackage rights in the UP/SP merger proceeding over the UP line between Kerr/Round Rock and Temple, TX (via Taylor) to handle shipments for Texas Crushed Stone and other customers at Kerr/Round Rock, TX served by the Georgetown Railroad, a "2-to-1" shortline. Prior to June 16, 1998, BNSF moved all of the Georgetown Railroad traffic over UP's Houston Subdivision between Temple and Taylor. On June 16, 1998, in order to avoid heavy congestion on the Temple to Taylor route which had caused considerable delays in BNSF's service to and from Texas Crushed Stone and other Georgetown Railroad shippers, BNSF began routing the Georgetown Railroad traffic that was destined for

Houston via its Taylor-Smithville-Sealy trackage rights.[4] BNSF has also encountered serious congestion on the Taylor-Smithville-Sealy route.

BNSF could avoid the congested and circuitous Temple-Taylor and Taylor-Smithville-Sealy routes that it currently uses for handling Texas Crushed Stone's shipments if it was granted trackage rights, under the compensation terms and other conditions set forth in the BNSF Settlement Agreement, over the Taylor-Milano line from MP 109.90 at Milano to MP 144.4 at Taylor. The Temple-Taylor line, the Taylor-Smithville-Sealy line, and the Taylor-Milano line are depicted on Map 4 attached hereto. By moving the Texas Crushed Stone shipments over this route, congestion on the Temple-Taylor and Taylor-Smithville-Sealy line would be reduced, and UP itself would benefit from less congestion on the line.

In addition to diverting traffic away from heavily congested UP lines, these trackage rights would allow BNSF to access its lines more directly than its present circuitous route. Indeed, the Taylor-Milano route involves 3.5 miles less of UP trackage rights than the Temple-Taylor route, and 81.8 miles less of UP trackage rights than the Taylor-Smithville-Sealy route.

2. **Train Service.** BNSF plans to operate 12 trains per week from Texas Crushed Stone over the Taylor-Milano line.

BNSF does not anticipate any change in yard activity in Taylor or Milano as a result of the granting of trackage rights on UP's Taylor-Milano line.

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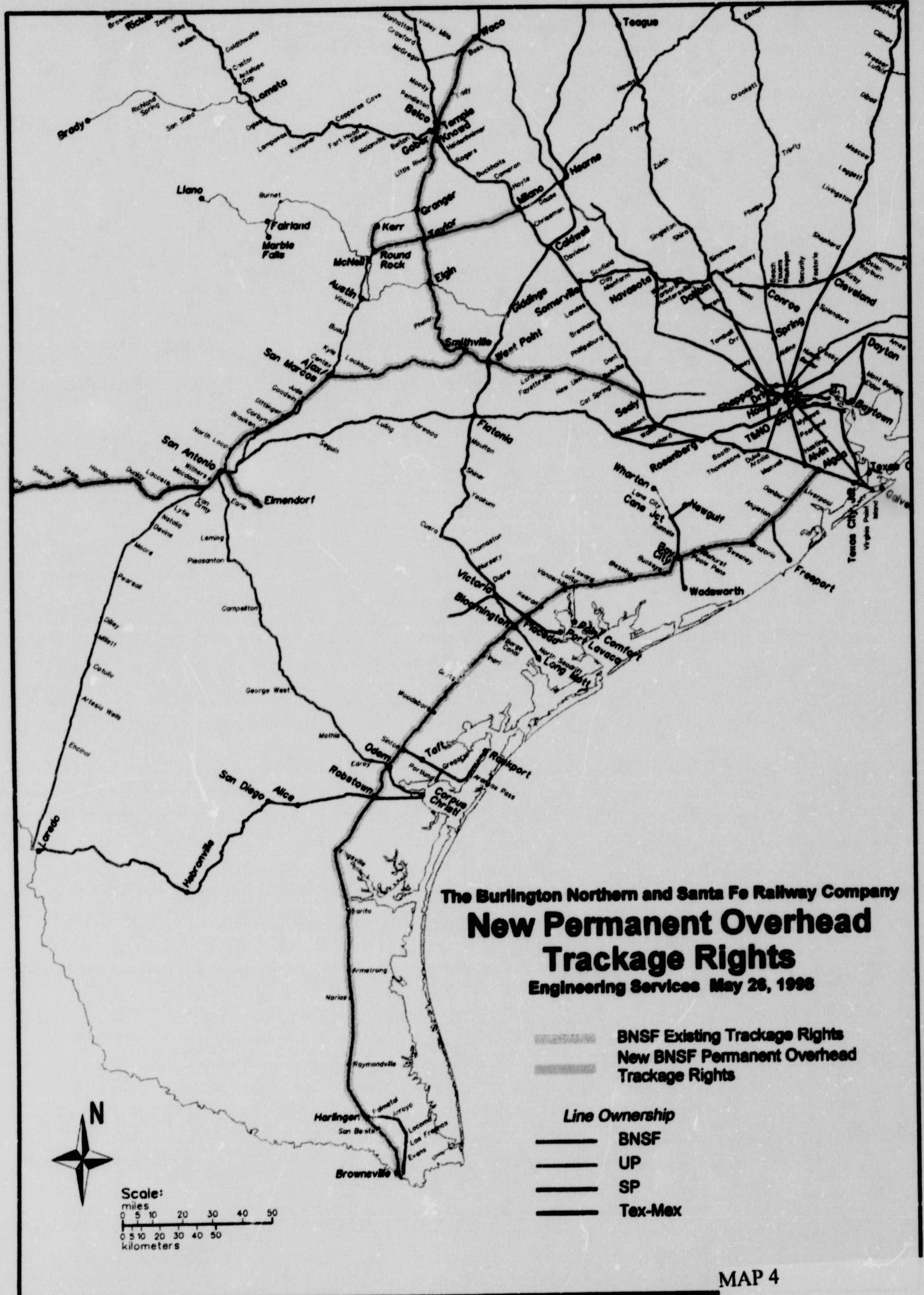
[4] Georgetown Railroad traffic that was destined for east Texas has continued to move via Temple and Taylor.


The Burlington Northern and Santa Fe Railway Company
New Permanent Overhead Trackage Rights
Engineering Services May 26, 1998
BNSF Existing Trackage Rights
New BNSF Permanent Overhead Trackage Rights
Line Ownership
BNSF
UP
SP
Tex-Mex
N
Scale:
miles
0 5 10 20 30 40 50
0 5 10 20 30 40 50
kilometers
San Antonio
Austin
Houston
Corpus Christi
Laredo
Brownsville
Victoria
Waco
Temple
Freeport

MAP 4

3. **Implementation.** In order to use the Taylor-Milano line, BNSF would reinstall a former connection on an existing right-of-way in the southwest quadrant of Milano that would connect the BNSF line at MP 174.89 with the UP line at MP 109.90.[5]

BNSF would use the existing crew districts that handled the Temple-Taylor and Taylor-Smithville-Sealy line.

4. **Impacts.** There are no local commuter operations or Amtrak operations on the Taylor-Milano line, and thus the trackage rights would have no impact on passenger rail operations.

D. Neutral Switching Supervision Of The Baytown/Cedar Bayou Branches and the Sabine/Chaison Branches

1. **Current and Planned Operations.** Presently, BNSF interchanges cars with UP for Baytown Branch and Cedar Bayou Branch customers at Houston for movements to the branches and at Dayton for movements from the branches. Map 5 depicting the Baytown and Cedar Bayou Branches is attached hereto. UP provides local switch service via haulage between BNSF and most of its customers on these branches. UP's performance of its switching functions on the Baytown and Cedar Bayou Branches has been unacceptable, and Baytown Branch and Cedar Bayou Branch shipments moving via haulage on the UP are often delayed.

The UP/SP merger settlement conditions permit BNSF to switch Baytown Branch and Cedar Bayou Branch customers accessible to it directly. However, a number of

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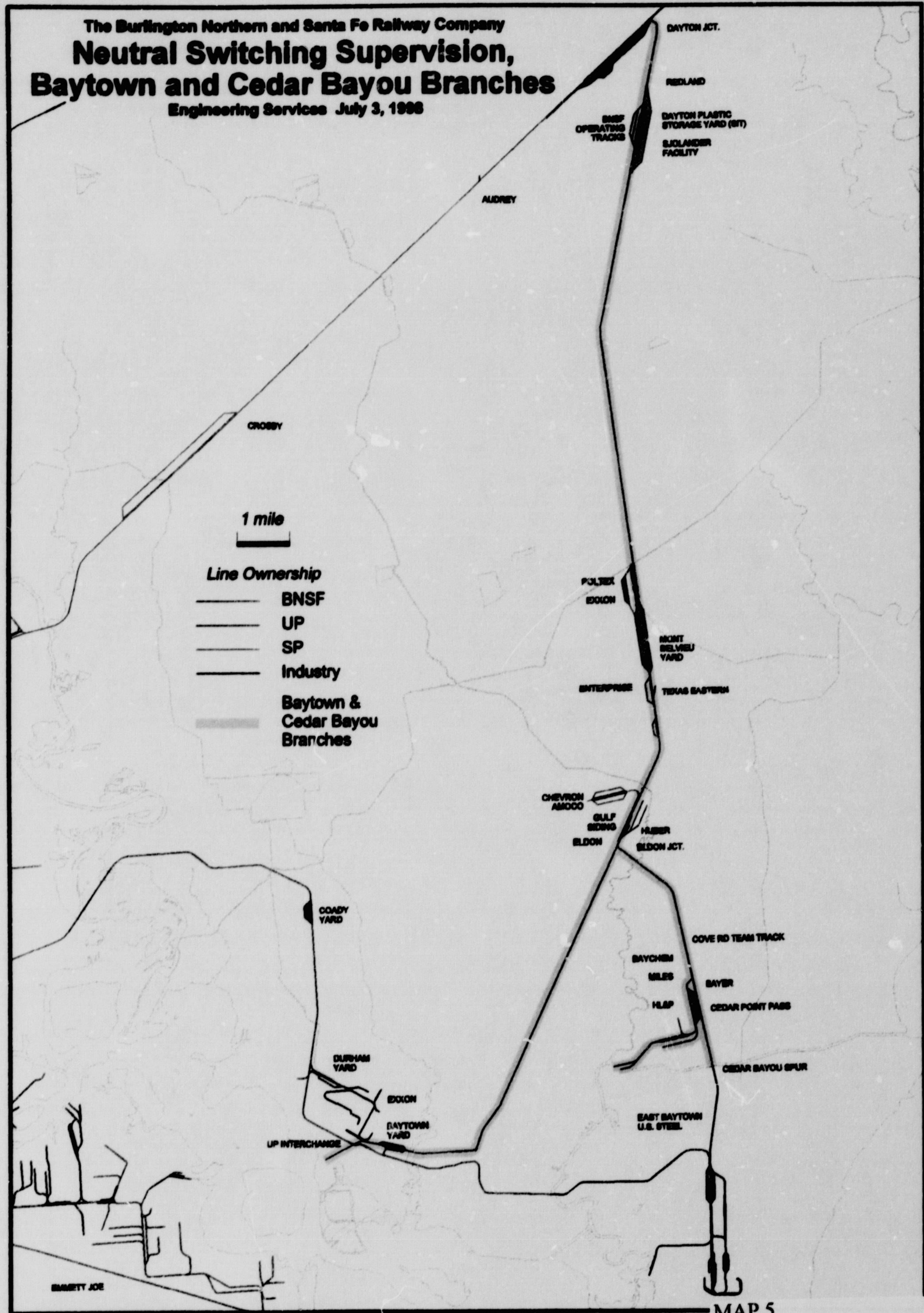
[5] If the Board grants BNSF the requested trackage rights, BNSF will seek from the Board any appropriate authority to construct the connection.


The Burlington Northern and Santa Fe Railway Company
Neutral Switching Supervision,
Baytown and Cedar Bayou Branches
Engineering Services July 3, 1998
DAYTON JCT.
REDLAND
BNSF OPERATING TRACKS
DAYTON PLASTIC STORAGE YARD (SIT)
SJOLANDER FACILITY
AUDREY
CROSBY
1 mile
Line Ownership
BNSF
UP
SP
Industry
Baytown & Cedar Bayou Branches
POLTEX
EXXON
MONT BELVIEU YARD
ENTERPRISE
TEXAS EASTERN
CHEVRON AMOCO
GULF SIDING
HUBER
ELDON
ELDON JCT.
COADY YARD
COVE RD TEAM TRACK
BAYCHEM
MILES
BAYER
HLAP
CEDAR POINT PASS
CEDAR BAYOU SPUR
DURHAM YARD
EXXON
BAYTOWN YARD
UP INTERCHANGE
EAST BAYTOWN U.S. STEEL
EMMETT JOE
MAP 5

factors prevent BNSF from offering direct switching services to many of the branches' customers.

First, and most important, most Baytown Branch and Cedar Bayou Branch customers cannot logistically handle two switching carriers in their facilities. On February 6, 1998, BNSF notified UP that it intended to begin performing switching on the Baytown Branch. Since that time, BNSF has approached a number of shippers on the branches to request that it be allowed access to their facilities to perform switching. Most of these shippers do not believe it is feasible to have two carriers switching their facilities. Further, both the shippers and BNSF would prefer to limit the number of switches performed at the facilities. To date, BNSF has only begun switching one facility on the Baytown Branch. Second, it would be difficult for BNSF to exercise its option to switch Baytown Branch and Cedar Bayou Branch customers because the Baytown and Cedar Bayou Branches are heavily congested with existing UP operations. Adding more trains on these branches would cause increased congestion.

Finally, UP's recent unilateral decision to institute a directional flow on the Baytown Branch effectively destroyed BNSF's ability to exercise its right to switch Baytown Branch customers. Indeed, it would be extremely difficult for BNSF to go against the flow of UP traffic in order to perform switching on the Baytown Branch over its existing trackage rights.

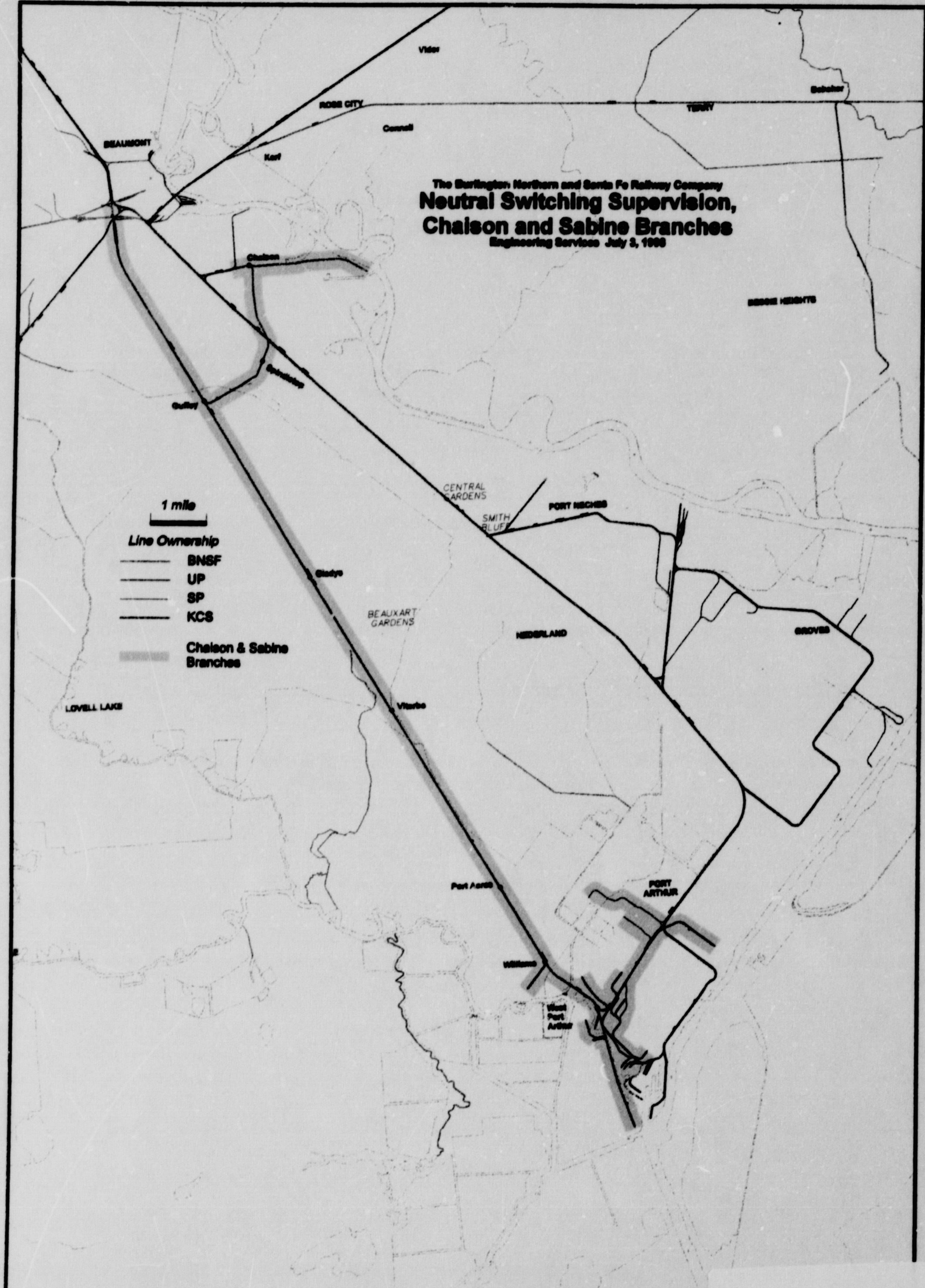
Because most Baytown Branch and Cedar Bayou Branch shippers do not want two carriers switching their facilities, and because congestion and UP's directional operations would make it difficult for BNSF to perform switching, BNSF must rely on UP haulage in order to service most Baytown shippers. However, because of the unacceptable delays of UP haulage, BNSF cannot provide competitive service to most Baytown Branch and Cedar Bayou Branch shippers.

BNSF therefore requests that a neutral party to be installed to supervise the switching on the Baytown and Cedar Bayou Branches. Under BNSF's proposal, a neutral party would dispatch UP and BNSF trains pursuant to the dispatching protocol established under the CMA agreement.

Neutral switching would provide both UP and BNSF with a "level playing field" to serve customers on this line, thereby resulting in service improvements for both UP and BNSF. This would benefit all Baytown Branch and Cedar Bayou Branch customers.

In its Infrastructure Report, UP indicated that it intends to spend $24.7 million installing double track from MP 0.2 to MP 10.6 along the Baytown Branch. As indicated, however, customers along the Baytown Branch are not receptive to the prospect of using two switchers. Therefore, although the installation of double track would make it easier for BNSF to perform switching functions, it would not necessarily enhance BNSF's ability to offer competitive service to shippers along the Baytown Branch.

As a result of the Term Sheet Agreement entered into by BNSF and UP on February 12, 1998, BNSF has trackage rights over UP's Sabine and Chaison Branches. Map 6 depicting these branches is attached hereto. Although BNSF currently does not handle any traffic on these branches, it has marketing plans for generating traffic on the branches. Just like the situation on the Baytown and Cedar Bayou Branches, most Sabine Branch and Chaison Branch customers cannot logistically handle two switching



The Burlington Northern and Santa Fe Railway Company
Neutral Switching Supervision,
Chaison and Sabine Branches
Engineering Services July 3,
Vidor
ROSE CITY
TERRY
Connell
BEAUMONT
Chaison
BESSIE HEIGHTS
Gulley
CENTRAL GARDENS
SMITH BLUFF
PORT NECHES
1 mile
Line Ownership
BNSF
UP
SP
KCS
Gladys
BEAUXART GARDENS
NEDERLAND
GROVES
Chaison & Sabine Branches
LOVELL LAKE
Viterbo
Port Acres
PORT ARTHUR
Williams
West Port Arthur

MAP 6

carriers in their facilities. Further, the shippers, BNSF and UP would all benefit from limiting the number of switches performed at the facilities. Accordingly, neutral switching should be ordered on the Sabine and Chaison Branches as well as the Baytown and Cedar Bayou Branches.

2. **Implementation.** The neutral switchers would have supervisory responsibilities only. The neutral switchers would use UP and BNSF employees, and seniority for those employees would be protected.

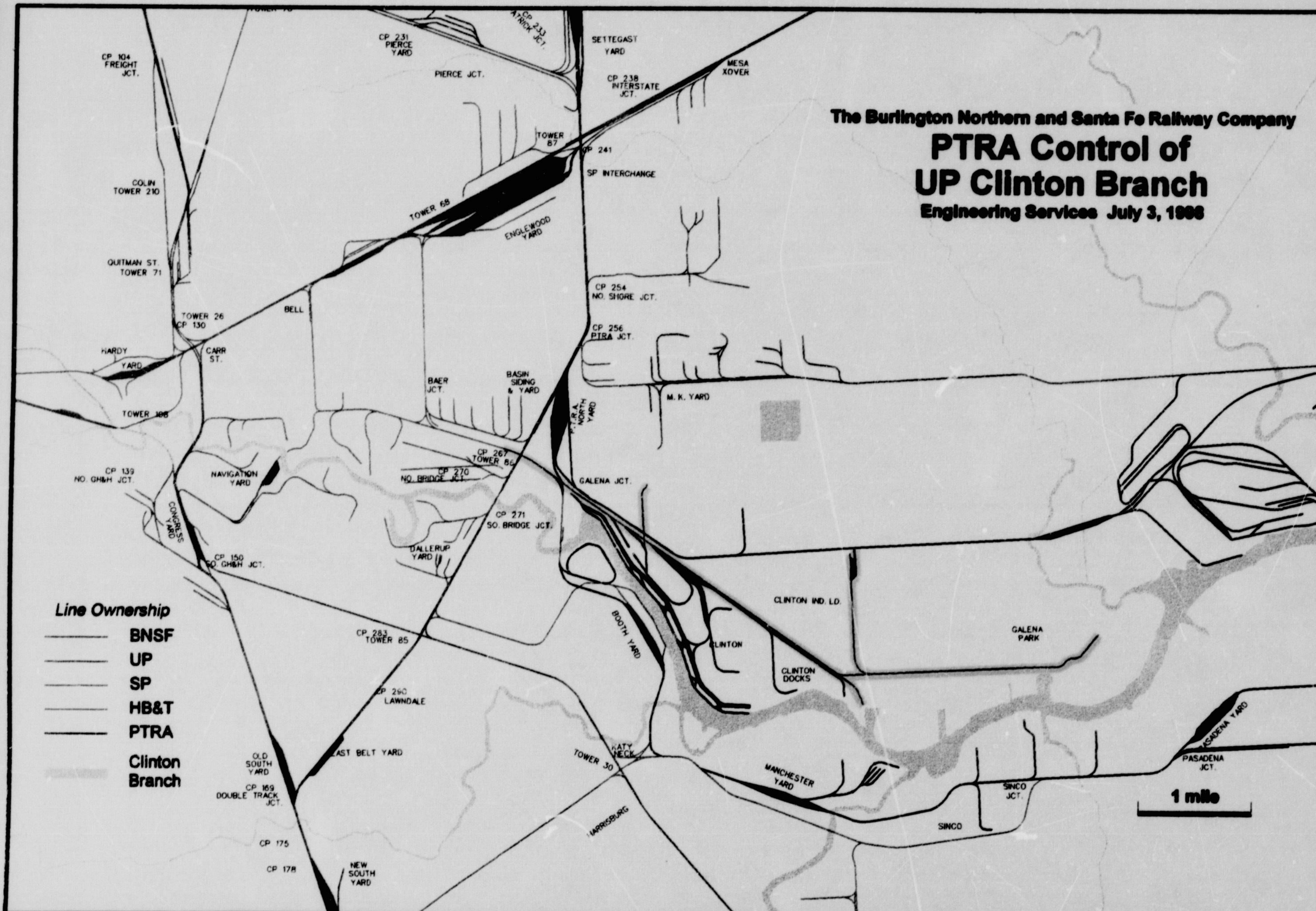
BNSF does not anticipate that yard activity would increase by more than 20% over its present levels.

3. **Impacts.** There are no local commuter operations or Amtrak operations on the Baytown and Cedar Bayou Branches or the Sabine and Chaison Branches, and thus installation of a neutral switcher would have no impact on passenger rail operations.

E. PTRA Operation of The UP Clinton Branch In Houston

1. **Current and Planned Operations.** The Clinton Branch is an isolated part of the UP system in Houston that BNSF must use to service the Houston Public Elevator. Map 7 depicting the Clinton Branch is attached hereto. In order to service the Houston Public Elevator, BNSF delivers cars to UP's Basin siding on the Clinton Branch. UP then delivers these cars to the Houston Public Elevator. BNSF has been unable to provide timely, reliable and competitive service to the Houston Public Elevator under the current arrangement.

The Clinton Branch is paralleled by tracks and yards of the PTRA, and the PTRA is in the best position to regulate the flows of traffic on this branch. PTRA will be able


The Burlington Northern and Santa Fe Railway Company
PTRA Control of
UP Clinton Branch
Engineering Services July 3, 1996
Line Ownership
BNSF
UP
SP
HB&T
PTRA
Clinton Branch
1 mile
CP 104
FREIGHT
JCT.
CP 231
PIERCE
YARD
PIERCE JCT.
SETTEGAST
YARD
CP 238
INTERSTATE
JCT.
MESA
XOVER
TOWER
87
CP 241
SP INTERCHANGE
COLIN
TOWER 210
TOWER 68
ENGLEWOOD
YARD
QUITMAN ST.
TOWER 71
CP 254
NO. SHORE JCT.
TOWER 26
CP 130
BELL
CP 256
PTRA JCT.
HARDY
YARD
CARR
ST.
BAER
JCT.
BASIN
SIDING
& YARD
M. K. YARD
P.T.R.A.
NORTH
YARD
TOWER 108
CP 267
TOWER 86
CP 139
NO. GH&H JCT.
NAVIGATION
YARD
CP 270
NO. BRIDGE JCT.
GALENA JCT.
CONGRESS
YARD
CP 271
SO. BRIDGE JCT.
CP 150
SO. GH&H JCT.
DALLERUP
YARD
CLINTON IND. LD.
BOOTH YARD
CP 283
TOWER 85
CLINTON
GALENA
PARK
CLINTON
DOCKS
CP 290
LAWNDALE
PASADENA YARD
EAST BELT YARD
OLD
SOUTH
YARD
TOWER 30
KATY
NECK
MANCHESTER
YARD
PASADENA
JCT.
CP 169
DOUBLE TRACK
JCT.
SINCO
JCT.
HARRISBURG
SINCO
CP 175
CP 178
NEW
SOUTH
YARD

MAP 7

to more efficiently operate the Clinton Branch, thereby providing Port of Houston shippers and local grain companies with more competitive service.

In its Infrastructure Report, UP stated that it intends to spend $2.8 million constructing 2,000 ft. sidings on the Clinton Branch. The construction of these sidings will not address BNSF's inability to provide efficient and competitive service to the Houston Public Elevator as the sidings could, at most, handle one grain train for the Houston Public Elevator. Further, even if the additional sidings were designed to handle the Houston Public Elevator trains, UP has yet to complete its plans regarding construction of the sidings. Indeed, in its Infrastructure Report, UP noted that the "location of the project remains undetermined." Infrastructure Report at 21.

2. <u>Implementation.</u> BNSF does not anticipate that yard activity would increase by more than 20% over its present levels.

3. <u>Impacts.</u> There are no local commuter operations or Amtrak operations on the Clinton Branch, and thus installation of a neutral operator would have no impact on passenger rail operations.

F. BNSF Trackage Rights Over Any Lines Over Which UP Commences Directional Operations

1. <u>Current and Planned Operations.</u> BNSF has been adversely impacted by UP's decision to initiate directional operations on a number of lines, and BNSF's subsequent inability to secure trackage rights over portions of UP's directional routes. In these cases, BNSF trains are forced to either run "against the flow" of UP on the trackage rights lines or reroute trains over other heavily congested lines.

For example, as depicted on Map 8 attached hereto, BNSF has trackage rights over the former SP line from Waxahachie to Fort Worth.[6] However, UP plans to commence northbound directional running on this line, thereby making it difficult for BNSF to run southbound traffic over its trackage rights line from Waxahachie to Fort Worth. As a result, BNSF will be required to move southbound traffic from UP's Fort Worth Subdivision over the DART commuter rail route from Fort Worth to Dallas. The traffic would then be carried from Dallas to Waxahachie over the line that BNSF purchased pursuant to the BNSF Settlement Agreement.

Because BNSF would be handling this traffic over the DART line, it will be subject to commuter train windows. This would limit BNSF's operations southbound from Fort Worth and would prevent BNSF from being able to offer competitive service for traffic moving southbound from Fort Worth. In order to allow BNSF to offer competitive service for traffic moving southbound from Fort Worth, BNSF requests that, in the event UP begins directional operations between Fort Worth and Waxahachie, UP grant it trackage rights, under the compensation terms and other conditions set forth in the BNSF Settlement Agreement, over UP's Fort Worth to Dallas #1 and #2 main tracks from MP 245.7 at Tower 55 at Ft. Worth to MP B215.21 at Forest Avenue at Dallas.

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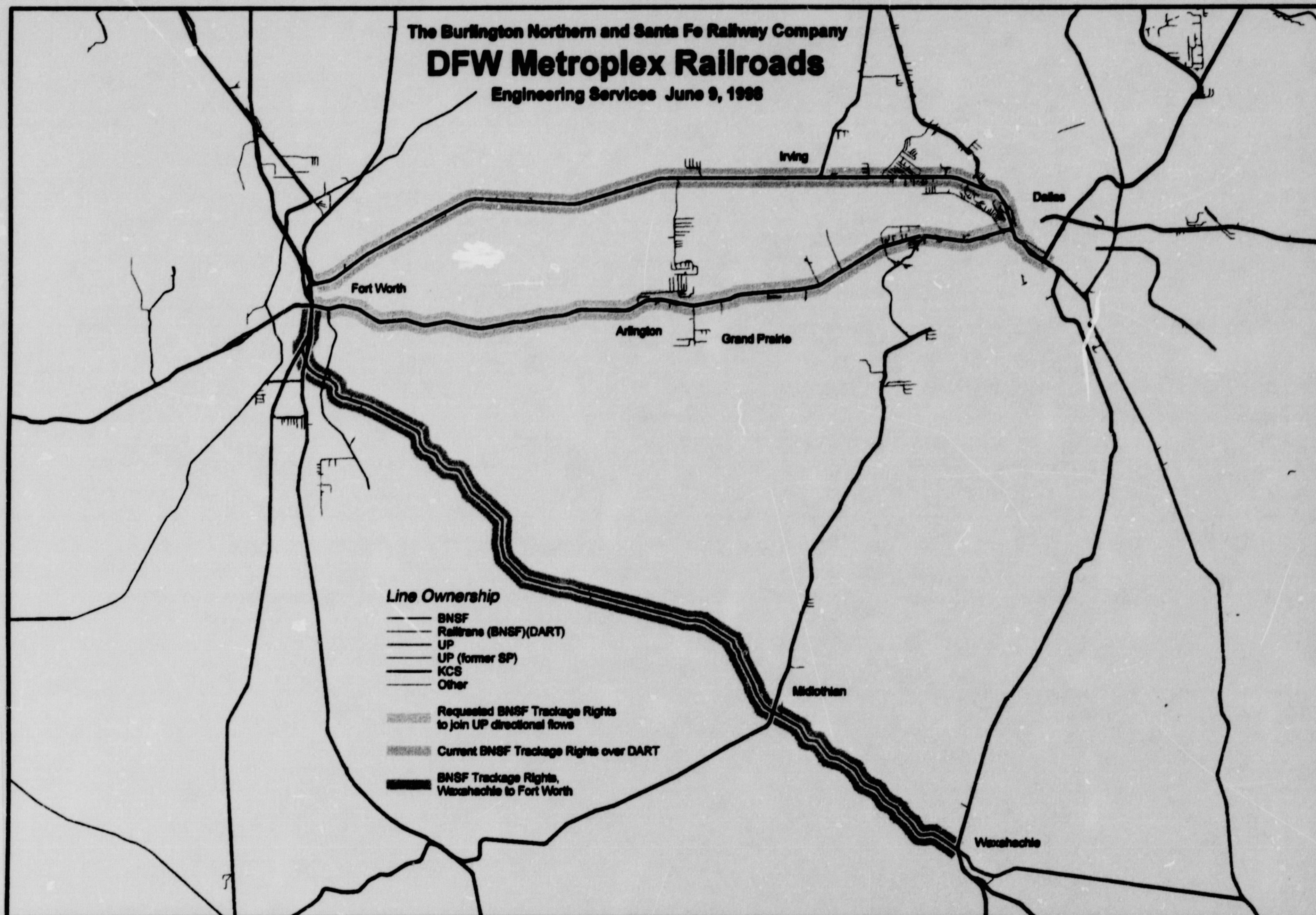
[6] I discuss the Ft. Worth to Waxahachie line as an example of instances where UP has begun or plans to begin directional operations and BNSF has been unable to secure trackage rights over a bidirectional route. Other examples of lines over which BNSF needs the option and ability to operate over alternative routes because UP has begun or may soon begin directional operations include UP's routes between Taylor and San Antonio, TX via Ajax, and on the Baytown Branch between Houston and Baytown.


The Burlington Northern and Santa Fe Railway Company
DFW Metroplex Railroads
Engineering Services June 9, 1998
Irving
Dallas
Fort Worth
Arlington
Grand Prairie
Midlothian
Waxahachie
Line Ownership
BNSF
Railtran (BNSF)(DART)
UP
UP (former SP)
KCS
Other
Requested BNSF Trackage Rights to join UP directional flows
Current BNSF Trackage Rights over DART
BNSF Trackage Rights, Waxahachie to Fort Worth

MAP 8

Additionally, BNSF requires trackage rights on all lines where UP has begun or plans to begin directional operations to handle traffic that otherwise would have been carried bi-directionally over the lines over which BNSF has trackage rights. Further, UP should be required in the future to provide BNSF with advance notice of its intent to implement directional operations on BNSF's trackage rights lines, to seek BNSF's concurrence in revised operations, and to provide BNSF with the alternative to join the directional flow with the appropriate trackage rights. If the parties are unable to agree upon a mutually acceptable plan for such operations, the issue could be submitted to arbitration or resolved by the Board.

G. BNSF Additional Trackage Rights on UP/SP Lines in the Houston Terminal Area for BNSF to Operate over Any Available Clear Routes Through the Terminal as Determined and Managed by the Spring Consolidated Dispatching Center, Including, but Not Limited To, the Former SP Route Between West Junction and Tower 26 Via Chaney Junction.

1. **Current and Planned Operations.** Presently, BNSF handles significant volumes of traffic over its trackage rights which must move through the highly-congested Houston terminal area via either UP's East Belt or West Belt line. Because of the congestion on these lines, BNSF has often been unable to offer competitive, timely and reliable service to shippers. UP will not permit BNSF to use alternate routes, even though they are available, unless prior trackage rights agreements are in place with respect to those routes.

For example, BNSF could avoid routing a considerable amount of traffic through the Houston terminal area if it had unrestricted access to the former SP line between Rosenberg and Englewood via West Junction, Chaney Junction, and Tower 26.

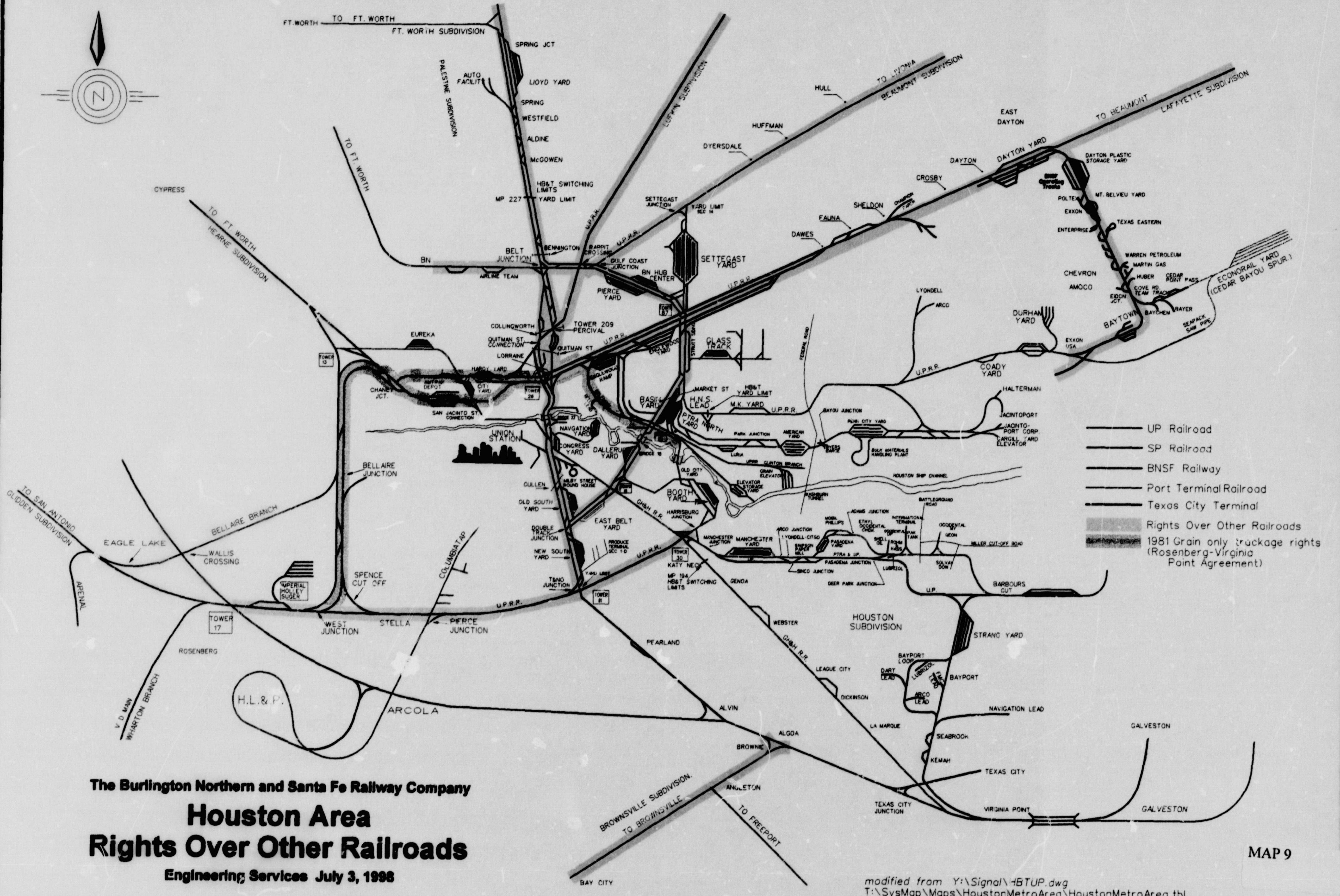
Pursuant to a 1981 Supplement to a 1920 Agreement between the former ATSF and the former SP, BNSF has trackage rights over this line; however, under the terms of the Supplemental Agreement, BNSF may only use those trackage rights to handle grain traffic.

BNSF therefore requests that UP be required to amend the 1981 Supplemental Agreement to allow BNSF to route any type of traffic over the former SP line between Rosenberg and Englewood via West Junction, Chaney Junction, and Tower 26. BNSF also requests that it be granted additional trackage rights on UP/SP in the Houston Terminal Area to operate over any available clear route as determined through the terminal as determined by the Spring Center. Map 9 depicting the Houston Terminal Area is attached hereto. These additional trackage rights would allow BNSF the option to bypass the West Belt and East Belt lines if congested, thereby offering shippers more competitive service.

2. **Implementation.** The additional trackage rights would be dispatched by the Spring Center. The center would direct BNSF trains over any clear route through Houston.

H. Coordinated Dispatching Of All UP and SP Trackage From Houston to Longview and Houston to Shreveport

1. **Current and Planned Operations.** Presently, BNSF has trackage rights over both the former UP line between Houston and Longview, TX and the former SP line between Houston and Shreveport, LA, as well as access to all "2-to-1" shippers, new facilities, and "2-to-1" shortlines on these lines. Map 10 depicting the lines from Houston to Longview and Houston to Shreveport is attached hereto. While congestion on these



The Burlington Northern and Santa Fe Railway Company

Houston Area
Rights Over Other Railroads

Engineering Services July 3, 1998

MAP 9

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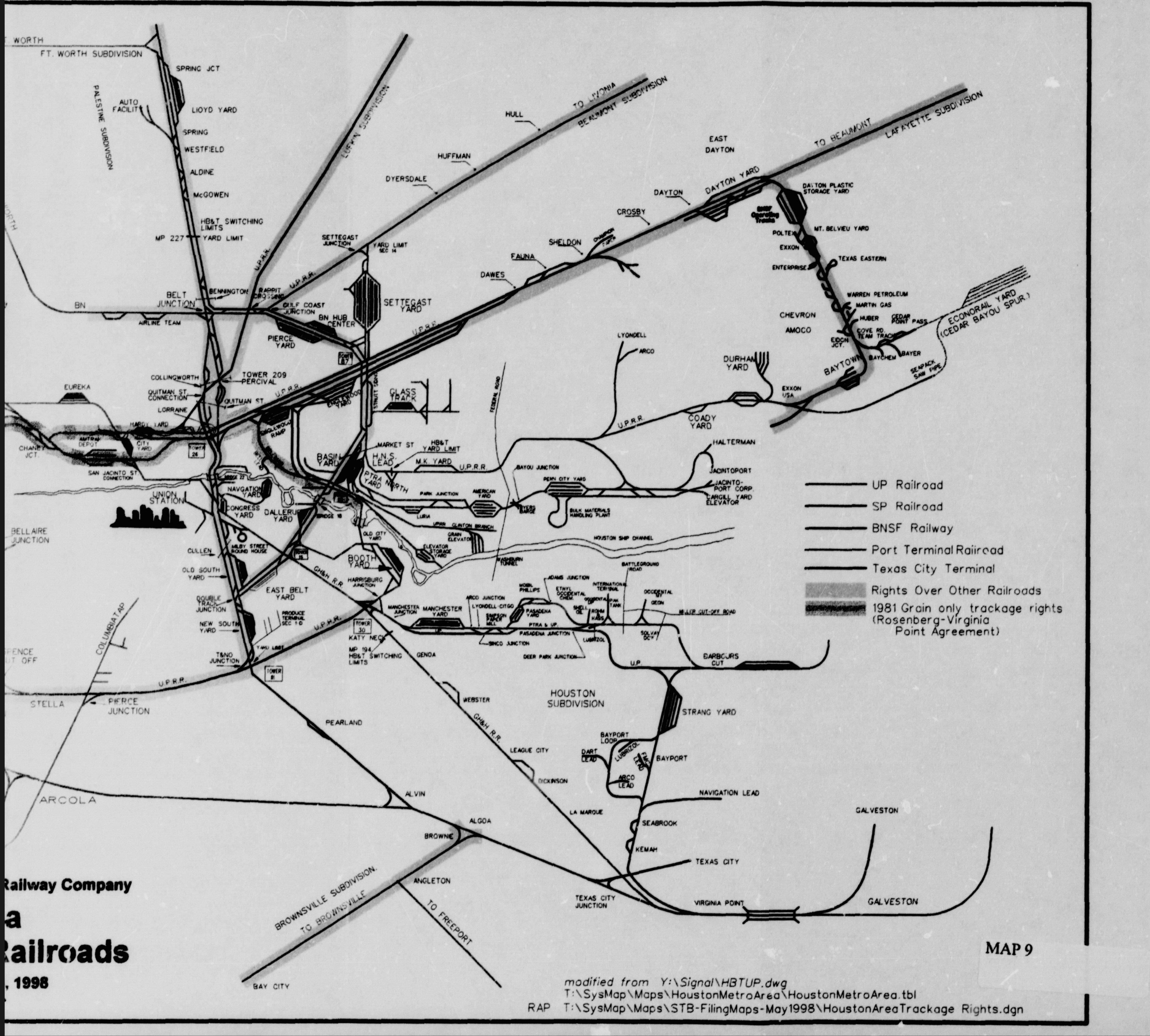
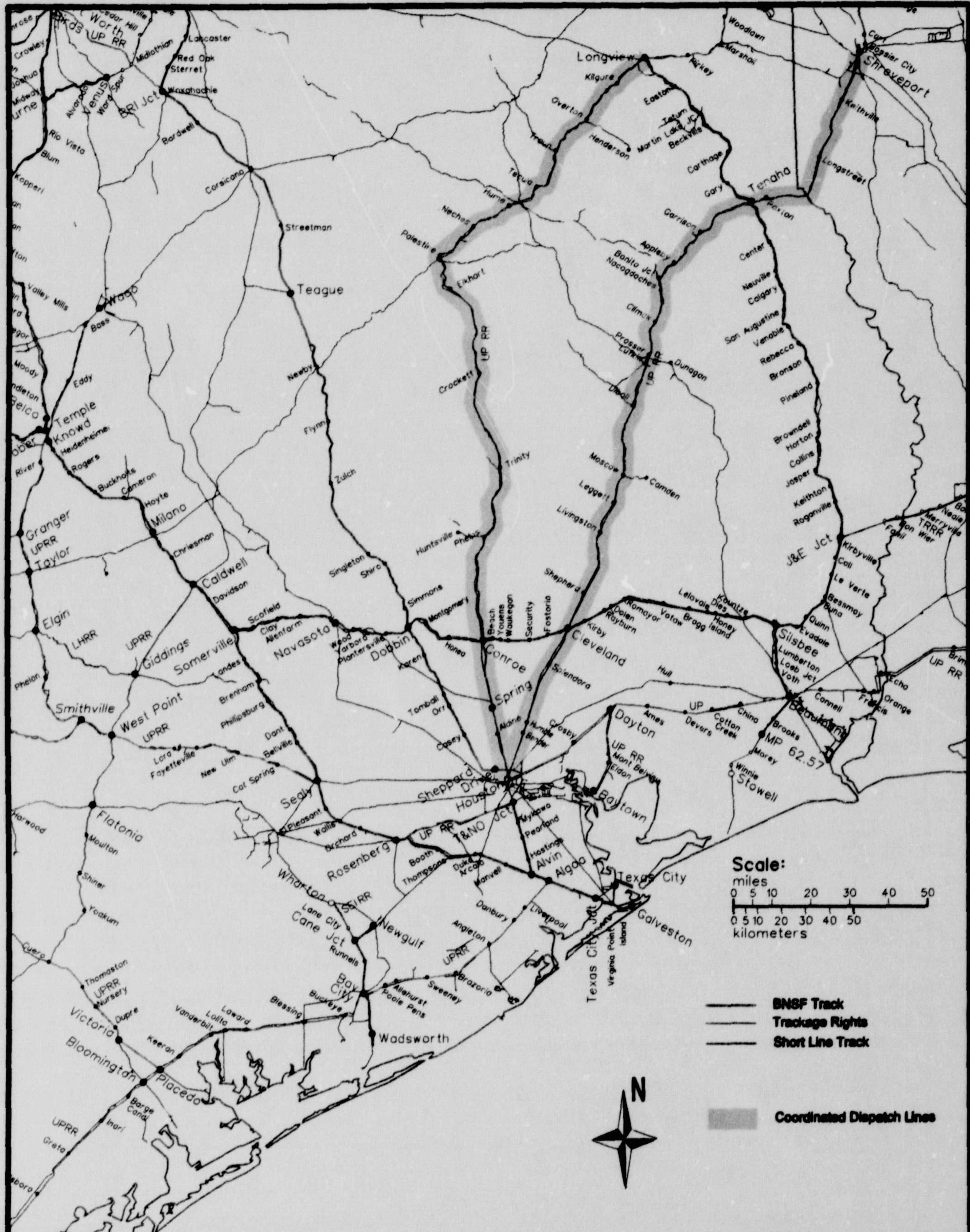


FT. WORTH
FT. WORTH SUBDIVISION
SPRING JCT
PALESTINE SUBDIVISION
AUTO FACILITY
LIOYD YARD
SPRING
WESTFIELD
ALDINE
McGOWEN
HB&T SWITCHING LIMITS
MP 227 YARD LIMIT
LUFKIN SUBDIVISION
U.P.R.R.
HULL
TO LIVONIA
BEAUMONT SUBDIVISION
HUFFMAN
DYERSDALE
EAST DAYTON
TO BEAUMONT
LAFAYETTE SUBDIVISION
DAYTON
DAYTON YARD
DAYTON PLASTIC STORAGE YARD
CROSBY
SHELDON
FAUNA
DAWES
SETTEGAST JUNCTION
YARD LIMIT SEC 14
SETTEGAST YARD
MT. BELVIEU YARD
POLTEX
EXXON
TEXAS EASTERN
ENTERPRISE
WARREN PETROLEUM
MARTIN GAS
HUBER
CHEVRON
AMOCO
CEDAR POINT PASS
COVE RD. TEAM TRACK
EIDON JCT.
BAYCHEM
BAYER
ECONORAIL YARD (CEDAR BAYOU SPUR)
SEAPACK SAW PIPE
BAYTOWN
BELT JUNCTION
BENNINGTON
RABBIT CROSSING
GULF COAST JUNCTION
BN HUB CENTER
BN
AIRLINE TEAM
PIERCE YARD
TOWER 87
LYONDELL
ARCO
DURHAM YARD
EXXON USA
COADY YARD
COLLINGWORTH
TOWER 209 PERCIVAL
QUITMAN ST. CONNECTION
QUITMAN ST.
LORRAINE
EUREKA
HARDY YARD
ENGLEWOOD YARD
ENGLEWOOD RAMP
CLASS TRACK
FEDERAL ROAD
AMTRAK DEPOT
CITY YARD
CHANEY JCT.
TOWER 26
SAN JACINTO ST CONNECTION
MARKET ST
HB&T YARD LIMIT
H.N.S. LEAD
BASIN YARD
M.K. YARD
PTRA NORTH YARD
BAYOU JUNCTION
PENN CITY YARD
HALTERMAN
JACINTOPORT
JACINTO-PORT CORP.
CARGILL YARD ELEVATOR
BULK MATERIALS HANDLING PLANT
PARK JUNCTION
AMERICAN YARD
UNION STATION
NAVIGATION YARD
CONGRESS YARD
DALLERUP YARD
BRIDGE 15
LURIA
UPRR CLINTON BRANCH
GRAIN ELEVATOR
HOUSTON SHIP CHANNEL
BELLAIRE JUNCTION
CULLEN
MILBY STREET ROUND HOUSE
OLD CITY YARD
ELEVATOR STORAGE YARD
BOOTH YARD
WASHBURN TUNNEL
OLD SOUTH YARD
EAST BELT YARD
GH&H R.R.
HARRISBURG JUNCTION
DOUBLE TRACK JUNCTION
NEW SOUTH YARD
PRODUCE TERMINAL SEC 1-D
YARD LIMIT
T&NO JUNCTION
TOWER 81
TOWER 30
KATY NECK
MP 194 HB&T SWITCHING LIMITS
MANCHESTER JUNCTION
MANCHESTER YARD
ARCO JUNCTION
LYONDELL-CITGO
MOBIL PHILLIPS
ADAMS JUNCTION
ETHYL OCCIDENTAL CHEM
INTERNATIONAL TERMINAL
BATTLEGROUND ROAD
PASADENA YARD
PTRA & UP.
PASADENA JUNCTION
SINCO JUNCTION
DEER PARK JUNCTION
SHELL OIL
ROHM & HAAS
OCCIDENTAL
GEON
MILLER CUT-OFF ROAD
LUBRIZOL
SOLVAY
BARBOURS CUT
U.P.
GENOA
COLUMBIA TAP
STELLA
PIERCE JUNCTION
WEBSTER
HOUSTON SUBDIVISION
STRANG YARD
PEARLAND
LEAGUE CITY
BAYPORT LOOP
DART LEAD
BAYPORT
ARCO LEAD
DICKINSON
NAVIGATION LEAD
ARCOLA
ALVIN
LA MARQUE
SEABROOK
GALVESTON
ALGOA
BROWNIE
KEMAH
TEXAS CITY
ANGLETON
BROWNSVILLE SUBDIVISION
TO BROWNSVILLE
TO FREEPORT
TEXAS CITY JUNCTION
VIRGINIA POINT
BAY CITY
UP Railroad
SP Railroad
BNSF Railway
Port Terminal Railroad
Texas City Terminal
Rights Over Other Railroads
1981 Grain only trackage rights (Rosenberg-Virginia Point Agreement)
Railway Company
a
Railroads
, 1998
MAP 9
modified from Y:\Signal\HBTUP.dwg
T:\SysMap\Maps\HoustonMetroArea\HoustonMetroArea.tbl
RAP T:\SysMap\Maps\STB-FilingMaps-May1998\HoustonAreaTrackage Rights.dgn



The Burlington Northern and Santa Fe Railway Company

Coordinated Dispatching of Operations at Spring Center
UP/SP Lines, Houston - Shreveport/Longview

Engineering Services July 3, 1998

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RAP 03 JUL 1998file- ...\coorddisp-hou-shreingv.dgn

MAP 10

lines has continued to sporadically increase and decrease, the fact that the dispatch functions for these lines are not within the jurisdiction of the Spring Center makes it more difficult for BNSF and UP to coordinate the arrival of trains into Houston from Shreveport (the southbound directional flow line shared by BNSF and UP) to mesh with delivery opportunities into the East Belt and the West Belt and onto the PTRA. This also impacts the timely relief of crews upon expiration of their hours of service.

On the northbound side, from Houston to Longview, the lack of coordination between the Spring Center and UP's Harriman Center in Omaha, which dispatches the Houston to Longview line, has negatively impacted BNSF's ability to provide timely arrivals and departures for trains into and out of Longview. In order to address this problem, thereby improving service for shippers and relieving congestion in the Houston terminal area, BNSF requests that the Board require that both the UP and SP line dispatching functions between Houston and Longview and Houston and Shreveport be relocated to and coordinated at the Spring Center.

I. Trackage Rights On UP's San Antonio-Laredo Line

1. Current and Planned Operations. As a condition of the UP/SP merger, BNSF received permanent trackage rights over a UP route to Tex Mex and the Laredo gateway via Algoa, Corpus Christi and Robstown.[7] In order to allow BNSF to permanently bypass Houston and avoid the congestion on the Robstown-Placedo-Algoa

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[7] Presently, in order to accommodate UP's directional running, BNSF serves the Laredo gateway via temporary trackage rights on the Caldwell-Flatonia-Placedo line for southbound traffic. BNSF is operating northbound between Placedo and Algoa, TX. Additionally, BNSF is serving Brownsville and Harlingen via UP haulage via Houston and Corpus Christi/Flatonia.

line, BNSF proposes that it be granted trackage rights on UP's line between MP 264.3 at South San Antonio and MP 412.51 at Laredo, under the compensation terms and other conditions set forth in the BNSF Settlement Agreement in the UP/SP merger proceeding. Both the Algoa route and the San Antonio to Laredo line are depicted on Map 11 attached hereto. This would reroute BNSF's existing trackage rights trains from the existing route through Algoa to the route from San Antonio-Laredo. UP would retain dispatching control for these movements.

Rerouting BNSF Laredo traffic to a more direct route between San Antonio and Laredo would take one train per day each way off of the Algoa route.

In its May 1, 1998 Infrastructure Report, UP has discussed a number of projects that are designed to decrease congestion along the Algoa route such as the installation of double track near Angleton and the extension of switching track, main line and sidings at Bloomington. BNSF submitted its specific concerns about the Infrastructure Report to the Board on June 1, 1998.[8/] BNSF is not confident that, even if such projects were completed by UP on the Algoa route at an undetermined date in the future, they would provide a complete remedy to the congestion that has plagued the routes in and

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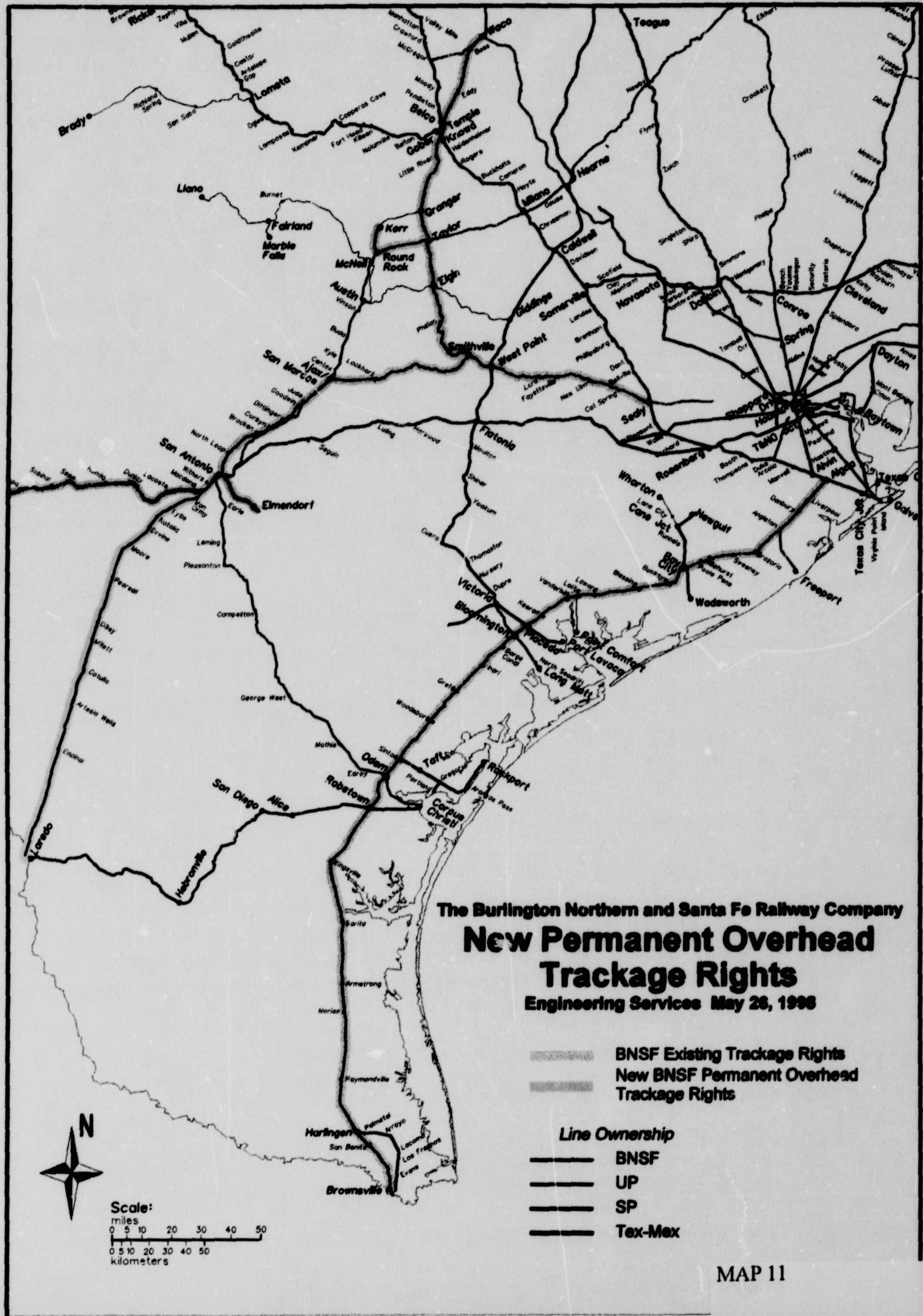
[8/] In its Reply, BNSF voiced its concerns about the contingent nature of UP's plans including that UP's "planning process is not yet complete", and it has not committed itself irrevocably to the capital investments proposed in the Report, has not established a time frame for completion of the projects proposed, has not included a detailed costing for the dozens of projects involved, and has specifically stated that "the precise timing and specifics of some of the projects are likely to change." Infrastructure Report at 2, 6. In addition, while UP notes that its Board of Directors has endorsed the plan in general, UP still must seek Board approval of specific projects in the normal capital budgeting process. Id.


The Burlington Northern and Santa Fe Railway Company
New Permanent Overhead Trackage Rights
Engineering Services May 26, 1996
BNSF Existing Trackage Rights
New BNSF Permanent Overhead Trackage Rights
Line Ownership
BNSF
UP
SP
Tex-Mex
N
Scale:
miles
0 5 10 20 30 40 50
0 5 10 20 30 40 50
kilometers
Waco
Temple
Belton
Taylor
Round Rock
Austin
San Marcos
San Antonio
Elmendorf
Smithville
Hearne
Caldwell
Navasota
Conroe
Spring
Houston
Rosenberg
Wharton
Victoria
Bloomington
Placedo
Port Comfort
Port Lavaca
Taft
Rockport
Corpus Christi
Robstown
Odem
Alice
San Diego
Laredo
Hebbronville
Harlingen
Brownsville
Freeport
Dayton
Baytown
Cleveland
Brady
Llano
Lometa
Giddings
Flatonia
Bay City
Wadsworth

MAP 11

around Houston. BNSF thus needs access to the San Antonio-Laredo line in order to ensure competitive service for Laredo traffic.

2. **Train Service.** Currently, BNSF averages one and one-half trains per day each way to and from Eagle Pass via San Antonio. These trains handle merchandise, automotive, coal and grain traffic. If BNSF obtains trackage rights from San Antonio to Laredo, BNSF would shift the grain traffic that currently moves via Eagle Pass to the Laredo route, thereby reducing the traffic to and from Eagle Pass to one train per day each way six days a week. BNSF would also shift a majority of the export traffic that it interchanges with Tex Mex at Robstown, TX to the Laredo route, thereby reducing BNSF's interchange operations with Tex Mex to one train per day six day per week. BNSF would then operate two to three trains per day each way between San Antonio and Laredo. These trains would be composed of the grain traffic rerouted from Eagle Pass, the traffic previously routed to Laredo via Tex Mex, and new business. BNSF anticipates that its operations between San Antonio and Laredo would add approximately one train each way per day over the bridge at Laredo.

In order to handle Mexican traffic via Laredo, BNSF would need trackage rights over the International Bridge[9] and the track leading from the bridge at MP 0.00 to the UP connection in the vicinity of MP 0.50, as well as designated windows during which it could operate over the bridge. Because the International Bridge is used for switching and interchanging movements, the transfer, collection or delivery of freight, and assisting

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[9] The International Bridge is owned by Mexrail, Inc., a wholly-owned subsidiary of Transportacion Maritima Mexicana S.A. de C.V. ("TMM"), that owns common stock of Tex Mex. The International Bridge runs from Laredo, TX to Nuevo Laredo, Mexico.

in the performance of the functions of a terminal, BNSF is filing simultaneously a separate application seeking terminal trackage rights over the International Bridge. BNSF also requests that the Board require UP and Tex Mex collectively to allow BNSF equal access to the use of the International Bridge for interchange purposes through the establishment of defined operational windows for BNSF's use. Neither UP's nor Tex Mex's operations would be substantially impacted if BNSF is authorized to operate as requested over the International Bridge. While the International Bridge has been congested in recent months, process and infrastructure improvements by Tex Mex, UP and TFM currently in place or underway to take functions performed on the bridge to other locations should open up operational "windows" for BNSF's use across the Bridge without adversely impacting the operations of either Tex Mex or UP.

Yard activity at San Antonio and Laredo should not increase by more than 20% over current yard operations (which approximate 24-26 trains per day) as a result of the granting of trackage rights on UP's San Antonio-Laredo line. As mentioned above, when UP completes construction of the connection between the former SP line and the UP line at Heafer Junction, BNSF would not move any trains through the yard at San Antonio.

3. <u>Implementation.</u> BNSF would need to expand its existing crew district at San Antonio in order to operate between San Antonio and Laredo. The San Antonio crew district would handle traffic to and from both Eagle Pass and Laredo.

BNSF would also need track capacity at Laredo. If BNSF obtains trackage rights between San Antonio and Laredo, BNSF would negotiate with UP to lease UP track in or around the Laredo Yard in order to interchange Mexican traffic. If BNSF is unable to negotiate the lease of track with UP, BNSF would seek to purchase land on which it would construct such track. BNSF would agree to pay its share of any other capacity improvements that may be needed for its proposed trackage rights operations.

4. **Impacts.** There are no local commuter operations or Amtrak operations on the San Antonio to Laredo line, and thus the trackage rights would have no impact on passenger rail operations.

IV. SUMMARY

This Verified Statement describes proposed BNSF train operations designed to provide shippers with reliable, dependable and consistent service in Houston, South Texas and the Gulf Coast area. Based upon my experience and the research I performed in preparing this statement, I believe that the proposed services and operations are feasible and realistic and that BNSF is fully capable of providing them. It also is my view that BNSF's proposed services and operations would restore timely and reliable service to shippers and significantly reduce congestion on the UP lines in and around Houston. Finally, the proposed operations will not interfere with the operations of UP, Tex Mex or any other carrier.

<u>**VERIFICATION**</u>

THE STATE OF TEXAS)

COUNTY OF TARRANT)

Ernest L. Hord, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.

Ernest L. Hord

Ernest L. Hord

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

Betty L. Reinert

Notary Public

My Commission expires:

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

3

STB FD-32760 (SUB29) 7-8-98 A ID-189357 4 OF 4

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

Union Pacific Corp., et al.
-- Control and Merger --
Southern Pacific Corp., et al.

[Houston/Gulf Coast Oversight]

VERIFIED STATEMENT OF LORENZO E. CANTU

My name is Lorenzo E. ("Larry") Cantu, and I am the President and Chief Operating Officer of the Brownsville & Rio Grande International Railroad ("BRGI") based in Brownsville, Texas. My business address is P.O. Box 3818, Brownsville, TX 78523-3818, tel. (956) 831-7731. I am submitting this verified statement to express my support of The Burlington Northern and Santa Fe Railway Company ("BNSF") in its request to the Board for certain additional merger-related relief. I understand that, in the above-captioned oversight proceeding, BNSF requests -- (1) the right to operate over both the former UP and SP main lines from Harlingen south to Brownsville, TX, and (2) the right to designate BRGI as BNSF's agent for all service south of Harlingen, TX. BNSF's requests will remedy its overly limited competitive presence in the Brownsville area and will improve operations through the Brownsville-Matamoros international gateway.

As the Board is no doubt well aware, BRGI was an active participant in the original UP-SP merger proceeding, and has remained active in (1) Board oversight of the UP-SP merger implementation in STB Finance Docket No. 32760 (Sub-No. 21); (2) Ex Parte 573, Rail Service in the Western United States; and (3) the recent proceedings instituted by the Board in Ex Parte 575, Review of Rail Access and Competition Issues. Throughout these proceedings, I have vigorously represented the interests of BRGI, but I have also been entrusted with communicating to the Board the interests of the Brownsville Navigation District as well as the many shippers located at the Port of Brownsville.

As potential "2-to-1" points, the Port of Brownsville and BRGI were to have been accommodated under the settlement agreements negotiated between BNSF and the Union Pacific Railroad Company ("UP") during the course of the UP-SP merger proceeding. As I understand those UP-BNSF agreements, BNSF was granted trackage rights access to Brownsville, TX, including rights to interchange traffic directly with TFM at Matamoros and BRGI at the Port of Brownsville. It was (and continues to be) important to BRGI and its customers that they enjoy direct physical access to two line-haul carriers to ensure truly effective two-carrier competition. To assuage my concerns about the competition BNSF would be able to provide post-merger, I was informed that BNSF would institute trackage rights operations to and from Brownsville as soon as it became practical to do so.

To this date, BNSF has been unable to convert to trackage rights its existing haulage rights service to Brownsville, which makes our area the only major point where BNSF has not instituted direct trackage rights service under its settlement agreements with UP. As a result, BNSF is wholly dependent upon the operations of its competitor (UP) for the level of service it can provide.[1] There is little doubt in my mind that UP's poor service and UP's continued refusals to convey to BNSF those trackage rights necessary to make effective use of the Brownsville gateway are responsible for BNSF's decision not to institute competitive trackage rights service of any kind to and from the Port of Brownsville. Whether done intentionally or not, UP's actions have seriously impeded BNSF's ability to establish the type of competitive presence in the Brownsville gateway that the merger-related settlement agreements had contemplated and that BRGI and its shippers had expected.

I understand that, in an effort to effectively serve the Brownsville area, BNSF is requesting that it be granted the right to operate over both the former UP and SP main lines south of Harlingen, TX. BRGI strongly supports BNSF's request. Logistically, this trackage rights request makes perfect sense, will add a needed level of operational flexibility to the equation, and will prove less taxing on yard facilities and local highways in downtown Brownsville. As BNSF will show, without

[1] In addition, haulage rights access to a particular market requires far less of a service commitment than does trackage rights service. Where BNSF institutes trackage rights service, it must also commit personnel, equipment, and other such capital. Therefore, under a trackage rights operation, BNSF would presumably have a higher stake in seeing its operations succeed. This is why BRGI and its shippers were anxious in the first place about having BNSF physically present in Brownsville.

access to both the UP and SP main lines south of Harlingen, BNSF will be forced to "compete" in Brownsville with "one arm tied behind its back." The trackage rights BNSF seeks are designed to avoid routing circuity, rail-highway congestion in downtown Brownsville, and unnecessarily inefficient (and thus more costly) operations in and through the Brownsville gateway.

BNSF is also requesting that the Board permit it to designate BRGI to serve as its agent for all rail service south of Harlingen, TX. Again, BRGI heartily supports BNSF's request, because it will not only improve BNSF's competitive presence in Brownsville, but it will also permit **for all rail carriers concerned** a more efficient use of the critical Brownsville-Matamoros international gateway. BRGI is ready, willing, and able to serve as BNSF's agent for such service. The Board may well wonder why BNSF cannot unilaterally designate BRGI to serve as its agent without the intervention of the Board. It turns out that the UP-BNSF settlement agreements negotiated during the course of the UP-SP merger proceeding forbid BNSF from so designating BRGI without the consent of UP. BNSF has already asked UP to allow it to use BRGI as its agent south of Harlingen, and UP has steadfastly refused the request, even though from an operational perspective such an arrangement would be far preferable to actual BNSF service south of Harlingen.

Today, UP trains from Mexico (TFM) must obtain U.S.D.A. and U.S. Customs clearance to proceed northward into the U.S. interior. To obtain this clearance, UP must hold its trains on the single-track line (the "River Lead")in Brownsville that leads to and from the Brownsville-Matamoros International Bridge until all inspections are completed. As far as I am aware (and as UP's own statements suggest), UP lacks any other suitable facility in the area to which northbound trains can be moved pending U.S.D.A and customs clearance. If a northbound train is delivered to UP during the evening hours, U.S.D.A. and customs officials are unavailable to handle clearance tasks, and the train must occupy the River Lead for several hours until officials are available the next morning. Obviously, when a train sits on the River Lead awaiting clearance, no other cross-border traffic can move, unless there is another suitable point to move the holding northbound train.

If BNSF is permitted to designate BRGI as its agent (and assuming that BNSF obtains the rights to operate over both the UP and SP lines south of Harlingen), then BNSF/BRGI will not need to occupy the River Lead any longer than the time it takes to pull northbound trains off of this trackage. BRGI can move northbound trains directly from Mexico to its rail facilities at the Port of Brownsville -- the only other secure location at the Brownsville-Matamoros international gateway that is suitable for holding railcars pending U.S.D.A. and customs clearance. If BNSF is not permitted to designate BRGI as its agent, BNSF (which, like UP, lacks operating rights over BRGI facilities) would be forced to hold trains on the River Lead just as UP does today -- further exacerbating congestion and delays for trans-border traffic. Thus, BRGI operations south of Harlingen could make cross-border operations more fluid, while BNSF stand alone operations would only further congest this critical gateway.

BRGI had originally planned to institute direct Port-to-TFM service as an emergency measure, and had requested operating rights over UP for this purpose in Ex Parte 573. During that time, I personally discussed BRGI's proposed operations with local U.S.D.A. and customs officials, all of whom fully supported the use of the Port of Brownsville for railcar clearance purposes. Not only do such officials continue to support BRGI's operating proposal, but some of them, anxious to see the port facilities used in this manner, have since asked me when BRGI would begin such operations. I have told them that our plans depend upon either UP acceding to BNSF's requests or, barring that, Board action.

Given the potential benefits that BRGI operations south of Harlingen would offer for all railroad operations through the Brownsville gateway, I can think of only one reason why UP would object to the BNSF/BRGI agency proposal -- BNSF would become an effective competitor where it is not today.[2] To me, UP's refusal to permit the proposed agency operation reflects its desire to

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[2] I must point out that this is exactly the opposite of what BRGI and local shippers were told when UP and BNSF completed their merger-related settlement agreements. BNSF was to serve as a "replacement" competitor in light of the loss of competitive SP service. We expected that UP and BNSF would cooperate further as necessary to ensure that each would be able to serve the Brownsville area as efficiently as possible. Instead, UP's apparent sense of cooperation is to wholly dominate operations in and around the Brownsville gateway.

control a market and an international gateway that it had originally promised to open to direct BNSF competition. Additionally, UP's efforts to restrict any other carrier's operations in Brownsville is contrary to the Board's stated policy objectives of promoting NAFTA-related international trade and fostering efficiency at international railroad interchanges. It seems clear to me that UP's refusal to negotiate with BNSF and BRGI on this matter is foolhardy and manifestly counter-productive. UP should be (but is not) discussing with BNSF and BRGI any arrangements that could improve service and reduce congestion through this corner of the Texas Gulf Coast.

As I had expected, BRGI is not alone in supporting BNSF's efforts to secure its competitive presence in and around Brownsville. Very nearly every shipper located at the Port of Brownsville supports BNSF's request for additional conditions. In fact, I am attaching to my verified statement a petition signed by no less than twenty port shippers supporting BNSF's request for Brownsville area relief. (See, Exhibit A, attached hereto.) Such shipper support reflects the fact that BNSF has as yet been unable to become the sort of competitive presence at the Port of Brownsville that BNSF and UP had both represented it would be during the UP-SP merger proceeding.[3]

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[3] I am sure that another motivation behind each shipper's support of BNSF is the fact that, if the Board grants the requested conditions, BRGI would be able to transport (on BNSF's account) traffic directly between the Port of Brownsville and the TFM interchange at the Brownsville-Matamoros International Bridge. BNSF is supposed to provide a competitive alternative to UP's service between TFM and the Port of Brownsville, but it has

Virtually everyone having a stake in the Brownsville-Matamoros gateway supports BNSF's proposal. Not only are BRGI, U.S.D.A., U.S. and Mexican customs officials, and numerous Port of Brownsville-based shippers enthusiastic about the much needed competition and service improvements that BNSF's proposal would bring, but TFM and Brownsville city officials also support such efforts to improve gateway service. TFM is UP's and BNSF's Mexican partner in international rail traffic routed through Brownsville, and it recognizes that BNSF's new operating proposals for this gateway would translate into expanded business opportunities prompted by potentially more cost-effective service just north of the border. For the City of Brownsville, BNSF's proposal would limit rail-highway congestion over downtown city streets, just as BNSF has explained in its own filings.

If BNSF is to live up to its potential as a competitive presence in Brownsville, then it must be granted the conditions it seeks in this oversight proceeding. I have outlined in detail the competitive and operational benefits that BNSF's request for relief would bring to our area. I have identified the numerous parties who, like BRGI, support BNSF's efforts, and I have made clear my impression that UP's refusals to negotiate needed service improvements in the Brownsville area reveal UP's anti-competitive animus. I would have by far preferred to see the issues presented here resolved without the need for continued

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not been able to provide any sort of competitive "bridging" service, contrary to BRGI's hopes and expectations.

Board intervention, but UP refuses to negotiate with BNSF on such essential remedies. Therefore, on behalf of BRGI, I must submit my strong support of BNSF's requests for conditions particular to service in and around Brownsville, TX.

VERIFICATION

COUNTY OF CAMERON)
) ss:
STATE OF TEXAS)

Lorenzo E. Cantu, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein, and that the same are true as stated.

Lorenzo E. Cantu
President and Chief Operating Officer
Brownsville & Rio Grande International Railroad

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

Notary Public

My Commission Expires :

NORMA TORRES
Notary Public, State of Texas
My Commission Expires
January 29, 2002

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

Union Pacific Corp., et al.
-- Control and Merger --
Southern Pacific Corp., et al.

[Houston/Gulf Coast Oversight]

SHIPPERS' PETITION IN SUPPORT OF

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY AND

THE BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD

WE, THE UNDERSIGNED, in connection with the above-captioned Surface Transportation Board proceeding, and in support of the remedial action sought in this proceeding by The Burlington Northern and Santa Fe Railway Company ("BNSF"), state as follows:

1. We, the undersigned, are shippers located in or around the Port of Brownsville, Texas;

2. We are served directly by the Brownsville & Rio Grande International Railroad ("BRGI"), and, via BRGI, have connections to the Union Pacific Railroad Company ("UP") and BNSF (the latter by way of UP-provided haulage rights);

3. Although we had expected to enjoy fully the benefits of unfettered competition between UP and BNSF following the UP-SP merger, it turns out that BNSF has been severely impeded in its efforts to establish the sort of competitive presence in the Brownsville area that it had originally contemplated under the terms its merger-related settlement agreements with UP;

EXHIBIT
A

4. We are very well aware of UP's continuing service-related problems in the Gulf Coast area, and have ourselves fallen victim to UP's chronic service failures;

5. Since BNSF today depends upon UP-provided haulage to serve the Port of Brownsville, we believe that BNSF is also a victim of UP's service failures;

6. We are aware that, in connection with the above-captioned proceeding, BNSF intends to file with the Board a request for relief designed to improve service and competition in and around the Port of Brownsville;

7. We have been informed that BNSF will request the following pro-competitive relief from the Board: (1) that BNSF be granted expanded trackage rights access to parallel main lines south of Harlingen, TX (to enable more efficient train operations), and (2) that BNSF be permitted to designate BRGI to serve as its agent for all service south of Harlingen, TX;

8. BRGI has informed each of us that it fully supports BNSF in its request for the conditions summarized in clause seven (7), above, and BRGI has demonstrated to us both the willingness and ability to provide service as BNSF's agent; and

9. We have concluded that the BNSF/BRGI agency arrangement proposed for lines south of Harlingen (in conjunction with BNSF's related trackage rights request) will -- (1) improve service in the Brownsville vicinity (including service to and from the Port of Brownsville), (2) substantially improve BNSF's competitive presence in the area and reduce BNSF's current reliance upon UP,

and (3) increase efficient operations in and through the important Brownsville-Matamoros international gateway (and especially between the Port of Brownsville and TFM at Matamoros).

FOR THE FOREGOING REASONS, we strongly urge the Board to grant in full the remedial conditions BNSF will request in this proceeding to improve rail service south of Harlingen, TX. Specifically, we urge the Board to grant BNSF's request for trackage rights operations over both the former SP and UP main lines from Harlingen to Brownsville, and we also urge the Board to grant BNSF's request that it be permitted to designate BRGI as its agent for operations south of Harlingen, TX.

Respectfully submitted,

Port of Brownsville-based Shippers
(Signatures affixed below)

Signature: Martin Johnson

Name (printed): MArtin Johnson

Title: Plant Manager

Company: Premier Refractories

Date: 7-1-98

Signature: Gracie Rodriguez

Name (printed): Gracie Rodriguez

Title: Officer Clerk.

Company: Brownsville Gulfside Warehouse, Inc.

Signature: Rosario Bernal

Name (printed): ROSARIO BERNAL.

Title: MANAGER.

Company: CROSSING OF MEXICO FORWARDING INC

Date: 7-1-98

Signature: Edward M. McLaughlin

Name (printed): EDWARD M. McLAUGHLIN

Title: PRESIDENT

Company: RTS INTERNATIONAL

Date: 6-30-98

Signature: Frank Puglisi

Name (printed): FRANK H. PUGLISI

Title: VP FINANCIAL CONTROLLER

Company: AMFELS, INC

Signature: [signature]

Name (printed): MAURICIO MARTINEZ

Title: Mgr - Pres

Company: GULMAR, INC

Date: 6-30-98

Signature:

Name (printed): Craig Elkins

Title: General Manager

Company: Port Elevator - Brownsville, LC

Date: 1 July 98

Signature:

Name (printed): Craig Elkins

Title: Secretary

Company: SOUTHWEST GRAIN Co, Inc

1-July-98

Signature:

Name (printed): Craig Elkins

Title: Representante Legal

Company: Granos Southwest de Mexico, S de RL de CV

Date: 1-July-98

Signature: Janette G. Reyna

Name (printed): Janette G. Reyna

Title: Manager

Company: Satellite I, Inc.

Date: June 30, 1998

Signature: Adriana Garza

Name (printed): Adriana Garza

Title: Manager

Company: Chem USA Corp.

Signature: Ramiro Martinez

Name (printed): RAMIRO MARTINEZ

Title: Superintendent

Company: INTERLube CORP

Date: JUNE 30, 1998

Signature: William Challenger

Name (printed): William Challenger

Title: Terminal Manager

Company: Statia Terminals Southwest Inc

Date: 6-30-98

Signature: R M Walsdorf

Name (printed): Robert M Walsdorf

Title: Pres

Company: RM Walsdorf inc

Signature: Sylvia M. Lara

Name (printed): SYLVIA M. LARA.

Title: OFFICE MANAGER

Company: GULF FACILITIES INC.

Date: 6/30/98

Signature: MARK HOSKINS

Name (printed): MARK HOSKINS

Title: Gen. Mgr.

Company: Gulf Stream Marine Inc.

Date: 6/30/98

Signature: Benito Ramirez

Name (printed): Benito Ramirez

Title: Vice President

Company: Transforma Marine

Signature: Daniel O. Bueno

Name (printed): DANIEL O. BUENO

Title: V.P./CONTROLLER

Company: I. S. L.

Date: 7/1/98

Signature: A R Caballero

Name (printed): ARtemio R. Caballero

Title: OPER. MGR

Company: WESTWAY Terminal

Date: 7/1/98

Signature:

Name (printed):

Title:

Company:

Signature:

Name (printed):

Title:

Company:

Date:

Signature: [signature]

Name (printed): Jim Wilkinson

Title: President

Company: Wilkinson Jim Iron & Metal, Inc.

Date: 7-3-98

Signature: ______________________

Name (printed): ______________________

Title: ______________________

Company: ______________________

Signature: ______________________

Name (printed): ______________________

Title: ______________________

Company: ______________________

Date: ______________________

Degussa **Degussa México, S.A. de C.V.**

July 1st, 1998

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

We are a company dedicated to import and distribution of chemicals, which have been doing business with enterprises in the USA and Canada.

Lately, or better said since the merger of UP/SP we have experienced a lot of delays on our business to the USA mainly because of the lack of competitiveness on rail transportation over the Laredo Tx./Nuevo Laredo Tamaulipas, border.

The delays as we all know have been due the problems that the UP/SP merger have incurred in handling appropiately this merger to the fact that we as many other companies have been jeopardizing our international business because of delays incurred in traffic.

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

Therefore we kindly request that the BNSF obtains overhead trackage rights on UP's San Antonio - Laredo line, and that also obtain permanent bi-directional trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia Placedo lines, in place of temporary trackage rights at present.

We believe that by approving these trackage rigths, all parties involved, even the UP/SP will benefit from it since they will hardly incur in congestion again, since there will be another company that will compete with them and will enforce that both companies become efficient if they want to participate in the market.

Thanking you in advance for your kindly attention to my request and hoping that my request is approved.

Sincerely yours

Karen Werner M.
Logistics and Distribution
Manager

Oficina matríz: Calz. México-Xochimilco 5149, C.P. 14610 México, D.F. Tel.: 673-13-70 Apartado Postal 22-252 Fax 673-1016 Telex: 017-73815 y 017-64385
Sucursal en Guadalajara: Calle 6 # 2191 Zona Industrial C.P. 44940 Guadalajara. Jal. Tel.: 8-11-70-59 Fax 8-11-76-74
Sucursal en León: Degussa México, S.A. de C.V. Clemente Orozco 210 y 212, Col. Prados Verdes C.P. 37480, León Gto. Tel.: 12-83-48 Fax 12-84-55
Sucursal en Monterrey: Calle América del Norte # 211, Col. Las Américas C.P. 67120 Monterrey, N.L. Tel.: 34-09-45 al 47 Fax 34-09-48

Dynegy Inc
1000 Louisiana Street, Suite 5800
Houston, Texas 77002
Phone 713.507.6400
www.dynegy.com

DYNEGY

The Honorable Vernon A. Williams
Secretary
1925 K Street, NW
Washington, D.C. 20423

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

Dear Mr. Williams;

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

I, Janice Rowland, Rail Operations Supervisor represents Dynegy Inc. (formally Warren Petroleum), who in Mont Belvieu Texas stores, manufactures, and sells LPG products out of our facility there. We have our own fleet of cars plus customers cars that come in and out of our facility. We currently handle around 800 cars a year. Our Facility is located on the Baytown branch on the line coming out of Dayton, Texas. We have a limited area for trains and rail cars so it is important that the carrier be consistent and reliable.

We foresee a neutral switching operation would improve the efficiency of operations by reducing the congestion that potentially could happen with two carriers switching. Also with a neutral switcher we can expect that all the cars will be pulled and we can prioritize with confidence.

We expect our business at Mount Belvieu to continue to grow in the future. The installation of a neutral party to supervise switching of the branch would provide a long-term solution to our need of efficient and competitive service.

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

Sincerely,

Janice Rowland
Rail Operations Supervisor
Dynegy Inc.

June 30th, 1998

Subject: Docket No. 32760
Sub-No. 26

To whom it may concern:

We are a company dedicated to the export/import of non-ferrous metals, which have been doing business with enterprises in the USA, Europe and Canada.

Lately, or better said, since the merger of UP/SP we have experienced a lot of delays on our business to the USA mainly because of the lack of competitiveness on rail transportation over the Laredo, TX./Nuevo Laredo-Tamaulipas, border.

The delays as we all know have been due to the problems that the UP/SP merger have incurred in handling appropriately this merger to the fact that we, as many other companies, have been jeopardizing our international business because of delays incurred in traffic.

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

Therefore we kindly request that the BNSF obtains overhead trackage rights on UP's San Antonio – Laredo line, and that also obtain permanent, bi-directional trackage rights on UP's Caldwell-Flatonia – San Antonio and Caldwell-Flatonia Placedo lines, in place of temporary trackage rights at present.

We believe that by approving these trackage rights, all parties involved, even the UP/SP will benefit from it since they will hardly incur in congestion again, since there will be another company that will compete with them and will enforce that both companies become efficient if they want to participate in the market.

Thanking you in advance for your kindly attention to my request and hoping that my request is approved.

Sincerely yours,

Alejandro Cervantes R.
General Director

FIMEXPO METALES S.A. DE C.V.
Río Sena No. 54 P.A. Col. Cuauhtémoc 06500 México, D.F.
Tels.: 566-37-00 705-15-18 Fax: 535-96-97 703-19-83

GRUPO VITRO

July 02, 1998

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

Subject: Docket No. 32760
Sub-No. 26

Vitro serves commercial, industrial and consumer markets with glass containers, flat glass, automotive glass, glassware, plastic container, aluminium cans and household goods. Based in Monterrey, México, Vitro was founded in 1909 and employs over 30,000 people. It has its own production and distribution facilities in 8 countries, including México and the United States.

Our traffic department handle 126.0 million dlls/year to move all kind of freight. Our rail traffic in U.S.A. is of 460,000 tons/year, 28% of our total traffic and we mainly use the Laredo, Tx /Nuevo Laredo, Tm. border. These are our main commodities that we handle by rail:

Commodity	**Shipper**	**Origin**	**Tons**
Soda Ash	Ansac	Green River, Wy	400,000 tons/year
Silica Sand	U.S. Silica	Mill Creek, Ok	8,400 tons/year
Kaolin	Wilkinson	Gordon, Ga.	5,000 tons/year
Borax	U.S. Borax	Boron, Ca	3,600 tons/year

We kindly request that the BNSF obtains overhead trackage rights on UP's San Antonio - Laredo line, and that also obtain permanent bi-directional trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia Placedo lines, in place of temporary trackage rights at present.

We believe that by approving these trackage rights, all parties involved will benefit, since there will be another company that will compete with the actual railroads and will enforce that the companies become efficient if they want to participate in the market.

Thanking you in advance for your kindly attention to my request and hoping that my request is approved.
Sincerely yours,

Armando Díaz Orozco
Logística Vitro

cc Carlos Mattei
Jaime Galvän

Av. Roble 660, Col. Valle del Campestre, 66265 Garza García, N.L., México
52 - 8 • 329 • 1200 http://www.vto.com

July 6, 1998

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

IBP, inc.'s Support for BNSF Trackage Rights

My name is Perry M. Bourne. I am Assistant Vice President of Transportation for IBP, inc. ("IBP"). My business address is 1651 IBP Avenue, Dakota City, NE 68731. I have a total of 24 years of business experience in various facets of domestic and international traffic operations, pricing and regulatory matters. For the past 15 years, I have been employed by IBP. I have personal knowledge of the matters contained in my statement.

IBP is the worlds largest meat packing company, with annual sales in excess of $13.2 billion. In 1997, IBP's total freight expenditures (domestic and international) were $425 million. Domestic rail transportation accounted for $32 million of that figure. IBP owns and leases a fleet of 900 rail tank cars and uses mechanical reefer cars and covered hopper cars supplied by railroads. IBP ships approximately 14,000 rail car loads annually of frozen meat, bone meal and tallow from 33 plants and freezers in the United States and Canada. IBP ships frozen beef in mechanical reefer cars, bone meal and dried blood in covered hopper cars and grease, lard and tallow in tank cars. IBP has a total of four (4) plants on the BNSF. See Appendix A for listing of plants and commodities which are currently being shipped from BNSF origin plants to Mexico via Laredo, TX.

UP SERVICE FAILURES

IBP has endured a considerable loss in service as a result of the UP/CNW and UP/SP mergers. These difficulties have increased transits on our tank cars, increased emergency trucking to keep IBP plants open and service customers who were running short of product. These service failures have created erratic switches at IBP facilities due to railroad power, crew shortages and congested switching terminals.

TEMPORARY TRACKAGE RIGHTS

As a result of the UP's congestion in Texas, the BNSF was granted temporary overhead trackage rights for the UP's Caldwell-Flatonia-Placedo line. IBP has benefited from this temporary route. This route prevented our tank cars from being subject to transit delays in the Houston yards. Compared to this time last year, IBP tank car transit times were better over the Caldwell- Flatonia- Placedo line than they were over the Algoa-Corpus Christi line.

ibp.

The efficiency in reduced transits is realized by the increase in cars available for loading through improved cycle times.

Period	Volume	Average Transit
May/June 1997	96 Shipments	20 Days
May/June 1998	110	16

RECOMMENDATION

IBP is requesting the Surface Transportation Board to grant the BNSF permanent trackage rights over the UP Caldwell-Flatonia-Placedo line. These permanent trackage rights will not only benefit IBP's rail fleet utilization, but will also benefit our customers who will be required to carry less "safety stock" inventory to effectively manage rail transit fluctuations.

Sincerely,

Perry M. Bourne

Perry M. Bourne
AVP Transportation

APPENDIX A

VOLUME FROM IBP PLANTS ON BNSF TO MEXICO VIA LAREDO, TX.

ACTUAL DATA FROM 06/01/97 TO 05/31/98

ORIGIN: AMARILLO,TX

PRODUCT	POUNDS SHIPPED	RAIL SHIPMENTS
TALLOW	120,017,037	731
BONE MEAL	16,378,750	98
FROZEN MEAT	629,750	5

ORIGIN: HOLCOMB, KS

PRODUCT	POUNDS SHIPPED	RAIL SHIPMENTS
BONE MEAL	1,404,700	8
FROZEN MEAT	1,735,500	14

ORIGIN: JOSLIN, IL

PRODUCT	POUNDS SHIPPED	RAIL SHIPMENTS
FROZEN MEAT	882,000	7

NATIONAL BY-PRODUCTS, INC.

3514 So. 33rd Street
P.O. Box 7234
Omaha, NE. 68107
402-342-2076
FAX 402-342-2156

Mr. Vernon Williams
Secretary
Surface Transportation Board
1925 K St. NW
Washington, DC 20423

July 2, 1998

Dear Mr. Williams,

National By-Products, Inc. , has two (2) Protein Blending Plants in Omaha, Nebraska. One plant is serviced by the BNSF, the other by the Union Pacific Railroad.

Almost all of our outbound Railroad moves are in Jumbo Hopper cars, from Omaha, Nebraska to Laredo, Texas for Export into Mexico. Our rates from both the BNSF and the Union Pacific Railroad are very close.

To grant BNSF permanent overhead tracking rights on UP'S San Antonio-Laredo line, would permit the BNSF access to the most direct route to Laredo, and therefore enable the BNSF to be more competitive.

Robert Blank

Sincerely,
Robert A. Blank
District Manager
National By-Products, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

HOUSTON/GULF COAST OVERSIGHT

VERIFIED STATEMENT OF
H. THOMAS KORNEGAY
EXECUTIVE DIRECTOR
PORT OF HOUSTON AUTHORITY

My name is H. Thomas Kornegay. I am Executive Director of the Port of Houston Authority. My business address is P.O. Box 2752, Houston, Texas 77252.

The purpose of my statement is express the Port of Houston Authority's support for the Burlington Northern Santa Fe's (BNSF) recommendation that the Union Pacific's (UP) Clinton Branch be controlled by the Port Terminal Railroad Association (PTRA). Two of the Port Authority's facilities are located on the Clinton Branch, Houston Public Grain Elevator No. 2 and Woodhouse Terminal.

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 Baldridge 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 5,400 ships, 50,000 barges and 935,000 TEU's (Twenty-Foot Equivalent Units). The top export cargoes include petroleum and petroleum products, organic chemicals, cereals and cereal preparation, plastics in primary forms, and animal oils and fats.

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.

Port Authority Facilities on the Clinton Branch

My statement is directed to the two Port Authority 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.

Port Authority Supports PTRA Operation of the Clinton Branch

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

No Change in Competitive Access

Changing the operating responsibility for the Clinton Branch to PTRA will not change the current competitive access to shippers on the branch. The shippers located along the Clinton Branch, with the exception of UP's own automobile unloading facility, already are open to reciprocal switch, and thus have access to railroads other than UP. Tariff ICC SP 9500-D, issued by Southern Pacific Transportation Company on September 11, 1996 lists in Item 5090 the industries on the Clinton Branch (listed under station name Galena Park - 35070) which are open to reciprocal switch. These include American Plant Food Company, Arrow Terminal Company, Delta Steel Incorporated, Exxon Energy Chemical, GATX Terminal, Holnam Incorporated, City of Houston, Houston Public Grain Elevator No. 2, Stevedoring Service of America (at that time the lessee and operator of Woodhouse Terminal), Texaco Lubricants Company, and United States Gypsum Company.

Service to the Elevator

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

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

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

Service to Woodhouse Terminal

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

To resolve these delays, the Port Authority developed with the railroads an informal routing in which the cars for Woodhouse were delivered to PTRA, 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 PTRA and delivered them to Woodhouse. In effect, this route substituted PTRA 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 PTRA'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.

Conclusion

□

The Port of Houston Authority supports the BNSF recommendation that operation of the Clinton Branch be performed by PTRA. As illustrated in this statement, PTRA 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.

VERIFICATION

My name is H. Thomas Kornegay. I am Executive Director of the Port of Houston Authority. I hereby declare under penalty of perjury that the facts in the foregoing statement are true and correct. I also certify that I am qualified and authorized to verify the facts set forth in this statement.

Executed on July ___, 1998

H. Thomas Kornegay

ROQUETTE AMERICA
1417 EXCHANGE STREET
KEOKUK, IOWA 52632
319-526-2204
FAX: 319-5262358

July 6, 1998

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

Dear Secretary Williams:

Now comes William R. Mudd, Director of Logistics , Roquette America Inc., 1417 Exchange Street, Keokuk , Iowa in Support of the Burlington Northern Santa Fe's petition for permanent overhead trackage rights on the Union Pacific's San Antonio-Laredo line permitting Burlington Northern Santa-Fe access to more direct route to Laredo.

Roquette America is a Corn Wet Miller with plants in Keokuk, Ia and Gurnee ,Ill and have in excess of 500 employees. We produce Corn Syrup , Starch, Fructose, Dextrose and Sorbitol in addition to the by-products of wet milling. We currently are shipping Sorbitol from our Keokuk facility to various locations in Mexico via the Burlington Northern Santa-Fe railroad which serves this facility.

It is anticipated that the current volume will increase in the next 12 months from 10 cars /year to over 50 Cars / year. By granting these overhead trackage rights to the Burlington Northern Santa-Fe railroad we believe our transit time will be reduced substantial. We currently lease in excess of 850 rail tankcars to handle deliveries to our customers. The reduction in transit time directly affects our cost and allows Roquette America to become more competitive.

We pray that the Surface Transportation Board will consider this statement and grant the trackage right in order to improve the competitive position of Roquette America in this lane.

Thank You for your consideration.

Sincerely,

W.R. (Bill) Mudd
Director Logistics

CTS Co

[redacted]

P.O. BOX 1000 • GEORGETOWN, TEXAS 78627-1000 • PHONE 512/863-5511, AUSTIN: 255-4405 • FAX 512/244-6055

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington D. C. 20423

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

On behalf of the Texas Crushed Stone Company, I am submitting this verified statement to express my support of the Burlington Northern and Santa Fe Railway Company's (BNSF) request for permanent overhead trackage rights on the Union Pacific's Taylor-Milano line.

My name is William B. Snead, and I am President of the Texas Crushed Stone Company located in Georgetown, Texas. Our business address is P. O. Box 1000, Georgetown, Texas 78627. Our company is in the business of quarrying crushed limestone. Our product is used in a variety of ways including as a base material for roads, as aggregate in concrete, as aggregate in hot mix asphalt, in agriculture to neutralize soil acidity, and as an air scrubbing material in coal fired power plants. We ship our stone products outbound from our quarry near Georgetown to customers in Houston and other points along the Texas and Louisiana gulf coast. Additional shipments are made to points all over East Texas. In bound shipments to points on the Georgetown Railroad consists of empty stone cars, loaded lumber cars, loaded ammonium nitrate cars, and occasional shipments of other materials.

Currently, our rail service transportation needs are being provided by both BNSF and UP with an interchange with Georgetown Railroad at Kerr/Round Rock. For stone movements into and out of our quarry, the BNSF uses the trackage rights it was granted over the Kerr- Temple-Taylor line and sometimes the trackage rights it was granted over the Kerr-Taylor-Sealy line. It has been our experience that these routes are inadequate because of heavy congestion on UP lines and the circuitous routing on the Taylor-Temple-Milano route.

Because of the inefficiencies of the rail service being provided to us, we have been unable to fill our customers orders in a timely manner. Our customer's orders have accumulated to the point that we have had more than 1200 rail cars released for shipment. Again because of UP's congestion problems and BNSF's circuitous routing we have been only able to ship an average of about 90 cars per day. This has forced our customers to delay construction projects and lose money because they have had men and equipment waiting for the stone necessary to build these projects. Since many of these projects involve the construction or rehabilitation of vital highway projects, these delays are having a negative impact on the transportation infrastructure of the state of Texas.

If BNSF were granted overhead trackage rights over the UP's Taylor-Milano line, BNSF could provide Texas Crushed Stone with better, more efficient service by avoiding much of the congested and circuitous trackage rights that BNSF is currently using. The benefits derived from these BNSF trackage rights will benefit Texas Crushed Stone, our customers, the UP and the BNSF.

I certify under the penalty of perjury that the foregoing is true and correct. Executed this 6 day of July 1998.

W.B. Snead

William B. Snead
President
Texas Crushed Stone Company

Verification

State of Texas
County of Williamson

I William B. Snead hereby verify that I have read the statements above and find that the statements are true and correct to the best of my knowledge.

W.B. Snead

William B. Snead

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

LaVerne J. Tonn

Notary Public in and for the
State of Texas

NOTARY PUBLIC STATE OF TEXAS
LAVERNE J. TONN
MY COMMISSION EXPIRES
APRIL 30, 2001

My Commission Expires 4/30/2001

TOSCO

July 2, 1998

C. W. PEGRAM
Traffic Manager

Tosco Refining Company
A Division of Tosco Corporation
2000 Crow Canyon Place
Suite 400
San Ramon, CA 94583
(510) 277-2304 Telephone
(510) 277-2410 Fax

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

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

Members of the Board:

My name is Charles W. Pegram. I am Traffic Manager for Tosco Refining Company which operates six petroleum refineries on the west coast.

This is my verified statement to the Board in support of the Burlington Northern Santa Fe Railway's request that neutral switching supervision be imposed on the former SP Baytown (Texas) Branch.

Tosco ships approximately 200 tank cars/year to customers at Mont Belvieu, Texas. With the completion of a butamer unit at one of our refineries, it is anticipated that shipments of product into Mont Belvieu will increase.

Since the completion of the UP/SP merger, service failures have cost my company thousands of dollars in reduced equipment utilization. Our support of BNSF's request for neutral switching supervision is offered in the belief that it will result in a more efficient operation and result in improved turnaround time of our tank cars. As the Board is quite aware, railroad service breakdown, particularly in Texas, has become of tantamount concern to shippers and receivers. We believe that granting the subject request will be yet another step in the right direction to bring rail service in Texas closer to a normal level.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of July, 1998.

Yours truly,

Charles W. Pegram

Charles W. Pegram
Traffic Manager

ULTRAMAR DIAMOND SHAMROCK
CORPORATION

June 30, 1998

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

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

My name is Steve Geneva. I am General Manager, Transportation for Ultramar Diamond Shamrock Company. This verified statement is being submitted in support of the request of The Burlington Northern and Santa Fe Railway Company's ("BNSF") request for the Surface Transportation Board to order neutral switching supervision on the former SP Baytown Branch.

Our plant is located in Mont Belvieu, Texas and is in the business of processing and splitting propylene, a petrochemical product, into components. We sell these components via pipeline to companies in the plastics and chemicals industry in and around the Gulf Coast area.

Our purchases of propylene are transported to our plant in Mont Belvieu by rail. We purchase product form various origins in the United States, including from Williams Energy Company in Memphis, Tennessee. BNSF carries inbound to our plant 20 cars of propylene every other day. UP also provides rail service for a portion of our propylene traffic and also directly serves our plant.

We expect that by the first quarter of 1999, our business needs will grow. It is anticipated that our company will require the capacity to load and unload up to 40 cars daily. It is also likely that during 1999, our company will have the need for rail services for outbound traffic.

As mentioned above, both BNSF and UP have been providing switching at our plant since mid-April this year. Prior to that, for a short period of time, UP was providing haulage services. Our experience with UP haulage was that there were a lot of delays. Although service has been somewhat better with BNSF and UP both providing switching, we believe that even better service would be provided if a neutral switcher were to supervise operations on the branch.

P.O. BOX 696000 • SAN ANTONIO, TEXAS 78269-6000 • 210 / 592-2000

A neutral switcher would enhance the efficiency of operations for several reasons. First, with only one neutral switcher on the branch, there would be less overall activity on the branch, a likely reduction in the number of switches and generally less congestion for all customers on the branch whether their rail services are provided by BNSF or UP. Second, if there is only one neutral party supervising the switching of our plant, it would provide for better coordination of all activities including loading and emptying cars. Third, with increased efficiencies that a neutral switcher could provide, we would have improved turnaround times on cars, the majority of which are owned by our supplier Williams Energy out of Memphis, Tennessee.

As our business continues to grow, and with the expectation of outbound shipment sin sometime in 1999, our need for improved, efficient and competitive rail transportation services becomes even more important. The installation of a neutral party to supervise switching of the branch would provide a long-term solution to our need for such efficient and competitive service.

In sum, we support BNSF's request that the Board order that a neutral switcher shall supervise the Baytown Branch. We believe that this request will benefit our company and other shippers on the branch and will result in service improvements for both UP and BNSG.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 30th day of June, 1998.

Sincerely,

Steve Geneva

Steve Geneva
General Manager Transportation

Subscribed and sworn to me this 30th day of June, 1998.

JODI O. CHIRSTIANSEN
Notary Public State of Texas
My Commission Expires: 03/07/2002

Jodi O. Christiansen

UNITED SALT CORP.

4800 San Felipe
Houston, TX 77056

(713) 877-2600
FAX: (713) 877-2664

July 7, 1998

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

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

Dear Secretary Williams:

My name is Mike Causseaux. I am Distribution Manager with United Salt Corporation located in Houston, Texas. This verified statement is being submitted in support of the request of The Burlington Northern and Santa Fe Railway Company ("BNSF") for the Surface Transportation Board to order neutral switching supervision on the former SP Baytown Branch.

Our company is currently building a salt mining plant on the Baytown branch. The first phase of construction is planned for completion in April of 1999 and we expect to become operational at that time. Our customers use our salt in a multitude of products such as water softener, and it is also used extensively in the dye, chemical and food industries. Typically, our product is shipped via rail or truck to our customers.

Once operational at our Baytown plant, we anticipate shipping 600-700 rail cars per year from that location to customers located primarily in the Midwest. We do not expect any inbound rail traffic at this time.

In anticipation of our new plant operations on the Baytown branch, we are very concerned about the efficiency of switching operations in order to keep our production at steady levels and provide timely service to our customers.

Based on these concerns, we believe that BNSF's request to have neutral switching supervision of the branch provides a good and practical solution to the problems that other shippers have been experiencing on the branch. It is only logical that with one neutral switcher on the branch there would be less overall activity on the branch. This in turn would likely reduce the number of switches and congestion for all customers on the branch whether their rail services are provided by BNSF or UP. A neutral party supervising the switching would also provide for better coordination of all activities including loading and emptying cars.

In sum, our company believes that the installation of a neutral party to supervise switching of the branch would provide a long-term solution to our needs and the needs of other shippers for efficient and competitive service and will result in service improvements for both UP and BNSF.

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

R. Michael Causseaux

R. Michael Causseaux
Distribution Manager

21205767.1 70798 1609E 95210647

VITROMEX

July 2nd. 1998.

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

Subject: Docket No. 32760
Sub-No. 26.

Grupo Industrial Saltillo serves commercial, industrial and consumer markets with autoparts, ceramic floor and stoneware. Based in Saltillo, México, Grupo Industrial Saltillo was founded in 1928 and employs over 12,000 people.

Our traffic department handle 20'000,000 dlls/year to move all kind of freight. Our rail traffic is of 156,700 tons/year, 30% of our total traffic. These are our main commodities that we handle by rail.

Commodity	Shipper	Origin	Tons
Silica Sand	Badger Mining	Utley, WI	84,000tons/year.
Coke	ABC Coke	Birmingham, AL	30,000tons/year.
Clay	United Clay	Gleason, TN	31,200tons/year.
Silica Sand	Oklahoma Sand	Mill Creek, OK	11,500tons/year.

Lately, or better said since the merger of UP/SP we have experienced a lot of delays on our business from the USA mainly because of the lack of competitiveness on rail transportation over the Laredo, TX/Nuevo Laredo, Tamps. border.

The delays as we all know have been due the problems that the UP/SP merger have incurred in handling appropiately this merger to the fact that we as many other companies have been jeopardizing our international business because of delays incurred in traffic.

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

Therefore we kindly request that the BNSF obtains overhead trackage rights on UP's San Antonio-Laredo line, and that also obtain permanent bi-directional trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia Placedo lines , in place of temporary trackage rights at present.

We believe that by approving these trackage rights, all parties involved, even the UP/SP will benefit from it since they will hardly incur in congestion again, since there will be another company that will compete with them and will enforce that both companies become efficient if they want to participate in the market.

Thanking you in advance for your kindly attention to my request and hoping that my request is approved.

Sincerely yours,

Ing. Francisco J. Garza O. de M.

Blvd. Isidro Lopez # 4103
A.P. 385
C.P. 25230
Tel. (84) 11-50 -11
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Saltillo, Coahuila.

STB FD-32760 (SUB29) 7-15-98 A ID-189847

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES
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Office of the Secretary

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Part of
Public Record

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-No. 26 and 29)

Dear Secretary Williams: 189846 189847

Enclosed please find the original verification for Dynegy whose verified letter of support was filed as part of The Burlington Northern and Santa Fe Railway Company's Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area on July 8, 1998.

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

Sincerely,

Erika Z. Jones / KAK

Erika Z. Jones

Enclosure

Dynegy Inc
1000 Louisiana Street, Suite 5800
Houston, Texas 77002
Phone 713.507.6400
www.dynegy.com

DYNEGY

The Honorable Vernon A. Williams
Secretary
1925 K Street, NW
Washington, D.C. 20423

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

Dear Mr. Williams;

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

I, Janice Rowland, Rail Operations Supervisor represents Dynegy Inc. (formally Warren Petroleum), who in Mont Belvieu Texas stores, manufactures, and sells LPG products out of our facility there. We have our own fleet of cars plus customers cars that come in and out of our facility. We currently handle around 800 cars a year. Our Facility is located on the Baytown branch on the line coming out of Dayton, Texas. We have a limited area for trains and rail cars so it is important that the carrier be consistent and reliable.

We foresee a neutral switching operation would improve the efficiency of operations by reducing the congestion that potentially could happen with two carriers switching. Also with a neutral switcher we can expect that all the cars will be pulled and we can prioritize with confidence.

We expect our business at Mount Belvieu to continue to grow in the future. The installation of a neutral party to supervise switching of the branch would provide a long-term solution to our need of efficient and competitive service.

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

Sincerely,

Janice Rowland

Janice Rowland
Rail Operations Supervisor
Dynegy Inc.