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SURFACE
TRANSPORTATION BOARD

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

RE: Finance Docket No. 32760 (Sub-No. ~~26~~ 30),
Union Pacific Corp., et al. – Control & Merger – Southern Pacific Rail Corp., et al. -- Houston/Gulf Coast Oversight

Dear Secretary Williams:

Enclosed for filing in above captioned proceeding are an original and twenty-six copies of the Request For Adoption Of A Consensus Plan In Order To Resolve Service And Competitive Problems In The Houston/Gulf Coast Area (the "Consensus Plan") filed on behalf of The Chemical Manufacturers Association, The Society of Plastics Industry, Inc., The Railroad Commission of Texas, The Texas Chemical Council, The Texas Mexican Railway, and The Kansas City Southern Railway Company (collectively, the "Consensus Parties"). Please date and time stamp one copy of the Consensus Plan for return to our offices.

Pursuant to discussions with your office, also enclosed is a check in the amount of $53,000 as a filing fee in accordance with the provisions of 49 CFR § 1002.2. Please note that this fee is in addition to the $48,300 filing fee paid on March 30th by Tex Mex and KCS, which the Consensus Parties request be carried forward and applied to this filing. Furthermore, the Consensus Parties will later file a petition requesting a refund of a portion of these filing fees.

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TRANSPORTATION BOARD

Also, included with this filing is a 3.5-inch diskette with the text of the pleading.

Sincerely,

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

cc: Parties of Record
Honorable Stephen J. Grossman

189672

CMA-2 SPI-2
RCT-2 TCC-2
TM-2 KCS-2

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-No. ~~26~~ 30)

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

REQUEST FOR ADOPTION OF A CONSENSUS PLAN IN ORDER TO RESOLVE SERVICE AND COMPETITIVE PROBLEMS IN THE HOUSTON/GULF COAST AREA

THE CHEMICAL MANUFACTURERS ASSOCIATION

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS CHEMICAL COUNCIL

THE TEXAS MEXICAN RAILWAY COMPANY

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

July 8, 1998

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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

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INTRODUCTION AND SUMMARY

> The merger between Union Pacific and Southern Pacific railroads has been, in short, the marriage from hell. Problems stemming from the merger have resulted in a financial nightmare for Texas shippers. Numerous promises and deadlines made by UP officials to unclog their railways and improve service came too little too late. While UP cars were backed up on the tracks, Texas businesses were losing an estimated $ 100 million monthly. * * * The solution to Houston's clogged railways is apparent: the STB needs to give other railroad carriers more access to UP's tracks.
>
> *Clogged Tracks; Plan offers promise for clearing Texas' railway backup*, Houston Chronicle, January 19, 1998, at 18.

So said the major newspaper in the city most affected by the impact of the Union Pacific ("UP") / Southern Pacific ("SP") merger. The merger between UP and SP was promoted to improve the railroad system in the United States. However, what began as promise has turned into a nightmare which has resulted in an unprecedented service meltdown. The merger, notwithstanding the conditions imposed, has reduced competitive rail service and exacerbated the service disruptions.

The Houston area has been the hardest hit region during this service crisis. UP controls 9 out of the 11 tracks into and out of Houston, approximately 70% of the switching, and controls an 87% market share of Houston traffic bound to and from the Southeast. This virtual monopoly by UP has led the Houston area shippers to bear the brunt of the service meltdown.

As a result of UP's dominance of the Houston market, Texas manufacturers and shippers have suffered enormous economic damages from UP's meltdown. In a study dated February 9, 1998 for the Railroad Commission of Texas, Dr. Bernard Weinstein and Dr. Terry Clower, said, "[w]e conservatively estimate the costs to date for Texas businesses, measured by lost sales, reduced output and higher shipping charges, at $1.093 billion. We have also identified $643 million in additional costs to businesses, consumers and taxpayers in Texas that may be incurred within the next few months unless the Union Pacific can quickly remediate its service delivery problems." Bernard L. Weinstein, Ph.D. and Terry L. Clower, Ph.D., *The Impacts of the Union Pacific Service Disruptions on the Texas and National Economies: An Unfinished Story*, Feb. 9, 1998 at 4 (emphasis in original) (the study is attached herein as Exhibit A to the Joint Verified Statement of Dr. Curtis Grimm and Mr. Joseph P. Plaistow ("Weinstein study").[1]

Shippers are not the only ones damaged by the service meltdown. UP's control of most of the Houston area tracks means that BNSF and Tex Mex, who operate into, out of, and through

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[1] Throughout this filing, there are numerous citations to various documents, pleadings, and studies. Most of these are attached as exhibits to various witness statements. However, for ease of reference, to the extent not attached to a witness statement, the relevant section of a document, pleading, or study is included as supplemental information and enclosed in Volume 2 of this filing.

Houston via trackage rights, must operate their trains under unsatisfactory conditions imposed by UP. When UP has delayed trains, labor disruptions, or any other service problems on its tracks, a chain reaction occurs that affects BNSF and Tex Mex by delaying their trains and causing their service to suffer. These compounded failures consequently continue to exacerbate, rather than ease, the service meltdown in the area. The chain reaction is not only costing the shippers money, it is also severely hurting the other railroads. *See* Verified Statement of Joseph J. Plaistow at 7.

The crisis that Houston is experiencing has also had a ripple effect that has been felt by the railroad industry as a whole, the customers that it serves, and the U.S. economy. "If the Union Pacific service disruptions have cost the state of Texas more than $1 billion so far, the national economic cost is probably in excess of $2 billion." Weinstein study at 22 (emphasis in original).

This submission is being made by a broadly-based group of interested parties in response to the shippers' concerns and to the invitation of the Surface Transportation Board in Decision No. 1 in this proceeding.[2] That decision invited concerned parties to submit requests for new remedial conditions to be imposed on the UP/SP merger to address service and competitive problems not adequately remedied by the conditions originally imposed by the Board in the decision approving that merger.[3]

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[2] *Houston/Gulf Coast Oversight*, Finance Docket No. 32760 (Sub-No. 26), Decision No. 1, (STB served May 19, 1998).

[3] *See Union Pacific Corporation, et al. – Control and Merger – Southern Pacific Rail Corporation, et al* Finance Docket No. 32760, Decision No. 44, slip op. at 146 (STB served Aug. 12, 1996)(*"Decision No. 44"*).

Decision No. 1 recognizes the truly extraordinary and unprecedented nature of the continuing crisis in rail service affecting Houston and the Texas Gulf Coast region. It also correctly recognizes that the crisis warrants a separate proceeding specifically to consider new remedial conditions to alleviate the problems on a more than short-term basis. The Board stated:

> The virtual shutdown of rail service in the Houston Gulf/Coast Area that occurred after the UP/SP merger – and which, after many months, has yet to be normalized – is unprecedented. . . . [T]he service crisis in this region, and its significant impact on the regional economy, clearly warrant our discrete treatment of these matters now.

Decision No. 1 at 5. The Board also noted that it had acted to alleviate the problems when it issued and later extended Emergency Service Order No. 1518, but that those actions were necessarily limited and short term in view of the limitations on the Board's statutory authority to issue emergency service orders. *Id.* at 4. Accordingly, the Board invoked its expressly retained oversight jurisdiction to "thoroughly explore anew the legitimacy and viability of longer-term proposals for new conditions to the merger as they pertain to service and competition in that region." *Id.* at 5-6.

The parties making this submission fully concur with the Board's assessment of the crisis, and they applaud the Board's recognition of the need to consider proposals for new merger conditions. These parties represent a broad spectrum of shippers, communities and railroads that have been grievously harmed by "the virtual shutdown of service in the Houston/Gulf Coast area." The shutdown has caused over a billion dollars of damage to shippers, railroads, other businesses and employees in the immediate region and has had serious ripple effects throughout North America.

Accordingly, in response to the service crisis and the Board's directive in Decision No. 1, The Chemical Manufacturers Association ("CMA"), The Society of the Plastics Industry, Inc.

("SPI"), The Texas Chemical Council ("TCC"), The Railroad Commission of Texas ("RCT"), The Texas Mexican Railway Company ("Tex Mex"), and The Kansas City Southern Railway Company ("KCS") (collectively "Consensus Parties") held a series of meetings among themselves and with other organizations, companies, and affected parties in order to develop a consensus regarding the scope of any such filing requesting additional remedial conditions. The Board has repeatedly stated its preference for consensus proposals and solutions and it was the goal of the Consensus Parties to develop just such an agreed upon solution.[4]

The parties have worked long and hard to develop a set of conditions they believe will help meaningfully to alleviate service and competitive problems that are related to the UP/SP merger. The Consensus Plan builds upon the provisions temporarily imposed by the Board in Service Order No. 1518 and other provisions proposed by the Tex Mex and KCS on February 12, 1998 (TM-5/KCS-5) and March 30, 1998 (TM-7/KCS-7) and the Railroad Commission of Texas filing (*See Supplemental Petition of the Railroad Commission of Texas*, STB Ex Parte No. 573 / Service Order No. 1518 filed Dec. 1, 1997 and the Greater Houston Partnership ("GHP") request in that same proceeding (*see also* Resolution of the Board of Directors to Resolve Houston's Current and Future Freight Rail Service Issues filed March 3, 1998.[5]

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[4] The Port Authority of Houston, the Greater Houston Partnership, the National Industrial Transportation League, and the Burlington Northern and Santa Fe Railway Company took part in those discussions. The Port of Houston is submitting herein a statement of support for most elements of the Consensus Plan. The Greater Houston Partnership and the National Industrial Transportation League are making separate filings setting forth certain "principles" that they believe the STB should adopt when considering proposals to resolve the service and competitive crisis in Houston and the Gulf Coast. These principles are substantially similar to certain elements of the Consensus Plan. The Burlington Northern and Santa Fe Railway Company is submitting its own plan, which has been discussed with the Consensus Parties.

[5] The Consensus Plan, while different in some respects from the February 12 (TM-5/KCS-5) and March 30 (TM-7/KCS-7) plan filed by Tex Mex and KCS and the plans filed by the RCT and GHP, builds upon and supplements many of the arguments and evidence contained within those

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

The Consensus Parties are in agreement that additional remedial conditions for Houston and the Texas Gulf Coast are necessary in order to solve permanently the rail service and competitive problems in the Houston/Gulf Coast area that were caused by the UP/SP merger. The Consensus Plan outlined below represents those elements which the Consensus Parties believe should be adopted by the STB as conditions to the UP/SP merger. If the parties affected by an element of the plan fail to expeditiously reach a private agreement relating to compensation, the Consensus Parties specifically request the STB to determine the appropriate compensation.

1. The STB should permanently adopt the following provisions of the Emergency Service Order ("ESO") No. 1518 dated October 31, 1997 and as extended in Supplement 1 issued December 4, 1997, and Supplement 2 issued February 25, 1998:

   a) Lift the traffic restriction placed on Tex Mex in STB Decision No. 44 which approved the UP/SP merger. In Decision 44, the STB granted Tex Mex trackage rights on UP/SP between Corpus Christi/Robstown and Beaumont, Texas. However, the Board imposed the restriction that Tex Mex could only transport traffic that had a prior or subsequent movement on the Tex Mex between Corpus Christi and Laredo. As a result of the service crisis the Board removed this restriction, in ESO No. 1518, thereby allowing Tex Mex to receive and transport all traffic in Houston from

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filings. Accordingly, to the extent applicable, the Consensus Plan set forth herein specifically incorporates the argument and evidence contained within those filings and appropriate citations to those filings are indicated.

customers that were served by The Port Terminal Railroad Association ("PTRA") or former Houston Belt & Terminal Railway Company ("HBT").

b) Maintain the additional trackage rights temporarily granted to Tex Mex over the UP's Brownsville Subdivision, referred to by the Board as the "Algoa route" between Placedo and Algoa, TX and over the Burlington Northern Santa Fe ("BNSF") between Algoa and T&NO Jct. For the use of these tracks, Tex Mex will pay UP and BNSF a trackage rights fee equivalent to the fee that BNSF currently pays UP as established in Decision No. 44 of the UP/SP decision. In ESO No. 1518, the Board authorized the Tex Mex to operate over the Algoa route. In Supplement 1, Service Order 1518, the Board directed Tex Mex to operate over the Algoa route in compliance with the UP's directional running.

c) During the time for which the Emergency Service Order has been in effect and until such order expires, Tex Mex will submit to the STB and all parties of record a service performance report which will demonstrate the effectiveness, or lack thereof, of the access granted to Tex Mex under the ESO.

2. The STB should restore neutral switching in Houston that was lost when the UP and BNSF dissolved the HBT. The geographic scope would encompass all of the industries and trackage that were formerly served by the HBT, as well as all industries and trackage of the PTRA. The PTRA would be the logical choice as the provider of this neutral switching. The UP and BNSF would grant the neutral switching entity trackage rights over former HBT trackage and the use of appropriate yards.

3. The STB should expand the neutral switching area to include all customers currently located on the former SP Galveston Subdivision between Harrisburg Jct. and Galveston.

This would include shippers located at Sinco, Pasadena, Deer Park, Strang, LaPorte, the Clinton Branch, the Bayport Loop and the Bayport area, including Barbours Cut and the Navigation Lead. The neutral switching area will also include Galveston over both the former SP and the former UP routes between Houston and Galveston. The UP would be required to grant the neutral switching company (PTRA) trackage rights between Houston and Galveston over both routes with rights to serve all industries located along the two lines. The UP would also grant PTRA access to the former SP and UP yards at Strang and Galveston to facilitate service to local industries, the switching, classification, and blocking of rail cars for all railroads having interchange rights with the PTRA.

4. The STB should require neutral dispatching within the area defined as the neutral switching area. The neutral dispatching would be located, managed and administered by the PTRA. All railroads serving Houston would be granted terminal trackage rights by the owning carrier over all tracks within the neutral switching and dispatching area to enable the neutral dispatcher to route trains over the most efficient route.

5. The STB should require UP and BNSF to acknowledge Tex Mex's full voting membership on the PTRA board and should require UP and BNSF to restore the Port of Houston Authority as a full voting member of the PTRA board.

6. The STB should require the sale of UP's rights to the SP's former line between Milepost 0.0 at Rosenberg and Milepost 87.8 at Victoria, Texas to the Tex Mex on reasonable terms and conditions. Tex Mex will then re-construct this line and when completed, the Tex Mex will grant UP and BNSF trackage rights between Rosenberg and Victoria to facilitate UP's directional traffic on the Brownsville Subdivision. The STB should order trackage rights to be granted to Tex Mex by UP over the two miles on the south end of

this line between Milepost 87.8 and point of connection at UP's Port LaVaca branch at Victoria. UP would also retain rights to serve industries currently located along the portions of the line for which SP had not previously sought abandonment. Tex Mex also would give up its current trackage rights on the UP's Glidden Subdivision between Tower 17, Rosenberg and Flatonia upon Tex Mex's commencement of operations on the former line between Rosenberg and Victoria.

7. The STB should require the UP to sell or lease an existing yard in Houston to the Tex Mex at a reasonable rate. Booth Yard appears to be the most logical choice with the necessary capacity that Tex Mex needs to compete. If the parties cannot agree, the STB will arbitrate the terms and location of the yard. Tex Mex will sub-lease to UP a portion of Booth Yard to hold a maximum of 300 empty storage cars until such time that Tex Mex can complete construction of the line between Rosenberg and Victoria and such time when Tex Mex can build a storage yard between Rosenberg and El Campo. Upon completion of a storage yard, Tex Mex will lease to UP track space at the new storage yard to hold a maximum of 300 empty storage cars. Upon execution of such lease, Tex Mex will cancel its sub-lease to the UP of yard space at Booth Yard. Tex Mex will upgrade Booth Yard by reconstructing the south end of the yard.

8. The STB should require the UP to allow Tex Mex/ KCS to construct a new rail line on UP's right-of-way adjacent to UP's Lafayette Subdivision between Dawes and Langham Road, Beaumont, TX. Upon completion of this new rail line, Tex Mex/KCS will deed it to UP in exchange for a deed to the UP's Beaumont Subdivision between Settegast Jct., Houston, and Langham Road, Beaumont. Tex Mex will dispatch this line from Houston

and will grant BNSF and UP trackage rights over this line. Tex Mex will retain trackage rights over the Lafayette Subdivision between Houston and Beaumont.

Name, Address and Telephone Number of Petitioners and Their Counsel [49 C.F.R. Section 1180.6(a)(1)(i)]

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<u>The Purpose Sought to Be Accomplished by the Consensus Proposal [49 C.F.R. Section 1180.6(a)(1)(iii)]</u>

The Consensus Parties ask the Board to impose a set of conditions that will help to restore competition and service in the Houston/Gulf Coast area. Underlying the Consensus Plan are certain conclusions shared by the Consensus Parties, that guided the discussions and development of the Consensus Plan. These conclusions are:

1. The service crisis is the result of multiple causes, not a single or predominating cause. Some of those causes are clearly effects of the UP/SP merger.

2. Insufficient rail infrastructure is a contributing factor, as the Board indicated in Decision No. 1, but insufficient <u>competitive</u> infrastructure – <u>i.e.</u> infrastructure not controlled by UP-- is demonstrably more significant than lack of UP infrastructure. Indeed, it is highly questionable that UP can fairly place much blame for its service deficiencies on its own lack of infrastructure.

3. The UP/SP merger has greatly reduced rail competition in the Houston/Gulf Coast region. The service crisis provides compelling evidence of that fact. That BNSF and Tex Mex do not provide effective competitive alternatives to shippers in that market is abundantly evident from the simple fact that, despite "the virtual shutdown of rail service" by UP in that market, UP continues to maintain an extraordinarily high market share of Houston traffic. That circumstance simply could not happen in a market where there were truly effective competitive alternatives.

4. Furthermore, this submission includes specific evidence that UP has used its control of lines and dispatching to hinder Tex Mex in its efforts to provide effective competitive service as contemplated by the STB.

5. The evidence establishes that there is a significant relationship between the reduction of competition and UP's unprecedented service failures. It is axiomatic that

competition stimulates service to consumers. It is not only a matter of competition giving service providers the proper incentives to serve their customers. If one provider is unwilling or unable to give its customers good service because of mismanagement, merger implementation difficulties, or for any other reason, the presence of effective competitors enables the customers to obtain that service from others. In Houston and the Gulf Coast, UP's customers have not had that option. Consolidated ownership of rail assets in the Houston area has reduced the effectiveness of the conditions imposed by the Board to maintain the pre-merger laws of competition.

6. UP's claim that its service problems are unrelated to the UP/SP merger is belied by the extraordinary and persisting character of those problems. The crisis has persisted for more than a year, and has persisted through repeated assurances by UP's top management to this Board and the public that the problems would shortly be fixed. At the Board's very first hearing on this matter, on October 27, 1997, UP's Chairman confidently predicted to the Board that the service crisis would "not extend beyond Thanksgiving by any appreciable manner." Although UP's management has repeated such similar promises many times since then, its service has not significantly improved. UP's claim that its problems have nothing to do with the merger that immediately preceded them has no more credibility than its repeated assurances of imminent recovery.

7. The service crisis shows that the conditions initially imposed by the Board on the UP/SP merger have been inadequate to preserve pre-merger levels of rail competition and rail service. The Board has correctly shown concern with both competition and service; both are elements of the public interest that the Board must use its merger-conditioning power to protect. 49 U.S.C. § 11324(b)(1) and (b)(5).

Given these conclusions, the Plan has three basic objectives:

- The Plan will add substantial new competitive infrastructure to the region. The Plan asks the Board to authorize Tex Mex and KCS to acquire and restore an out-of-service UP rail line south of Houston and to add a second track on one of the two UP rights-of-way between Houston and Beaumont, Texas, thereby creating three lines between these two interchange points. These two projects alone will entail capital investments by Tex Mex and KCS of upwards of $150 million. The plan also provides for additional yard capacity. The infrastructure added as part of the Consensus Plan will also benefit UP and BNSF.
- The Plan will essentially restore the competition and operating arrangements that existed before the UP/SP merger. As recently as 1988, there were five separate Class I railroads serving Houston shippers, and two terminal railroads, HBT and PTRA, which provided all of those Class I railroads and a substantial number of Houston shippers with neutral dispatching and switching services. While the Plan will not bring five railroads back to Houston, it will restore neutral switching and dispatching to the three that do serve Houston today (UP, BNSF, and Tex Mex) and restore competition to the vast majority of Houston shippers.
- The Plan will help carry out the purpose of the Board's condition granting trackage rights to Tex Mex, which was to enable Tex Mex to be an effective competitive alternative to UP for U.S.-Mexican traffic. The restriction imposed by the Board on those rights, which limits the traffic Tex Mex can carry under its trackage rights, has seriously impaired Tex Mex's ability to be an effective competitor for that traffic. Permanently removing that restriction (which Service Order No. 1518 has done on a temporary basis) will not only make Tex Mex a more effective competitor but is also necessary to justify the cost of Tex Mex's and KCS's investment in restoring the Rosenberg-Victoria line and building a third line between

Houston and Beaumont. The elimination of the restriction on Tex Mex's service to Houston can be accomplished without any elaborate negotiations or other arrangements among the Houston carriers. The service and contractual relationships are in place today and can remain in place. Implementation of this condition is as simple as turning on a light switch.

A Discussion of the Public Interest Justification in Support of the Consensus Plan [49 C.F.R. Section 1180.6(a)(2)(i)-(a)(2)(vi)]

ITEM 1(a) OF THE CONSENSUS PLAN

GRANT THE SAME TRACKAGE RIGHTS TO TEX MEX AS THE BOARD GRANTED IN DECISION NO. 44 IN DOCKET NO. 32760 BUT WITHOUT THE RESTRICTION THERE IMPOSED AS TO THE TYPE OF TRAFFIC TEX MEX CAN CARRY UNDER ITS TRACKAGE RIGHTS.

A. Removing The Restriction Will Allow Tex Mex To Be An Effective Competitor For NAFTA And Houston Traffic

In the UP/SP merger decision, the Board granted Tex Mex certain limited access to Houston shippers and certain limited trackage rights to ensure effective competition for Houston and North American Free Trade Agreement (NAFTA) traffic and to ensure the continued provision of essential rail services provided by Tex Mex to Texas shippers. *See* Decision No. 44, at 147-151; UP/SP Merger Voting Conference Transcript, July 3, 1996 at 20-21, 73-74, 96-99. While the Board intended these conditions to provide Houston and NAFTA shippers with a competitive alternative to UP, they have not. As Curtis Grimm and Joseph Plaistow show in their joint verified statement, Houston shippers, even in the midst of a service crisis, have had no alternative but to use UP. Unless the Consensus Plan is adopted, this UP domination will continue. As shown further in the verified statement of George Woodward and the Verified Statement of Shelby G. Turner, the restriction imposed on Tex Mex's trackage rights in Decision No. 44 has been a serious and artificial impediment to Tex Mex's ability to be an effective competitor to UP for Houston and NAFTA traffic, contrary to the Board's purpose in Decision No. 44.

For numerous reasons, this restriction places Tex Mex at a great disadvantage to UP in providing the competition for NAFTA traffic that the STB intended. Railroads bid for shippers' business on the basis of rates, service, and equipment needs. Shippers review those bids based upon their criteria and award a contract based upon their needs. Most rail contracts have volume commitments. These are usually for between 80 and 95 percent of all the shipments that are available to rail. V.S. Turner at 2. If a large portion of a shipper's rail shipments are destined to points that are not accessible to Tex Mex, then Tex Mex is effectively precluded from bidding for most of the U.S.-Mexico traffic theoretically available to it. If a shipper's business to Mexico is a relatively small percentage of its overall requirements, it is not unusual for that shipper to lump its Mexico business with other business to other parts of the United States and then award the contract based upon the successful bid of the entire package. V.S. Turner at 2. In reality, therefore, UP can solicit traffic at Houston to and from major markets in the Southeast, the Northeast, the Midwest, California, and the Pacific Northwest, in addition to traffic to and from Mexico. Due to the limitations placed upon Tex Mex's trackage rights, however, Tex Mex cannot offer an effective competitive alternative to UP even for the U.S.-Mexican traffic.

Another example of Tex Mex's inability to compete due to the trackage rights restriction is the fact that dedicated trains for packaged freight, such as United Parcel Service or other LTL carriers from Monterrey and Mexico City, are generally "hubbed" at Houston and then combined with domestic U.S. freight destined for specific markets in the United States, including Chicago, Kansas City, and Atlanta. Only by having the unrestricted ability to solicit freight at Houston for both carload and intermodal can Tex Mex effectively bid on this traffic and provide service in the primary market where the Board intended it to provide a competitive alternative. V.S. Woodward at 4-5.

The restrictions on Tex Mex also prevent it from fulfilling its intended competitive role is the market for the transportation of plastic resins manufactured in Houston. Plastic resins are usually produced without the final destination being determined at the time of production. Covered hoppers of plastic resins are commonly taken to storage in transit yards ("SIT yards") in the Houston area before their ultimate destinations are determined. Tex Mex's ability to compete for this traffic has been effectively hamstrung by its restriction to solicit only Mexico destined traffic. Plastics shippers clearly want a rail carrier that can solicit freight to all major markets and deliver those cars to the appropriate connecting carriers when the destinations of the shipments are determined. V.S. Woodward at 6.

Similarly, Tex Mex's ability to develop a transportation market for automotive customers directly hinges on its ability to use Houston as a gathering, distribution and mixing point for vehicle and parts traffic to and from Mexico. Automotive shippers have become adept in using the network capabilities of the U.S. rail system. Ford Motor Company's mixing center in Kansas City is an example of this concept where shipments of vehicles from widely dispersed assembly plants are resorted by dealer destinations and then taken by rail and truck to consuming markets. Similarly, vehicles produced in Mexico can be mixed with vehicles imported through the port of Houston for rail and truck distribution to markets in the United States and Canada. Tex Mex's ability to participate in these transportation network opportunities is severely and negatively impacted because it is not able to solicit northbound freight in the Houston marketplace. For Tex Mex to provide effective rail competition at the important Laredo gateway, it is necessary that the Board permanently provide Tex Mex the ability to solicit traffic northbound from its Houston "hub." V.S. Woodward at 5.

Tex Mex's operations under the Emergency Service Order also clearly have shown why it is important for Tex Mex to have permanent access to all Houston traffic. In the ESO, the Board recognized that Tex Mex has the crew and equipment capacity to move freight in and out of Houston. To help relieve the congestion, the ESO allowed certain Houston shippers -- those served by the former HBT and the PTRA -- to be released from their current UP contracts for purposes of selecting a new competitive rail carrier. Although some shippers were able to take advantage of this opportunity, the temporary nature of the ESO rights deterred most Houston shippers from doing so, despite the fact that Tex Mex had the ability to move a significant number of cars out of the congested terminal complex. V.S. Turner at 3.

One of the reasons why shippers could not take advantage of Tex Mex during the ESO is the fact that shippers rely less upon human resources and more on technology to assist them in their day-to-day shipment transactions. The software technology provides that a shipper can establish software patterns, or models, that will allow the shipper to enter just the origin and destination ("O/D pair"), while the computer does the rest of the work. Once a software pattern is established, and until such time as it is changed, that software will automatically enter routing, rates, and other billing information for any O/D pair. However, the software will not route over a temporary route, in this case Tex Mex, unless a re-programming takes place, which is a complex and expensive process. V.S. Turner at 3. Accordingly, the "backroom" work done by shippers is too labor and resource intensive for a temporary rights such as those granted under the original ESO. *Id.* The incremental extensions of the ESO did not resolve this problem. Only a permanent lifting of the restriction will.

Further complicating the situation is the fact that shippers are also required to re-negotiate "gateway" rates from other railroads to enable their products to reach their destination, which the eastern carriers have been unwilling to do during the ESO. *Id.* The shippers also run the risk of higher rates being assessed by the UP once they are forced to return their business to UP lanes at the end of the ESO. Accordingly, unless Tex Mex is given permanent access to all Houston traffic, the shippers will never truly benefit from having an available service alternative in the event of future congestion crises.

B. Adopting the Consensus Plan, Including Removing the Restriction, is Crucial To Restoring Competition In The Houston Area

The verified statements of Frederick L. Webber, President and CEO of CMA, and Larry L. Thomas, President of SPI, provide important shipper perspective regarding UP's service crisis. Dr. Curtis Grimm and Joseph Plaistow's joint verified statement also cites many examples of disgruntled shippers complaining about UP's service meltdown. Over and over again, shippers cite to increased cycle times for delivery, inconsistent service and increased expenses in dealing with the delays. UP's weekly report of June 29, 1998 indicates that these problems have persisted and are at least as bad as they were a year ago, and in many cases much worse.

Yet, despite these problems, the shippers could not switch to alternative rail services. Instead, when shippers became desperate from the delays and service problems that plagued UP, they turned to other modes of transportation, namely trucks, at drastically increased costs. "Without the product available via rail, we have had to ship via tank truck which has increased the cost of moving product as high as 100% above what we typically pay for rail service." Joint Petition for Emergency Service Order, filed October 20, 1997, Verified Statement of Mike Scherm, Solvay Polymers, Inc., attached herein.

Almost all of the disgruntled shippers continued to use UP for their rail transportation. Given their extreme dissatisfaction, the only reason that they would do so is obvious: as discussed above, they simply had no effective rail alternative. That they continued to use UP in these circumstances provides compelling evidence of the fact that UP, as a result of the merger with SP, achieved significant market power in Houston.[6] As Grimm and Plaistow explain: "The UP/SP merger provided Union Pacific with a virtual monopoly on Houston originated traffic to the East-Northeast, the South-Southeast, and the Midwest. . . . In 1996 the UP/SP combined carload market share for Houston originating traffic was 86% to the Northeast, 91% to the Southeast, and 80% to the Midwest." V.S. Grimm and Plaistow at 7.

In 1997, when UP's service meltdown began, most disgruntled customers could not turn to alternative carriers. From July through December of 1997, when the service crisis was at its peak and customers, if they had competitive alternatives available, would have been leaving in drastic numbers, "[a]mazingly, UP still retained an 84% carload market share to the Northeast, 87% to the Southeast, and 80% to the Midwest, despite its catastrophic service failure during this period. The data provides striking evidence that the UP/SP merger has created a fundamental structural problem in Houston." V.S. Grimm and Plaistow at 8.

The fundamental structural problem in Houston is the fact that UP has virtually no effective competition in the area. If there were competition, the shippers, who were consistently losing large amounts of money using UP, would have turned to an alternative rail carrier. "Clearly the magnitude of costs and impacts on shippers provides dramatic evidence of the lack of adequate post-merger rail competition in Houston. Had shippers been able to access

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[6] UP's market power is further evidenced by the erosion of UP's transit times once the SP was neutralized due to its agreement and plan of merger with UP. *See* V.S. Thomas at 6, Exhibit D.

competitive alternatives to UP, the impacts would have been far less. As stated by CMA in its June 15, 1998 filing in STB Ex Parte No. 628, *Expected Relief for Severe Inadequacies*: "Much of this crisis might have been mitigated had shippers had access to an alternative rail carrier." Ex Parte No. 628, CMA at 1.

UP understands its fundamental dominance but continues to insist that added competition is not the answer. Indeed, recently, UP filed a report stating that if other railroads had expanded access to Houston it would deter UP from investing in the changes that are needed. *See Union Pacific's Report on Houston and Gulf Coast Infrastructure*, Ex Parte No. 573 at 6-8. This claim cannot be supported by economic principles or by experience. As Grimm and Plaistow note: "The principles of free market economies indicate that adding competition spurs investment; it does not discourage it. UP's static, protectionist view of the relationship between competition and investment runs counter to the experience across the entire U.S. economy in recent years." J.V.S. Grimm and Plaistow at 25. A good example of competition spurring investment is found in the Powder River Basin ("PRB"). Burlington Northern Railroad Company ("BN") for years was the only railroad that operated in the PRB. Then in 1982, the Chicago and North Western Transportation Co. ("CNW") was able to gain access to the PRB, and hence introduce competition. "Since the advent of competition in the PRB, the levels of traffic, the investment in infrastructure and the revenues received have grown exponentially." V.S. Grimm and Plaistow at 14. The situation at PRB runs counter to everything that UP argues for to prevent competition. "If one is to believe the Union Pacific's argument that they will be deterred from investing in improvements if competition is introduced in the Houston area upon access by CNW, BN would have lost its incentive to invest in sufficient track or equipment to serve the PRB traffic. V.S. Grimm and Plaistow at 14. None of these things occurred, however. On the contrary, there was tremendous profitability for both BN and CNW, an increase in the amount of shipping, plus improved infrastructure, since both BN and CNW were willing to invest to improve it. Indeed, most recently, a third carrier, the Dakota, Minnesota and Eastern Railway is proposing a $ 1.4 billion investment to build track and infrastructure in order to provide additional competition to the PRB.

Competition also led to increased improvements in intermodal traffic. Railroads across the country have been spending millions of dollars to improve their facilities. "Competition is fierce. In the West, BNSF and UP compete head to head against the trucking industry and each other." V.S. Grimm and Plaistow at 22. As a result, UP and BNSF are spending over $376.4 million to expand and improve their capacities at key terminals. V.S. Grimm and Plaistow at 23. Again, competition has increased rather than decreased infrastructure investment and companies are continuing to invest to stay lucrative. If UP thought that competition would impede investment, then it would not be investing in intermodal facilities.

In sum, "[t]here is a strong linkage between the service crisis and the competitive impact of the UP merger in Houston. .... If there were adequate rail competition in Houston, shippers would have shifted their traffic from UP and we would expect UP's market share in the latter half of 1997 to be small. In fact, an analysis of 1997 traffic data reveals that UP remained the dominant carrier to Eastern and Midwestern markets." V.S. Grimm and Plaistow at 26. Increased competition at Houston not only will bring a relief to shippers, but it will spur increased investment by all the railroads to improve service and infrastructure. Contrary to UP's claims, it is competition that forces businesses to improve -- not monopolies.

C. Lack of Infrastructure was Not a Primary Cause of the Service Crisis

As Mr. Harlan Ritter, former President of the HBT, details in his verified statement in the March 30th filing, the congestion problems in Houston and South Texas were not primarily caused by UP's lack of infrastructure, but rather by various other factors, including inefficient management practices, incompatible computer systems, and the lack of sufficient planning and due diligence. TM-7/KCS-7, V.S. Ritter at 242-45. Although UP has claimed that lack of UP infrastructure is largely responsible for UP's service meltdown, closer examination of the facts shows that UP's mismanagement of its infrastructure is more to blame than any shortage or inadequacies of physical facilities.[7]

UP took a series of steps which together spelled disaster for Houston rail operations and the rest of the western United States, including -

- laying off SP operating personnel familiar with Houston operations and leaving Houston terminal operations under management largely unfamiliar with the intricacies of Houston operations;
- closing Strang Yard at a crucial point, eliminating essential yard capacity;
- furloughing train crew personnel in the face of growing service demand;
- abolishing the HBT, a neutral terminal carrier which had proven effective for approximately 90 years of operations;
- closing the former MKT line entering Houston;
- selling a path through Eureka Yard which eliminated much of that yard's capacity;

[7] Apparently, there is no evidence on record at the STB indicating that the problem was a lack of infrastructure in the Houston area. Indeed, when asked as part of a Freedom of Information (FOIA) request to provide all documents relied upon for the Board's conclusions in several orders concerning inadequacies in the Houston area infrastructure, the FOIA officer responded by saying "after searching our records, we are unable to locate any material on that subject matter in question."

- failing to act quickly enough to remedy the congestion problems until the problems were allowed to overwhelm UP's system.

The combination of these and other factors contributed greatly to creating the rail service crisis in Houston that spread throughout the western states. *See* TM-7/KCS-7, V.S. Ritter at 242-255.

Indeed, contrary to the thrust of its filings with this agency, the UP's most recent SEC 10-Q filing does not identify inadequate infrastructure as even a contributing factor. That report states:

> System congestion started in the Gulf Coast region and spread throughout the system as the Railroad shifted resources to help mitigate the problem in the Gulf Coast region. **The congestion was brought on by, among other things, crew shortages and restricted track access caused by necessary track maintenance on former Southern Pacific lines, increased demand, washouts due to severe weather, derailments and congestion at Texas/Mexico gateways.** Traffic slowed further as rail yards in the Gulf Coast region filled, slowing access into and out of the yards and forcing trains to be held on sidings. Slower average train velocity led to a greater need for locomotives in the region. As traffic in the region backed up and the Railroad redeployed locomotives to the Gulf Coast region to help alleviate local congestion, congestion problems spread to other parts of the Railroad's system during the third and fourth quarters of 1997.

Union Pacific Railroad Company SEC Quarterly Report 10-Q, filed May 14, 1998, at 10-11 (emphasis added). This report mainly blames lack of crews, performance of track work, and increased demand.[8] UP nevertheless continues to eliminate infrastructure and even to eliminate train crews:

> In connection with the continuing integration of UPRR-Utah and Southern Pacific's rail operations (collectively, the Railroad), **the Company is continuing to eliminate duplicate positions, (primarily positions other than train crews), relocate positions, merge or dispose of redundant facilities**, dispose of certain rail lines and cancel uneconomical and duplicative SP contracts.

Id., at 5 (emphasis added).

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[8] Increased demand, however, also would not have caused the problem had appropriate management techniques been employed. Traffic growth in the Houston BEA from 1990 through 1996 proceeded at a moderate and steady pace of less than five percent. TM-7/KCS-7, V.S. Ritter at 245-248. Under even greater traffic growth in 1982, MP was able to cut car handling time almost in half in Houston, V.S. Ritter at 5, n. 2, while for UP in 1997, car handling time increased 25 to 50%.

D. Removing the Restriction Is Critical For Adding Competitive Infrastructure

Notwithstanding the fact that lack of infrastructure is not the causative factor UP claims it to be in Houston, Tex Mex and KCS recognize that building and maintaining an adequate infrastructure are key elements in providing necessary services to shippers. Toward this end, Tex Mex is already constructing a 16-track yard at Laredo and expects to upgrade its existing sidings as well as add new ones. TM-7/KCS-7, V.S. Fields at 86-87. Furthermore, if the Consensus Plan is adopted, KCS plans to build additional yards, increase storage capacity, and extend various sidings. TM-7/ KCS-7, V.S. Rees at 93.

There are three other specific and crucial areas where Tex Mex and KCS are committed to making capital investments which will increase infrastructure around Houston in conjunction with the Consensus Plan. First, is the proposed rehabilitation of the Rosenberg to Victoria line. Second, is the plan to purchase or lease Booth Yard and upgrade its operations. The third is to double track UP's line, the Lafayette Subdivision between Dawes and Langham Road, Beaumont, TX. The benefits of each of these proposals are discussed further in Sections 6, 7, and 8 below, but are briefly discussed here.

Tex Mex's planned investment in the Rosenberg-to-Victoria rehabilitation is an integral part of the Consensus Plan to provide additional infrastructure to the Houston area. If the Board adopts the Consensus Plan, this line will provide a more competitive alternative route to the current rail transportation service provided over the highly congested and circuitous route via Flatonia and allow traffic to be routed around, rather than through, Houston. Tex Mex estimates that the cost for reconstruction, rehabilitation and purchase of necessary right of way will cost $65.5 million. *See* TM-7/KCS-7, V.S. Brookings at 295 and V.S. Lewis at 298. Tex Mex estimates that it will take approximately nine (9) months to complete the engineering, procurement and rehabilitation of this rail line. *Id.* at 295.

While the Consensus Plan does not call for a forced divestiture of the Houston-to-Beaumont line, it does request the STB to order UP to allow Tex Mex to build a line along (in effect, double-track) UP's Lafayette Subdivision line located between Dawes and Langham Road, Beaumont, TX. Upon completion of this new rail line, Tex Mex will deed it to UP in exchange for the deed to the UP's Beaumont Subdivision between Settegast Jct., Houston, and Langham Road, Beaumont. Tex Mex will dispatch this line from Houston and will grant BNSF and UP trackage rights over this line. It is estimated to cost approximately $57.6 million to double-track the Lafayette Subdivision. V.S. Brookings at 4.

Double-tracking the Houston to Beaumont line would significantly increase overall capacity between Houston and Beaumont, and in the end, UP, BNSF, and Tex Mex will have the right to operate over three rail lines between Houston and Beaumont, whereas capacity today is limited. The use of crossover switches linking double main tracks that are 10 feet apart, instead of 10 miles apart (which is the distance between UP's Beaumont and Lafayette Subdivisions), will increase the velocity and capacity of the UP's Lafayette Subdivision between Houston and Beaumont. V.S. Brookings at 4. Furthermore, the grant back to UP and BNSF of trackage rights on the purchased line would allow those two carriers to continue their directional operations on that line if they desired to do so. Finally, because there is little local traffic on the UP Beaumont Division line, of which Tex Mex will ultimately receive ownership if the Consensus Plan is adopted, UP and BNSF would lose little, if any revenue, from serving those local shippers.[9]

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[9] Indeed, in order to ensure that no local shippers located on the Houston to Beaumont line suffer a diminution in the number of existing carriers currently serving them, Tex Mex, as the owner of the line after the deed swap, will grant back local trackage rights to UP and/or BNSF so as to

The Consensus Plan also contemplates the purchase or lease of a yard by Tex Mex. If this part of the plan is adopted, Tex Mex is committed to upgrading the capacity of Booth yard and reconnecting most of the presently stub-ended tracks at the south end of Booth Yard to the south lead track. V.S. Broussard at 13. This would increase the capacity of the yard by allowing the yard to be worked from either the north or south and allowing blocks to be assembled on more tracks.

In total, if the Consensus Plan is adopted, Tex Mex and KCS are willing to commit to spending up to $150 million in additional capital expenditures.[10] It is imperative to note that in order for Tex Mex and KCS to make an investment of this magnitude in expanding infrastructure capacity Tex Mex and KCS must have the opportunity to generate sufficient revenues and traffic densities to pay for such an investment.

If it continued operating pursuant to its existing restricted trackage rights without any of the changes proposed herein, Tex Mex could not generate sufficient revenues to justify the planned infrastructure investment. Indeed, in a normal year without congestion, Tex Mex is projected to produce a net operating income of $4,386,000. TM-7/KCS-7, V.S. Plaistow at 127. This level of revenue cannot justify reconstructing the Rosenberg-to-Victoria segment, double tracking the Houston-to-Beaumont line, and purchasing and upgrading Booth Yard. However, under the Consensus Plan, Tex Mex is projected to produce a net operating income of $15,793,000. V.S. Plaistow at 10. Thus, under the projected traffic levels for the proposed plan,

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enable either one of those carriers to access whatever local shippers they currently access along that line. However, any future shippers locating along the line shall be exclusively served by Tex Mex.

[10] This figure includes the capital investment that Tex Mex and KCS are willing to spend rebuilding the Victoria to Rosenberg segment, the purchase of Booth Yard, and investment in double-tracking the UP line from Houston to Beaumont.

which includes Houston-originated northbound traffic, Tex Mex's and KCS's investments in these three critical infrastructure projects would be justified and Tex Mex would continue to operate at profitable levels. It is clear that Tex Mex needs the lifting of the Houston traffic restriction and the additional remedial conditions in order to realize the needed revenues to make this essential investment.

ITEM 1(b) OF THE CONSENSUS PLAN

GRANT PERMANENT TRACKAGE RIGHTS TO TEX MEX OVER THE UP'S BROWNSVILLE SUBDIVISION BETWEEN PLACEDO AND ALGOA, TEXAS AND OVER THE BNSF LINE BETWEEN ALGOA AND TN&O JUNCTION, TEXAS.

In early November, 1997, Union Pacific established directional running between Houston and Placedo to help alleviate congestion on the UP's Brownsville Subdivision. The UP directed that southbound trains, with an exception granted to a few UP trains, were to be routed Houston to Flatonia over the UP's Glidden Subdivision and Flatonia to Placedo over UP's Port Lavaca Branch. Northbound trains were to be routed over UP's Brownsville Subdivision ("the Algoa Route") between Placedo and Algoa and the BNSF between Algoa and TN&O Jct. The Board temporarily granted Tex Mex Algoa Route trackage rights in Service Order No. 1518 and Supplement No. 1 thereto to permit Tex Mex to operate in compliance with UP's directional running. Tex Mex already had trackage rights via the Flatonia route as part of the UP/SP merger decision.

UP's directional running operations severely crippled Tex Mex's operations to the Laredo gateway between November 1998, and early May, 1998 (*See* TM-7/KCS-7, V.S. Watts at 158). Tex Mex and BNSF suffered extreme delays, often sitting for as much as 24 hours behind parked UP trains on the main line between Flatonia and Placedo due to UP's inability to re-crew its own trains. *See* TM-7/KCS-7, V.S. Watts at 157. However, since early May, it appears that UP has corrected most of its crew difficulties between Flatonia and Placedo.

The Consensus Plan calls for the rehabilitation of the former SP line between Rosenberg and Victoria. The operating plan also assumes the continuation of directional running between Houston and Placedo, although the southbound business that would pass through Houston area on UP, BNSF, and Tex Mex would be routed via trackage rights West Jct. to Rosenberg; Rosenberg to Victoria over Tex Mex's rehabilitated line; and Victoria to Placedo. Northbound trains would continue to be routed via (permanent and temporary) existing trackage rights over the UP's Algoa Route and over the BNSF's trackage between Algoa and TN&O Jct. Making the Algoa route rights permanent is thus essential for efficient trackage rights operations by all of the carriers.

The new routing under the Consensus Plan will accomplish the following operational benefits:

1) Shortens UP and Tex Mex's southbound route by nearly 70 miles;

2) Reduces the amount of locomotive horsepower needed by both UP and Tex Mex to operate from Houston to Victoria by circumventing the hilly terrain on the current route between Glidden and Cuero;

3) Reduces the number of trains between Flatonia and Victoria and thereby would allow BNSF to operate northbound trains from Corpus Christi/Robstown to Temple and UP to operate their northbound Coleto Creek empty coal trains via the Port Lavaca Branch; and

4) Reduces the number of trains operating between Rosenberg and Flatonia on UP's heavily congested Sunset Route.

ITEM 1(c) OF THE CONSENSUS PLAN

DURING THE TIME FOR WHICH THE EMERGENCY SERVICE ORDER HAS BEEN IN EFFECT AND UNTIL SUCH ORDER EXPIRES, TEX MEX WILL SUBMIT TO THE STB AND ALL PARTIES OF RECORD A SERVICE PERFORMANCE REPORT WHICH WILL DEMONSTRATE THE EFFECTIVENESS, OR LACK THEREOF, OF THE ACCESS GRANTED TO TEX MEX UNDER THE ESO.

This provision is intended to provide the Board and the public with Tex Mex operating information that is similar to that provided to the Board by UP in the UP Weekly Reports. If Consensus Plan is adopted, Tex Mex will compile the information requested beginning with the time the service order went into effect and ending with the time it expired.

ITEM 2 OF THE CONSENSUS PLAN

GRANT TRACKAGE RIGHTS AND THE USE OF APPROPRIATE YARDS TO PTRA OVER THE LINES OF HBT TO PROVIDE SWITCHING SERVICES TO ALL RAILROADS SERVING HOUSTON ON A NON-DISCRIMINATORY BASIS.

This will restore the neutral switching over the lines of the HBT and the PTRA that had been available to all railroads serving Houston for at least 90 years until UP and BNSF dissolved the HBT last year. PTRA currently provides neutral switching for shippers on its own lines to and from all railroads serving Houston, and PTRA would be the logical entity to provide that service on HBT lines now that the HBT has been dissolved.

The Consensus Plan calls for improving the efficiency of Houston terminal operations by expanding the current neutral switching operation of the PTRA throughout the Greater Houston Terminal Area. Neutral switching will improve operational coordination and eliminate discrimination by placing switching throughout a broad area in the hands of PTRA whose sole responsibility will be to maintain and improve terminal operating performance. Indeed, in its July 1, 1998, quarterly UP/SP merger progress report filed with the Board ("BNSF-PR-8"), BNSF has requested that neutral switching be imposed on the Baytown and Clinton Branches outside Houston to remedy problems of inefficiency and discrimination in UP's switching of those areas. BNSF-PR-8 at 18-19. The Consensus Plan likewise requests initiation of neutral switching on the Clinton Branch. Neutral switching has worked well before in Houston and is a common mechanism used in major terminal areas, including Chicago and St. Louis, two of the busiest rail terminals in the country.[11] Not only will expanding PTRA's operations benefit terminal efficiency, it also will enhance terminal safety as PTRA has been the safest terminal railroad company for the past two years, and has been recognized by the railroad industry for continued improvement in operational safety. *See* J.V.S. Slinkard/Watts at 9. Moreover, neutral switching will benefit shippers by making all carriers serving the Houston terminal equally available to them for movement of freight.

A. Principles Of Neutral Switching

The principal functions of the proposed neutral switcher in Houston will be the distribution and gathering of cars in connection with prior or subsequent movement by linehaul carriers, and providing shippers equal access to connecting trunk lines. To do this, the switching carrier must operate yard facilities to gather and sort cars received from different shippers and linehaul carriers. These facilities enable the switching carrier to sort the cars in order to gather groups of cars from different linehaul carriers' yards for delivery to proximately-located shippers served by a single switching assignment, and to block cars received from shippers for delivery to yards of linehaul carriers for outbound movement.

A switching carrier's operations allow delivery of cars between rail patrons and linehaul carriers as efficiently as possible. Were it not for switching carriers, each linehaul carrier would

[11] *See generally United States v. Terminal Railroad Association of St. Louis*, 224 U.S. 383 (1912)(finding the Terminal Railroad Association of St. Louis to be a practical necessity due to geographic constraints and to avoid unproductive duplication of railroad facilities in St. Louis).

have to haul each shipment that it brought to town to the customer receiving it, and would have to travel to each shipper location to pick up its outbound cars. This would require substantial duplication of assets and operations by the linehaul carriers and would result in substantial congestion, which was borne out when UP eliminated neutral switching in Houston. Because the switching carrier gathers cars from several linehaul carriers, it is able to move traffic in larger, more efficient blocks and is able to avoid redundancy in facilities and personnel that would result if each linehaul carrier had to provide its own switching.[12] Another efficiency of neutral switching is cost-sharing. Costs of terminal operations are apportioned among carriers based on use. Therefore, for example, no one carrier is saddled with the economic burden of making improvements in infrastructure that benefit all carriers. Economies of scale inherent in this form of cost sharing will actually encourage infrastructure investment.

While some of these efficiencies and economies of scale could be obtained through certain reciprocal switching arrangements, a neutral switching carrier's principal goal of moving all necessary railcars as efficiently as possible is different from the primary goal of a linehaul carrier that also performs switching. Efficiency in moving cars is a goal of a linehaul carrier performing switching, but that goal takes second place to the linehaul carrier's primary goal of getting its own freight to destination. One significant reason for that difference is the reporting hierarchy of the switching carrier versus that of the linehaul carrier. With a switching carrier, particularly a neutral switching carrier, the highest operating officer of the company is responsible for fulfilling the switching carrier's primary responsibility - efficient operation of the terminal. By contrast, the linehaul carrier may have a local person responsible for management

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[12] *See generally* BNSF-PR-8 at 17-18, discussing the need for neutral switching service on the Baytown Branch to avoid congestion and inconvenience to customers resulting from dual carrier switching. BNSF further states that customers themselves disfavor multiple carrier switching.

of the local switching operation, but that person ultimately has supervisors whose responsibility is to see that the linehaul carrier's own freight moves, without regard to competing linehaul carriers' freight. As BNSF stated in its July 1, 1998, quarterly progress report:

> BNSF has found that in most cases where UP is performing either haulage or reciprocal switch service for BNSF, . . . UP has given its own trains preference over BNSF trains, thereby causing BNSF trains to experience considerable delays . . . [or] BNSF trains experienced delays because UP inefficiently coordinated operations.

BNSF-PR-8 at 29.

Eliminating the bias inherent in a linehaul carrier's providing switching service to its competitors is a principal reason for neutral switching. The officers of a neutral switching carrier are ultimately responsible to a group comprised of a balanced representation of the owning railroads, and the day-to-day decision making is in the hands of the person whose responsibility it is to make the entire system work as effectively as possible. Attempts by any of the owning carriers to obtain preferred treatment at the hands of the switching carrier can be checked by the other owning carriers through a governing board, contractually or otherwise. PTRA's charter, for example, requires impartiality by PTRA.

B. The Elimination of Neutral Switching In Houston Has Resulted In Discrimination Against Tenant Railroads

Switching service that a linehaul carrier provides to a competing linehaul carrier often disfavors the competing carrier's freight. For example, Tex Mex's Patrick L. Watts has previously testified that:

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

Verified Statement of Patrick L. Watts, *Petition for Consolidation, to Declare Exemption Void Ab Initio, and to Revoke Exemptions*, Finance Docket Nos. 33461, 33462, and 33463, Exhibit E at 4 (Feb. 3, 1998)(emphases in original). The cars referred to remained in UP's Congress Yard for approximately 6 days, much longer than if HBT had been the responsible neutral switcher and probably much longer than UP delayed delivery of its own cars. V. S. Ritter at 5-6.[13] Tex Mex has experienced other problems with switching service provided by its competitor UP, including:

- Lost and misrouted cars;
- Cars never delivered to the consignee after interchange to UP but instead routed loaded back to their origin;[14]
- A linehaul switching carrier's tendency to exacerbate inefficient car usage, such as by being unwilling to find competing lines' cars in the terminal area and to switch them to a customer, forcing the competing line to locate a car from outside the terminal area and to interchange it to the switching carrier for delivery to the competing line's shipper; and
- Empty cars tendered for delivery upon a Tex Mex shipper's request that instead make their way into the hands of a UP shipper and are loaded and routed UP rather than being tendered to and loaded by the Tex Mex customer to whom Tex Mex intended the cars to be delivered.

As a specific example of the last point, Commercial Metals, a Tex Mex shipper, requested Tex Mex to provide it with empty gondola cars for loading and shipment to Laredo. Tex Mex tendered the cars to UP and directed that they be delivered to Commercial Metals. However, the cars were tendered by UP to a UP customer for loading, leaving Tex Mex's

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[13] BNSF has reported similar problems with UP's haulage of BNSF trains in Utah. BNSF-PR-8 at 27.

[14] *See* BNSF-PR-8 at 26, describing a similar problem in Utah and Nevada.

customer unable to ship Tex Mex. V.S. Ritter at 6. Such problems should not arise with neutral switching.

A neutral switching carrier also maintains shippers' options. Because it would provide a neutral connection to all linehaul carriers serving Houston, PTRA's proposed operations would give shippers the choice of routing their traffic over UP, BNSF or Tex Mex. This would provide shippers with a variety of price and, more importantly in view of the ongoing UP service crisis, service options. Merely because a shipper is located on a UP line would no longer mean that the shipper was captive to UP's service problems. Although transportation contracts and the fact that both BNSF and Tex Mex presently depend on UP trackage rights to reach Houston would limit shippers' service options, if the former HBT lines and the other portions of the neutral switching area were neutrally maintained, access within Houston could remain open despite service problems like UP's. Thus, not only would shippers not be blockaded, but also there would be an automatic pressure relief valve which would allow traffic to flow away from the congested carrier, perhaps heading off the tremendous traffic build-up and gridlock, the effects of which still afflict Houston.

Other forms of switching access, such as reciprocal switching, will not effectively provide the remedies served by the Consensus Plan. During the recent crisis, for example, Tex Mex handled shipments originating at DuPont's facility in the Strang area. That facility historically had been open to reciprocal switching, but in May, UP amended its reciprocal switching tariff by eliminating reciprocal switching to Tex Mex, effectively cutting DuPont off from future use of Tex Mex. Absent imposition of the Consensus Plan proposal for neutral switching, economical and efficient access to rail service throughout most of the Houston area will remain subject to the anti-competitive whim of UP.[15]

C. Neutral Switching Is Not A Unique Concept.

Neutral switching as proposed in the Consensus Plan is not a unique concept; it works effectively in other major terminals such as Chicago and St. Louis, and similar systems are being implemented in other busy terminal areas such as New Jersey and Mexico City. A neutral switching carrier of the scope proposed here is not a unique entity. The Belt Railway Company ("BRC") and the Terminal Railroad Association of St. Louis ("TRRA") are neutral switching carriers that have operated in Chicago and St. Louis, respectively, for over 100 years serving many rail patrons. Both the BRC and the TRRA are operated by independent management and provide fair and impartial service to their respective connections. The fact that these neutral switching carriers have operated successfully in the busy Chicago and St. Louis terminals is a strong endorsement for restoring a similar neutral switching carrier in the congested Houston terminal area.

Newly developing terminal operations are also favoring a neutral type of operator, particularly where infrastructure limitations may exist. The Conrail Shared Assets Area concept, designed to provide equal access and multiple shipping options to affected terminal area shippers, is somewhat akin to the Consensus Plan proposal for PTRA neutral switching. Moreover, in the world's largest city, Mexico City, a neutral terminal entity owned by connecting railroads is being developed. The government of Mexico has just completed auctioning off the third and final piece of the Mexican rail system. In the future, what was a

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[15] The Consensus Plan specifically requests that any shipper located within, or along the lines of the neutral switching district should be allowed access to the neutral switcher, even if that shipper is located on an exclusively owned UP line but is open to reciprocal switching.

single government-owned railroad will be three separately run private railroad companies, which each will enter Mexico City from a different direction. Each of these railroads will have an ownership interest in the Valley of Mexico terminal railroad company, which will perform the same type of neutral switching services HBT, BRC and TRRA have performed in Houston, Chicago and St. Louis to ensure efficient and fair service for each of the railroads serving Mexico City. V.S. Ritter at 11.

D. The Consensus Plan Restores Neutral Switching to Houston.

Neutral switching has already proven itself in Houston and in fact its existence was one of the underlying bases for the Board's original conditions in the merger. The neutral switching currently performed by PTRA and previously provided by HBT has worked well in Houston. The HBT functioned successfully and safely as the neutral switching company in Houston for nearly 90 years, until it was recently dissolved by UP and BNSF. During its long history, HBT conducted efficient, impartial switching operations in the Houston terminal, coordinated service with as many as seven or eight carriers that connected with and were served by its switching functions, and operated a large number of yards serving as many as 200 shippers. V.S. Ritter at 12. This historical experience, as well as PTRA's current safe and efficient functioning as a neutral switcher, show beyond dispute that neutral switching can and will work in Houston.

A merger of the previously separate neutral switching areas around Houston (the former HBT and the existing PTRA) is very similar to what is proposed in the Consensus Plan. Such a merger also is not a new concept. It was previously proposed and was favorably received by most carriers when Houston was a more diversified market. While he was president of the HBT in the early 1980's, Harlan Ritter proposed a consolidation of the neutral switching areas around Houston to include territories served by the HBT, PTRA, Galveston, Houston & Henderson, Texas City Terminal Railway and the Galveston Wharves in order to combine them into a single, efficient switching terminal company. V.S. Ritter at 14. As today, the purposes of the proposal were to increase operational flexibility and efficiency, as well as to allow for investment in upgraded infrastructure in order to meet growing rail traffic in the Houston area.

Mr. Ritter's proposal was approved by the Board of HBT, but foundered because of the non-concurrence of the dominant carrier in the Houston market at that time, Southern Pacific Transportation Company ("SP"). The PTRA board, which included SP, was required to obtain unanimous approval of proposals such as Mr. Ritter's proposal for consolidation of the neutral switching area. SP, seeking to preserve its traffic base, withheld its approval, preventing PTRA's agreement to the plan. V.S. Ritter 15. Similarly today, UP, the dominant carrier in the Houston market and successor to SP's lines, has rejected the neutral switching concept it once supported, opting instead to increase its control over the Houston market by abolishing the HBT.

1. The Consensus Plan Includes Most Houston Shippers.

Creation of the proposed neutral switching district will offer efficiency and competitive benefits to a much larger number of rail customers. Currently PTRA is the only neutral switching carrier in the Houston area. PTRA's current service territory is only a limited part of the overall Houston terminal area. Therefore, the benefits of neutral switching presently are available to only a fraction of shippers in the Houston terminal. The Consensus Plan proposes an expansion of the territory throughout which PTRA would make its neutral switching services available. Shippers in the Strang area and Galveston, among others, will receive neutral switching service not heretofore available to them. Shippers served by the East and West Belts of the HBT will enjoy restoration of the neutral switching that the HBT previously provided them until its dissolution by UP and BNSF on November 1, 1997.

Creation of neutral switching for these shippers will bring them more efficient, more flexible and, as discussed hereafter, safer service. The benefits of neutral switching previously discussed are widely recognized. The Consensus Plan's creation of a neutral switching district will increase the overall operational efficiency and flexibility of the Houston terminal. The economies of scale from which a neutral switcher derives some of its efficiency will expand. Even more importantly to shippers, their shipping choices and flexibility will be increased. Additional routing options opened by neutral switching will provide shippers with additional price and service options as called for by the National Rail Transportation Policy. *See* 49 C.F.R. § 10101 (1 and 4). But at least equally importantly, no longer will shippers in the Strang area and Galveston suffer helplessly from UP service problems. PTRA's neutral switching will provide a pressure relief valve that will give shippers equal access to BNSF and Tex Mex service when UP's service failures occur. Not only will day-to-day operational efficiency improve, but in crisis periods such as the past twelve months, shippers will not be captive to a collapsing system such as UP's has been. That fact will not only be a tremendous benefit to shippers, but it will benefit the collapsing system as well by automatically allowing shippers to divert traffic away from the collapsing system, relieving pressure on that system. Thus, what the Board did in Ex Parte 573 and Service Order No. 1518, allowing shippers to divert traffic to Tex Mex and BNSF to relieve pressure on UP, can happen more automatically, giving the collapsing system an earlier and quicker opportunity to recover.

2. The Consensus Plan Will Enhance Safe Switching Operation to Houston.

Institution of expanded neutral switching service by PTRA will also make Houston switching operations safer. PTRA's operational safety is excellent while, as the Board is well aware, UP's safety performance slipped substantially in the past year with UP having the largest number of employee fatalities of any carrier in 1997. V.S. Ritter 19-21; J.V.S. Slinkard/Watts at 8-9. UP was the subject of two safety blitzes by the Federal Railroad Administration ("FRA") during 1997, as well as several National Transportation Safety Board ("NTSB") inquiries. Frequently those inquiries led to findings that UP had systemic safety problems or findings of substantial managerial flaws that resulted in accidents, cargo loss or damage, injuries and fatalities. V.S. Ritter 17-19.

While UP's operational safety was the focus of public and regulatory scrutiny in 1997, PTRA was on its way to receiving its second gold Harriman safety award in a row as the safest terminal or switching railroad. At the Harriman awards presentation, PTRA also was one of only three railroads to be recognized for its continued improvement in operational safety. 1997 marked the fourth year in a row and the 13th time in the past seventeen years that PTRA was among the top three safest terminal and switching rail carriers in the United States. J.V.S. Slinkard/Watts at 9.

Expanding PTRA's neutral switching in the Houston area will increase public and rail safety by replacing a switching operator whose safety performance lags that of other Class I railroads with the safest terminal and switching railway company in the industry. PTRA's outstanding operational safety speaks for itself. Indeed, the only railroad in the country whose accident per 200,000 man hours ratio compares with PTRA's is Norfolk Southern, perpetual winner of the gold Harriman award among the largest Class I railroads. J.V.S. Slinkard/Watts at 9. While switching railroads usually have a considerably higher incidence of injury than linehaul carriers, PTRA's accident ratio compares favorably to that of the safest Class I linehaul carrier in the nation. Bringing this higher level of safety to rail employees and the public in the crowded Houston terminal area will be a substantial public benefit of implementing the Consensus Plan.

ITEM 3 OF THE CONSENSUS PLAN

GRANT PTRA TRACKAGE RIGHTS ON THE FORMER SP GALVESTON SUBDIVISION BETWEEN HARRISBURG JUNCTION AND GALVESTON AND USE OF FORMER SP AND UP YARDS AT STRANG AND GALVESTON TO PROVIDE SWITCHING SERVICES TO ALL RAILROADS SERVING HOUSTON ON A NON-DISCRIMINATORY BASIS.

This would expand the neutral switching area to include shippers not only located on the former HBT and the existing PTRA, but also to include shippers south and east of Houston, including shippers located at Sinco, Pasadena, Deer Park, Strang, LaPorte, the Clinton Branch, the Bayport Loop and the Bayport area, including Barbours Cut and the Navigation Lead. The Board has correctly shown concern with both competition and service; both are elements of the public interest that the Board must use its merger-conditioning power to protect. 49 U.S.C. § 11324(b)(1) and (b)(5). The service crisis shows that the conditions initially imposed by the Board on the UP/SP merger have been inadequate to preserve pre-merger levels of rail competition and rail service. These shippers have been among those most harmed by UP's service failures.

The UP/SP merger has greatly reduced rail competition in the Houston/Gulf Coast region. The service crisis provides compelling evidence of that fact. That BNSF and Tex Mex do not provide effective competitive alternatives to shippers in that market is abundantly evident from the simple fact that, despite "the virtual shutdown of rail service" by UP in that market, neither BNSF nor Tex Mex has been able to significantly increase its market share. Indeed, the data shows that UP's market share remained substantially the same. For example, despite the service crisis, UP retained an 87% carload market share of traffic to the Southeast. That circumstance simply could not happen in a market where there were truly effective competitive alternatives. *See* Verified Statement of Curtis M. Grimm.

While, some parties have attempted in the past to distinguish between competitive issues and service problems, the service crisis and UP's dominance have conclusively demonstrated that the absence of effective competition has service implications.[16] Furthermore, BNSF's designation as a substitute competitor has not fulfilled the Board's intent in replicating the level of competition that SP provided to UP because BNSF remains fully dependent on UP's local distribution system within the Houston area, upon switching by the UP, and even upon UP's yards for its operations.[17] This level of dependency upon the UP network has cast serious doubt upon BNSF's ability to function as a substitute for the SP. The Board should act to restore the competitive balance in Houston despite the zealous efforts of UP to resist all competition.

Finally, expanding the switching area is necessary to add traffic densities to the Tex Mex system in order to provide the necessary revenues for infrastructure investment. The Board clearly understands the need to provide sufficient traffic densities to carriers in order to generate sufficient revenues to pay for infrastructure improvements and costs associated with operating via overhead trackage rights. Indeed, the Board has given similar rights to BNSF in several locations, including: the Lake Charles area; Shreveport; Beaumont and Texarkana. *See* Decision No. 44, slip op. at 153, 167, 186. In granting these rights to BNSF the Board said, "the new facilities and transload conditions were intended, in part, to enable BNSF to achieve sufficient traffic density on the trackage rights lines, not only in the near future but in the more distant future as well." Decision No. 61, slip op. at 10. Tex Mex is requesting the same consideration

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[16] See also V.S. Thomas at 2-3.

[17] In its July 1, 1998, Quarterly Report at 9-10, BNSF complained that, as a result of congestion and UP service failures, BNSF was still a long way from providing reliable, dependable and consistent service to the shippers which it had gained access to in the UP/SP merger proceeding.

from the Board in gaining more traffic density on its lines to continue to remain effectively competitive.

ITEM 4 OF THE CONSENSUS PLAN

REQUIRE PTRA TO PROVIDE NEUTRAL DISPATCHING OF ALL LINES WITHIN THE NEUTRAL SWITCHING AREA, AND GRANT ALL RAILROADS SERVING HOUSTON TERMINAL TRACKAGE RIGHTS OVER ALL TRACKS SERVING HOUSTON TO ENABLE THE PTRA DISPATCHERS TO ROUTE TRAINS OVER THE MOST EFFICIENT ROUTE.

UP repeatedly has used its control of dispatching over HBT lines and UP lines in Houston greatly to delay Tex Mex trains and otherwise impede efficient Tex Mex operations. Furthermore, UP has absolutely refused to permit Tex Mex trains to be routed over short segments of UP track in Houston, even when UP dispatchers themselves have indicated that such routings would be far more efficient and less circuitous than routings UP forced Tex Mex to take.

The Consensus Parties submit that these actions and the attitude they reflect are typical of the actions and attitude that have resulted in "the virtual shutdown of service" noted in Decision No. 1. The Consensus Parties further submit that, if competition and service are to be restored to their pre-merger levels, it is essential that rail operations in Houston be dispatched by a neutral entity and that all railroads serving Houston have trackage rights throughout the Houston terminal area to enable the neutral dispatcher to route trains over the most efficient routes.

In Decision No. 44 of the UP/SP merger decision, the Board approved the terminal trackage rights application by Tex Mex for trackage rights over the SP route[18] and the East Belt route[19] subject to the restriction that such trackage rights could only be used for the transportation

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[18] The SP route runs over SP's line from West Junction via Bellaire Junction, Chaney Junction and Tower 26 to the connection with HBT at Quitman Street.

[19] The East Belt route begins at West Junction and runs over SP's line to T&NO Junction (Tower 81) and then runs over the HBT line from T&NO Junction to a point between Old South Yard

of freight having a prior or subsequent movement on the Laredo-Robstown-Corpus Christi line. The Board also granted Tex Mex certain limited rights to use the following yards and other terminal facilities in Houston: (i) SP's Glidden Yard; (ii) interchange with the PTRA at North Yard, Manchester Yard and Pasadena Yard; and (iii) interchange with the HBT at HBT's New South Yard.[20]

The Board, in Decision No. 44, acknowledged the concerns of several parties, including KCS, who argued that BNSF's service over UP/SP lines would be subject to dispatching discrimination. The Board agreed that "the landlord's power to control dispatching is an important one" but that it was relying on assurances by UP/SP that dispatching would be conducted without discrimination. The Board also referred to the dispatching protocols agreed to between UP/SP and BNSF which purported to ensure equal treatment of all trains without regard to ownership.[21]

In Decision No. 47 (STB served Sept. 10, 1996) of the UP/SP merger decision, the Board confirmed its ruling in Decision No. 44 and again covered the issue of discrimination in dispatching on joint trackage, this time UP's discrimination against Tex Mex. The Board referred to a number of safeguards which UP/SP had established to ensure that Tex Mex trains would be dispatched without discrimination. First, the Board noted that the dispatching

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and New South Yard known as Double Track Junction. At that point it breaks off to the northeast and runs along a HBT line past North Yard and Settegast Yard to the Settegast Junction connection with UP.

[20] *Id.* at 33, 147-51 and 232-33. This restriction was subsequently lifted by the Board in Service Order No. 1518. As part of an effort to resolve the rail service crisis in Houston, the Board authorized Tex Mex to accept all traffic routed to it by shippers switched by HBT and PTRA. STB Ex Parte No. 573, *Rail Service in the Western United States,* (STB served October 31, 1997) at 1.

[21] Decision No. 44 at 132.

protocols agreed to between UP/SP and Tex Mex required that Tex Mex be given equal dispatch without any discrimination in promptness, quality of service or efficiency. These protocols enabled Tex Mex to be admitted "at any time to dispatching facilities and personnel responsible for dispatching the Joint Trackage to review the handling of trains on the Joint Trackage." Second, the Board noted that the Joint Services Committee which Tex Mex and UP/SP had agreed to set up would be responsible for establishing rules and standards as appropriate to ensure equitable and non-discriminatory treatment.[22]

A. Discriminatory Dispatching Started with Dissolution of the HBT

Tex Mex began utilizing the trackage rights that the Board had granted it in Decision No. 44 and Decision No. 47 on October 9, 1996. According to Mr. Patrick Watts, Vice President of Transportation, The Texas Mexican Railway Company, problems with discriminatory dispatching within the Greater Houston Terminal Area began on or about November 1, 1997, coincident with the date of dissolution of HBT. Prior to its dissolution, HBT switched local industries and dispatched trains through the Houston gateway on a neutral basis, including Tex Mex trains, when they utilized HBT's tracks and facilities. On November 17, 1997, UP took control of virtually all HBT dispatching functions and relocated HBT's dispatching facility to UP's dispatching facilities at Spring, Texas. Since November 1, 1997, Tex Mex has encountered immense congestion problems and delays traversing former HBT tracks. V.S. Watts at 2. Another result of UP's takeover of HBT was that UP now could use HBT main tracks as storage

[22] Decision No. 47 at 22.

locations for trains which had tied up due to congestion at Englewood and Settegast Yards. The HBT dispatchers were powerless to stop this practice because UP now controlled the HBT.[23]

In addition to operational problems, Tex Mex also encountered problems of preferential treatment by UP towards its own trains. UP's dissolution of HBT enabled it to control nine out of the eleven lines into and out of Houston, as well as the dispatching and switching systems in almost all of Houston. J.V.S. Slinkard/Watts at 5. This resulted in preferential treatment by UP dispatchers towards UP trains by virtue of UP's control. Various incidents of discrimination against Tex Mex trains by the Spring dispatching center between November 1997 and February 1998 have been chronicled by Patrick Watts in a verified statement submitted to the Board on March 30, 1998.

The most important loss suffered by Tex Mex following the dissolution of HBT was the neutral perspective that HBT's management offered. HBT's neutrality made it possible for Tex Mex to approach the HBT board of directors (which was comprised of two representatives from UP and two representatives from BNSF) in order to resolve problems relating to operations or customer access. The dissolution by UP has made it much more difficult for such problems to be resolved in view of the fact that HBT has lost its neutrality and is now controlled by UP. As Mr. Watts predicted in his October 1997 verified statement in opposition to the dissolution of the

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[23] *See BNSF Gulf Coast Service Initiative Proposal* presented to the Texas Railroad Commission at a hearing on Houston rail traffic on October 3, 1997. BNSF made its first calls for neutral dispatching of HBT on October 31, 1997 a stance that it would subsequently forego in favor of joint dispatching.

HBT,[24] complaints that Tex Mex makes to UP management about preferential treatment often fall on deaf ears. V.S. Watts at 4.

B. UP's Control of Dispatching Discriminates Against All Houston Carriers.

It is clear that BNSF had similar concerns about UP control over HBT in particular and the Houston terminal in general. In its August 20, 1997 Reply to comments by interested parties on the effects of the UP/SP merger on competition, BNSF complained that "[a]t Houston ... extreme congestion continues to exist with many trains tied up in operating sidings causing unacceptable delays to BNSF trains. UP appears to be giving preference to its trains over BNSF trains contrary to the dispatching protocol."[25] In BNSF's Quarterly Report filed October 1, 1997, BNSF referred again to violations by UP of the dispatching protocol imposed by the Board as a condition to the UP/SP merger and called for the installation of PTRA as a neutral dispatcher of the HBT, as well as the entire Strang/Bayport Loop area, including Pasadena and Sinco.[26]

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[24] *See* Verified Statement of Patrick L. Watts in support of the Petition for Emergency Cease and Desist Order and Complaint of The Texas Mexican Railway Company and The Kansas City Southern Railway Company, Finance Docket No. 33507, filed October 30, 1997.

[25] *Reply of the Burlington Northern and Santa Fe Railway Company to August 1 Comments*, Finance Docket No. 32760 (Sub-No. 21), filed August 20, 1997, at 9. More recently, in its July 1, 1998 Quarterly Progress Report, BNSF asserted that congestion and service problems on UP's lines are continuing and likely to persist. *See The Burlington Northern and Santa Fe Railway Company's Quarterly Progress Report*, Finance Docket No. 32760 (Sub-No. 21), filed July 1, 1998 at 8.

[26] *See The Burlington Northern and Santa Fe Railway Company's Quarterly Progress Report*, Finance Docket No. 32760 (Sub-No. 21), filed October 1, 1997, at 6. In its July 1, 1998 Quarterly Report at 59, UP asserts that the BNSF-UP dispatching protocol has "worked well." As evidence, UP cites to various BNSF Quarterly Reports up to and including BNSF's July 1, 1997 Quarterly Report. However, UP fails to cite to any later BNSF Quarterly Reports because BNSF began to complain about violations of the BNSF-UP dispatching protocol from then on. UP also fails to mention that BNSF has greatly diminished its reliance on the dispatching protocols for the Houston terminal because it has entered into a joint dispatching arrangement with UP. In fact, in BNSF's July 1, 1998 Quarterly Report at 4, BNSF continues to complain about dispatching violations by UP and, as an example, refers to the Tehachapis Line where BNSF is solely reliant on UP dispatching.

On October 24, 1997, BNSF again called for a neutral party to supervise the Houston terminal facilities which would "provide even-handed, impartial use of available resources geared toward overall efficiency rather than the interests of any single carrier." BNSF argued that the PTRA had proven itself to be an effective neutral operator in the Gulf Coast area and that PTRA had institutional knowledge of the area, trackage, facilities and customers which would enable it to fairly balance shippers' service needs with the needs of UP and BNSF.[27] No mention was made of Tex Mex.

C. Joint Dispatching Is Not the Same As Neutral Dispatching

By December 1997, BNSF had changed its course with respect to neutral dispatching and began to favor joint dispatching.[28] In written testimony by Matthew K. Rose, Senior Vice President and Chief Operating Officer of BNSF, Mr. Rose proposed that the dispatching center at Spring, Texas be "jointly" supervised by BNSF and UP.[29] This would allegedly ensure that lines in the Houston terminal were not blocked and that operations remained fluid for both UP and BNSF. Mr. Rose also claimed that Tex Mex's interests in the Houston terminal would be

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[27] *See* Verified Statement of Rollin D. Bredenberg and Ernest L. Hord in support of the *Petition of The Burlington Northern and Santa Fe Railway Company to Intervene in Support of the Joint Petition for Emergency Service Order,* Service Order No. 1518, filed October 24, 1997, at 9.

[28] Since the terms "joint dispatching" and "neutral dispatching" do not have universally accepted meanings, considerable effort is made to distinguish the meanings of these two terms. As a general matter, UP/BNSF refer to "neutral dispatching" and "joint dispatching" synonymously to refer to their invitation to Tex Mex to move Tex Mex's dispatching facility to the same physical facility that houses the jointly controlled UP/BNSF dispatching center. However, UP/BNSF are not inviting Tex Mex to be an equal partner in administering and controlling the dispatching center. When the Consensus Parties refer to "neutral dispatching," they are referring to neutral dispatching over a terminal area in a manner which ensures equal treatment of all rail carriers in the area. When the Consensus Parties refer to "joint dispatching" they are referring to UP/BNSF's definition of joint dispatching.

[29] This written testimony was submitted in connection with a public hearing regarding the status of railroad freight service in the western United States scheduled by the Board on December 3, 1997. *See Testimony of Matthew K. Rose*, Service Order No. 1518, filed December 3, 1997 at 6.

adequately protected by joint supervisory control and this would ensure that Tex Mex's traffic did not add to Houston terminal congestion.

The Board clearly viewed discrimination by UP as a problem. On December 4, 1997, in a supplemental order to its Emergency Service Order, the Board responded to concerns about discrimination by UP/SP in its dispatching operations by directing UP/SP to permit representatives of BNSF and Tex Mex full access to the Spring, TX, dispatching facility as neutral observers. The Board opined that this access would enable these carriers to "become involved in or at least fully aware of the circumstances surrounding UP/SP's various decisions about prioritizing the movement of trains."[30]

By January 1998, BNSF openly acknowledged that it was involved in negotiations over a joint dispatching arrangement with UP which did not include KCS/Tex Mex.[31] In its January 2, 1998 Quarterly Report, BNSF mentioned a proposal that it had made to UP "that includes the operation of the major lines in the Houston area by UP and BNSF on a coordinated basis under neutral dispatching that BNSF believes would assure equal treatment and improved service for all."[32]

KCS and Tex Mex obtained the first details of BNSF's "neutral dispatching" concept on February 4, 1998 when BNSF delivered its "Proposal for Gulf Coast Service Improvement" at a meeting of representatives from the Railroad Commission of Texas, the Port of Houston

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[30] *See Supplemental Order No. 1 to STB Service Order 1518*, Joint Petition for Service Order, (STB served December 4, 1997) at 4.

[31] It appears that discussions between UP and BNSF had started well before that. In a letter from UP to the Board filed February 18, 1998, UP claimed that "[s]ince late last year, Union Pacific has been discussing with Burlington Northern Santa Fe the importance of creating a true joint dispatching center for UP and BNSF lines in Houston and in the areas surrounding Houston.

Authority, Tex Mex and KCS. BNSF proposed the establishment of "coordinated and joint dispatch functions at a consolidated dispatch center in UP's Spring, TX facility." BNSF claimed that the dispatch center would include involvement by KCS and Tex Mex "as appropriate" but declined to define these terms of reference. [33]

BNSF remained firm on the issue of joint control throughout the negotiations over a joint dispatching center. In a letter to UP from BNSF dated February 6, 1998, Robert D. Krebs stated that it had become "clear to us over the last year that BNSF must have an equal say in the way operations are structured and carried out in order to attract and properly service customers" and that any proposal could not be "contrary to the principle of true joint control that we discussed." Mr. Krebs suggested that he would ask the Board to reopen the UP/SP merger case and order divestiture of the eastern portion of the SP system if the parties failed to reach an agreement closely parallel to BNSF's proposal. [34]

On February 12, 1998, in a joint petition to the Board, KCS/Tex Mex expressed renewed frustration at UP's dominance of control of dispatching in the entire Houston area. KCS/Tex Mex claimed that the elimination of neutral dispatching and the service crisis had severely impeded their ability to provide essential rail services in the NAFTA corridor.[35] As a result of this impediment, KCS/Tex Mex proposed, among other things, that UP, BNSF, Tex Mex and

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[32] *See The Burlington Northern and Santa Fe Railway Company's Quarterly Progress Report,* Finance Docket No. 32760 (Sub No. 21), filed January 2, 1998, at 20.

[33] *See BNSF Proposal for Gulf Service Improvement* dated February 4, 1998.

[34] Letter of February 6, 1998, from Robert D. Krebs to Richard K. Davidson, at 2.

[35] *See Joint Petition of The Texas Mexican Railway Company and The Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction*, Finance Docket No. 32760 (Sub-No. 21), filed February 12, 1998 at 11.

PTRA be authorized and directed to enter into an "Agreement for Neutral Dispatching Protocols, Greater Houston Terminal Area" in a form substantially similar to the "Draft Agreement for Neutral Dispatching Protocols Greater Houston Terminal Area," attached as Attachment D to the J.V.S. Slinkard/Watts.

UP and BNSF finally declared their decision to manage a joint dispatching center in the Spring Center in a joint press release on March 13, 1998.[36] UP released further details about the operation of the new joint dispatching center in its twenty-second weekly report on service recovery filed with the Board on March 16, 1998. UP explained that a joint UP/BNSF director would supervise the center, overseeing corridor managers from both UP and BNSF using a common dispatching system. The weekly report stated that Tex Mex was still invited to participate and that space was available for its personnel.[37]

1. Joint Dispatching Operates Unfairly Against KCS/Tex Mex

UP and BNSF's concept of "neutral dispatching" was more clearly enunciated in their joint dispatching Organization Chart which accompanied a letter sent by UP to the Board on February 18, 1998 and is attached to Watts' Verified Statement as Exhibit G. As can be seen from the Organization Chart, all personnel in the Spring Center are either employed by UP or BNSF. The neutrality of the dispatching in the Spring Center was therefore questionable from

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[36] "Union Pacific, Burlington Northern Santa Fe Open Joint Dispatching Center," Union Pacific Press Release dated March 13, 1998; "Union Pacific, Burlington Northern Santa Fe Open Joint Dispatching Center," BNSF Press Release dated March 13, 1998. In its July 1, 1998 Quarterly Progress Report at 8-9, BNSF stated that the establishment of the Spring Consolidated Dispatching Center had significantly helped the continuing service problems and congestion plaguing Houston and the Gulf Coast area but that in many cases, BNSF's trains were still being delayed due to the volume of trains and UP's handling of trains beyond the Spring Center's control.

[37] *Rail Service in the Western United States*, Service Order No. 1518, Ex Parte No. 573, UP March 16, 1998 Weekly Report at 5.

the outset since KCS/Tex Mex were not real participants but were merely relegated to the sidelines. V.S. Watts at 3.

In spite of the patent lack of neutrality of the Spring joint dispatching center and Tex Mex's clear inability to participate in the Spring Center as equal participants, on February 25, 1998 the Board (in a decision extending Service Order No. 1518) declared that it had already provided for neutrality by giving BNSF and Tex Mex access to UP/SP's dispatching center. The Board went on to state that it had not seen any evidence of preferential dispatching decisions adverse to carriers such as Tex Mex. However, if the joint dispatching program proved to be unfair to Tex Mex, or if Tex Mex concluded that, as a result of its expanded role, it needed a more active role in dispatching that was not permitted by the BNSF-UP/SP joint dispatching program, the Board would be prepared to consider appropriate relief at that time.[38] The Consensus Plan's provision for true neutral dispatching is intended to represent that "appropriate relief."

On March 15, 1998, UP and BNSF opened their Consolidated Dispatch Center ("CDC") in UP's Spring facility. On March 16, 1998 Ronney Nichols was hired by Tex Mex to work in the CDC as Tex Mex's observer. V.S. Nichols at 2. As contemplated by the Board, the observer was hired to ensure that Tex Mex was not treated unfairly by the UP/BNSF joint dispatchers and to document any discrimination against, or mishandling of, Tex Mex trains while they were

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[38] *Rail Service in the Western United States,* Service Order No. 1518, Ex Parte No. 573, *Rail Service in the Western United States,* (STB served February 25, 1998) at 3 n.4.

within territories administered by the UP/BNSF joint dispatchers.[39] These territories included the Houston terminal. V.S. Nichols at 4.

Despite the presence of a Tex Mex observer, Tex Mex continues to be discriminated against. One of the major obstacles to the effectiveness of the Tex Mex's observer relates to the use by UP, BNSF and PTRA of the Digicon train tracking system (the "Digicon System") for tracking and monitoring of trains traversing CDC territories. The Tex Mex observer does not have his own Digicon terminal, which places him at a great disadvantage. Without access to a Digicon terminal, he is forced to circulate among the floors of the CDC in an attempt to find a joint dispatcher or supervisor who has time to check the location of Tex Mex trains. The joint dispatchers are extremely busy and are often unavailable to assist the observer. This means that he cannot monitor the progress of Tex Mex trains at times of need. V.S. Nichols at 2-3. In addition, due to safety concerns, UP management is understandably reluctant to allow the observer to walk into dispatcher cubicles and distract the dispatchers from their duties. However, without access to a Digicon terminal, the observer has no ability to effectively monitor Tex Mex trains. V.S. Nichols at 2.

Since April 1998, Tex Mex's neutral observer has made numerous requests to UP to make a Digicon terminal available to Tex Mex. V.S. Nichols at 2-3. However, it was only in the first week of June 1998, that UP formally offered Tex Mex an opportunity to acquire its own Digicon System.[40] As a result of the length of time required to order, receive and install a

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[39] An Organizational Chart setting forth the structure of the CDC, the territories which the CDC administers and the respective dispatchers responsible for those territories is attached to V.S. Watts as Exhibit G.

[40] UP's concession followed shortly after Administrative Law Judge Grossman ordered UP to make a Digicon terminal available to Tex Mex for discovery purposes. *See* Transcript of hearing before ALJ Grossman on June 1, 1998, Finance Docket No. 32760 (Sub-No. 26).

Digicon System, Tex Mex currently still does not have its own Digicon System at its disposal. V.S. Watts at 4.

Another problem with the present UP/BNSF joint dispatching arrangement is that even when the observer is able to observe and monitor discrimination against Tex Mex trains, his passive observer status prevents him from taking active steps to prevent this discrimination from continuing. When the observer detects discrimination, he is limited to registering a complaint with the Joint Corridor Manager or Joint Director but often the Joint Corridor Manager and Joint Director are not available. Instead of coordinating with the joint dispatchers regarding the most practical and efficient movements for Tex Mex trains, the observer is powerless to take further action. By the time that the discrimination complaint comes to the attention of Joint Corridor Manager or Joint Director, the incident is usually over and the harm has already occurred. V.S. Nichols at 3. These difficulties persuasively demonstrate that Tex Mex needs a more active role in dispatching than that currently permitted.

2. Dispatching Discrimination Still Occurs

Since his installation as a neutral observer in March 1998, Tex Mex's observer has witnessed various acts of discrimination by dispatchers against Tex Mex trains in violation of the existing UP/Tex Mex dispatching protocols. Some of these discriminatory acts are described more fully in Mr. Nichols' verified statement. Further acts of discrimination were uncovered by Patrick Watts after spending 4½ days from June 15-19, 1998 in UP's Harriman Dispatching Center reviewing 11 days of Digicon tapes produced by the Digicon System at the Spring Center. V.S. Watts at 8-9. These incidents unequivocally demonstrate that the organizational structure of the CDC operates unfairly against Tex Mex.

3. Observing Is Not the Same As Participating

On May 29, 1998, UP again requested that Tex Mex place its train dispatchers responsible for dispatching the Tex Mex line between Robstown and Laredo in the CDC. UP claimed that this would facilitate coordination with the UP and BNSF dispatchers located in Spring. UP further requested that Tex Mex participate in the Joint Services Committee established to oversee the dispatching of all Gulf Coast lines that Tex Mex uses. UP also stated that the only reason why Tex Mex had raised complaints about being excluded from the dispatching process was that it had refused to accept the opportunities available to it to exercise oversight and exercise direct influence over the handling of its trains.[41] UP ignored the fact that Tex Mex was, and continues to be, disadvantaged by its status as an observer and desires to have a real say in the way that dispatching operations are being carried out.

The full import of Tex Mex's observer status became clear on June 18, 1998 when UP and BNSF held a "joint" staff meeting without Tex Mex to discuss the progress made by the CDC and what could be done to improve communications between railroads, reduce congestion and improve working relationships. Owing to the fact that Tex Mex was not invited, the Tex Mex observer had no opportunity to provide input on these issues, all of which are vital to Tex Mex's ability to provide efficient and competitive service in the NAFTA corridor. V.S. Nichols at 3.

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[41] *See* Letter from Steve Barkley to Tex Mex's President Larry Fields dated May 29, 1998 included herein. UP again urged Tex Mex to become a "full participant" in the CDC, which would enable Tex Mex to oversee the dispatching of its trains. *See* Letter from Arvid Roach to William Mullins and Richard Allen dated June 10, 1998. Despite UP's insistence that Tex Mex has existing remedies available to it, UP refused to allow Tex Mex to view the Digicon tapes in order to determine if discrimination was occurring. It took an order from Judge Grossman before UP allowed Tex Mex to view the Digicon tapes.

The fallacy that observing is the same as neutral dispatching was pointed out in a letter from KCS and Tex Mex's counsel to UP's counsel on June 17, 1998. Counsel for Tex Mex and KCS explained that being able to sit and watch UP/BNSF joint dispatchers at work did not amount to being a "full participant."[42] In a manner seemingly oblivious to KCS and Tex Mex's concerns, on June 19, 1998 UP again encouraged Tex Mex to exercise its rights under the UP/Tex Mex dispatching protocols.[43]

Watts explains that there are a number of reasons why the Tex Mex/UP dispatching protocols are ineffective in protecting Tex Mex against preferential treatment. First, joint dispatchers are ultimately answerable to their employers (UP and/or BNSF) and not Tex Mex. Second, as the experience of the neutral observer has shown, while the dispatching protocols guarantee access to dispatching facilities, this access is limited in practice. Third, while the dispatching protocols provide for daily communication on conflicts over Tex Mex's movements over joint trackage, this communication is limited to raising complaints after the fact when it is too late. Fourth, while the dispatching protocols establish a Joint Service Committee ("JSC") to take remedial actions when disputes arise, previous experience has shown that the JSC does not take the required remedial action even when complaints are presented to it. Fifth, the dispatching protocols provide for arbitration in the event that the JSC cannot resolve a dispute. However, the parties are required to agree beforehand what sanctions will be available to the arbitrator. Reaching such agreement would be difficult if not impossible to achieve in view of the adverse

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[42] *See* Letter from Richard Allen and William Mullins to Arvid Roach dated June 17, 1998.

[43] *See* Letter from Arvid Roach to Richard Allen dated June 19, 1998. In its July 1, 1998 Quarterly Report at 69, UP again claimed, without furnishing reasons, that Tex Mex has failed to exercise its rights under the Tex Mex-UP protocol. It seems that UP is still unaware of the ineffectiveness of the dispatching protocol.

consequences to which an offending party would be voluntarily subjecting itself. Furthermore, even if such agreement could be reached, it is difficult to conceive what sanctions could be imposed that would prevent the unfair treatment from recurring. Finally, UP's culture causes it to view parties with trackage rights over its tracks as competitors who must be beaten, which weakens the cooperative spirit of the dispatching protocols. V.S. Watts at 5-7.

The difficulties experienced by both BNSF and Tex Mex in enforcing the dispatching protocols is a compelling testament to the fact that such dispatching protocols are ineffective in preventing discrimination against Tex Mex. The only way to ensure a meaningful exercise by Tex Mex of its rights under the dispatching protocols is a neutral dispatching arrangement which would enable Tex Mex to have an equal say to that of UP and BNSF in how its trains are dispatched and not limit Tex Mex to a monitoring role. Finally, it would guarantee impartial dispatching by eliminating patronage as a consideration in dispatching.

D. The Consensus Plan Provides for Effective Neutral Dispatching

The Consensus Plan proposes that the CDC be supervised, headquartered and administered by a neutral party such as the PTRA. Even though the PTRA has no dispatchers at this time, a simple transfer of some joint dispatchers from UP's and BNSF's payrolls to the PTRA while they continue to dispatch the same territories, is entirely feasible. This would remove the problem of unfair control by one rail carrier and enable the dispatchers to make the most impartial and efficient dispatching decisions without fear of retaliation.

The Consensus Parties have put forward a proposal which would place a dispatching territory currently referred to as STO-2 under neutral dispatching.[44] Prior to the implementation of the CDC, the STO-2 dispatcher only dispatched HBT lines (which include the East Belt line

[44] *See* Map of Current Dispatching Operations (by territories) attached to V.S. Watts.

STB FD-32760 (SUB30) 7-8-98 A ID-189672 2 OF 13 and the West Belt line[45]). When UP dissolved HBT, it added the former SP line from Galena Junction to the Strang Yard periphery and the Harrisburg line from T&NO Junction to Harrisburg Junction. These additional responsibilities caused the STO-2 dispatcher to become overloaded, and inefficient. V.S. Watts at 9-10. Watts voiced his concerns to UP about the STO-2 dispatcher on June 17, 1998 and June 19, 1998 and proposed that STO-2 territory be subdivided into STO-2 and STO-3 territory. He was advised by UP that UP was considering subdividing the current STO-2 territory into STO-2 and STO-3 territories but that the matter was under discussion.

The Consensus Parties propose that the current STO-2 territory be subdivided into two efficient and workable territories – STO-2 and STO-3,[46] both of which would be neutrally dispatched by PTRA. The new STO-2 territory would encompass only the lines that were handled by the former HBT. The new STO-3 territory would dispatch the Bell Yard main line to the periphery of Strang Yard and the Harrisburg line between TN&O Junction and the Galveston line. From an operational perspective, this subdivision is preferable: the East Belt line and West Belt line, which are two interlocking through routes in Houston, would have to be dispatched by the same dispatcher to ensure the utmost synergistic use of these lines. Similarly, STO-3 lines to Galveston and Strang Yard need to be coordinated together to properly move trains efficiently and safely over highly trafficked lines such as the Booth Yard area. V.S. Watts at 10.

[45] The West Belt line begins at West Junction and runs over SP's line to T&NO Junction (Tower 81). and then runs over the HBT line from T&NO Junction past the Congress Street Yard and continues past the HBT/SP Quitman Street connection to the Gulf Coast Junction with UP.

[46] *See* Map of Proposed Dispatching Operations (by territories) attached to V.S. Watts.

1. Neutral Dispatching is a Viable Solution for all Carriers

The Neutral Dispatching Protocols attached to the joint Slinkard/Watts verified statement represent a blueprint for achieving the objectives of neutral dispatching. Unlike the UP/Tex Mex dispatching protocols which allow dispatching functions to remain with the owner of the lines, the Neutral Dispatching Protocols vest dispatching functions in PTRA (or other neutral contract dispatcher) which would be owned and controlled in equal shares by UP, BNSF, Tex Mex and under the plan, the Port of Houston. This avoids conflicts of interest because dispatchers who are employed by the neutral dispatching authority are accountable to all of its owners equally. Since the administration of dispatching operations is in the hands of neutral management, they will be much more sympathetic to the concerns of all carriers.

The proposal that the Consensus Group has put forward would place dispatching responsibilities for most of the Houston terminal area under PTRA. As Mr. Watts has previously pointed out, the qualifications of the PTRA for this duty are impeccable.[47] In addition, PTRA's outstanding safety record means that it can be relied upon to perform its switching and dispatching functions with competence. Finally, as a bona fide agent of the railroads who own and use its facilities, its neutrality and impartiality are assured.

2. Neutral Dispatching Allows All Rail Carriers To Operate Over The Most Efficient Routes Through the Houston Terminal

The Consensus Plan requests the Board to grant to each of UP, BNSF, Tex Mex and PTRA (collectively, the Houston carriers) terminal trackage rights over all the lines and yard facilities encompassed by the proposed ST0-2 and STO-3 territories. The relief requested would help to relieve congestion in the Houston terminal area and enable the neutral dispatchers to

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[47] *See* TM-7/KCS-7, V.S. Watts at 169-170.

dispatch trains using the most efficient routes through the Greater Houston Terminal Area and not just the routes over which such trains have trackage rights. Neutral dispatching over all terminal trackage will allow for improved transit times by all Houston carriers since the dispatchers will not be subject to any artificial constraints and will be able to concentrate on routing all arriving trains through the least congested and most efficient routes.

The benefits of allowing dispatchers to use the most efficient routes through the Houston terminal were evident between April 24-27, 1998 when the UP/BNSF joint dispatchers in Spring, TX routed Tex Mex trains along the most direct routes between Pasadena or Manchester Yards and Basin Yard.[48] This freed up capacity on the heavily congested Harrisburg line over which Tex Mex had been awarded trackage rights in Decision No. 44 of the UP/SP merger.[49] The Harrisburg line is a highly congested and cumbersome route for moving traffic between Manchester or Pasadena Yards and Basin Yard. Nevertheless, UP refused to allow the joint dispatchers to continue to route Tex Mex trains along these direct routes and forced Tex Mex to use the Harrisburg line. This resulted in greatly increased transit times for Tex Mex trains and the trains of other railroads through the Houston terminal.

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[48] The routes in question were (i) UP's Houston Subdivision (GH&H) between Tower 30 (Houston Subdivision MP 189.8) and Tower 85 (Houston Subdivision MP 187.8), and (ii) through UP's Booth Yard and HBT's Booth Yard lead connecting Booth Yard to the East Belt near Tower 85. *See Emergency Joint Petition of The Texas Mexican Railway Company and The Kansas City Southern Railway Company For Additional Trackage Rights Conditions to Emergency Service Order No. 1518*, STB Service Order No. 1518, Ex Parte No. 573, *Rail Service in the Western United States*, at 4 ("Additional Trackage Rights Petition").

[49] *See* Decision No. 44 at 147-151.

ITEM 5 OF THE CONSENSUS PLAN

REQUIRE UP AND BNSF TO ACKNOWLEDGE TEX MEX'S FULL VOTING MEMBERSHIP ON THE PTRA BOARD AND TO RESTORE THE PORT OF HOUSTON AUTHORITY AS A FULL VOTING MEMBER OF THE PTRA BOARD.

The agreement governing PTRA operations and membership entitles all railroads serving Houston to become members of PTRA. Full membership by all such railroads, of course, is essential to ensure that PTRA acts even-handedly with respect to each of them, and thus to ensure that switching and dispatching performed by PTRA is truly neutral. Although there was initially some question whether they would do so, UP and BNSF now seem to have accepted Tex Mex as a full voting member of the PTRA. The Consensus Parties also feel strongly that the Port of Houston should also be a full voting member of PTRA, as it once was, to ensure that all interests served by the Port are also represented.

ITEM 6 OF THE CONSENSUS PLAN

REQUIRE UP TO SELL THE SP'S OUT-OF-SERVICE LINE BETWEEN MILEPOST 0.0 AT ROSENBERG, TX AND MILEPOST 87.8 AT VICTORIA, TX ON REASONABLE TERMS AND CONDITIONS, AND GRANT TRACKAGE RIGHTS TO TEX MEX OVER TWO MILES OF UP LINE BETWEEN MILEPOST 87.8 AND THE POINT OF CONNECTION WITH THE UP'S PORT LAVACA BRANCH.

The Consensus Parties seek an order from the Surface Transportation Board to require Union Pacific to sell to Tex Mex a rail line between Rosenberg and Victoria, Texas on reasonable terms and conditions.[50] The line begins at approximately Milepost 0.0 in Rosenberg,

[50] Tex Mex is willing to grant UP and BNSF overhead trackage rights over the original line to facilitate directional running. As a result, Tex Mex also seeks to retain its trackage rights over the Algoa route to participate in the directional running. Tex Mex is also willing to grant UP local trackage rights to serve current industries on the line.

Texas and proceeds in a southern and westerly direction to approximately Milepost 87.8[51] near Victoria, Texas. *See* Map on next page. This condition will add substantial new competitive infrastructure, at Tex Mex's and KCS's expense, to the Houston/Gulf Coast region. It will significantly shorten Tex Mex's existing trackage rights route and make Tex Mex service much more competitive. It also will enable Tex Mex to cease operations over the heavily-used UP line between Flatonia and Rosenberg, which is also used by Amtrak. The substantial expense of restoring this line and other infrastructure improvements proposed, however, cannot be justified unless the existing restriction on Tex Mex's rights is removed and Tex Mex is able to compete for a larger traffic base.

A. The Rosenberg To Victoria Line Does Not Necessitate Construction Authority

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

[51] The Consensus Parties are also requesting the Board to grant Tex Mex terminal trackage rights over the "stub end" of the line at Victoria, from approximately Milepost 87.8 to connection at UP's Port LaVaca Branch, a distance of approximately two miles.

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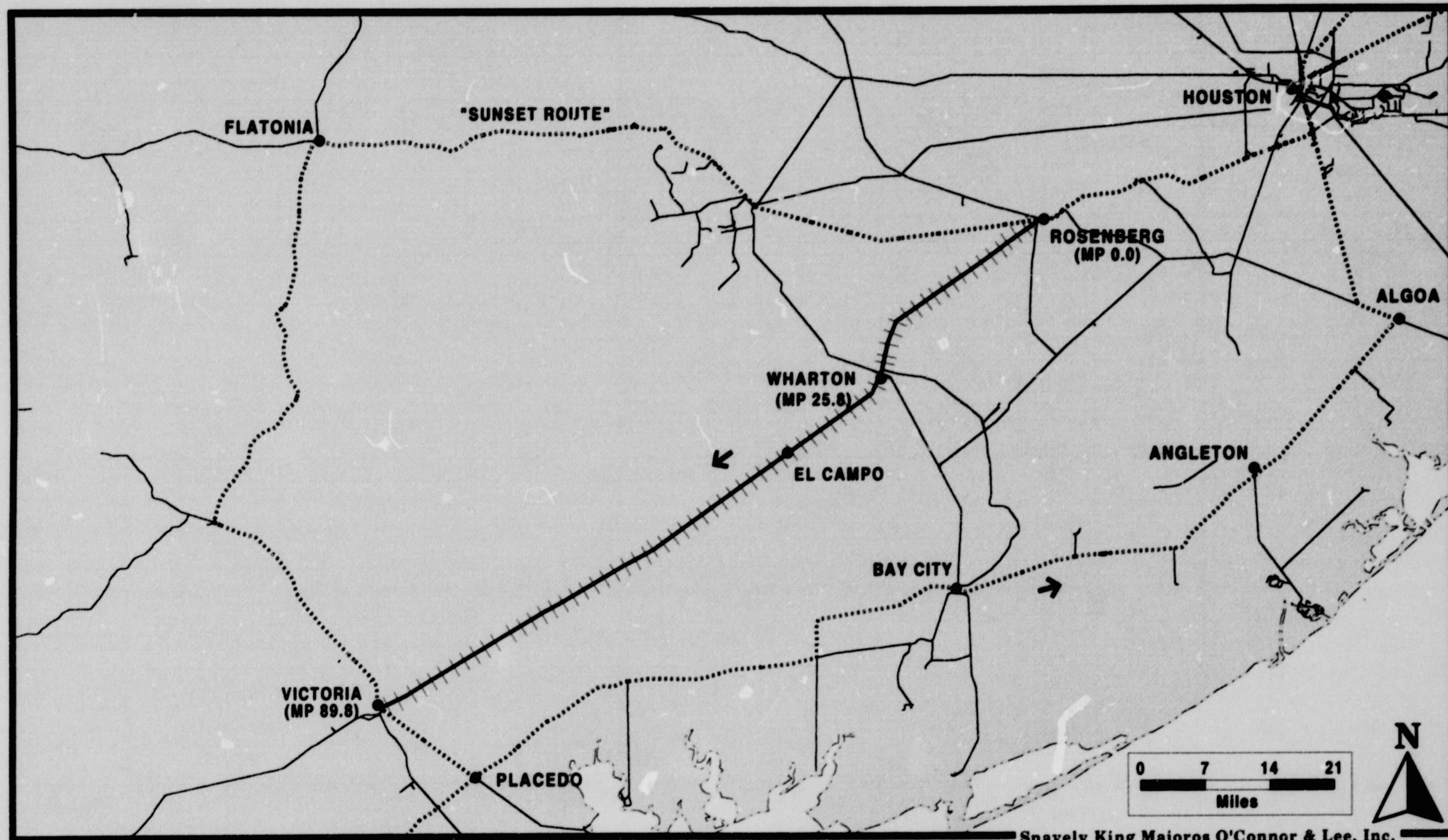
Rosenberg to Victoria Acquisition



Tex Mex Trackage Rights Granted In UPSP Merger and Emergency Service Order

Rosenberg to Victoria Acquisition

Directional Running

neither portion of the Rosenberg to Victoria line has been abandoned. *See Union Pacific's Responses and Objections to KCS/Tex Mex's Second Set of Discovery*, UP/SP-340 at 7.[52]

The issuance of a decision granting permissive abandonment authority does not automatically cause the Board to lose its jurisdiction over the rail line. *See Union Pacific Railroad – Abandonment and Discontinuance of Operations – In Canyon and Ada Counties, ID*, Docket No. AB-33 (Sub-No. 79) (ICC served Feb. 16, 1995) at 5; *Fox Valley & Western Ltd. – Abandonment Exemption – In Fortage and Waupaca Counties, WI*, Docket No. AB-402 (Sub-No. 3X) (STB served March 28, 1996) at 4 and cases cited therein. In order for the Board to lose jurisdiction over a line granted permissive abandonment authority, the railroad must have fully exercised the abandonment authority. The question of whether abandonment has been consummated is a question of fact based upon an examination of the carrier's intent. *Id.* With respect to the Rosenberg-to-Victoria line, UP has stated that it has not abandoned any part of the line. *See* UP/SP-340, *supra*. The fact that UP has removed some of the rail and ties over a portion of the line does not mean that the abandonment was consummated, *see, e.g., T and P Railway – Abandonment Exemption – In Shawnee, Jefferson and Atchison Counties, KS*, Docket No. AB-381 (Sub-No. 1X) (ICC served July 20, 1995) at 10, particularly when UP has not removed structures such as bridges or culverts along the line. *Id.* at 6. *See Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company, et al.*, Finance Docket No. 33508 (STB served April 28, 1998) at 13-14 (rehabilitation of a rail line, purchased from another carrier, does not require authority).

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[52] If, in the unlikely event the Board determines that the line has been abandoned and, therefore, construction authority is needed, the Consensus Parties will rely on the previously filed Construction Petition, Finance Docket No. 33568, which is included in TM-7/KCS-7, filed March 30, 1998.

Because neither SP nor UP ever consummated the abandonment of the Rosenberg-to-Victoria line, Tex Mex is in the process of trying to negotiate the sale of the Rosenberg-to-Victoria line with UP. UP has stated that it is willing to sell the line to Tex Mex and that it agrees that restoration of the line would add useful infrastructure to Houston. Nevertheless, the extreme disparity between the terms proposed by the two parties raises doubts about UP's professed willingness to sell and therefore the Consensus Parties believe that an order from the Board requiring such a sale is necessary, and that an order establishing the terms may ultimately be necessary. Specifically, although Tex Mex has offered a purchase price well above the value SP put on the line in approximately 1994 when SP was trying to sell the line,[53] UP's latest counter offer is more than five times Tex Mex's offer. Also, among the many conditions UP would attach to any sale would be a retention of the exclusive right to serve existing customers.

Consequently, the Consensus Parties request an order from the STB to require UP to sell the line. Then, if the parties are unable to agree on the terms and price of the sale within a reasonable time thereafter, the price and terms of the sale would be submitted to the Board for determination. A condition requiring the sale of this line is expressly within the Board's power to impose conditions on a transaction. 49 U.S.C. § 11323(c). While the Board has indicated that it will require a sale of an applicant's active rail lines only in extraordinary circumstances, no such reservations should apply to an inactive line that an applicant has stated that it is willing to sell. While requiring a sale of the line will require an order from the Board, no separate authorization would be required to permit Tex Mex to rehabilitate it in view of UP's assertion that the line has not been abandoned. *Missouri Central Railroad Company, supra.*

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[53] *See* Wharton Area Branch Lines valuation prepared by SP's Plant Rationalization.

B. The Rosenberg To Victoria Line Will Create Efficiencies For Tex Mex Traffic

As noted previously, Tex Mex is a Class II carrier which operates approximately 157 miles of line between the Mexican border at Laredo, Texas and Corpus Christi, Texas, with a connection to the UP's Brownsville Subdivision at Robstown, Texas. It operates between Robstown and Houston, Texas and between Houston and Beaumont, Texas over UP's rail lines pursuant to trackage rights granted as a condition in the UP/SP control proceeding. Tex Mex's trackage rights between Robstown and Houston, however, are over a quite circuitous, 289 mile route through Placedo, Victoria, and Flatonia, Texas. Tex Mex also operates over terminal trackage rights on the tracks of the HBT in Houston. Tex Mex, as a result of Decision No. 44, also has the right to permanently serve shippers located in Houston on the PTRA and the HBT, but its right so to serve Houston shippers is restricted to traffic having a prior or subsequent move across Tex Mex's line between Corpus Christi and Laredo, Texas.

HOUSTON TO LAREDO VIA FLATONIA	HOUSTON TO LAREDO VIA ACQUIRED LINE
422 MILES	355 MILES

As shown in the above chart, the 355 miles to get from Houston[54] to Laredo via the newly acquired Rosenberg to Victoria line will provide a new and needed infrastructure alternative to the approximately 422 mile route Tex Mex is currently compelled to use from Rosenberg to Victoria via the Flatonia route. This is more than a 16% reduction in the number of track miles Tex Mex will be required to traverse between Houston and Laredo when competing and moving traffic between those two points.

[54] Starting from West Junction.

This translates to reduced overall operating costs -- less fuel costs, lower locomotive and car utilization expenses and savings in crew costs. Unquestionably, the sale and implementation of Tex Mex service over the Rosenberg to Victoria line, in the most expedient manner possible, is in the best interest of all concerned. Once operations begin on the Rosenberg to Victoria line, Tex Mex will not operate on UP's heavily congested Glidden Subdivision (part of the Sunset Route) between Tower 17 in Rosenberg and Flatonia, Texas, a distance of 83.7 miles. Importantly, the removal of Tex Mex from the 83.7 mile portion of the Sunset Route will remove freight trains from the congested Amtrak route.

As noted by Patrick Watts, UP controls 9 out of the 11 tracks into and out of Houston. J.V.S. Slinkard/Watts at 5. This means that Tex Mex operates at the mercy of UP wherever Tex Mex must operate via trackage rights. The purchase of the Rosenberg to Victoria line will give Tex Mex its own line for a significant portion of the route between Houston and Laredo. Currently, of the 422 miles between Houston and Laredo, Tex Mex travels over more than 250 of those miles via trackage rights on the UP. If Tex Mex is allowed to purchase the Rosenberg to Victoria line, Tex Mex's trackage rights over the UP will be reduced to approximately 120 miles – a reduction of over 50 % in trackage rights dependence.

Currently, Tex Mex operates 2 scheduled trains per day between Laredo and Beaumont via the Flatonia route South of Houston. If the Board approves and authorizes the Consensus Plan for additional remedial conditions, and once operations commence on the Rosenberg to Victoria line, Tex Mex projects that 4 additional daily Tex Mex trains will operate between Laredo and Beaumont and one additional train will operate over the Rosenberg to Victoria line for local traffic. These calculations place the projections for traffic over the Rosenberg to Victoria line at 7 trains per day. Furthermore, once the purchase is consummated, Tex Mex will undertake to build a classification and storage facility somewhere between Rosenberg and El Campo. For additional details on the current and post operations, *see* J.V.S. Slinkard/Watts, Attachment B at 7.

Tex Mex projects to invest approximately $65.5[55] million in the Rosenberg to Victoria line as part of its desire and affirmative actions to provide additional infrastructure and a more competitive alternative route to the current rail transportation service provided over the highly congested and circuitous route via Flatonia. Tex Mex also plans on investing approximately $60 million in adding a third line between Houston and Beaumont, as well as, $3.1 million in a storage yard between Rosenberg and El Campo, Texas. See V.S. Brookings at 3-5. Furthermore, the acquisition and operation authority sought herein, combined with the additional remedial conditions sought in the Consensus Plan, will enable Tex Mex to compete effectively with UP in the Houston, Laredo and NAFTA markets. Importantly, in order for Tex Mex to make an investment of more than $130 million in expanding capacity by acquiring and operating the Rosenberg to Victoria line and the other investments, Tex Mex must realize at least a $15.8 million increase in operating income to support an investment that large. *See* V.S. Joseph J. Plaistow at 11. Tex Mex desires to make these capital investments in Houston and UP has indicated its acquiescence to Tex Mex owning and operating the line. Nevertheless, Tex Mex

[55] This figure comes from the Verified Statement of David W. Brookings (TM-7/ KCS-7) at 295 wherein Mr. Brookings estimates the rehabilitation of the Rosenberg to Victoria line at $57.5 million, combined with the estimated cost of the right of way at $8 million. *See also* Verified Statement of David M. Lewis (TM-7/KCS-7) at 298. Once the line is purchased from UP, Tex Mex will rehabilitate the entire rail line. Tex Mex estimates that it will take approximately nine (9) months to complete the rehabilitation of the line. TM-7/KCS-7, V.S. Brookings at 295. In addition, Tex Mex proposes to begin operations over this line within one year after the acquisition and operation authority is granted.

needs the lifting of the Houston traffic restriction and the additional remedial conditions in order to make this needed investment. *See* V.S. Plaistow at 11 and V.S. Woodward at 4.

C. The Acquisition And Operation Of The Rosenberg To Victoria Line By Tex Mex Is In The Public Interest

Tex Mex is prevented from providing efficient and economic rail transportation service into and out of Houston and Laredo because of the Houston traffic restriction and UP's congestion problems. Specifically, Tex Mex's operating ratio for the 3rd quarter of 1997 was 113% and Tex Mex experienced operating losses of $1,193,000 for 1997. *See* V.S. Plaistow at 9. This is not a sustainable operating ratio. However, with the acquisition and operation of this rail line by Tex Mex, and the grant of the other requested additional remedial conditions, Tex Mex will be capable of providing transportation service for the Houston, Laredo and NAFTA markets on an efficient and economical basis. The acquisition and rehabilitation of the rail line between Rosenberg and Victoria is an integral part of the Consensus Plan which will finally permit Tex Mex and KCS together to compete effectively with UP in order to retain and to increase their respective shares of the transportation service provided to and from the Houston, Laredo and NAFTA markets. V.S. Woodward at 3.

The acquisition and operation of the Rosenberg to Victoria rail line by Tex Mex will foster competition among rail carriers [49 U.S.C. § 10101(5)], ensure the development of a sound rail transportation system [49 U.S.C. § 10101(4)], and allow the competition and the demand for Tex Mex and KCS service, rather than federal regulation, to govern the level of rates for transportation service in the Houston, Laredo and NAFTA markets [49 U.S.C. § 10101(1)]. Ordering UP to sell to Tex Mex, and authorizing Tex Mex to operate the Rosenberg to Victoria line, will provide additional capacity. In addition, the acquisition and operation of the Rosenberg-to-Victoria line by Tex Mex, combined with the other additional remedial conditions requested, will enhance the ability of Tex Mex and KCS together to provide an effective competitive alternative to Texas and NAFTA shippers. V.S. Woodward at 7.

As noted above, Tex Mex will use this line to increase efficiencies and abate its quite circuitous 289 mile route through Placedo, Victoria, Flatonia, Rosenberg to Houston and instead travel directly from Rosenberg to Victoria and on to Placedo. Providing Tex Mex authority to purchase and operate over this more highly efficient line is thus in the public interest.

After the purchase, Tex Mex/KCS will rehabilitate the line. The line will be rehabilitated on an existing rail bed with approximately 30 miles of track, and most bridges and trestles are still in place. The 30 miles of track, as well as the bridges and trestles, will be rehabilitated to FRA Class 4 track standards. V.S. Brookings at 3. This leaves approximately 60 miles of track to be relaid and brought up to FRA Class 4 track standards. *Id.* The acquisition, rehabilitation and operation of the Rosenberg to Victoria rail line by Tex Mex is in the public interest because it is designed to enhance rail competition in the delivery of products in Texas and the NAFTA market.

As just one example of how this project will benefit the public interest, in a March 19, 1998 statement by Shell Chemical Company ("Shell"), Shell states that "[W]e believe that establishment of the Tex-Mex as a permanent presence in the Houston market will be an important contribution to the efforts to address the long term needs of Houston shippers." Importantly, Shell has utilized the Tex Mex under the Board's emergency service order and would like to have the right to use Tex Mex permanently. As such, Shell supports the Board's granting Tex Mex authority to rehabilitate the Rosenberg to Victoria line in order to increase capacity and improve efficiency for Tex Mex movements which will enhance rail competition.

ITEM 7 OF THE CONSENSUS PLAN

REQUIRE UP TO SELL OR LEASE AN EXISTING YARD IN HOUSTON TO THE TEX MEX AT A REASONABLE RATE.

Item 7 of the Consensus Plan calls for making yard space available to Tex Mex in Houston. Yard space is essential to railroad operations. The other railroads serving Houston all have yard facilities, with UP having at least 22 yards, while Tex Mex has no yard space available to it in Houston. Tex Mex's lack of yard space in Houston causes Tex Mex and the other railroads serving Houston substantial inefficiencies. By allowing Tex Mex to acquire yard space in Houston, the Consensus Plan will remedy those inefficiencies, making Tex Mex more efficient and therefore more competitive, and contributing to the overall operational efficiency of the Houston terminal. Booth Yard, a small yard located south of the Houston Belt and in close proximity to PTRA's principal yards, is the optimal yard for Tex Mex to acquire in order to effectuate these goals.

A. UP and BNSF Agree With the Consensus Parties That Tex Mex Needs Yard Space in Houston

In 1996, UP told the Board that Tex Mex needed to establish a yard operation in Houston to interchange effectively with PTRA at North Yard, as Tex Mex now does. As the Board stated it, "UP/SP insists that, if Tex Mex wants to interchange directly with PTRA at North Yard, it should establish a yard operation in Houston and put on the required transfer job." Decision No. 47 at 9. BNSF stated in a June 17, 1998, letter that it believes that Tex Mex needs yard space in Houston. "We support the concept that Tex Mex needs its own yard in the Houston area to accomplish interchanges, setouts and pick-ups."[56] The Consensus Plan proposes that Tex Mex

[56] Letter of June 17, 1998, from Peter J. Rickershauser, Vice President of BNSF to Randy Speight, Chemical Manufacturers Association.

establish just such an operation at Booth Yard, an underutilized, partially dismantled yard located away from the East Belt of the former HBT.

B. Tex Mex Cannot Operate Effectively Without Yard Space

Tex Mex must control yard space in Houston to preserve competition into and out of Mexico as included by the Board in the UP/SP merger proceeding. Verified Statement of Paul L. Broussard ("V.S. Broussard") at 5-8. Yard facilities are required in normal railroad operations to interchange traffic between carriers, to classify and block (*i.e.*, sort and group by destination) cars for movement, and for other functions ancillary to train movement.[57] V.S. Broussard at 5-7. That yard facilities are essential to railroad operations is amply demonstrated by the number of rail yards that UP, BNSF and PTRA operate in the Houston area. *See* V.S. Broussard at 5 and map following that page. UP alone operates at least 22 yards in the Houston area, while BNSF and PTRA together operate approximately another 10 yards. Meanwhile, Tex Mex controls no Houston yard space. *Id.*

Being able to control and operate yard space to classify and block cars is essential if Tex Mex is to avoid substantial operating inefficiencies that it now suffers in Houston because of how it must interchange with other carriers. V.S. Broussard at 6. The East Belt of the former

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

HBT is the most heavily congested segment of the HBT's former lines.[58] Yet, because it lacks yard space in Houston, Tex Mex must interchange cars destined to facilities formerly switched by the HBT by pick ups or set outs at Basin or Dallerup Yards, on the East Belt.[59] TM-7/KCS-7, V.S. Watts at 177. This requires Tex Mex trains to traverse the entire heavily-congested East Belt portion of the former HBT. Even worse, in order to interchange at Dallerup or Basin Yards, Tex Mex trains are forced to block the main line while performing pick ups and set outs. V.S. Broussard at 9. This impedes movement of through traffic while the switching operation occurs, and is inefficient to all concerned, as UP has long recognized.[60] Nevertheless, UP has refused to allow Tex Mex access to yard space to avoid these inefficiencies.

Tex Mex interchanges with the PTRA in North Yard, which is adjacent to Basin Yard and close to Booth Yard. Normally, these interchanges are made only by northbound Tex Mex trains because PTRA's North Yard ordinarily cannot be accessed by a southbound Tex Mex train without blocking the East Belt and numerous road crossings for an extended time. Until recently, PTRA would not classify or block cars for Tex Mex. Instead, PTRA tendered Tex Mex at Houston sets of cars that contained both cars bound south toward Laredo and cars bound north

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[58] UP has stated its desire to remove traffic from the East Belt to speed passage of through trains along that route. *See Union Pacific's Report on Houston and Gulf Coast Infrastructure*, Ex Parte No. 573/Service Order No. 1518, filed May 1, 1998 at 15.

[59] The Board's Decision No. 44 at 33, 147-151 and 232-33 in the UP/SP merger proceeding granted Tex Mex the right to set out or pick up shipments in Houston if those shipments had a prior or subsequent movement on Tex Mex's Corpus Christi-Robstown-Laredo line. Subsequently, the Board's October 31, 1997 Service Order No. 1518 at 1 granted Tex Mex the right to accept northbound traffic tendered to it by Houston shippers switched by the HBT and PTRA. The next day on Nov. 1, 1997, UP and BNSF arbitrarily dissolved the HBT.

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

to Beaumont and beyond. Tex Mex had to haul these mixed groups of cars to the nearest yard available to it (namely, either Beaumont or Laredo) in order to classify and block them and to move them toward their destination. Often that movement meant sending the cars back through Houston in the opposite direction from which they had just come.

Following the Tex Mex/KCS March 30 filing with the Board in this matter, UP withdrew its previous opposition that prevented PTRA from separating northbound and southbound cars slated for interchange to Tex Mex.[61] V.S. Broussard at 7. Now, PTRA separates the cars that are being picked up by Tex Mex according to whether their destination is south or north of Houston. Unfortunately, due to physical limitations and other restrictions placed upon Tex Mex's trackage rights in Houston, Tex Mex still cannot pick up southbound blocks from PTRA with a southbound through freight train, and consequently must first move southbound cars north to Beaumont for classification and assembly into Tex Mex's southbound trains.

The lack of yard space available to Tex Mex in Houston causes inefficiency to both Tex Mex, its customers and other carriers serving Houston. V.S. Broussard at 7. Because Tex Mex has no yard facilities in Houston in which it can classify cars received in interchange or, if the cars were classified, in which it can hold cars for pick up by a train bound in the proper direction, Tex Mex frequently is forced to haul groups originating in Houston to the nearest yard facilities available for Tex Mex's use. Normally, that means hauling the cars approximately 80 miles north of Houston to Beaumont. In some instances in the past, however, this meant having to haul the cars almost 300 miles south to Corpus Christi. V.S. Broussard at 7. This creates substantial inefficiency and added cost for Tex Mex by -

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[61] This very rudimentary blocking is less thorough than the blocking that Tex Mex would perform for itself if it had yard space in Houston to block its own cars.

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

- adding further traffic unnecessarily to the already-congested Houston-Beaumont lines;

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

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

- forcing Tex Mex to pay KCS a switching fee at Beaumont for every southbound car that must be hauled to Beaumont, to be switched to a southbound train; and

- forcing Tex Mex to pay unnecessary trackage rights fees to UP[62] and added time and mileage-based car hire fees to car owners.

Accordingly, Tex Mex's lack of yard facilities in Houston forces significant inefficiencies onto Tex Mex, its customers, and to a lesser extent even onto other carriers. V.S. Broussard at 7-8.

C. The Consensus Plan Calls for Needed Yard Space To Be Made Available To Tex Mex

Although Tex Mex is willing to negotiate with UP about buying or leasing Booth Yard, UP thus far has shown no flexibility on that subject. Therefore, the Consensus Parties' proposal to allow Tex Mex to purchase Booth Yard or to lease it over the long term is the optimal solution to inefficiencies Tex Mex now suffers from lack of yard space in Houston, and would have ancillary benefits for all Houston railroads as well. V.S. Broussard at 16-17. Booth Yard, a former HBT yard which HBT sub-leased to the PTRA, is now controlled and owned by UP.

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

V.S. Broussard at 8. During the period when PTRA leased Booth Yard from HBT, PTRA allowed Tex Mex to use Booth Yard, eliminating some of the inefficiencies of interchanging that presently exist. UP ended Tex Mex's use of Booth Yard when, following dissolution of the HBT, UP took over Booth Yard and terminated PTRA's lease there. The yard has 17 tracks, although the connections between most of those tracks and the lead track at the south end of the yard were severed recently. V.S. Broussard at 13. With a 456 sixty foot standing car capacity, Booth Yard is a small to modest-sized yard by Houston standards. Its capacity equals only about 3% of the capacity of seven of UP's largest Houston yards.

Tex Mex would rehabilitate Booth Yard and put it to more productive use than UP. V.S. Broussard at 12-14. Because most of the yard tracks are severed on the south end, most movement of cars into and out of the yard, and even between most of the tracks in the yard, must be performed from the north end of the yard. This reduces flexibility in using the yard for switching and other purposes. V.S. Broussard at 13. Tex Mex proposes to restore the connections between the yard tracks and the south end lead track to allow cars to be moved between the various yard tracks from either end of the yard. This will create added flexibility in classification and blocking of cars, and would also allow trains moving into or out of Houston to enter and exit the yard from the north or from the south. V.S. Broussard at 12. This would be particularly important in connection with Tex Mex's planned rehabilitation and rebuilding of the Rosenberg-Victoria line, which connects with the south end of Booth Yard via the Booth Yard-Harrisburg Junction-T&NO Junction-Rosenberg segment of UP's Houston-Flatonia-San Antonio ("HFS") route. V.S. Broussard at 10-11.

The Consensus Plan provisions for Booth Yard not only would improve the usefulness of that yard, but would also reduce congestion on the former HBT East Belt by diverting Tex Mex trains operating through Houston away from the East Belt. V.S. Broussard at 9-10. Tex Mex trains could travel between Booth Yard and the Rosenberg-Victoria line directly via the HFS route and additional connecting terminal track without having to use the extremely congested West or East Belt lines. Tex Mex trains could operate through Booth Yard, avoiding the nearly gridlocked southern junction of the East and West Belts, Double Track Junction. In addition, interchange for shippers switched on the former HBT lines and points north of the Houston Ship Channel could take place by operating a switching job between Booth Yard and PTRA's neighboring North Yard. This would avoid blockage of the East Belt, which presently results from Tex Mex having to interchange such shipments at Dallerup, Basin and PTRA North Yards along the East Belt. V.S. Broussard at 9. Interchange with PTRA's Manchester and Pasadena Yards would also be improved because they are accessible directly from Booth Yard. V.S. Broussard at 10.[63]

D. The Consensus Plan Protects UP's Stated Interests in Booth Yard As Well

The Consensus Plan not only makes yard space available that Tex Mex needs to improve its own efficiency and to improve operating efficiency of the entire terminal, it also protects UP's stated interests in using Booth Yard. UP stated in February that it used Booth Yard for storage of cars. V.S. Broussard at 14.[64] The Consensus Plan protects UP's need for car storage by

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[63] The Consensus Parties have been told that UP plans to remove the line that connects the north end of Booth Yard to the East Belt sometime in 1998-99. That plan, if true, would remove the principal route by which Tex Mex could access Booth Yard on southbound through train movements prior to the reconstruction of the Rosenberg-Victoria line. Accordingly, the Board should prohibit UP from removing that line, at least pending a determination on the Consensus Plan and reconstruction of the Rosenberg-Victoria line.

[64] After the Tex Mex/KCS March 30 filing disclosed that UP's use of Booth Yard for car storage was widely agreed to be an inefficient use of valuable yard space in a crowded and badly congested terminal area, UP claimed in its May 1 infrastructure report that it also originates switching jobs for industries in the Sinco area from Booth Yard.

providing that Tex Mex would lease UP temporarily, pending construction of a new storage yard near Rosenberg, up to 300 cars' worth of space in Booth Yard. Though not required by the Consensus Plan, Tex Mex plans to base two switch crews in Booth Yard to handle Tex Mex trains and whatever other switching may need to be done in the yard. Tex Mex would be willing to handle switching of UP cars in the yard on a contract basis. Meanwhile, Tex Mex would construct a car storage yard between Rosenberg and El Campo. When that yard is completed, UP's car storage at Booth Yard would be terminated and Tex Mex would lease UP space in the new Rosenberg-El Campo yard.

Although a Rosenberg-El Campo location would not be a suitable location for a switching and classification yard for Houston traffic, it could function well as a car storage yard. Switching and classification yards handle multiple pick ups and deliveries of small groups of cars each day. The large number of such small volume movements each day places a premium on proximity of the yard to the industries being switched because the longer the distance of each switching movement, the more time-consuming it is and the more track time it occupies. This factor likely motivated BNSF to move its switching operations from the Mykawa area to Old and New South Yards on the HBT.[65]

The Consensus Plan also provides for the switching that UP lately claims to perform out of Booth Yard. UP stated in its infrastructure report that its uses Booth Yard to provide industry support in the Booth Yard and Sinco areas. The Consensus Plan calls for the neutral switching carrier to serve those areas, thus satisfying any industry support needs UP may currently serve from Booth Yard.

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[65] Mykawa Yard is a point on BNSF's line serving Algoa and Alvin.

E. No Alternative To Tex Mex's Use Of Booth Yard Would Provide All The Benefits Of The Consensus Plan

Neither UP's suggestion that Tex Mex build a receiving track at Basin Yard[66] nor BNSF's suggestion in a June 17 letter to CMA that Tex Mex build a yard near BNSF's Mykawa yard are efficient alternatives to the Consensus Plan's suggestion that Tex Mex be allowed to purchase or lease for a long term Booth Yard. Building a set-out and pickup track at Basin Yard would still require Tex Mex to perform all interchanges on the East Belt, and thus would not alleviate congestion on that track segment as would the Consensus Plan proposal for use of Booth Yard. Unlike Booth Yard, Basin Yard also does not have the proximity advantage with respect to PTRA's Manchester and Pasadena Yards.

Building a switching and classification yard at Mykawa would be unsatisfactory to Tex Mex for the same reasons that BNSF moved its switching and classification operations to Old and New South yards; *i.e.*, limited access due to the yard's distance from the heart of the terminal area. Also, for southbound Tex Mex trains to access a yard at that location would require that they traverse Houston entirely, probably over the crowded East Belt, and then continue south against the directional flow on the Algoa route.

F. Conclusion

If NAFTA and Houston shippers are to be provided a fully effective alternative to UP, Tex Mex needs yard space in Houston. Booth Yard is the best choice of yard space available because it is presently underutilized, because its location would limit Tex Mex's use of the East Belt, and because the location of Booth Yard ties in well with the proposed Tex Mex operation between Victoria and Rosenberg. Accordingly, acquisition of Booth Yard by Tex Mex will

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[66] *See Union Pacific's Report on Houston and Gulf Coast Infrastructure*, Ex Parte No. 573/Service Order No. 1518, filed May 1, 1998 at 19.

improve the operating efficiency of Tex Mex, Booth Yard itself, and of the entire Houston terminal area.

ITEM 8 OF THE CONSENSUS PLAN

REQUIRE UP TO ALLOW KCS AND TEX MEX TO CONSTRUCT A NEW LINE ON UP'S RIGHT-OF-WAY ADJACENT TO UP'S LAFAYETTE SUBDIVISION BETWEEN DAWES AND LANGHAM ROAD, BEAUMONT, TEXAS, SUBJECT TO CERTAIN CONDITIONS.

This condition would also add substantial new infrastructure to Houston and the Gulf Coast region. Under the terms the Consensus Parties propose for this condition, it would increase the capacity of all railroads serving Houston, entirely at Tex Mex's and KCS's expense, without reducing any railroads' existing capacity or access to shippers.

At present, there are two parallel single-track lines between Houston and Beaumont, TX: (1) UP's Lafayette Subdivision, which serves major industries around Dayton and on the Baytown Branch, and (2) UP's Beaumont Subdivision, which serves few local shippers.[67] Under the terms proposed for this condition, upon completion of a second main line on the Lafayette Division, Tex Mex/KCS would deed it to UP in exchange for a deed to the UP's Beaumont Subdivision. UP and BNSF would be granted overhead and local trackage rights over the Beaumont Subdivision, which Tex Mex would dispatch, and Tex Mex would retain overhead rights on the Lafayette Subdivision.

Accordingly, the Consensus Parties request that the Board require UP to allow Tex Mex/KCS to construct a new rail line on UP's right-of-way adjacent to UP's Lafayette

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[67] Although UP has announced its intention to convert both lines to joint-ownership with BNSF, no application seeking authorization for such a transaction has been filed with the Board. Furthermore, as discussed earlier, Tex Mex is committed to ensuring that no local shipper located on the Beaumont Division line will see a diminution in the number of carriers currently serving that shipper. Accordingly, BNSF and UP will suffer little, if any, loss of revenue as a result of Item 8 of the Consensus Plan.

Subdivision between Dawes, near Houston, Texas at SP Milepost 353, and Langham Road, Beaumont, Texas at SP Milepost 282.4. Upon completion of this new rail line, Tex Mex/KCS will deed it to UP in exchange for a deed to the UP's Beaumont Subdivision between Settegast, Jct., Houston at UP Milepost 381.6, and Langham Road, Beaumont at UP Milepost 456.7. *See* map on next page. Tex Mex will dispatch this line from Houston and will grant BNSF and UP trackage rights over this line. Tex Mex will also retain trackage rights over the Lafayette Subdivision between Houston and Beaumont.[68]

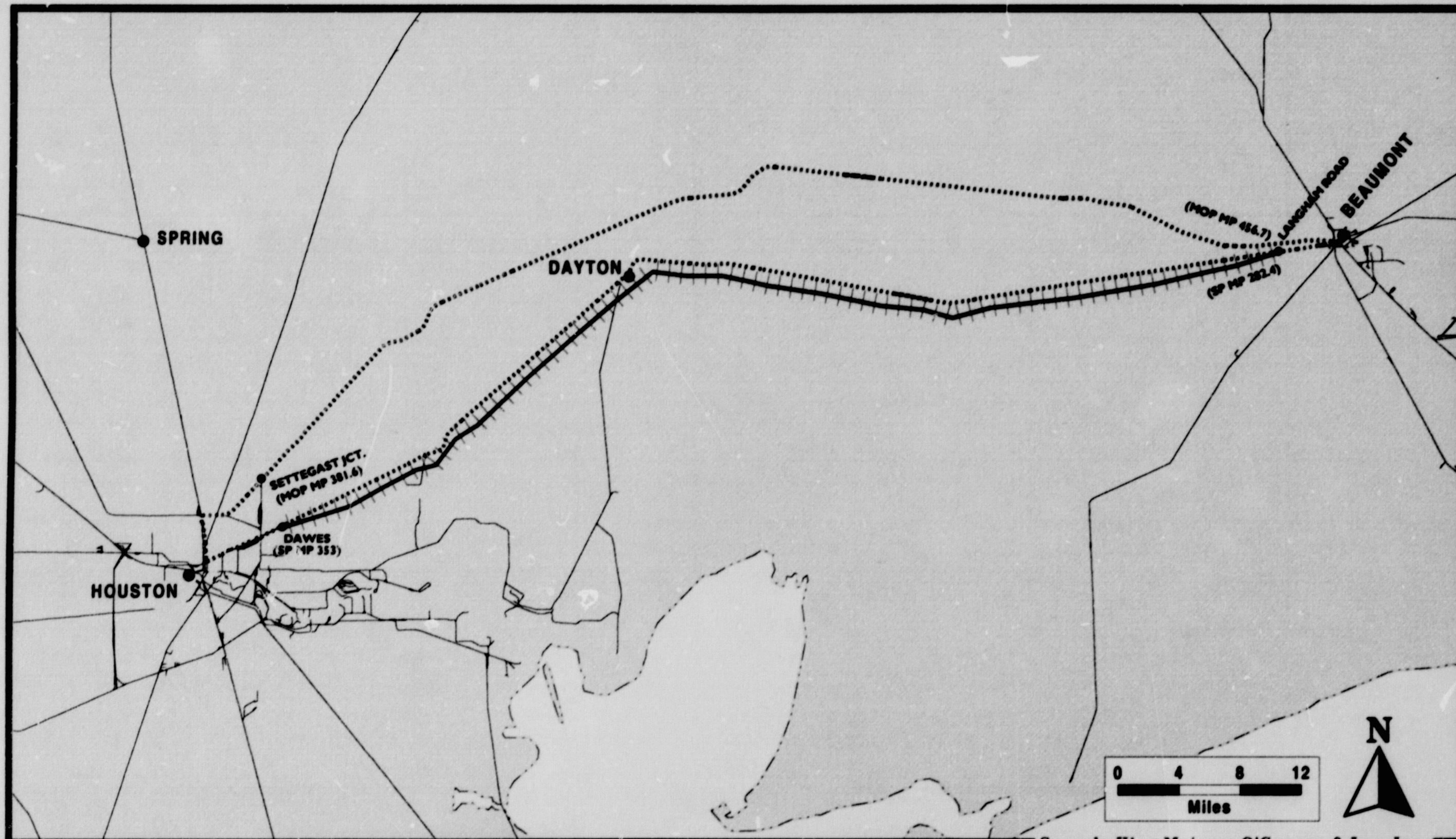
A. The Houston To Beaumont Double Track And Acquisition Will Create Efficiencies For All Houston Traffic

As noted previously, Tex Mex is a Class II carrier which operates approximately 157 miles of line between the Mexican border at Laredo, Texas and Corpus Christi, Texas. It operates between Houston and Beaumont over UP's rail lines pursuant to trackage rights granted as a condition in the UP/SP control proceeding. Those trackage rights were granted to enable Tex Mex to connect with KCS in Beaumont and, through the connection with KCS, to provide an effective competitive alternative to UP/SP for rail traffic between the United States and Mexico.

BEAUMONT TO LAREDO CURRENT	BEAUMONT TO LAREDO CONSENSUS PLAN
516 MILES	447 MILES

[68] The Consensus Parties believe that Tex Mex's construction of the double-track within UP's Lafayette Subdivision right of way does not, in and of itself, require construction authority from the Board. *See City of Detroit v. Canadian National Railway Company, et al.*, 9 I.C.C. 2d 1208 (1993) (hereinafter "*City of Detroit*") and *City of Stafford, Texas v. Southern Pacific Transportation Company*, Finance Docket No. 32395 (ICC served Nov. 8, 1994) (hereinafter "*City of Stafford*").

Houston to Beaumont Double-Track and Acquisition



Snavely King Majoros O'Connor & Lee, Inc.

Beaumont Subdivision ("MOP" Line)

Lafayette Subdivision ("SP" Line)

New Construction

As shown in the above chart, it takes 516 miles to get from Beaumont to the International Bridge at Laredo under the current Tex Mex route. Under the Consensus Plan, which includes Tex Mex owning the Beaumont Subdivision and the Rosenberg to Victoria line, Tex Mex's route would be reduced to 447. More importantly, of the current 516 miles, 370 of those miles are over UP trackage rights. Tex Mex operates at the mercy of UP wherever Tex Mex must operate via trackage rights. Under the Consensus Plan, only 135 of the 447 miles will be on UP trackage rights – a nearly 64% reduction in trackage rights dependence.

Tex Mex/KCS plan on investing approximately $58 million in the construction of the double-track line adjacent to UP's Lafayette Subdivision. *See* Verified Statement of David W. Brookings at 4, (hereinafter "V.S. Brookings"). The double-track construction will consist of approximately 63 miles[69] of track, all constructed to FRA Class 4 track standards to allow for 60 MPH freight train speeds. *Id.* at 3. The estimated length of time for completion of this line is 15 months. *Id.* at 4. Importantly, the crossover switches linking the double-track main lines will only be 10 feet apart instead of the 10 mile distance currently between the Beaumont and Lafayette Subdivisions. This will dramatically decrease maintenance costs for UP and ease in congestion problems because of the ease in switching between the double-main tracks.

In comparison to the new line, which will be deeded to UP upon its completion, the depreciated value of the Beaumont Subdivision line, which will ultimately be deeded to Tex Mex, is approximately $56 million, excluding real estate values. V.S. Brookings at 4. This figure includes the fair market value of existing grading, ties, rail, ballast, signals, bridges, culverts and switches. The current replacement cost of the real estate underlying the track is

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[69] The total distance of the double-track area is 75 miles, however, approximately 12 miles of the line consists of bridges which will not be double-tracked.

valued at almost $5 million. V.S. Brookings at 5. However, as part of the exchange of the double-track for the Beaumont Subdivision, Tex Mex/KCS are not requesting a transfer of the title to the underlying land and its encompassing subsurface land rights. Consequently, UP would gain a new $58 million line, with lower maintenance costs, in exchange for an older line worth approximately $56 million.

Most importantly, the Houston shippers would be gaining a third rail line, thereby adding to the capacity between Houston and Beaumont. As noted above, all three carriers, Tex Mex, UP and BNSF would each have trackage rights over the three lines. As a result, by requiring this requested exchange and imposing the other requests in the Consensus Plan, the Board will have furthered its intent to maintain Tex Mex as an effective competitive alternative to UP/SP for rail traffic between the United States and Mexico and added capacity and infrastructure to an area where shippers are desperately in need of permanent relief.

B. The Acquisition And Operation Of The Beaumont Subdivision Line By Tex Mex Is In The Public Interest

Currently, Tex Mex is prevented from providing efficient and economic rail transportation service between Mexico and U.S. markets because of the Houston traffic restriction and UP's congestion problems. As previously noted, Tex Mex's operating ratio for the 3rd quarter of 1997 was 113% and Tex Mex experienced operating losses of $1,193,000 for 1997. *See* V.S. Plaistow at 9. This is not a sustainable operating ratio. However, with the acquisition and operation of this rail line by Tex Mex, and the grant of the other requested Consensus Plan conditions, Tex Mex will be capable of providing transportation service for the Houston, Laredo and NAFTA markets on an efficient and economical basis. The rail line between Houston and Beaumont is an integral part of the Consensus Plan which will permit Tex Mex and KCS together to effectively compete with UP in order to retain and to increase their respective shares of the transportation service provided to and from the Houston, Laredo and NAFTA markets. V.S. Woodward at 7.

The double-tracking of the Lafayette Subdivision and acquisition and operation of the Beaumont Subdivision rail line, by Tex Mex will foster competition among rail carriers [49 U.S.C. § 10101(5)], ensure the development of a sound rail transportation system [49 U.S.C. § 10101(4)], and allow the competition and the demand for Tex Mex and KCS service, rather than federal regulation, to govern the level of rates for transportation service in the Houston, Laredo and NAFTA markets [49 U.S.C. § 10101(1)]. Ordering UP to allow Tex Mex to double-track UP's Lafayette Subdivision and authorizing Tex Mex to operate the Beaumont Subdivision line will provide additional capacity in the form of the three rail lines in place of the current two rail lines between Houston and Beaumont. This will increase capacity for all Houston carriers, all paid for by Tex Mex and KCS, and without reducing any of the existing railroad's capacity or access to shippers. In addition, the double-tracking of the Lafayette Subdivision and the acquisition and operation of the Beaumont Subdivision by Tex Mex, combined with the other additional remedial conditions requested, will enhance the ability of Tex Mex and KCS together to provide an effective competitive alternative to Texas and NAFTA shippers.

This acquisition and operation authority will promote safe and efficient rail transportation and will enhance Tex Mex's ability to earn adequate revenues from its transportation services [49 U.S.C. § 10101(3)], and encourage honest and efficient management of railroads [49 U.S.C. § 10101(10)]. Importantly, ordering UP to allow Tex Mex/KCS to construct a line adjacent to UP's Lafayette Subdivision in exchange for the Beaumont Subdivision line will not cause either UP or BNSF to lose any significant revenues since (1) there is little local traffic on the Beaumont Subdivision (which is the line Tex Mex will eventually own) and (2) Tex Mex will grant overhead and local trackage rights back to both UP and BNSF over the Beaumont Subdivision line.

The building of a new third rail line between Houston and Beaumont and the acquisition and operation by Tex Mex of its own line, via the Beaumont Subdivision, will benefit shippers because it will add capacity, enhance competition, and ensure the long term viability of Tex Mex. All of this will be done at the sole expense of Tex Mex and KCS with little, if any, loss in revenues to UP or BNSF.

C. The Houston To Beaumont Transaction Does Not Require STB Construction Authority

The building of a double-track within UP's right of way adjacent to the Lafayette Subdivision does not require separate STB authority and the acquisition by the Tex Mex of the parallel rail line between Houston and Beaumont, the Beaumont Subdivision can be authorized as a further condition to Decision No. 44 under the Board's continuing oversight authority and its powers at 49 U.S.C. § 11324(c). As stated previously, the construction of the double-track within UP's Lafayette Subdivision right of way does not, in and of itself, require construction authority from the Board. *See City of Detroit* and *City of Stafford, supra.* As stated succinctly in *City of Detroit* "Investing in existing systems . . . was not the kind of activity that Congress sought to regulate in 1920. If anything, Congress sought to encourage railroads to improve existing services before extending a line or constructing a new one." *Id.* at 1216. Since "[d]ouble-tracking is an improvement to an existing rail line," Congress did not intend to regulate the construction of double-track. *Id.* at 1219. *See also, City of Stafford* at 8-9. In fact, to find any other way would discourage any future improvements in efficiency and would "afford a rich opportunity for obstruction and delay by carriers that might feel threatened by increased or enhanced competition." *City of Detroit* at 1220.

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

The Consensus Parties have conducted numerous competitive and market impact analyses. These analyses are described in detail in the Verified Statements of Curtis Grimm and Joseph J. Plaistow, George Woodward, Michael H. Rogers, and Joseph J. Plaistow.

The market impact study done by Mr. George Woodward, Senior Vice President-Chief Commercial Officer at ALK Associates, Inc., assisted by Michael H. Rogers, examined whether or not Tex Mex would, absent a service crisis, provide an effective alternative to UP for Laredo traffic. The Board granted Tex Mex certain trackage rights and restricted local access to Houston shippers as a condition to the UP/SP merge to ensure the continuation of an effective alternative to UPSP's routing into the border crossing at Laredo and to protect the essential service Tex Mex provides to the more than 30 shippers located on its line. Decision No. 44 at 148-149. However, the Board's objectives in granting Tex Mex trackage rights have been undermined because of UP's management practices, the elimination of neutral switching and dispatching, and discriminatory treatment toward Tex Mex. The Consensus Plan will restore Tex Mex to the original role that the Board envisioned it to be.

As a direct result of its merger with Southern Pacific, UP, in 1996 (the most recent year for which traffic data is not "corrupted" by the congestion crisis), dominated the key Laredo gateway for U.S.-Mexico rail traffic, with approximately 90% of the carloads at Laredo to and from the U.S. in 1996. V.S. Woodward, Exhibit 1. The STB identified this dominance as an anticompetitive impact of the merger, and provided Tex Mex trackage rights to ensure effective competition for NAFTA traffic. Yet, in a normal year, assuming no congestion, Tex Mex using the Laredo gateway and the trackage rights granted to it in Decision No. 44 is predicted to have only a 14.4% market share of both inbound and outbound movements. V.S. Woodward, Exhibit

1.[70] The Consensus Plan, if adopted, would increase Tex Mex's share to 37.8%, providing Houston and NAFTA shippers with a significantly stronger competitive alternative. *See* V.S. Woodward, attached Exhibits 1, 2, and 3.

While, during this congestion crisis, UP's market share of Laredo traffic is declining and the number of carloads on the Tex Mex is increasing (which is precisely what the Board should expect to happen under its emergency service orders and due to shippers diverting traffic away from UP to the extent possible), this is not an indicator of the relevant traffic flows in a post-congestion environment. UP's statistics, submitted on July 1, 1998 in its second quarterly report in UP/SP-344, dramatically demonstrates the fact that, until the onset of the UP service meltdown, the Tex Mex trackage rights conditions had only a moderate effect on Tex Mex's market share at Laredo. Indeed, the traffic impact study done by ALK and discussed in the Verified Statements of Joseph Plaistow and George Woodward reflects the traffic flows in a post-congestion environment. Those analyses show how, in the absence of congestion and service meltdown, the Tex Mex trackage rights are still too limited to truly make Tex Mex/KCS an effective alternative to UP for NAFTA traffic.

It is important that the Board allow Tex Mex to permanently solicit northbound freight from Houston in order to ensure that Tex Mex is the competitive alternative for Mexico traffic intended by the Board. Without the ability to solicit traffic from Houston to other United States

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[70] While BNSF also serves the NAFTA market, much of BNSF's NAFTA traffic does not have to go through the Houston terminal. Further, in the event of congestion in Laredo, BNSF has the Eagle Pass and Brownsville gateways in which to route NAFTA traffic. *See* Decision No. 44 at 147. Tex Mex/KCS must travel in and through Houston subject to UP's dispatch and switching practices. This fact significantly impairs the ability of Tex Mex/KCS to serve the NAFTA traffic.

points, the Tex Mex will be relegated to the role of an ineffective niche player who will never be a truly competitive alternative to UP. *See* V.S. Woodward at 4.

Michael H. Rogers of ALK did a traffic diversion analysis to study the impact upon traffic flows that would result from the implementation of the proposed Consensus Plan. The study included both extended haul traffic and new business markets. In its study, ALK did not attempt to address changes in rail origin/destination patterns, transportation modal shifts, or economic growth considerations.

For this diversion analysis, ALK used Tex Mex's 1996 actual traffic data, integrating the 1996 100% Tex Mex traffic data with the 1996 Waybill Sample. The diversion analysis projected that in 1996, Tex Mex's total revenue would be approximately $18.4 million. With the UP/SP merger conditions imposed, Tex Mex's total revenue would rise approximately $8.7 million to $27.1 million. ALK's diversion projections further concluded that under the proposed Consensus Plan, Tex Mex would attract approximately $82.5 million in total freight revenue, which is about $55.3 million over the amount of freight revenue generated in a normal operating year utilizing its trackage rights granted under the UP/SP merger conditions. *See* V.S. Rogers, attached Exhibit 1. In addition, ALK's diversion projections indicated that the proposed Consensus Plan would result in an increase in annual revenue of $64.8 million for KCS; an increase of $20.4 million for BN; and a decrease in annual revenue of $154.9 million for UP. V.S. Rogers, attached Exhibit 2.

Dr. Grimm and Mr. Plaistow analyzed traffic data for July - December, 1997, and found that the Houston meltdown had a much greater impact on shippers because of UP's market dominance. If adequate rail competition existed, shippers would have switched to these competitive alternatives. However, the data show that UP's market share remained substantially the same. For example, despite the service crisis, UP retained an 87% carload market share of traffic to the Southeast. Grimm and Plaistow concluded that UP shippers do not have adequate competitive alternatives. J.V.S. Grimm/Plaistow at 8.

Dr. Grimm and Mr. Plaistow also analyzed whether competition spurs or hinders investment and found that, even in highly competitive industries, competition spurs investment. Similarly, in the railroad industry, increasing competition for intermodal traffic has spurred Class I railroads to invest heavily in intermodal infrastructure. Grimm and Plaistow concluded that competition will spur UP, which behaves like companies in other businesses, to invest in the necessary infrastructure to keep its lucrative Houston traffic. *See* J.V.S. Grimm/Plaistow at 12-21.

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

The Joint Verified Statement of William J. Slinkard and Patrick L. Watts presents two operating plans describing Houston and Galveston terminal operations and Tex Mex line haul operations, assuming the imposition of the Consensus Plan and the completion of the construction contemplated by that plan. The PTRA Operating Plan (developed by both Mr. Slinkard and Mr. Watts) provides that the Greater Houston Terminal Area will be operated as a unified terminal area with PTRA responsibility for neutral switching and dispatching over the entire Greater Houston area, essentially fulfilling long-term UP and BNSF plans blocked by the Southern Pacific before its merger with UP. The Tex Mex Operating Plan (developed by Mr. Watts) provides that Tex Mex will continue the directional operations between Beaumont and Houston and between Houston and Corpus Christi, as requested by UP, but those operations will be conducted over the enhanced infrastructure and additional mainline provided for in the

Consensus Plan. Full implementation of the Consensus Plan will result in simplified, more efficient, and substantially more fluid overall operations in Texas for Tex Mex, BNSF and UP.

Upon approval of the Consensus Plan, several aspects of the PTRA Operating Plan and the Tex Mex Operating Plan can be implemented immediately, including service Tex Mex provides as a result of ESO No. 1518, now scheduled to expire August 2, 1998. Although directional operations between Beaumont and Houston can continue as under ESO No. 1518 for UP, BNSF and Tex Mex, those operations will become much more fluid upon the construction of the second track mainline on the of UP's Lafayette Subdivision between Dawes and Langham Road in Beaumont, which will take 15 months to complete. The reconstruction and rehabilitation of the Rosenberg to Victoria line, which will take nine months to complete, will further enhance operations south of Houston, and will remove some of the traffic presently on UP's Glidden Subdivision over which Amtrak operates. Operations north and south of Houston will be substantially more fluid following full implementation of PTRA's neutral switching and dispatching operations in the Greater Houston Terminal Area. Full implementation of the Consensus Plan is anticipated two years after approval.

<u>**Financial Information [49 C.F.R. Section 1180.9]**</u>

The Consensus Parties asked Joseph J. Plaistow, Vice President and Principal of Snavely King, to perform a financial analysis of the imposition of the Consensus Plan. Mr. Plaistow demonstrates conclusively that imposition of the Consensus Plan, together with the projected traffic diversions projected by Mike Rogers of ALK, will result in a strong, competitive Tex Mex able to finance each of the projected competitive infrastructure improvements (such as rehabilitation of the Rosenberg-Victoria line and the double-tracking of the UP Lafayette line). Tex Mex experienced an operating loss of close to $1.2 million in 1997, in large part due to the adverse effects of the UP service meltdown, UP discriminatory practices, and operating inefficiencies discussed in the verified statement of Patrick L. Watts. Mr. Plaistow demonstrates that the Consensus Plan, which will resolve these issues and add needed competitive infrastructure, will result in a financially stronger Tex Mex able to compete in the post UP/SP merger environment.

Pro forma income statements and balance sheets for a three year period following approval of the Consensus Plan are also submitted as attachments to the verified statement of Joseph J. Plaistow.

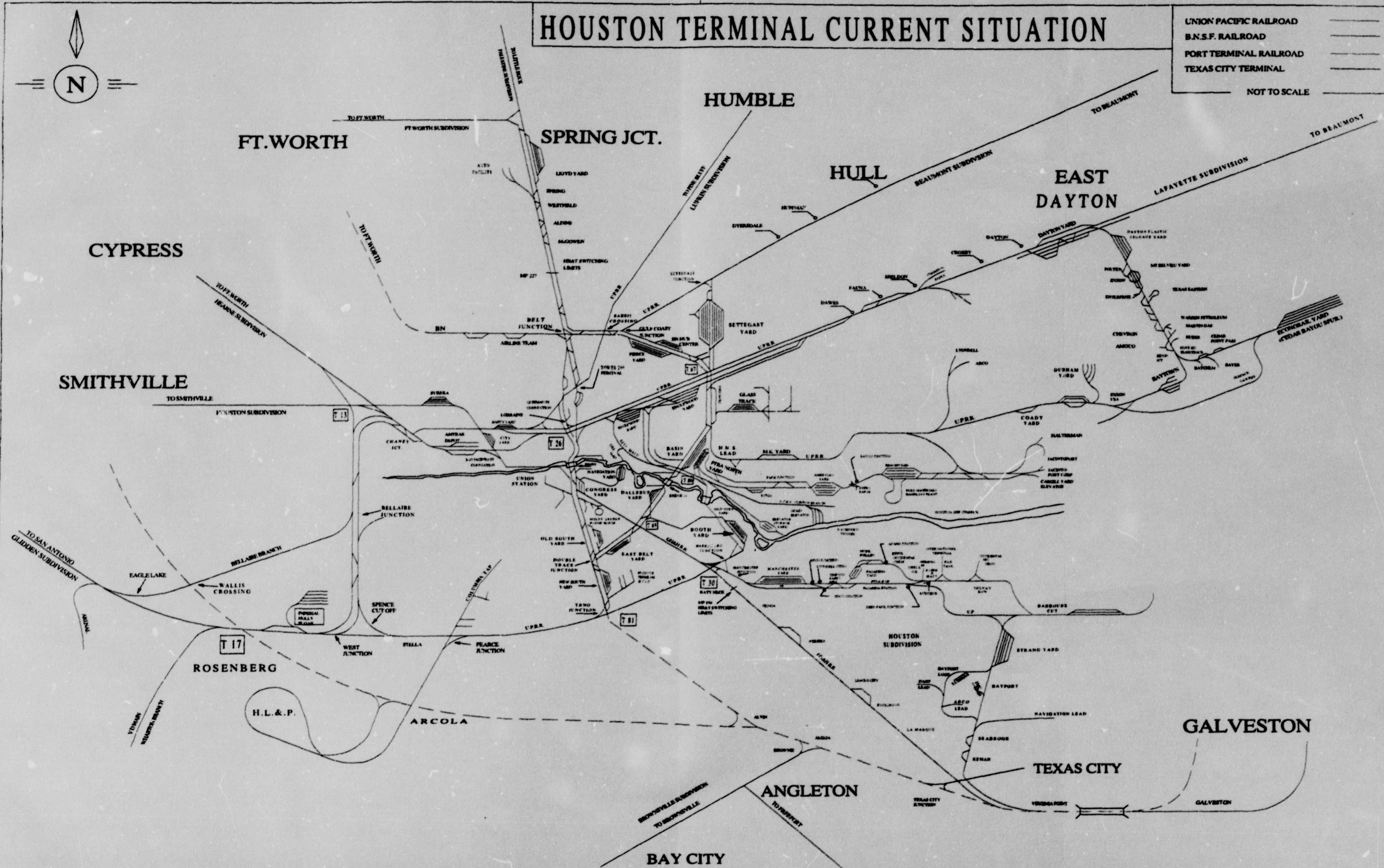
Maps [49 C.F.R. Section 1180.6(a)(6)]

The Consensus Parties submit various maps throughout the filing which indicate the lines discussed herein and their relationship to other lines. There are three large maps immediately following this page: (1) Houston Terminal - Current Situation: (2) Houston Terminal - Consensus Plan; and (3) The Tex Mex Railroad Under The Proposed Plan.

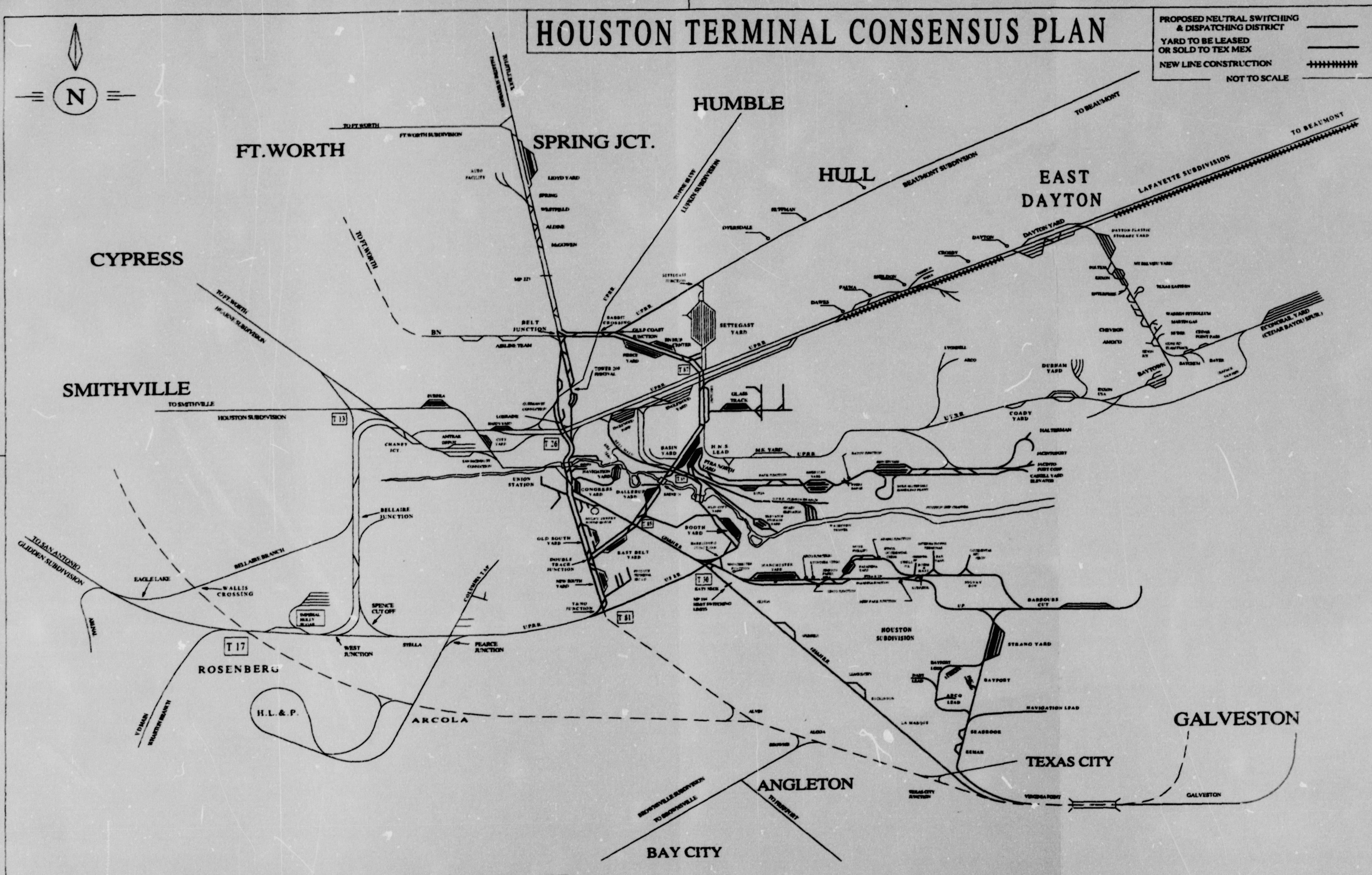
Proposed Time Schedule for Consummation of the Proposed Transaction [49 C.F.R. Section 1180.6(a)(1)(ii)]

The Consensus Parties request that the Board approve the Consensus Plan as soon as possible, but in any event before January 1, 1999. The Consensus Plan would be implemented immediately after the effective date of the order granting approval.

Tex Mex and KCS estimate that rehabilitation of the Rosenberg to Victoria line will begin immediately upon the completion of negotiations and sale of the line to Tex Mex. The STB should give Tex Mex and UP 30 days from the effective date of the order requiring UP to sell the line for the parties to complete negotiations. If the parties cannot agree within that time period, either party may submit determination of the terms and conditions of the sale to the STB for Board consideration. Rehabilitation of the line will take approximately nine months from the

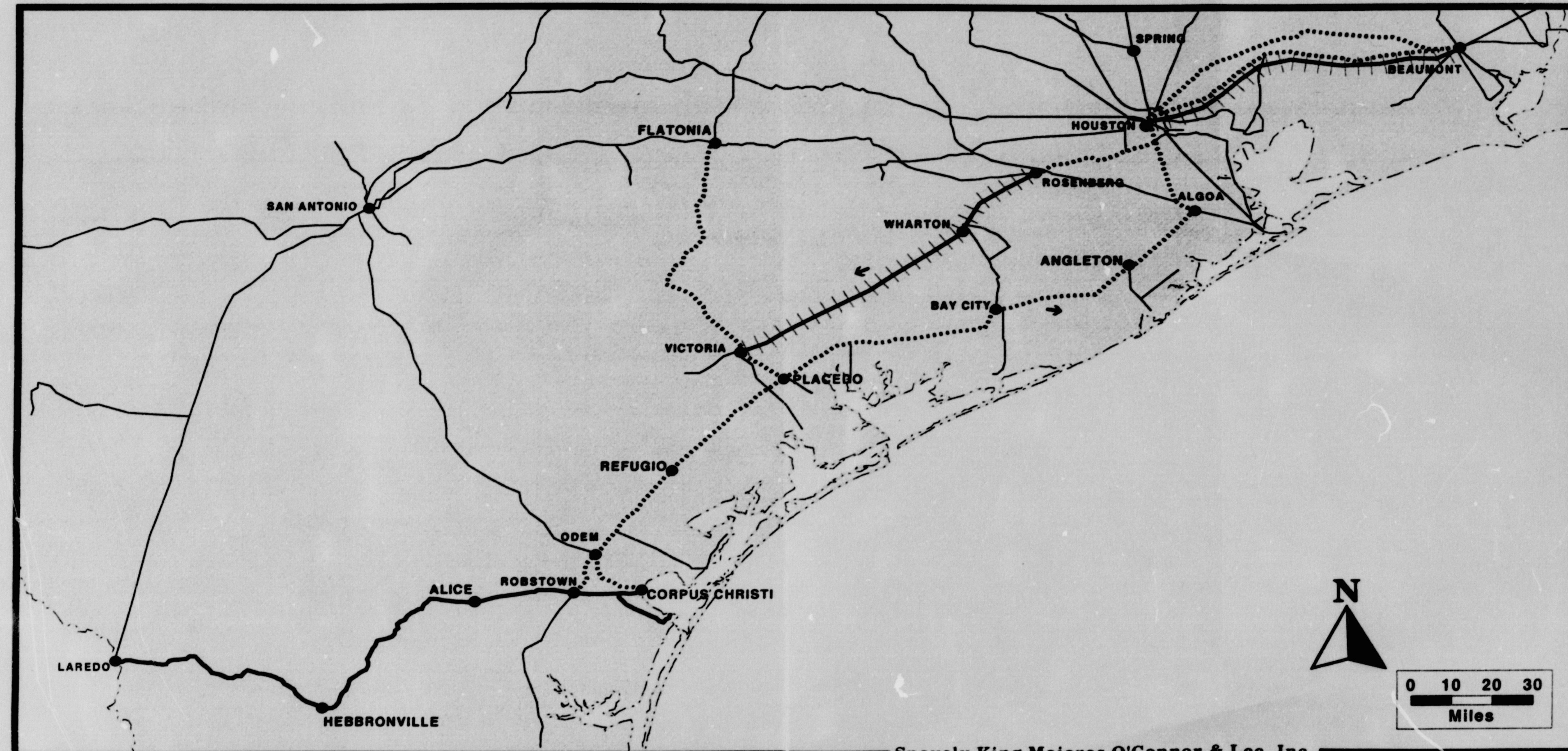


Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.



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

The Tex Mex Railroad Under Proposed Plan



Snavely King Majoros O'Connor & Lee, Inc.

Tex Mex Pre-Merger
Tex Mex Trackage Rights Granted In UPSP Merger and Emergency Service Order
New Line Construction / Rehabilitation
Directional Running

date of the sale to Tex Mex. Accordingly, operations on the Rosenberg to Victoria line are expected to begin within one year following the effective dates in the Board's order.

The construction of the double-track adjacent to the Lafayette Subdivision between Houston and Beaumont is expected to take fifteen months from the effective date of the STB order. Tex Mex and KCS further estimate that the commencement of operations for the completed double-track, and the exchange of deeds for the Houston to Beaumont line, should take place within eighteen months following the effective date in the Board's order approving the Consensus Plan.

The neutral switching and dispatching operations segment of the Consensus Plan will entail a year of planning, hiring and training the estimated 129 new Port Terminal Railroad Association employees necessary to implement the operations. New facilities, communications and traffic control equipment will be phased in and operational during the first year.

Benefits of the entire Consensus Plan, both financial and operational, will be realized fully over a three-year period. Construction and personnel planning will commence immediately upon the effectiveness of the Board's order approving the Consensus Plan.

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

The Consensus Plan is presented by and has the support of significant business and political leadership in the Houston area, including CMA, SPI, the RCT, the TCC, Tex Mex and KCS. Founded in 1872, CMA is a non-profit trade association whose 191 member companies represent more than 90% of the productive capacity of basic industrial chemicals in the United States. CMA's members depend heavily on rail transportation, in particular for movement of bulk chemicals that typically move in tank cars and covered hopper cars that the member companies own or lease. Given the heavy concentration of chemical production facilities in the

Texas area, CMA's members have an especially keen interest in restoring efficient rail service to that vital region.

SPI is a trade association of over 2,000 members representing all segments of the plastics industry in the United States. Founded in 1937, SPI serves as the "voice" of the plastics industry. SPI's business units and committees are composed of plastics processors, raw material suppliers, machinery manufacturers, moldmakers and other industry-related groups and individuals. SPI's members are responsible for an estimated 75% of the total sales of plastics materials and plastics products in this country. A significant portion of SPI's members' plastics resins production facilities are located in the Gulf Coast region of the United States.

Established in 1891, the RCT is the oldest regulatory agency in the state of Texas, and one of the oldest in the country. The RCT was established to regulate the rail industry of the 1800's, and to the extent applicable, continues this function in the state of Texas to this day.

The TCC is a statewide trade association of businesses operating chemical manufacturing facilities in Texas. The combined economic activity of the TCC's ninety-seven member companies sustains about 450,000 jobs for Texans. Organized in 1953, TCC was the country's first state trade association which represented the chemical industry's common interests at the state level.

KCS is a Class I rail carrier, serving the states of Nebraska, Iowa, Kansas, Missouri, Oklahoma, Arkansas, Louisiana, Mississippi, Tennessee, Alabama and Texas. KCS' northern terminus is Kansas City Missouri/Kansas, although it has haulage rights over UP between Kansas City and Omaha/Council Bluffs; Lincoln, Nebraska; and Atchison and Topeka, Kansas. To the south, KCS serves Dallas, Beaumont and Port Arthur, Texas; Shreveport, Baton Rouge, New Orleans and Lake Charles, Louisiana; Vicksburg, Jackson, Gulfport and Meridian, Mississippi; and Birmingham, Alabama. KCS also has the right to exercise haulage or trackage rights over UP between Beaumont and Houston and Galveston, Texas but only for grain and grain products. By its connection with its wholly-owned subsidiaries, Gateway Western Railway Company and Gateway Eastern Railway Company, at Kansas City, Missouri, KCS serves the St. Louis gateway and, for certain traffic, the Chicago gateway. In 1996, KCS had 2,704 employees and an operating revenue of $0.5 billion.

KCS's parent company, Kansas City Southern Industries, Inc. ("KCSI"), owns 49% of Tex Mex's parent company, Mexrail, Inc. Tex Mex is a Class II railroad providing rail service over its 157-mile line of railroad from Laredo, Texas on the Mexican border to Robstown, Texas where it meets up with UP and on to Corpus Christi, Texas, on the Gulf of Mexico, where it meets up with a branch line of UP. Tex Mex operates between Robstown and Houston, Texas and between Houston and Beaumont, Texas over UP's rail lines pursuant to trackage rights granted as a condition in the UP/SP merger. Tex Mex interlines traffic with KCS at Beaumont; with BNSF at Houston, Corpus Christi, and Robstown; with UP at Corpus Christi and Houston; and with TFM, via the International Bridge, at Laredo. In 1996, Tex Mex produced revenues of $19.8 million.

Other representatives of the various shipper and railroad entities will be submitting statements to the Board in support of the basic principles underlying the Consensus Plan. The Port Authority of Houston's verified statement supporting most elements of the Consensus Plan is attached herein. Similarly, the Greater Houston Partnership's separate filing, recommending new initiatives to increase rail competition, similar to those proposed by the Consensus Plan, is also attached herein. In addition, the National Industrial Transportation League ("NITL"), the oldest and largest organization in the United States representing the transportation policy interests of shippers, is making a separate filing endorsing (1) a neutral switching district in the Houston area; (2) the granting of permanent rights to the Tex Mex; (3) expanded overhead trackage rights in the Gulf Coast area; and (4) increased infrastructure involving multiple railroads. The Consensus Plan has further received the support of numerous regional newspapers, such as the Houston Chronicle. Finally, the Tex Mex/KCS Joint Petition for Additional Remedial Conditions filed on March 30, 1998, contains statements from over 30 individual shippers, advocating the general principles that underlie the Consensus Plan.

By contrast, in the July 1 UP quarterly report, UP includes thirty statements by shippers that support the UP/SP merger. While seventeen of the thirty shippers support the benefits that the merger has brought about, these seventeen are primarily located in the Pacific Northwest, California, the Central Corridor, or the Midwest. However, the Consensus Plan is focused on alleviating problems in the Houston/Gulf Coast area, the epicenter of UP's service crisis, and nothing in the Consensus Plan will harm any of the merger benefits that have occurred to those seventeen shippers.

Thirteen of the thirty shippers actually ship in Texas, but of those thirteen, seven support the merger for the competition that it has created, but five of those seven actually do so because they have been able to switch from UP to BNSF or Tex Mex during the service crisis. Thus showing the benefits of allowing BNSF and Tex Mex unrestricted access in Houston. Furthermore, of those thirteen Texas shippers, ten of those shippers express disappointment with UP's service in Texas and have suffered financially with UP's service problems.

More than half of UP's shipper statements are from shippers who do not have contact with Houston and its severe problems. The Consensus Plan does not seek to modify the merger in any non-Texas area, instead it is solely focused in Texas and, specifically, the Houston area where the service crisis is at its greatest.

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

The Consensus Parties, nor any individual member of the Consensus Parties, will not issue any new securities to conduct the operations proposed in the Consensus Plan.

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

Imposing the additional remedial conditions requested by the Consensus Parties will not result in the abolition or transfer of any employees of Tex Mex, KCS, or PTRA. Indeed, the Consensus Parties estimate that, over the period of three years following imposition of the requested conditions, Tex Mex will need to hire approximately 190 new employees to operate the resulting increased traffic, and PTRA will need to hire approximately 129 new employees to perform the requested neutral switching and dispatching. The necessary new hires by Tex Mex and PTRA (crew base and responsibilities) are described in the Joint Verified Statement of William J. Slinkard and Patrick L. Watts.

Because the Consensus Parties anticipate no adverse effect on applicant carriers' employees (indeed, as just noted, an <u>increase</u> in employment is expected), the issue of employee protective agreements with respect to applicant carriers' employees is moot. Because this proceeding is embraced within the overall merger proceeding in Finance Docket No. 32760, *see* Houston/Gulf Coast Oversight, Finance Docket No. 32760 (Sub-No. 26), Decision No. 1 at n.2 (served May 19, 1998), and has been instituted "as part of the 5-year oversight condition" imposed in that proceeding, *Id.* at 1, the Consensus Parties believe that, to the extent that the requested conditions result in an adverse impact on employees of UP, UP would be required to provide, with respect to those employees, the applicable labor protection already imposed by the

Board as part of the main UP/SP merger proceeding. *See* Finance Docket No. 32760, Decision No. 44 at 170-173.

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

The problems identified by the Consensus Parties will be solved by the Consensus Plan, and the Board should specify that no other carrier should be granted these rights.

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

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

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

A draft agreement for neutral dispatching protocols for the Houston Neutral Operations Area is attached to the Joint Verified Statement of William J. Slinkard and Patrick L. Watts as Attachment D. In addition, there have been numerous trackage rights agreements between Tex Mex, UP, BNSF and HBT. Many of these trackage rights agreements have been previously furnished to the Board. Upon request, Tex Mex and/or KCS will provide any of these agreements to the Board.

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

The Consensus Plan does not propose a consolidation or merger to two separate companies; therefore, Section 1180.6(a)(7)(iii) does not apply.

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

As the Consensus Parties, or individual members of the Consensus group, are the real parties in interest, Section 1180.6(a)(7)(iv) does not apply.

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

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

Currently, Tex Mex operates over the route it has historically operated between Laredo, Texas and Corpus Christi, Texas, with a connection with the Brownsville Subdivision of the Union Pacific Railway Company ("UP") at Robstown, Texas. It operates between Robstown and Beaumont, Texas by way of Houston over several hundred miles of UP's rail lines pursuant to trackage rights granted as a condition in the UP/SP control proceeding. Tex Mex's trackage rights between Robstown and Houston are over a route through Placedo, Victoria, and Flatonia, Texas. Tex Mex operates over both UP lines between Houston and Beaumont in accordance with the UP's directional flow over those lines. Tex Mex has temporary trackage rights over the UP Algoa route between Placedo and Algoa, Texas, and over the BNSF route between Algoa and Houston's TN&O junction.

KCS is a Class 1 rail carrier, serving the states of Nebraska, Iowa, Kansas, Missouri, Oklahoma, Arkansas, Louisiana, Mississippi, Tennessee, Alabama and Texas. KCS's northern terminus is Kansas City Missouri/Kansas, although it has haulage rights over UP between Kansas City and Omaha/Council Bluffs and between Lincoln, Nebraska; and Atchison and Topeka, Kansas. To the south, KCS serves Dallas, Beaumont and Port Arthur, Texas;

Shreveport, Baton Rouge, New Orleans and Lake Charles, Louisiana; Vicksburg, Jackson, Gulfport and Meridian, Mississippi; and Birmingham, Alabama. KCS also has the right to exercise haulage or trackage rights over UP between Beaumont and Houston and Galveston, Texas but only for grain and grain products. By its connection with its wholly-owned subsidiaries, Gateway Western Railway Company ("Gateway Western") and Gateway Eastern Railway Company, at Kansas City, Missouri, KCS serves the St. Louis gateway and, for certain traffic, the Chicago gateway. KCS also has access to the Chicago gateway through a voluntary coordination agreement with I&M Rail Link. KCS interlines with UP, BNSF, I&M Rail Link, Norfolk Southern Railroad Company ("NS") and Gateway Western at Kansas City; with UP, BNSF, and the South Orient at Dallas, with NS and CSX Transportation ("CSXT") at both Birmingham, Alabama and Meridian, Mississippi; with NS, CSXT, UP, BNSF and Illinois Central ("IC") at New Orleans, Louisiana; and with the IC at Jackson, Mississippi. Gateway Western interchanges with all the Kansas City railroads at Kansas City and with NS, CSX and Consolidated Rail Corporation ("Conrail") at East St. Louis, Illinois.

Currently, PTRA provides neutral switching over its lines in the Houston terminal area. North of the Houston Ship Channel, the PTRA Northshore Subdivision runs east from the PTRA North Yard through Bayou Junction to the Cargill Yard Elevator lead. A branch line off the UP Clinton Drive Industrial Lead stretches from Galena Junction to the end of track near Galena Park. South of the Houston Ship Channel, the PTRA Southshore Subdivision runs east from Galena Junction to Barbours Cut.

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

Under the Consensus Plan, PTRA will provide neutral switching and neutral dispatching over the following facilities, known herein as the Greater Houston Terminal Area ("GHTA"):

- Former Houston Belt & Terminal Railway Company ("HBT") West Belt Subdivision between Belt Junction, Control Point ("CP") 101 and T&NO Junction, CP 184;

- Former HBT East Belt Subdivision between Belt Junction, CP 101, and Double Track Junction, CP 169;

- Former HBT Booth Yard Lead between East Belt Subdivision milepost ("mp") 12.1 and Booth Yard;

- Union Pacific Railroad Company's ("UP's") Houston Subdivision between N. GH&H Jct., mp 184.8, and Galveston, mp 233.2;

- UP's Houston Terminal Subdivision between Bell Yard Wye located at the west end of Englewood's Intermodal Ramp (about mp 359.0-Passenger Line), along the Bell Yard main connecting with the Galveston Line at Bear Yard Wye (about mp 3.1) through Tower 86 and Galveston, mp 55.6 (Houston Terminal Subdivision, Galveston Line), including Barbours Cut, the Bayport Loop, Navigation Lead and Bridge 5-A;

- PTRA's Northshore Subdivision between mp 0.0 and End PTRA, mp 13.2;

- PTRA's Southshore Subdivision between Galena Jct., mp 1.4 and Deer Park Jct., mp 11.7;

- UP's (SP) Houston Terminals Subdivision, Harrisburg Line between Tower 81, mp 4.6 and Harrisburg Jct., mp 1.3 including the Katy Neck;

- UP's Beaumont Subdivision between Gulf Coast Jct., mp 378.0 and Settegast Jct., mp 381.6; and

- Clinton Drive Industrial Lead ("Clinton Branch") between Galena Jct. and end of line.

The Consensus Plan provides for the Board to grant to each of UP, BNSF, Tex Mex and PTRA (collectively, the "Houston Carriers") terminal trackage rights over the lines and yard facilities encompassed by the Greater Houston Terminal Area. Use of these trackage rights is necessary to each of the carriers in order to realize fully the benefits of the Consensus Plan. Without these rights, PTRA would be unable to route and dispatch each of the Houston Carriers in the most efficient manner, as it is required to do as the neutral dispatcher in the Greater Houston Terminal Area.

Together with the HBT,[71] each of the Houston Carriers owns part of the lines and/or yard facilities encompassed by the Greater Houston Terminal Area. In addition, certain of the Houston Carriers already have terminal trackage rights over, or have other rights to use, part of the lines and/or yard facilities involved.

The use of the lines for each of the Houston Carriers is practicable and in the public interest. The use by the Houston Carriers of the Houston Greater Houston Terminal Area lines will not impair the ability of the rail carrier owning the facilities or otherwise entitled to use the facilities if those facilities are operated under the conditions requested in the Consensus Plan.

All of the trackage covered by the request for terminal trackage rights is classic terminal facilities. The present and past terminal operations over the terminal facilities are discussed at length in the Verified Statement of Harlan Ritter and the Joint Verified Statement of William Slinkard and Patrick Watts. The facilities are used by the Houston Carriers for switching and interchange purposes in the Houston and Galveston terminal areas. Most of the facilities are subject to terminal trackage rights grants or agreements. All of the trackage is in built up metropolitan or industrial areas. Although some of the trackage has and will continue to be used as part of traffic movements through Houston, none of the Houston Carriers could seriously contend that the trackage covered by the request are not terminal facilities.

A grant of the requested rights would be clearly in the public interest. The purpose of the terminal rights is to permit PTRA to route the interchange and through movements of the Houston Carriers in the most efficient and effective manner pursuant to its responsibilities as the

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[71] As is discussed elsewhere in this submission, HBT is the corporate shell owned by UP and BNSF which owns much of the facilities encompassed by the Houston Greater Houston Terminal Area .

neutral dispatcher for the Greater Houston Terminal Area. An example of the efficiencies that would be created as a result of this grant are fully set forth in *The Emergency Joint Petition of The Texas Mexican Railway Company and The Kansas City Southern Railway Company for Additional Trackage Rights Conditions to Emergency Service Order No. 1518*, Service Order No. 1518, filed May 14, 1998, at 4-8. Unless the Board grants the requested rights, PTRA's ability to effectively dispatch the Greater Houston Terminal Area will be artificially constrained to the detriment of all of the Houston Carriers, the shippers located in the Greater Houston Terminal Area and shippers whose goods must transverse that area as part of a through movement.

The grant of the requested terminal trackage rights would not result in operations that would interfere with any owning railroad's operations. On the contrary, one of the primary public interest benefits of the grant of the requested terminal trackage rights will be the improved operations by the each of the owning railroads over its own track and over facilities the owning railroads now have rights.

As discussed in the Verified Statement of Harlan Ritter and the Joint Verified Statement of William Slinkard and Patrick Watts, the present congestion, inefficient operations, and discriminatory treatment has tied up Houston through traffic as well as terminal operations for all Houston carriers. The imposition of the Consensus Plan, including the requested terminal trackage rights and the designation of PTRA as the neutral dispatcher and switcher over the Greater Houston Terminal Area will result in a less congested Greater Houston Terminal Area that is dispatched in an neutral and efficient manner.

The Consensus Plan also envisions Tex Mex acquiring the former SP line from Milepost 0.0 in Rosenberg, Texas and proceeding in a southern and westerly direction to approximately

Milepost 87.8 near Victoria, Texas. Tex Mex would also be granted terminal trackage rights from Milepost 87.8 to the connection at UP's Port LaVaca Branch, Victoria, Texas.

Finally, the Consensus Plan would require UP to allow Tex Mex to build a new rail line along UP's existing rail line that runs from UP's existing right-of-way adjacent to UP's Lafayette Subdivision between Dawes, near Houston, Texas at SP Milepost 353 and Langham Road, Beaumont, Texas at SP Milepost 282.4. Upon completion of this new rail line, Tex Mex/KCS will deed it to UP in exchange for deed to the UP's Beaumont Subdivision between Settegast, JCT, Houston at UP Milepost 381.6 and Langham Road, Beaumont at UP Milepost 456.7

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

No governmental financial assistance is contemplated or required.

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

The Consensus Parties acknowledge that the relief sought in the Consensus Plan must comply with the Board's environmental reporting requirements, if applicable. 49 C.F.R. § 1121.3(a). Based upon the traffic studies and other analysis accompanying this filing, the rail traffic reasonably likely to be associated with the proposed Consensus Plan will not result in any significant changes in operations of the lines at issue that would exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

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

The transactions proposed in the Consensus Plan will not result in changes in carrier operations that exceed the above-listed thresholds. Therefore, no additional environmental documentation is required as part of the Request for Adoption of a Consensus Plan In Order to Resolve Service and Competitive Problems in the Houston/Gulf Coast Area. *See* 49 C.F.R. § 1105.6(c)(2)(i).

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

The environmental implications of each of the specific transactions of the eight-part Consensus Plan are discussed below:

(1) Make the provisions of the Emergency Service Order permanent.

This transaction will have no effect on existing rail operations, therefore, the Board's environmental reporting requirements and historic reporting requirements are not applicable. 49 C.F.R. § 1105.b(c)(2)(i) and 49 C.F.R. § 1105.8(b).

(2) Restore neutral switching in Houston with the PTRA as the neutral switcher.

This segment of the Consensus Plan will not result in any significant changes in operations of the lines at issue. Because the implementation of neutral switching will not change the sum of rail operations in the Greater Houston Terminal Area, the Board's environmental reporting requirements and historic reporting requirements are not applicable. 49 C.F.R. § 1105.b(c)(2)(i) and 49 C.F.R. § 1105.8(b).

(3) Expand neutral switching to include all customers on the former SP Galveston Subdivision.

This segment of the Consensus Plan will not result in any significant changes in operations of the lines at issue. Because the implementation of neutral switching will not change the sum of rail operations in the Greater Houston Terminal Area, the Board's environmental reporting requirements and historic reporting requirements are not applicable. 49 C.F.R. § 1105.b(c)(2)(i) and 49 C.F.R. § 1105.8(b).

(4) Require that the neutral switching area also have neutral dispatching.

This segment of the Consensus Plan will not result in any significant changes in operations of the lines at issue. Because the implementation of neutral dispatching will not change the sum of rail operations in the Greater Houston Terminal Area, the Board's environmental reporting requirements and historic reporting requirements are not applicable. 49 C.F.R. § 1105.b(c)(2)(i) and 49 C.F.R. § 1105.8(b).

(5) Require UP and BNSF to acknowledge Tex Mex's full voting membership on the PTRA.

This transaction will have no effect on rail operations, therefore, the Board's environmental reporting requirements and historic reporting requirements are not applicable. 49 C.F.R. § 1105.b(c)(2)(i) and 49 C.F.R. § 1105.8(b).

(6) Require UP to sell Tex Mex its rights to the former SP line between Rosenberg and Victoria, Texas.

Tex Mex's purchase of the Rosenberg to Victoria line is exempt from environmental reporting requirements under § 1105.6(c)(2)(i). The proposed acquisition will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5). In addition, since the eight trains per day limit will not be exceeded, there is additional support that no environmental reporting is necessary. *See Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company, et al.*, Finance Docket No. 33508 (STB served April 28, 1998) at 17.

Under 49 § 1105.8(b)(1), the proposed acquisition of the Rosenberg to Victoria line by Tex Mex is also exempt from the historic reporting requirements. Tex Mex's acquisition of the line is for the purpose of continued rail operations. In addition, further Board approval would be required as a prerequisite to abandonment or discontinuance of service, and there are no plans in connection with this transaction to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

(7) Require UP to sell or lease an existing yard in Houston to Tex Mex.

This segment of the Consensus Plan will not result in any significant changes in the sum of rail operations in the Greater Houston Terminal Area, the Board's environmental reporting requirements and historic reporting requirements are not applicable. 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b).

(8) Allow Tex Mex/KCS to construct a new rail line immediately adjacent to UP's Lafayette Subdivision between Houston and Beaumont in exchange for UP's Beaumont Subdivision line between Houston and Beaumont.

The Consensus Parties do not believe that separate construction authority is required to double track UP's Lafayette Subdivision. The Consensus Parties also state that under

§ 1105.6(c)(2)(i), Tex Mex's acquisition of UP's Beaumont Subdivision line is exempt from environmental reporting requirements because the proposed acquisition will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 § 1105.8(b)(1), the proposed acquisition of the Beaumont Subdivision line by Tex Mex is also exempt from the historic reporting requirements. The construction and acquisition is for the purpose of continued rail operations. In addition, further Board approval would be required as a prerequisite to abandonment or discontinuance of service of the Beaumont Subdivision line or complete abandonment or discontinuance of service of the double track Lafayette Subdivision. There are also no plans in connection with this transaction to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

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

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ATTORNEY FOR THE SOCIETY OF PLASTICS INDUSTRY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the "REQUEST FOR ADOPTION OF A CONSENSUS PLAN IN ORDER TO RESOLVE SERVICE AND COMPETITIVE PROBLEMS IN THE HOUSTON/GULF COAST AREA" was served this 8th day of July, 1998, by hand delivery to counsel for Union Pacific Railroad Company, counsel for Burlington Northern and Santa Fe Railway Company, the Port Terminal Railway Association, and the Houston Belt & Terminal Railway Company, by first class mail upon all other known parties of record in the Sub-No. 21 and 26 oversight proceedings.

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

BEFORE THE SURFACE TRANSPORTATION BOARD

STB 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]

VERIFIED STATEMENT

OF

FREDERICK L. WEBBER

VERIFIED STATEMENT

OF

FREDERICK L. WEBBER

My name is Frederick L. Webber. I am the President and Chief Executive Officer of the Chemical Manufacturers Association ("CMA"). My business address is 1300 Wilson Boulevard, Arlington, Virginia, 22209.

Position of the Chemical Manufacturers Association

I am submitting this statement on behalf of CMA in support of the "Consensus Plan" for a permanent solution to rail service and competitive problems in the Gulf Coast region. **CMA respectfully requests that the Surface Transportation Board ("Board") impose the Consensus Plan in the form of additional remedial conditions on the 1996 merger of the Union Pacific and Southern Pacific railroad systems ("UP/SP merger").**

Importance of Gulf Coast Rail Service to CMA Members

The 191 member companies of CMA together represent more than 90 percent of the productive capacity for basic industrial chemicals in the United States. The chemical industry depends heavily on railroads for the safe and efficient transportation of a wide variety of products to destinations throughout the country. Railroads also transport chemical exports to Canada, Mexico, and U.S. ports. On an annual basis, according to data compiled by the Association of American Railroads, the chemical industry ships about 140 million tons of products by rail. The chemical industry spends more than $4.5 billion per year on rail freight charges, accounting for 14 percent of the revenue received by U.S. railroads.

The Gulf Coast, and the Houston area in particular, are extremely important to the chemical industry. To illustrate, chemical production facilities in the State of Texas account for almost 16 percent of the value of the industry's total shipments. Data for 1996 from the U.S. Department of Commerce show that chemical shipments from Texas were valued at $57.4 billion, out of a total of $366.6 billion for the entire United States.

CMA appreciates the Board's 1996 decision to impose five years of oversight of the UP/SP merger and to retain jurisdiction to impose additional remedial conditions as necessary. Moreover, CMA recognizes that the Board has been vigilantly monitoring all facets of the Gulf Coast rail service situation as part of its on-going oversight of the UP/SP merger.

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The Board is well aware of the participation by CMA and many of its individual member companies in the Board's UP/SP merger docket, in the Board's 1997 UP/SP oversight proceedings, and in the Board's broad investigation concerning rail service in the western United States. CMA therefore commends the Board for initiating this proceeding on March 31, 1998, to look specifically at "whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred" in the Houston/Gulf Coast area.

Development of the Consensus Plan

CMA believes that there is a clear relationship between the UP/SP merger and the severe rail service failures that have cost the chemical industry hundreds of millions of dollars over the past 12 months. CMA consistently advocates rail-to-rail competition as the primary means to assure that carriers provide safe and efficient service and invest in necessary infrastructure. That policy also serves as the basis for CMA's involvement in the development of the Consensus Plan.

As a proponent of private-sector solutions to complex business issues, CMA has participated extensively in formulating the Consensus Plan. CMA especially commends the Board for granting the requested 30-day extension of the original filing date in this proceeding, which made possible further productive negotiations among CMA, the Society of the Plastics Industry, the Texas Chemical Council, the Kansas City Southern Railway Company, the Texas Mexican Railway Company, and the Railroad Commission of Texas ("the Consensus Parties"). During that 30-day period, as CMA continued to consult with its own membership, the Consensus Parties held additional meetings with other organizations to explore their perspectives on the Consensus Plan.

CMA's Support for the Consensus Plan

CMA urges the Board to examine the record in this proceeding and to impose all eight points of the Consensus Plan as additional remedial conditions that would modify the terms of the UP/SP merger. Before addressing the eight specific points of the Consensus Plan, I would like to emphasize that CMA believes that the Board itself must act if meaningful change is to be accomplished. Following the Board's necessary action, the private parties that would be affected should negotiate the terms of compensation. Only if those parties fail to agree in an expeditious manner should the Board have to step in and determine the appropriate level of compensation.

On behalf of the chemical industry, I request that the Board impose the eight points of the Consensus Plan. These eight points form a comprehensive plan that will promote the public interest and assist shippers in the Houston/Gulf Coast area:

1. The Board should make permanent certain provisions of its Emergency Service Order No. 1518 that involve trackage rights granted to Tex Mex. In 1997 the Board temporarily removed restrictions that it had imposed in 1996, and granted Tex Mex other trackage rights to enable it to contribute to efforts to resolve the UP/SP rail service crisis. Chemical shippers will clearly benefit from these

provisions being made permanent, because Tex Mex's rail operations and competitive presence in the Houston area will be enhanced.

2. The Board should restore the neutral switching service that was lost when the Houston Belt & Terminal Railway ("HBT") was dissolved. It is significant to note that HBT was dissolved after the UP/SP merger was consummated. The Board should re-establish the status quo for HBT-served shippers, with the Port Terminal Railroad Association ("PTRA") operating both its own and the former HBT properties. To the extent necessary, PTRA should receive appropriate trackage rights and yard access to provide effective neutral switching for shippers and line-haul carriers.

3. The Board should expand the neutral switching area, with PTRA as the logical operator. Neutral switching is essential to provide shippers in key Houston locations with consistent service and permanent access to alternative line-haul carriers in the event of future service failures.

4. The Board should require neutral dispatching in the Houston neutral switching area. CMA wishes to emphasize the difference between "joint" dispatching proposals, which may involve only certain carriers, while "neutral" dispatching would be independently administered by PTRA for the benefit of all railroads and shippers in the Houston area. To facilitate neutral switching by PTRA, all railroads with tracks in the Houston area should also permanently grant each other terminal trackage rights.

5. The Board should require that Tex Mex be allowed full voting membership on PTRA's board of directors and that the Port of Houston Authority be restored to full voting membership in PTRA. These changes are in the public interest because they will strengthen PTRA's ability to provide truly independent service to carriers, shippers and the Port of Houston.

6. The Board should require the sale to Tex Mex, on reasonable terms and conditions, of UP's rights to the former line between Rosenberg and Victoria. This reconstruction project will add capacity and Tex Mex will grant trackage rights on the line to both UP and BNSF.

7. The Board should require that UP sell or lease an existing yard in the Houston area to Tex Mex at a reasonable rate. CMA encourages the Board to recognize that in Houston, as elsewhere, rail yards are essential facilities for carriers to conduct operations efficiently.

8. The Board should require that UP allow Tex Mex to construct a new rail line on UP's right-of-way between Dawes and Beaumont. That new line, which would provide additional capacity in the Gulf Coast area, would subsequently be exchanged for UP's line between Settegast Junction and Beaumont, with BNSF, UP and Tex Mex each having either ownership or trackage rights in both Houston-Beaumont lines.

Conclusion

CMA strongly supports the Consensus Plan, which provides the Board with a comprehensive approach to enhancing rail service in the Houston/Gulf Coast area. Under the Consensus Plan's eight points, shippers would have access to additional service alternatives, neutral switching and dispatching would be provided by a truly independent PTRA, Tex Mex would be a viable competitor in Houston, and the area's rail infrastructure would be expanded.

VERIFICATION

I, Frederick L. Webber, declare under penalty of perjury that I have read the foregoing statement and that its contents are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this statement as President and Chief Executive Officer of the Chemical Manufacturers Association. Executed on July 6, 1998.

Frederick L. Webber

Frederick L. Webber

BEFORE THE

SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

REQUEST FOR ADOPTION OF THE CONSENSUS PLAN IN ORDER TO RESOLVE SERVICE AND COMPETITIVE PROBELMS IN THE HOUSTON/GULF COAST AREA

VERIFIED STATEMENT OF LARRY L. THOMAS

THE CHEMICAL MANUFACTURERS ASSOCIATION

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS MEXICAN RAILWAY COMPANY

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

THE TEXAS CHEMICAL COUNCIL

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

July 8, 1998

BEFORE THE

Surface Transportation Board

WASHINGTON, DC 20423

VERIFIED STATEMENT

OF

LARRY L. THOMAS

My name is Larry L. Thomas. I am the President of The Society of the Plastics Industry. Inc. (SPI). This statement is filed on behalf of SPI's members for the purpose of providing an industry overview in responding to the order issued by the Surface Transportation Board (STB) on March 31. 1998. as a means of addressing the rail service inadequacies arising out of the UP service meltdown.

Introduction

SPI is the national trade association of the plastics industry. with over 2.000 members nationwide. SPI represents every facet of this industry. the manufacturers of plastics raw materials. products. machinery and molds. The industry accounts. directly and indirectly. for employment of over 2.3 million workers in the U.S.. nearly two percent of the U.S. work force.

Over the past two years. SPI has frequently been before the Board concerning rail transportation issues in the West. as they affect our members. We testified in the UP/SP merger proceeding and in the merger oversight proceeding. We were one of three industry associations which petitioned the Board last Fall to adopt the Emergency Service Order (ESO). and we have testified in the two hearings held before the Board in the service order proceeding. In our prior testimony. we explained that rail transportation is the lifeline connecting the resin producers with the thousands of fabricators (those who manufacture products and component parts for sale and for commercial and industrial use) located throughout the country. The economic details concerning our industry, and our industry's reliance upon the railroad industry, are spelled out in prior testimony. Attached as **Exhibit A** is our statement presented to the Board on October 27, 1997, for the service order proceeding.

SPI supports the Consensus Plan, along with other affected industry members, public officials in the State of Texas and interested rail carriers. We do so because of our critical dependence upon rail transportation, and in fulfilling our responsibilities to our membership. The plastics industry is one of the major users of rail transportation service in the Houston market.

<u>A Long-Term Solution to the Houston Rail Service Environment Is Required</u>

While the Board did not agree with SPI's preferred solution set forth in our merger comments, the Board did recognize that allowing the merging of UP and SP without conditions would have a substantial adverse effect upon competition. The Board accepted the trackage rights agreement of the UP and BNSF as a means of preserving dual-rail access at "2-to-1" points. It also accepted certain other conditions negotiated by the UP; and the Board expanded upon those conditions, including requiring additional provisions for BNSF to acquire former SP storage yards that would be required for service to the plastics industry.

Unfortunately, the conditions imposed did not serve their intended purpose of preserving competition in the Houston/Gulf Coast area. There are several reasons for this. First, as competitors, the UP and SP each maintained independent infrastructure. Any service problems experienced by one did not impede service by the other. To the contrary, for competitively served plants, the carrier that experienced service problems was subject to loss of traffic to the other railroad. Substitution of BNSF for the SP did not maintain competitive parity since the BNSF does not have a strong rail network in Houston. Its two lines are not connected: and while the Board recognized and addressed the handicap faced by the BNSF in serving the plastics industry due to its lack of storage capacity. the Board did not remedy BNSF's lack of operating yard capacity in Houston. Accordingly. the rights granted to the BNSF are dependent upon use of the UP's local gathering network and the UP's switching and classification yards. When the BNSF was required by the trackage rights agreement to elect whether to provide its own switching or to receive reciprocal switching from the UP. without an established traffic base the BNSF made the understandable decision to receive switching service from the UP. We all are too familiar with the consequences of the BNSF's reliance upon the UP in the Houston market: gridlock for one became gridlock for both. BNSF's Quarterly Progress Report submitted to the Board on July 1. 1998 documents the "structural deficiencies and UP's practices" which impede BNSF from providing "reliable. dependable and consistent service." See Report at pp. 2. 8-20 and 29 - 30.

Secondly. a number of our members operated plants served on the lines of both the UP and the SP. With independent rail networks. a service problem by one railroad would have allowed the producer to ship product from the other plant. Additionally. the plant subject to impaired rail service could have transloaded. via short-haul truck movement. to rail cars at the other plant for outbound shipments to customers. While we understand truck transload has been utilized in the past and is not satisfactory as a long-term operation. it can alleviate short-term service problems. without the burdens of the long-haul truck movements relied upon for substitute service over the past year. The merger. however. placed both plants in the above situation under the sole control of the UP.

Moreover. while in some cases BNSF received access to one of the two facilities which some producers operated on the separate lines of the UP and SP. the fact that one plant remained captive to the UP enabled the UP to leverage that position to capture the traffic from the competitively-served facility. For this reason. as well. the UP has increased its stranglehold over Gulf Coast traffic. thereby impeding BNSF from becoming the "robust competitor" touted by UP in the merger proceeding.

<u>Independent and Competitive Infrastructure Is Required in the Houston/Gulf Coast Area</u>

While the Board has been well intended in the service order proceeding, its ability to provide meaningful relief has been handicapped by the UP's control over the infrastructure. Due to the pervasiveness of UP's control over the Houston area infrastructure, the efforts to relieve the congestion through assistance from BNSF and KCS/TexMex nonetheless have been dependent upon the UP itself. What is needed in the Houston area is independent management of the gathering system, i.e., neutral switching within the Houston area, one or more independent competitive routes out of Houston, and sufficient independent yard facilities for use by the railroads other than the UP. These are required both to fulfill the intent of the Board's conditions imposed in the UP/SP merger, as well as to prevent a recurrence of the experiences over the past year. According to the BNSF, the Houston problems "may not be resolved for some time" (Reply Comments of the Burlington Northern Santa Fe Railway Company on Houston and Gulf Coast Infrastructure, STB S.O. No. 1518, June 1, 1998 at p. 4).

<u>The Consensus Plan Represents A True Private Sector Solution</u>

SPI members and staff have worked very hard in developing a plan to meet the long-term needs of the Houston area. We worked in cooperation with other affected shipper interests, specifically the Chemical Manufacturers Association and the Texas Chemical Council, as well as with the Texas Railroad Commission, and the Kansas City Southern Railway and Texas-Mexican Railway. We have developed a plan, while perhaps not as extensive as desired by some, that we believe will meet the overall needs of the greater Houston area. We have been careful in developing this plan <u>to assure that neither UP nor BNSF would lose any access or operating rights they currently enjoy</u>. The plan provides for infrastructure investment by KCS and TexMex, and the additional line capacity will be shared with both UP and BNSF.

Finally, a word is in order concerning the role of the UP and BNSF with regard to the Consensus Plan we are submitting to the Board. As we previously advised you, we endeavored to work with the UP, consistent with the Board's urging, in fashioning temporary relief under the service order, utilizing the capacities of BNSF and KCS/TexMex. In our opinion, the UP showed little, if any, meaningful interest in obtaining assistance from these carriers. See letter of May 1, 1998, attached as **Exhibit B**. Based upon that experience, and its public pronouncements, we have no reason to expect that UP will cooperate in finding a long-term solution. Moreover, we find the UP's infrastructure plan submitted to the Board on May 1, 1998, lacking in specificity and commitment. See Joint Comments of SPI and CMA dated June 1, 1998, attached as **Exhibit C**. Therefore, we have no confidence that the UP is prepared to solve the long-term problems in the Houston market in a satisfactory manner, let alone cure the deficiencies discussed above. Indeed, our members' experience with UP service, even before the onset of the service meltdown, reflect a progressive erosion of transit times following UP's agreement to merge with the Southern Pacific. This fact is demonstrated in **Exhibit D**, a graph showing average transit time for outbound plastics movements on the Union Pacific from January 1995 to May 1998.

With regard to the BNSF, we undertook to work with BNSF in developing the attached plan. While BNSF has indicated they either accepted or would not oppose some elements of the plan, they seem unalterably opposed to the presence of the KCS and TexMex in the Houston market. Moreover, BNSF appeared to be more concerned with respecting boundaries in its competitive relationship with the UP, rather than providing a competitive infrastructure to meet the needs of the plastics industry and other shippers in the Houston area. What is needed is a change in the way rail service is provided in the Houston area. This must include restoring truly competitive service, not minor tweaking of the current trackage rights arrangement

In conclusion, SPI urges the Surface Transportation Board to adopt the Consensus Plan.

* * *

I, Larry L. Thomas, affirm under penalty of perjury that the foregoing statement is true and correct based on my knowledge, information and belief.

Larry L. Thomas

July 7, 1998

EXHIBIT A

Comments
Presented To The
United States Surface Transportation Board

October 27, 1997

Washington, D.C.

Larry L. Thomas
President
The Society of the Plastics Industry

COMMENTS PRESENTED TO THE

UNITED STATES SURFACE TRANSPORTATION BOARD

PUBLIC HEARING -- OCTOBER 27, 1997

INTRODUCTION

I am Larry L. Thomas, President of The Society of the Plastics Industry (SPI), Inc., -- better known as SPI. We are pleased to have the opportunity to come before the Surface Transportation Board (STB) to discuss a matter of the highest priority for this industry: the status of rail service in the western United States, and to assess proposals to resolve the service problems that exist. No recent transportation issue has affected industry planning and production more than the rail crisis we are currently experiencing.

Truly, American growth and expansion has been, as President Kennedy once said in 1963, "in great measure the story of American railroads." So what has happened since the era of Manifest Destiny in the 1800's to precipitate the profound concern from the U.S. shipping community beginning in the late 1980's? And, we are concerned.

Both the most recent rail merger of last year and the current rail service crisis have one common theme: lack of competition in the U.S. rail system. This is a problem so endemic in the system that monopolistic behavior by the U.S. railroads has become an acknowledged, yet grudgingly accepted, way of life for shippers and, the only way of conducting business. This does not have to continue.

The STB has the opportunity to remedy this situation. Once again, you are faced with making a decision that, by your very job description, says you must act in the "public good." By whatever means required, there must be competitive rail alternatives available to the shippers of the United States. This is not asking for any special favors, but simply a plea to let us conduct our business as other businesses do in the U.S. -- that is, on a level playing field.

INDUSTRY ECONOMICS

In order to comprehend and appreciate the concerns of the plastics industry in the matter of rail competition, it is imperative to understand some background information about this robust industry and its heavy reliance on a competitive and viable rail transportation system.

Simply put, the plastics industry is a very large part of the United States economy. This is illustrated by the following figures:

- >> The U.S. plastics industry directly employs more than 1.2 million workers;
- >> The U.S. plastics industry generates more than $225 billion in annual shipments;
- >> More than 20,000 U.S. facilities produce plastics materials, products and equipment;
- >> The U.S. plastics industry has a $4 billion annual trade surplus.

If nothing else, I think given the facts presented, I hope we all will agree that the plastics industry is substantial in size and has a strong economic impact as part of a national and international global economy.

THE ECONOMICS OF TRANSPORTATION

What also needs to be emphatically noted is that an efficient, cost-effective rail system is critical to our industry. It is, simply put, our life blood and the gateway to our markets. This is better explained if you look at the economics of transporting our raw materials.

1. Transportation is the second highest cost component of plastics, up to a full 20% of the cost of finished raw material production.

2. Approximately, 75% of all plastics raw materials are shipped by rail; of that number, about 85% of the shippers are captive shippers -- that is, singularly served by one rail road.

3. Roughly, 60 billion pounds of plastics are shipped each year;

4. This equates to over 300,000 hopper cars loads at $2500 to over $5000 per car;

5. $1 billion is paid to the railroads each year;

6. If, however, your facility is a captive shipper -- these rates are anywhere from 15 - 60% higher.

I hasten to add, that although some of our raw materials are shipped by other modes of transportation -- it would take 3.5 - 4 hopper trucks to accommodate every one hopper car of resin. The bottom line is that over 1.2 million trucks would need to be introduced on our nation's highway s every year move our raw materials. This just doe not seem like a viable option. So we are, as stated previously, a very rail dependent industry.

DIMINISHING COMPETITION

It should be emphasized that the plastics industry is no different that any other industry. That is, we look to compete on a level playing field each and every business day. Paramount to that happening is the existence of a strong, viable and competitive rail system. In passing the Staggers Act of 1980, Congress attempted to unshackle the rail industry from a regulatory quagmire. In doing so, the Act served to free railroads from many artificial regulatory constraints, leading to improved productivity, increased profitability, and increased competitiveness where the railroads compete with one another with other modes of transportation.

Included in this list of intended, or unintended consequences, is the increasing number of rail mergers. The numbers tell the entire story: in 1980 there were 41 Class I railroads. Today, there are nine -- soon to be eight. This begs the question -- when will the time come when fewer choices equal less competition, a return to monopolistic behavior, less emphasis on service, and, higher costs?

That time, we believe, has come. Throughout the 1980's and into the 1990's there has been a very consistent cadence that has eroded shippers' rights in the public policy arena, and ultimately, in the very way we can conduct our business. It is this issue -- rail monopoly, or lack of competition -- that has ultimately caused, according to the Union Pacific (UP), the "worst rail crisis of the Twentieth Century."

In reviewing the recent rail merger, the Board's single and essential standard for approval is that the merger of two Class I railroads be "consistent with the public interest," as prescribed in the U.S. Code. In determining what is consistent wit the public interest, it requires consideration of a least the following five factors: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including or failing to include other carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

For the Board to disapprove a merger, they must find that only one of the "public interest" factors has not been demonstrated. From the perspective of the plastics industry, let me tell you what has transpired over the last six months since the UP merger was approved by the STB:

>> I visited and spoke with a third-generation plastics industry person -- one who doesn't know when the next hopper car of resin will be sent to his facility. So, as a result, he has had to lay off workers, or, work employees overtime, which has precipitated a much greater frequency of worker accidents, and, all the while, is losing $1,000 - $3,000 a day.

>> I listened to a resin producer who finds himself now in the banking business. What I mean by this is that the cost of the resin sold and shipped to a customer has gone up in the two months it has taken for the resin to arrive at the facility, so the supplier gives credit to that customer;

>> I heard from a small processor who took emergency measures to get resin shipped so his customers would not have to close their doors. Transit time for this particular route has gone from 4 to 40 days to move resin less than 100 miles. This is not acceptable.

>> Finally, at one facility, inconsistent delivery is the largest problem. Troublesome? Yes, when transit time in the last year has increased by 40%, and the entire facility, producing millions of pounds of resin per day, came within three

hours of a complete shutdown. This cannot continue. American business deserves better.

WHAT CAN WE EXPECT IN THE FUTURE?

More of the same. In fact, with the pending Conrail acquisition, shippers are more frightened than ever. And why shouldn't they be? For the first time in the American history of rail and shipper movements, we will be faced with two western and two eastern rail lines.

American business, especially the plastics industry, must perform in a free market system every day, yet we are served by a monopoly. Something is very wrong. The STB must live up to its role of serving the public good. If that role is not fulfilled, the American economy will suffer, and suffer greatly.

The role of the STB is to protect the public interest. We urge the STB to live up to this role and intervene immediately in this "greatest rail crisis of the Twentieth Century."

EXHIBIT B

The Plastics Industry Trade Association

May 1, 1998

The Honorable Linda Morgan
Chair
U.S. Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Dear Madam Chair:

Following our letter to you dated March 11, 1998, we promised you an update of shipper efforts to establish a constructive dialogue with the railroads to begin addressing short-term solutions for the Houston rail congestion. The Service Order issued March 15th by the Surface Transportation Board (STB) gave strong encouragement to the private sector to meet and develop a better understanding of shared concerns and to develop solutions that can be commonly addressed and executed.

Since that time, The Society of the Plastics Industry, Inc. (SPI), the Chemical Manufacturers Association (CMA) and the National Industrial Transportation League (NITL) met twice with the Union Pacific, Burlington Northern, Kansas City Southern and TexMex railroads, collectively. Over two days of meetings, we spent the better part of eleven hours trying to identify and reach agreement on a variety of items that would bring immediate results to ease congestion in Houston. We were mildly encouraged by our first meeting, at which we developed a number of items which both carriers and shippers collectively believed could assist in relieving congestion. One of the most important of these items called upon BNSF and KCS/TexMex to identify available capacity in their train operations out of the Houston area which could provide haulage to the UP.

Our hopes proved short-lived, however; and when our second meeting concluded last week, the three shipper groups agreed that the outcome was very discouraging. The railroads were able only to agree on three recommendations for the shippers to implement concerning fleet management. Each association has distributed to their members these recommendations. Other than a BNSF/UP agreement to have the PTRA separately block north and southbound traffic for TexMex, which TexMex claims will not materially improve its operations, the railroads failed to agree on any cooperative measures. The UP declined the offers of haulage extended promptly following our first meeting in mid-March, and it was particularly apparent that the UP had no interest in accepting assistance from KCS and TexMex. By both word and action, the UP conveyed the

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attitude that the service recovery is well underway and that service is improving. The data reported to the Board, however, showed no pattern or consistent trend has yet developed. Moreover, we understand that service elsewhere on the UP system has deteriorated. Notwithstanding, it was this new-found "recovered" status that caused UP to completely, and effectively, close the door to any, and all, suggestions for traffic disbursement on its part.

As a result, we ended the meetings with no agreement by the railroads to move ahead with suggested service alternatives. Private sector solutions can work only if there is mutual cooperation. The three associations concluded that the UP is not willing to seek assistance from other carriers to turn the corner on this service crisis as soon as possible.

We are happy to further discuss this matter with you.

Sincerely,

Maureen A. Healey

Maureen A. Healey
Director of Transportation Issues
The Society of the Plastics Industry, Inc.

Frank J. Principi

Frank J. Principi
Senior Manager, Distribution Programs
Chemical Manufacturers Association

cc: Burlington Northern Railroad
Kansas City Southern Railways
Tex-Mex Railroad
Union Pacific Railroad

EXHIBIT C

CMA

CHEMICAL MANUFACTURERS ASSOCIATION

June 1, 1998

HAND DELIVERY

Office of the Secretary
Case Control Unit
Surface Transportation Board
1925 K Street,, N.W.
Washington, D.C. 20423

Re: **STB Service Order No. 1518 and STB Ex Parte No. 573, Union Pacific Report On Houston and Gulf Coast Infrastructure**

Dear Secretary:

On behalf of the Chemical manufacturers Association (CMA) and The Society of the Plastics Industry, Inc. (SPI), I am submitting with this letter the original and 12 copies of its comments on the above-captioned topic. Also included is a 3.5 inch diskette in Microsoft Word 7.0 format which contains the text of this letter and the comments. Please date stamp and return one of the attached copies by CMA's messenger.

If you have any questions, please feel free to telephone me at (703) 741-5172.

Sincerely,

Thomas E. Schick

Thomas E. Schick
Counsel

Enclosures.

RECEIVED
JUN 1 1998
MAIL
MANAGEMENT
STB

BEFORE THE

SURFACE TRANSPORTATION BOARD

SERVICE ORDER NO. 1518
JOINT PETITION FOR SERVICE ORDER

STB EX PARTE NO. 573
RAIL SERVICE IN THE WESTERN UNITED STATES

UNION PACIFIC REPORT

ON HOUSTON AND GULF COAST INFRASTRUCTURE

COMMENTS OF THE

THE CHEMICAL MANUFACTURERS ASSOCIATION

&

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

JUNE 1, 1998

EXHIBIT C

SERVICE ORDER NO. 1518
JOINT PETITION FOR SERVICE ORDER

STB EX PARTE NO. 573
RAIL SERVICE IN THE WESTERN UNITED STATES

RECEIVED
JUN 1 1998
MAIL MANAGEMENT
STB

UNION PACIFIC REPORT ON HOUSTON AND GULF COAST INFRASTRUCTURE

INTRODUCTION

In its decision served February 25, 1998, the Surface Transportation Board (STB) ordered: an extension of Service Order No. 1518 to August 2, 1998; Union Pacific (UP) to file a report addressing infrastructure in Houston by May 1, 1998; UP to augment its weekly reports; and replies to UP's infrastructure report be filed by June 1, 1998. CMA and SPI offer these comments in reply to that order and to the report submitted by UP.

On May 1, 1998 the UP filed its infrastructure report describing 95 projects it plans to complete over the next three to five year period to address infrastructure which UP deems "inadequate to handle major disruptions or anticipated traffic growth in the area." UP claims that the improvements will simplify operations, expand satellite yard capabilities, and bring needed surge capacity to the area. UP estimates the cost of the projects to be $600 million. The plan, in general, has been endorsed by UP's Board of Directors but the specific projects are subject to the normal capital budgeting process.

UP presented a brief overview of its preliminary study, process, and timeline to CMA and SPI on April 14, 1998. CMA and SPI were not asked to provide UP with formal observations about the report or the views of their members concerning the infrastructure improvements. CMA and SPI conclude that the report includes two limitations that, if addressed, would add value to the shipping public. One, the report offers no apparent hierarchy or prioritization of the 95 projects it describes. Two, there is little or no accountability in this process to ensure that UP follows through and completes the projects it has identified. These comments will focus on those two limitations and suggest constructive options to the STB to address each.

PRIORITIZATION

The extensive menu of 95 projects (pages 14-48) provides no apparent prioritization for the reader to conclude whether each project is equally important, or whether there will be some logical systematic approach to completing each. It is unclear whether UP is suggesting that all must be completed to restore and provide adequate service or whether perhaps only a handful should really be closely monitored.

1

CMA and SPI request the STB to require UP to augment its report to either justify the approach taken or to establish and publish subsequently a prioritization scheme for each project. UP should consider matching each project to a schedule (1998-2002) so as to offer the shipping public a clear understanding of what will be done, when, where, and with an end date. UP acknowledges the need to complete these projects in a "logical sequence" but offers none in the report. Adopting a linear approach to the projects will increase the value of the report for years to come.

Surely, not all 95 projects are of equal importance. One cannot conclude from reading the report whether an expansion of a prime storage-in-transit yard is of equal or greater value than a customer track. Should the reader conclude that an industry lead or support tracks are of equal value to double track? Where does the movement of a control tower and the installation of CTC fit into the overall prioritization scheme? Are projects earmarked for the Houston Terminal area more or less important than projects scheduled for South Central Texas? Southern Gulf Coast?

The report does not make clear either whether the $600 million figure referenced is generated entirely by UP, or whether UP expects to receive funding from other sources, e.g., other railroads, the Port Authority of Houston, or the State of Texas. The latter funding source is not out of the question as the report references projects associated with commuter lines in the region. CMA and SPI hope that these other organizations will file, and the STB will make available, their comments in order to clarify whether they have agreed to co-fund certain projects described in the report.

UP should be cautious to prioritize these projects in a way that they do not contribute to on-going service disruptions or transfers problems to other railroads. CMA and SPI are concerned that UP's criteria used in the project selection process do not account for the impact on the operations of other railroads (or the Ports). Recall, UP cited BNSF maintenance work as an excuse for UP service disruptions in its reply to comments in last year's oversight proceedings (see UP/SP - 311, pages 89-91).

The STB should order UP to clarify its report with regard to the sources of funding for the projects and the status of discussions with other affected railroads, commuter lines, and the Port Authority referenced in the May 1 Infrastructure Report. In addition, UP should differentiate between projects and investments contemplated in the UP/SP merger application and those newly identified in the infrastructure report. These clarifications would be expected to assist in providing a better understanding of the prioritization of the projects.

ACCOUNTABILITY

UP is quite clear, however, when it comes to providing disclaimers to the report and explaining that there are several factors that will be used to determine whether some or all of the projects in the report may not be completed. Included among the caveats are:

- the financial constraints associated with UP's earnings;
- the "pricing flexibility" of the current regulatory regime;
- divestiture and/or a requirement to open traffic to other carriers; and
- changing shipper requirements and traffic patterns

CMA and SPI are not convinced that UP, despite its good intentions, has sufficient incentives under the current regulatory regime, to complete the projects described in the report. Considering what UP claims are "extraordinary capital investments" combined with the need to seek UP Board approval for each project in the budgeting process, there appears to be no overwhelming reason to follow-through once service is restored to levels UP considers adequate. Some of the projects described in the report are, in fact, projects that have been promised to shippers for years and have not been completed for a host of reasons.

CMA and SPI are not suggesting that each and every project is necessary in order to reverse UP's year-long period of disruptions and put it on course to improve service levels which mirror what was promised in the merger application. However, once service is restored many of UP's good intentions may evaporate and resources may be committed elsewhere.

The STB should consider incorporating UP's Infrastructure Report and the comments received on it into the annual oversight docket on the UP-SP merger (STB Finance Docket 32760) and require UP to report progress on the projects in the Quarterly Progress Reports. This approach will ensure that the report stays current and continues to be used by UP as its guiding light to restore service.

CONCLUSION

CMA and SPI commend the STB for ordering UP to produce the Infrastructure Report and suggest that the two limitations described above be addressed as suggested.

Martin W. Bercovici
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Thomas E. Schick
Thomas E. Schick
Counsel, Chemical Manufacturers Association
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Arlington, Virginia 22209
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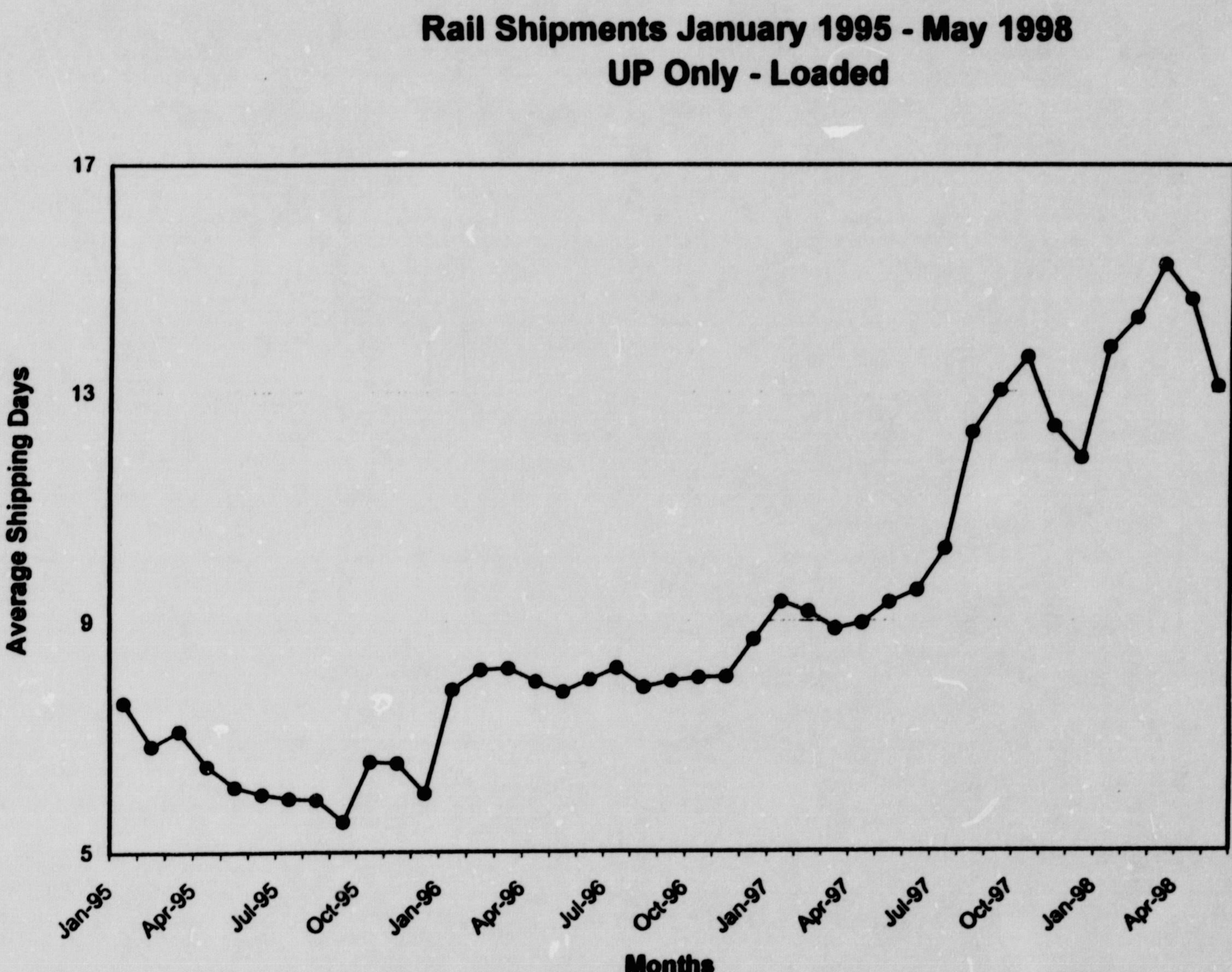
CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the comments of the Chemical Manufacturers Association and the Society of the Plastics Industry, Inc. on all parties of record, by first-class mail.

Thomas E. Schick
Thomas E. Schick

June 1, 1998

EXHIBIT D


Rail Shipments January 1995 - May 1998
UP Only - Loaded
17
13
9
5
Average Shipping Days
Jan-95
Apr-95
Jul-95
Oct-95
Jan-96
Apr-96
Jul-96
Oct-96
Jan-97
Apr-97
Jul-97
Oct-97
Jan-98
Apr-98
Months

BEFORE THE

SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

REQUEST FOR ADOPTION OF THE CONSENSUS PLAN IN ORDER TO RESOLVE SERVICE AND COMPETITIVE PROBELMS IN THE HOUSTON/GULF COAST AREA

JOINT VERIFIED STATEMENT

OF

DR. CURTIS GRIMM AND JOSEPH J. PLAISTOW

THE CHEMICAL MANUFACTURERS ASSOCIATION

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS MEXICAN RAILWAY COMPANY

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

THE TEXAS CHEMICAL COUNCIL

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

July 8, 1998

I. Qualifications and Introduction

My name is Curtis M. Grimm, and I am Professor and Chair of Logistics, Business and Public Policy in the College of Business and Management, at the University of Maryland at College Park . I have been a member of this College since 1983. I received my B.A. in economics from the University of Wisconsin-Madison in 1975 and my Ph.D. in economics from the University of California-Berkeley in 1983. My Ph.D. dissertation investigated competitive impacts of railroad mergers.

My background includes extensive exposure to public policy issues regarding transportation. I have previously been employed by the Wisconsin Department of Transportation, the Interstate Commerce Commission ("ICC"), and the Australian Bureau of Transport and Communication Economics, and I have provided consulting services to several other government agencies and private firms regarding transportation issues. At the Wisconsin Department of Transportation, I served as Assistant to the Chief of Intercity Transport Development in the Planning Division on two separate occasions between 1975 and 1978, with a focus on rail policy issues such as abandonments and the creation of shortline railroads. I also worked on a consolidation involving competing bids from Burlington Northern and the Soo Line/Milwaukee Road/CNW for the Green Bay and Western Railroad, decided by the ICC in 1977.

As an economist at the ICC's Office of Policy Analysis from January to December 1981, my duties included analysis of the competitive effects of the Union Pacific-Missouri Pacific-Western Pacific ("UP-MP-WP") merger. During 1982, I served as a consultant for the ICC while the UP-MP-WP decision was being drafted and subsequently consulted for the ICC regarding Ex Parte No. 347.

I have participated in several ICC merger proceedings, providing testimony which evaluated the competitive consequences of a merger. I previously submitted statements in this case on behalf of

Kansas City Southern Railway Company ("KCS") and the Texas Mexican Railway Company ("Tex-Mex"), providing evidence regarding the anti-competitive effects of the UP/SP merger. On November 8, 1995, I testified regarding competition issues in rail mergers before a Joint Meeting of the U.S. Senate's and House of Representatives' Committees on Small Business.

My research has involved deregulation, competition policy, competitive interaction and management strategy, with a strong focus on transportation. This research has resulted in over 60 publications, including articles in leading journals such as: Journal of Law and Economics, Transportation Research, Transportation Journal, Logistics and Transportation Review, Academy of Management Journal, Management Science, Strategic Management Journal, and Journal of Management. More than two dozen of my publications have dealt specifically with the railroad industry, mainly on deregulation, mergers, and competition issues. I have also co-authored four monographs. Further details my be found in my curriculum vitae attached to my statement.

My name is Joseph J. Plaistow, Vice President and principal of Snavely King Majoros O'Connor & Lee, Inc. (hereinafter, "SK") with offices at 1220 L Street, NW, Suite 410, Washington, DC 20005. On several occasions, I have assisted Dr. Curtis Grimm in quantifying the competitive impacts of mergers. I am also filing a verified statement quantifying the financial impact on Tex Mex of implementing the Consensus Plan. Exhibit No. JJP-1 of that statement provides a more detailed statement of my background and qualifications.

The UP/SP merger decision, while opining that the merger did not create a competitive problem in Houston, provided monitoring conditions to reassess and provide remedies should "unforeseen" circumstances prove otherwise. UP's Houston service meltdown, clearly unforeseen, has provided just such evidence that the merger created significant UP market power in Houston.

First of all, the dominant market share retained by UP in the latter half of 1997 provides strong evidence as to the lack of competitive alternatives. Second, the extent to which shippers were harmed by UP's service problems provides evidence of a structural competitive problem in Houston. We proceed with each argument in turn.

II. UP's Service Problems in the Houston Area Have Been Well-Documented.

UP's service in the Houston area was abysmal in the latter half of 1997 and has clearly continued into 1998. As evidence of this poor service, most shippers have seen significantly increased rail cycle times. In October of 1997, SPI, NITL and CMA filed a joint petition for an Emergency Service Order. The petition provided strong documentation as to the severity of the problem and the inadequate service received by shippers. This statement sets forth just a few of the examples provided by shippers of the problems of increasing cycle times which occurred after the UP/SP merger:

- *"We are seeing transit times measured in months, rather than days."* Verified Statement of Donald A. Welch, Inland Paperboard and Packaging, Inc., at 2.

- *"Railcar transit times west out of Lake Charles have increased in the range of 30% to 100%. Railcars of plastic shipped to Houston have been delayed for weeks."* Verified Statement of James J. Hall, CONDEA Vista Company, at 1.

- *"The average cycle, the time it takes a railcar to reach destination and return to origin, was 25-30 days prior to the merger. We are now lucky if we see a car return to origin within sixty (60) days."* Statement of Bob Messemer, Jones-Hamilton Co. at 1.

- *"Transit times which were normally seven to ten days are now well beyond 30 days."* verified Statement of John G. Breslin, Witco Corporation, at 1.

- *"In the past, within 15 days a car would reach destination anywhere in the country. Today, Fina has transits up to 60 days with no consistency."* Verified Statement of Mike Spahis, Fina Oil and Chemical Co., at 3.

- *"Dow jeopardized cars on the UP/SP system that will not meet customer/Dow delivery schedules is at least 200% higher through the last week of September, 1997, versus the first quarter of 1997; . . . Union Pacific performance target measuring percent on time delivery against standards on key Dow strategic corridors is down from a goal for 1997 of 92.1% to a September actual of 53%."* Verified Statement of Harry J. Ignatowski, The Dow Chemical Company, at 2.

- *"Since July, Union Pacific's service has drastically deteriorated and transit time has increased by approximately 40%."* Verified Statement of Charles N. Beinkampen, E.I. Du Pont de Nemours and Company, at 1-2.

- *"The transit times for the rail movement from Longview, TX to Houston, TX have increased from three (3) or four (4) days prior to the UP/SP merger, to widely varying transits ranging from fifteen (15) to thirty (30) days."* Verified Statement of H. Edward Palmer, Eastman Chemical Company, at 1-2.

- *"[One of Ethyl Corporation's tank cars was] shipped on August 29 from Sauget, IL to Houston, TX. The car arrived in Houston on September 9 but returned to Sauget on September 11 because incorrect billing was issued by the UP in error. The car departed again for Houston eight days later, September 19. The car arrived in Houston for the second time on September 23 but took seven additional days to interchange with the PTRA railroad for final delivery. The car finally arrived in Houston three (3) weeks late."* Verified Statement of Russell L. Gottwald, Ethyl Corporation, at 1.

- *"[PPG has] many specific point-to-point movements . . . where the actual loaded and/or empty transit times have increased 50-100%."* Verified Statement of Michael E. Petruccelli, PPG Industries, Inc., at 3.

- *"[Solvay Polymers, Inc.] had three railcars which were in transit for 49 days, 51 days, and 34 days to a Ft. Worth customer located only 300 miles from our Deer Park plant."* Verified Statement of Michael Scherm, Solvay Polymers, Inc., at 1.

- *"Shipments to customers which, prior to the merger, normally took five days now are taking 10-14 days, with sporadic situations of lost cars, misrouted cars and no bill cars which result in much longer transit times."* Verified Statement of David Parkin, Huntsman Corporation, at 1.

- *"As of October 9th, 1997 rail problems directly associated with UPRR service to the five Amoco Chemical plants in the Houston area have resulted in lost production and increased transportation costs totaling over \$7.4 million, and the monthly rate has been escalating."* Verified Statement of Robert J. Theurer, Amoco Chemicals, at 2.

- *Prior to the UP/SP merger, on the route between Beaumont, Texas to Vernon, Texas, transit time averaged ten days. By August, 1997, the average jumped to 30 days.* See Verified Statement of

Garret G. Smith, Mobil Oil Corporation, at 2.

- *"This year due to Union Pacific problems, the average transit time [between Colton, California and Houston, Texas] is up forty (40%) percent through August; from ten (10) days to fourteen (14) days . . . The average transit time on shipments from Vernon, CA to our customer in Corpus Christi, Texas has increased twelve (12%) with the Union Pacific; from seventeen (17) days in 1996 to nineteen (19) days."* Verified Statement of John Laciak, Akzo Nobel Chemicals, Inc., at 1.

- *"UP/SP rail service has deteriorated on our plastic resins shipments from Houston over a three month period . . . Shipper confidence in the rail service being offered by the UP is extremely low . . ."* Verified Statement of Fred W. Watson, Phillips Petroleum Company at 1-2.

- *Tank car shipments to the Houston area ports were delayed causing Air Products and Chemicals, Inc. to miss the sailing of a vessel that was to carry 315 tons of a bulk product for a Latin American customer. Air Products and Chemicals, Inc., and other shippers who had missed the boat had to pay $100,000 to have the ship return to port, rather than wait 30 more days for delivery.* See Verified Statement of Richard C. Walters, Air Products and Chemicals, Inc., at 2.

Recent statements filed by shippers provide further documentation that the UP service crisis is still continuing. In June of 1998, shippers filed statements for Ex Parte No. 628, which document the continuing UP service crisis. The statements verify that rail cycle times and inconsistency still persist as the leading problems with UP's service.

- "*The seriousness of the western railroad service crisis cannot be overstated. CPSB and other League members are dependent upon the railroads to deliver to us sufficient volumes of fuel necessary to meet our generation systems' fossil fuel requirements. The reliability of CPSB's electric generation system, and our ability to serve customer demands is at stake.*" Comments from the Verified Statement of Mark Werner attached to the Comments of the Western Coal Traffic League at 2.

- "*The recent and continued service problems being experienced by Union Pacific have severely impacted Cemex USA [a captive shipper]. The rail cycle time (i.e., the number of days required to deliver a full rail car to its destination and return it for refilling), particularly for shipments of aggregate (stone), continues to be excessive. This service failure has caused Cemex USA irreparable harm. Cemex USA has lost customers and revenues and was forced to reduce employment at its plant.*" Comments by Cemex USA Management, Inc., at 1.

- "*CLC presently owns a facility at Marble Falls, TX, located on a rail line that extends from Llano* *to Giddings, TX. Owned by the Capital Metropolitan Transportation Authority and operated by its contract shortline railroad operator, the Longhorn Railway Company. That facility presently ships product to a receiver near Beaumont, TX, using Longhorn to an interchange with UP at McNeil, TX. Formerly the freight movement required a transit time of about 7 days. Due to UP's service problems in Houston, that haul now requires at least 15 days. This service disruption has hurt CLC in several different ways. First, UP's inability to supply cars has meant that Longhorn has been unable to meet its customer needs. That resulting loss of revenue has had a devastating and life threatening impact on Longhorn's very financial existence. Second, service disruptions have substantially increased CLC's demurrage expense. While CLC can obtain demurrage relief, CLC has incurred significant additional administrative expenses to resolve this type of problem. Third, in order to meet customer demand, CLC has been forced to acquire by purchase or lease its own 64 freight car fleet. Slow transit times incurred in connection with that car fleet have increased CLC's costs by about $60,000 annually. Fourth in order to meet customer commitments, CLC has on numerous occasions been forced to substitute more expensive truck for rail service. Unfortunately, the price differential between rail and truck is substantial enough to erase the modest profit CLC was making on these product sales."* Comments by Chemical Lime Company at 3-4.

III. UP's Market Power in Houston Contributed to this Crisis and Prevented Shippers from Using Alternative Carriers.

The dominant Houston market share retained by UP in the latter half of 1997 in the midst of a service meltdown, provides strong evidence that the UP/SP merger and the limited conditions imposed by the STB created a competitive problem in Houston. The UP/SP merger provided Union Pacific with a virtual monopoly on Houston originated traffic to the East-Northeast, the South-Southeast and the Midwest. Table 1 reveals that in 1996 the UP/SP combined carload market share for Houston originating traffic was 86% to the Northeast, 91% to the Southeast, and 80% to the Midwest. In contrast, the dominant Houston carrier prior to the UP/SP merger had a much lower 64% share to the East-Northeast, a 48% share to the South-Southeast and a 50% share to the Midwest.

Table 1

UP's Market Shares for the Years 1994 and 1996
Traffic Originating in the Houston BEA

Destination <u>Geographic Region</u> <u>1</u>/ (1)	<u>Carloads</u> (2)	<u>Tons</u> (3)
1. East-Northeast		
1994 SP Market Share	22%	23%
1994 UP Market Share	64%	61%
1996 UP/SP Combined Market Share	86%	84%
2. South-Southeast		
1994 SP Market Share	48%	[illegible]%
1994 UP Market Share	47%	53%
1996 UP/SP Combined Market Share	91%	86%
3. Midwest		
1994 SP Market Share	25%	24%
1994 UP Market Share	50%	49%
1996 UP/SP Combined Market Share	80%	77%

<u>1</u>/ East and Northeast includes all of New England, eastern Canada, and New York, New Jersey, Pennsylvania, Delaware, Maryland, and Washington, D.C.; South and Southeast includes all the states from Virginia southward to Florida and as far west as Kentucky, Tennessee, West Virginia, and Louisiana; Midwest includes all states east and west between Ohio and Kansas – the region extends as far north as Michigan and as far south as Arkansas.

The Union Pacific service "meltdown" of 1997-98 has provided new evidence as to whether the UP/SP merger created undue market dominance in Houston. In industries where competition exists, catastrophic service failures by one leading provider inevitably results in massive defections to competitive providers. Table 2 reports the Houston market share numbers for July through December, 1997. Amazingly, UP still retained an 84% carload market share to the Northeast, 87% to the Southeast and 80% to the Midwest despite its catastrophic service failure during this period. The data provides striking evidence that the UP/SP merger has created a fundamental structural problem in Houston. As discussed in the Verified Statement of Larry Thomas, President of The Society of the Plastics Industry, the conditions imposed by the STB have not served their intended purpose of preserving competition in the Houston area.

Table 2

UP's Market Shares for Traffic Originating in the Houston BEA
For the Months July through December, 1997

Destination Geographic Region (1)	Carloads (2)	Tons (3)
1. East-Northeast		
UP Market Share	84%	81%
2. South-Southeast		
UP Market Share	87%	85%
3. Midwest		
UP Market Share	80%	80%

Table 3 provides further evidence that this conclusion is invariant with regard to the specific Houston market definition employed. Examining the same data for the SPLC4's within Houston encompassing the proposed neutral switching and neutral dispatching area, we still see strong UP dominance during the 1997 service crisis.

Table 3

UP's Market Shares for Traffic Originating in Houston SPLC4s
Encompassing the Proposed Neutral Switching Area
For the Months July through December, 1997

Destination Geographic Region (1)	**Carloads (2)**	**Tons (3)**
1. East-Northeast		
SPLC 6846	100%	100%
SPLC 6847	89%	89%
SPLC 6848	75%	61%
SPLC 6861	63%	63%
2. South-Southeast		
SPLC 6846	100%	100%
SPLC 6847	89%	88%
SPLC 6848	77%	64%
SPLC 6861	79%	80%
3. Midwest		
SPLC 6846	100%	100%
SPLC 6847	94%	93%
SPLC 6848	69%	59%
SPLC 6861	68%	68%

The degree to which shippers suffered from the crisis also corroborates the lack of competition in the Houston area. The joint petition for an Emergency Service Order by SPI, NITL and CMA ("ESO") included a survey of CMA members which revealed extremely high costs suffered due to UP's service meltdown; 27 members reported costs of more than $150 million over just four months. ESO at 17. More recently, CMA commented that "The Union Pacific service disruption, at its peak, cost CMA member companies tens of millions of dollars per month." CMA comments to Ex Parte No. 628, June 15, 1998, at 17.

A February 9, 1998, study by Dr. Bernard Weinstein and Dr. Terry Clower ("Weinstein Study"), attached as Exhibit A, provides the most comprehensive assessment of the UP service crisis impact on Texas Shippers. Weinstein and Clower report as follows:

> Without question, the Union Pacific's logistical problems are imposing significant incremental costs on Texas manufacturers, growers and shippers that will eventually be passed on to businesses and consumers both in-state and out-of-state. ***We conservatively estimate the costs to date for Texas business, measured by lost sales, reduced output and higher shipping charges, at $1.093 billion. We have also identified $643 million in additional costs to businesses, consumers and taxpayers in Texas that may be incurred within the next few months unless the Union Pacific can quickly remediate its service delivery problems.***
> Weinstein Study at 5-6.

As a result of the merger, shippers have been forced to divert traffic to other modes, at substantially increased costs. Shippers experienced these costs because they had no rail competitive alternatives, and they were forced to "bear with" UP, or to pay much higher transport charges from shifting to truck. The joint petition for an Emergency Service Order by SPI, NITL and CMA provides further evidence regarding the high cost of the service crisis to individual shippers.

- *"Chevron is 'baby sitting' between 80-180 cars per day and that trend is increasing . . . Despite Chevron's efforts, some number of these cars do not reach their destinations on time. This results in significant time, effort and substantial money being spent on emergency truck shipments . ."* Verified Statement of Eric W. Tibbetts, Chevron Chemical Company, at 2.

- *"Although we have been forced to move to more expensive forms of transportation such as tank trucks, to maintain shipping during the UP/SP crisis, we are at the point where even that alternative is only available on a limited basis. Our core truck carriers simply do not have sufficient equipment available to be a viable substitute for the railroad."* Verified Statement of John A. Noll, BASF Corporation, at 5.

- *"We estimate that our additional trucking expenses exceed $200,000 per month . . ."* Verified Statement of David Parkin, Huntsman Corporation, at 1.

- *"Since May 1997 Akzo Nobel Chemicals Inc. has shipped thirty-three (33) trucks to satisfy customer requirements. Truck shipments have added $67,000 to freight expenditures."* Verified Statement of John Laciak, Akzo Nobel Chemicals, Inc., at 2.

- *"In our efforts to meet our commitments to our customers, we have been and continue to be forced to make emergency shipments via bulk truck . . . occasionally air freight."* Verified Statement of Mike Scherm, Solvay Polymers, Inc., at 1.

- *"Without product available via rail, we have had to ship via tank truck which has increased the cost of moving product as high as 100% above what we typically pay for rail service."* Statement of Bob Messemer, Jones-Hamilton Co., at 1.

- *"[B]oth inbound raw materials and outbound customer shipments have been converted from rail to tank trucks at an additional cost of $23,700 for the month of August."* Verified Statement of Carol R. Sitz, Ashland Chemical, at 2.

- *"Since the merger of the Southern Pacific and Union Pacific, there have been significant delays in receiving material resulting in truck shipments which are more costly . . . Additional freight costs for hopper trucks have totaled $1,250 per month."* Verified Statement of Ronda A. Bynum, Allied Colloids Inc., at 1.

Clearly the magnitude of costs and impacts on shippers provides strong evidence as to the lack of adequate post-merger rail competition in Houston. Had shippers been able to access competitive alternatives to UP, the impacts would have been far less. As CMA stated, "[m]uch of this crisis might have been mitigated had shippers had access to an alternative rail carrier." CMA comments to Ex

Parte No. 628, June 15, 1998 at 1.

IV. Infrastructure Investment Will Not Be Reduced with the Approval of this Consensus Plan[1]

UP recently filed a report entitled: "Union Pacific's Report on Houston and Gulf Coast Infrastructure". In it, UP lays out its infrastructure investment plan for the region. However, UP claims that expanded access by other railroads in Houston would deter it from further investing, explaining:

> Significant changes in this [regulatory] environment would undermine the ability of railroads to make these necessary investments, including those discussed in this report. Should such a change occur in the future, UP's obligation to its stockholders would require it to reevaluate this investment program. Changes in the regulatory environment could also affect already planned capital spending.
>
> Forced divestiture or expanded access for other railroads would similarly undermine UP's ability to fund these projects by altering the pattern of service that UP provides today. Should the Board order divestiture or require UP to open its traffic base to other carriers, UP would have to reevaluate this investment program. [2]

UP's implicit threat not to make infrastructure improvements if the Board imposes additional conditions on its UP/SP merger approval simply does not make sense from an economic sense. Like any rational competitor, UP will respond to a strengthened competitive environment with additional competitive infrastructure improvements. UP may not fund the identical infrastructure improvements detailed in its infrastructure investment plan, but it will

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[1]This section is adapted from "The Impact of Increased Railroad Competition on Railroad Infrastructure Investment", Joseph J. Plaistow, Christena Adams, and Dr. Curtis Grimm for the Alliance for Rail Competition.

[2] Union Pacific's Report on Houston and Gulf Coast Infrastructure, Ex Parte No. 573, Rail Service in the Western United States, pages 6-8.

fund infrastructure improvements appropriate to the new competitive environment in which it finds itself.

Competitive pressures have intensified in most industries due to globalization, technological change, reduction in trade barriers and industry specific deregulation. U.S. firms have responded by cutting costs and improving service to cope with this increasing competition. Downsizing, re-engineering, total quality management and supply chain management innovation have been the order of the day. In short, firms throughout the U.S. economy have become lean and mean because of this enhanced competition, but have not in any way reduced their investment activity, making our economy the envy of the world. Moreover, an examination of the effects of enhanced competition in other infrastructure industries -- telecommunication, electricity, and natural gas – shows that investment has not suffered in the face of added competition.[3]

Closer to home, an examination of actual railroad investment practices in the face of increased competition also reveals that investment is stimulated, not reduced, by enhanced rivalry. The entry of the Chicago and North Western Railway Company (now a part of the Union Pacific Railroad) into the Powder River Basin ("PRB"), previously the sole domain of Burlington Northern ("BN"), provides one such example. Also, competition has been strong within the industry for intermodal traffic, and the facts reveal that investment has not declined in the presence of this intense competition. We proceed with a discussion of both examples.

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[3] "The Impact of Increased Competition on Railroad Infrastructure Investment" provides detailed evidence.

A. The Powder River Basin

The Burlington Northern Railroad Company commenced operations from the PRB in 1969. In 1982, the Chicago and North Western Railroad ("CNW") was permitted by the ICC to acquire a one-half interest in a portion of the line. In October 1984, CNW's PRB arm, Western Rail Properties, Inc. ("WRPI"), moved their first coal train. Since the advent of competition in the PRB, the levels of traffic, the investment in infrastructure and the revenues received have grown exponentially. If one is to believe Union Pacific's argument that they will be deterred from investing in improvements if competition is introduced in the Houston area, upon access by CNW, BN would have lost its ability to invest in sufficient track or equipment to serve the PRB traffic.

The evidence shows how absurd this argument is in terms of the PRB. Since 1984, CNW has engaged in head-to-head competition with BN for coal traffic originating in the southern portion of the PRB. According to statements made by CNW, between 1984 and 1994 "rail competition has had positive effects, as envisioned by the ICC when it first authorized construction of the Joint Line in 1976. CNW and BN bid competitively for the transportation of PRB coal, and the rail rates today are far lower than in 1984."[4]

As shown in the Table 4, CNW has been an aggressive competitor and annual coal tonnage originating on the Joint Line more than doubled between 1984 and 1994. In CNW's

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[4] "Planning The Next 50 Years Of Railroad Competition For Powder River Basin Coal: Why The ICC Urgently Needs To Modify The BN-CNW Joint Line Agreement", CNW, January 27, 1995.

words, "Railroad competition has fueled this dramatic growth."[5] In January of 1995, CNW stated that "[g]iving one competitor excessive control over a facility… is not the right structure for healthy competition [and]… support for [the opportunity for CNW to increase PRB capacity] will be a vote for adequate rail capacity and vigorous competition."[6]

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[5] Ibid.

[6] Ibid. pages 2-3.

Table 4

Joint Line Coal Production
1984 – 1994 (in millions)

Year	BN Tons	CNW Tons	Total
(1)	(2)	(3)	(4)
1984	73.6	2.4	76.0
1985	64.7	18.6	83.3
1986	57.0	23.8	80.8
1987	58.0	32.5	90.5
1988	68.0	37.3	105.3
1989	72.1	42.6	114.7
1990	72.6	49.0	121.6
1991	71.3	58.4	129.7
1992	69.7	57.2	126.9
1993	70.6	73.9	144.5
1994	78.9	86.7	165.6

Source: "Planning the Next 50 Years Of Railroad Competition For Powder River Basin Coal: Why The ICC Urgently Needs To Modify The BN-CNW Joint Line Agreement." Attachment A

BN put up the investment required to access the PRB with a joint line. However, until 1982, CNW could not find the financing or the resolve to put together the funds to participate. BN first accessed the basin from the north via Donkey Creek and subsequently constructed the 113-mile line to connect Belle Ayr mine to Bridger Junction at a cost of $113 million. The ICC provided CNW a reprieve and ordered CNW to pay $76 million to BN to obtain their one-half interest in the Orin line (that is, the line between Donkey Creek and Bridger Junction). CNW also needed to rebuild 45 miles from Crandall to Shawnee, build a new 56-mile line between Crandall, Wyoming and Joyce, Nebraska to connect to UP and construct a 6-mile connection between Shawnee and the BN. In the end, CNW invested more than $400 million in the infrastructure required to access the PRB.

Between 1984 and 1997, both BN and CNW continued to invest heavily in the PRB. Not only in track improvements (double-tracking then triple-tracking the Orin line and expanding yard capacities) but in equipment as well. In 1991, when CNW identified the need for capacity additions, they voluntarily advanced 100% of the funds. In 1995, BNSF invested $385 million in track and equipment, including 21 miles of double and triple track, expansion of the Alliance yard and acquiring 130 AC locomotives to power the coal trains. In 1996, BNSF placed the largest order ever for locomotives to power the PRB trains.

Today, the Joint Line is triple-tracked and railroad investment continues. According to Dick Davidson, UP's Chairman, UP will spend $400 million in 1998 to double-track the Marysville subdivision and triple track 42 miles between North Platte and Gibbon.[7] Greg Swienton, Senior VP, Coal and Agriculture, at BNSF stated that some $2.2 billion will be invested by BNSF. BNSF is currently daylighting the Guernsey tunnel and double-tracking the route ($16 million), purchasing cars and locomotives and upgrading track. BNSF will purchase 157 SD70-MAC locomotives at $283 million and three aluminum trainsets at $22 million.[8] BNSF's 1997 Annual Report to Shareholders also details the continued track investment as "23.8

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[7] Comments made at Western Coal Transportation Association Meeting, April 28, 1998, Houston, Texas.

miles of double-track between Alliance and Ravenna, Nebraska and 13.1 mile third main track within the PRB at a total cost of $44 million." These investments are being made in a competitive environment and the revenues keep growing.

In 1980, coal contributed 9.5 percent or $80 million of CNW's total freight revenue. By 1997, coal contributed $1.91 billion, or 19.7% of Union Pacific's (the current owner of the CNW property) total freight revenue.[9] For BN a similar story emerges. In 1980, coal revenues equaled $945 million. In 1997, coal revenue equaled $1.97 billion.[10] Table 5 summarizes coal revenues received by each carrier for 1987 through 1997.

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[8] Comments made at Western Coal Transportation Association Meeting, April 29, 1998, Houston, Texas.

[9] In 1995 UP acquired CNW. Revenues shown in Table 2 include CNW, UP, and SP coal revenues.

[10] In 1995 BN acquired ATSF. Revenues shown in Table 5 include BN and ATSF coal revenues.

Table 5 Summary of BN/SF and CNW/UP Coal Revenues 1987 through 1997 (in $millions)		
Year	BN/SF Revenue	CNW/UP/SP Revenue
(1)	(2)	(3)
1987	$1,509	$1,030
1988	1,667	1,098
1989	1,680	1,179
1990	1,776	1,233
1991	1,745	1,349
1992	1,715	1,317
1993	1,752	1,458
1994	1,907	1,635
1995	1,962	1,648
1996	1,973	1,630
1997	1,972	1,913
% change	+ 31%	+ 86%

These tonnage and revenue increases have taken place in an environment in which cost reductions and productivity improvements have exceeded rate reductions. Table 6 shows that rail industry productivity increased 5 percent annually between 1981 and 1994.

Table 6 Summary of Historical ICC Productivity Factors	
Year	**Cumulative Productivity Growth**
(1)	**(2)**
1981	1.000
1982	0.960
1983	1.058
1984	1.126
1985	1.105
1986	1.081
1987	1.271
1988	1.335
1989	1.415
1990	1.496
1991	1.364
1992	1.623
1993	1.781
1994	1.893

Table 7 shows that BN cost reductions exceeded rate reductions in the decade following the CNW intrusion into the PRB.[11] BN rates went down 28.0%, while costs went down 38.3%. Combined BNSF/UP net income increased from $1.1 billion to $1.7 billion.[12] Margins improved by a full 10.3%, and funds for infrastructure investments became more, not less, available.

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[11] Rebuttal to Verified Statement of Thomas D. Crowley, ICC Docket No. 41191, July 21, 1995, Table 11, p. 20.

[12] Analysis of Class I Railroads, Association of American Railroads, 1984 and 1994.

Table 7

Comparison of Change in BN Revenues and Variable Costs For Handling Coal Traffic 1984 – 1994

Year	BN Coal Revenues Per Revenue Ton Mile		BN Coal Variable Cost Per Revenue Ton Mile	
	Mills	1984 = 100	Mills	1984 = 100
(1)	(2)	(3)	(4)	(5)
1984	16.8	100.0	7.8	100.0
1985	16.2	96.4	7.9	101.3
1986	13.4	79.8	7.3	93.0
1987	13.8	82.1	6.5	83.3
1988	14.0	83.3	6.5	83.3
1989	13.5	80.4	5.9	75.5
1990	13.4	79.8	6.2	79.6
1991	13.1	78.0	6.4	81.6
1992	13.0	77.4	5.9	75.5
1993	12.5	74.4	5.1	64.9
1994	12.1	72.0	4.8	61.7

In conclusion, competition did not decrease investment nor profit potential in the PRB. In the early ICC proceedings, Burlington Northern told regulators to expect that investment would dry up and shippers would be hurt, much as UP claims now. History has shown that Burlington Northern was wrong. What actually transpired was a dramatic growth in investment and an increase in revenues and profitability. "Throw two fiercely competitive railroads together in Wyoming, and what happens? At the corporate level what you'd expect – aggressive solicitation of business."[13] Burlington Northern PRB traffic has grown beyond all expectations.

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[13] TRAINS, November 1989.

Competition has not eliminated the carriers' ability to invest or to increase revenues. In fact, UP itself, has been spending money for infrastructure upgrades.

B. Increasing Competition for Intermodal Traffic has Spurred Major Class I Railroads to Invest Heavily in Intermodal Infrastructure.

Intermodal traffic is, by definition, the rail carriers' most competitive traffic. Intermodal can move via truck or be drayed to an alternative rail carrier for movement. Yet, major Class I carriers continue to invest in intermodal traffic, especially in recent years.

Competition is fierce. In the West, BNSF and UP compete head to head against the trucking industry and each other. Reports from the 1998 Intermodal Expo in Dallas explain, "[t]he service troubles that began last summer in Texas have cost 3.5 percentage points in market share for [UP] the nation's largest railroad. Burlington Northern and Santa Fe Railway, UP's big western rival, continued to pad its lead in intermodal volume during the first quarter of this year at the expense of UP, posting nearly double-digit growth."[14] In the East, NS and CSX are projecting significant intermodal diversions to their railroads and away from trucks. They describe one of the benefits of their acquisition of Conrail as a "[r]eduction of highway congestion as freight moves by rail rather than truck".[15]

Intermodal infrastructure investments are large. Each rail carrier has invested vast sums to build and upgrade intermodal yards, improve track and establish timetables to meet the "just-in-time" service requirements of this traffic. NS, in its 1997 Annual shareholders report, identifies over $200 million to be spent over a three-year period for expansion or improvements

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[14] Journal of Commerce, May 7, 1998.

of intermodal facilities. In addition, they expect to invest more than $40 million for equipment to handle traffic growth anticipated by Triple Crown Services.[16] All of this is based on the belief that "[t]he Conrail transaction, if approved, should result in significant growth in intermodal revenues, as NS will benefit from direct access to most major East Coast ports."[17] At the 1998 Intermodal Expo, CSX touted a sharp improvement in service with a 90% on-time performance for intermodal traffic so far this year. The improvement was "driven by the realization that the Conrail acquisition was a lot about intermodal...There is a fundamental recognition here that intermodal is the growth driver."[18]

UP is also investing in intermodal facilities. In the UP/SP merger application, UP indicated their intention to spend "a desperately needed $221.4 million" to double-track SP's Sunset Route and $145.8 million "to make the SP Tucumcari Line a high-speed intermodal link between the Midwest and Southern California." In addition, UP emphasized its intent to invest "more than a quarter of a billion dollars" in building new and improving intermodal facilities. UP is currently building a new intermodal facility at Marion, Arkansas that will cost $70 million.

In 1995 and 1996, BNSF invested $155 million to expand capacity at key intermodal terminals and brought their annual lift capacity to 400,000 units. In 1998, BNSF will double-track nearly 75 miles of its Chicago to Los Angeles intermodal corridor at a cost of about $150

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[15] Merger application.

[16] Triple Crown Services was owned 50-50% by NS and CR pre-acquisition, and will be owned 100% by NS post-acquisition. Triple Crown provides intermodal service in Roadrailer® equipment.

[17] NS 1997 Annual Shareholders Report, p. 41.

[18] Journal of Commerce, May 7, 1998.

million. It will invest $55 million to increase its annual intermodal lift capacity to more than 530,000 units.[19] In 1997, TTX, the railroad owned company that supplies the bulk of intermodal rolling stock, spent $342 million on intermodal traffic. In 1998, TTX has $508 million budgeted for equipment acquisitions, primarily double-stacks. Table 8 summarizes the 1990-1997 changes in intermodal revenues for each of these railroads. Once again, increased competition has led to increased investment and rewarded each of the railroads with significant revenue increases.[20]

[19] BNSF 1997 Annual Shareholders Report.

[20] Margin and profitability information for this traffic segment was not available.

Table 8

Summary of Intermodal Revenues
By Carrier – 1990 to 1997 (in $millions)

Year	NS	CSXT	BNSF [1/]	UP [2/]
(1)	(2)	(3)	(4)	(5)
1990	$351	$479	$1,482	$1,273
1991	381	516	1,530	1,345
1992	411	535	1,623	1,416
1993	392	599	1,678	1,425
1994	429	684	1,956	1,664
1995	474	707	1,976	1,718
1996	487	660	2,039	1,720
1997	547	669	2,282	1,728
% Change	+56%	+40%	+54%	+36%

Source: Annual Shareholders Reports.

1/ BN, ATSF combined.

2/ UP, SP, CNW combined.

In summary, there is good reason to be skeptical of UP's implicit threat no to make infrastructure improvements if the Board imposes additional conditions on its UP/SP merger approval. The principals of free market economies indicate that adding competition spurs investment; it does not discourage it. UP's static, protectionist view of the relationship between competition and investment runs counter to the experience across the entire U.S. economy in recent years. Added competition will spur Union Pacific to invest to keep its lucrative Houston traffic. Competition will not cause Union Pacific to discontinue investing in the Houston infrastructure. And once again, UP undercuts its own argument by investing, itself, in intermodal facilities where competition exists.

VI. Conclusion.

It is obvious that the UP service crisis has not been rectified. Shipper after shipper has complained about the increased rail cycle times and inconsistency of service. There is a strong linkage between the service crisis and the competitive impact of the UP merger in Houston. Indeed, examining 1997 market share data provides cogent new evidence as to the UP market power in Houston created by the UP/SP merger. If there were adequate rail competition in Houston, shippers would have shifted their traffic from UP, and we would expect UP's market share in the latter half of 1997 to be small. In fact, an analysis of this traffic data reveals UP remained the dominant carrier to Eastern and Midwestern markets. This provides powerful new evidence, not available at the time of the merger decision, that the merger created a fundamental structural problem in Houston which must be remedied.

In addition, the Houston meltdown had a far more severe impact on shippers because of UP's market dominance. Had adequate rail competition existed, shippers would have switched to these alternatives and the disruptions and the costs to shippers would have been far less severe.

Furthermore, UP's argument that if competition is introduced in the Houston area, it will not be able to invest in infrastructure and equipment, carries no weight. Competition does not discourage investment, it spurs it on. The increased investment in the PRB and intermodal facilities after competition was introduced are perfect examples of the positive effects of competition.

Overall, the service crisis has exposed a serious competitive problem in Houston created by the UP/SP merger and the limited conditions imposed by the STB. The only remedy for the Houston area is for competition to be restored and shippers to be given adequate rail alternatives.

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PUBLICATIONS:

Books and Monographs

1) C. Winston, T. Corsi, C. Grimm and C. Evans, The Economic Effects of Surface Freight Deregulation, Brookings Institution, Washington, D.C., 1990.

2) Deregulation of Domestic Aviation: The First Year, Bureau of Transport and Communication Economics, Australian Government Publishing Service, Canberra, Australia, 1991 (lead author).

3) Smith, K., C. Grimm and M. Gannon, The Dynamics of Competitive Strategy, Sage Publishing, Newbury Park, CA, 1992.

4) Grimm, C. and K. Smith, Strategy as Action: Industry Rivalry and Coordination, West's Strategic Management Series, West Publishing Company, 1997.

Articles in Refereed Journals

5) Grimm, C. and R. Harris, "Structural Economics of the U.S. Rail Freight Industry: Concepts, Evidence, and Merger Policy Implications," Transportation Research Vol. 17A, No. 4, 1983, pp. 271-281.

6) Grimm, C., "An Evaluation of Economic Issues in the UP-MP-WP Railroad Merger," Logistics and Transportation Review Vol. 20-3, 1984, pp. 239-259.

7) Fanara, P. and C. Grimm, "Stand-Alone Costs: Use and Abuse in Determining Maximum U.S. Railroad Rates," Transportation Research Vol. 19A, No. 4, July 1985, pp. 297-303.

8) Grimm, C. and R. Harris, "The Effects of Railroad Mergers on Industry Performance and Productivity, Transportation Research Record 1029, 1985, pp. 9-17.

9) Grimm, C., K. Phillips and L. Selzer, "The Economics of Coal Transportation: Implications for Railroad and Shipper Strategies," Transportation Research Record 1061, 1985, pp. 14-26.

10) Grimm, C. and K. Smith, "The Impact of Rail Regulatory Reform on Rates, Service Quality, and Management Performance: A Shipper Perspective," Logistics and Transportation Review Vol. 22-1, 1986, pp. 57-68.

11) Grimm, C., "Excess Branch Line Capacity in the U.S. Railroad Industry: A Simulation Model Approach," Logistics and Transportation Review Vol. 22-3, 1986, pp. 223-240.

12) Barbera, A., C. Grimm, K. Phillips, and L. Selzer, "Railroad Cost Structure - Revisited," Journal of the Transportation Research Forum Vol. 28, No. 1, 1987, pp. 237-244.

13) Corsi, T. and C. Grimm, "Changes in Owner-Operation Use, 1977-1985: Implications for Management Strategy," Transportation Journal Vol. 26-3, Spring 1987, pp. 4-16.

14) Smith, K. and C. Grimm, "Environmental Variation, Strategic Change and Firm Performance: A Study of Railroad Deregulation," Strategic Management Journal Vol. 8-4, July/August 1987, pp. 363-376.

15) Grimm, C., J. Kling and K. Smith, "The Impact of U.S. Rail Regulatory Reform on Railroad Management and Organizational Structure," Transportation Research Vol 21A, No. 2, March 1987, pp. 87-94.

16) Corsi, T. and C. Grimm, "Mobility Barriers in the Motor Carrier Industry, Journal of the Transportation Research Forum Vol. 28, No. 1, 1987, pp. 302-309.

17) Kling, J. and C. Grimm, "Microcomputer Use in Transportation and Logistics: A Literature Review with Implications for Educators," Journal of Business Logistics Vol. 9, No. 1, 1988, pp. 1-18 (also published in the Proceedings of the 1987 Transportation and Logistics Educators Conference).

18) Grimm, C. and R. Harris, "A Qualitative Choice Analysis of Rail Routings: Implications for Vertical Foreclosure and Competition Policy," Logistics and Transportation Review Vol. 24, No. 1, March 1988, pp. 49-67.

19) Smith, K., M. Gannon, C. Grimm, and T. Mitchell, "Decision Making Behavior in Smaller Entrepreneurial and Larger Professionally Managed Firms," Journal of Business Venturing Vol. 3, No. 3, Summer 1988, pp. 223-232 (earlier version published in 1987 Southern Academy of Management Proceedings).

20) Grimm, C., K. Phillips and L. Selzer, "The Impact of Rail Rationalization on Traffic Densities," Transportation Research Record 1177, 1988, pp. 1-5.

21) Grimm, C., K. G. Smith, M. Gannon and K. A. Smith, "The Importance of Strategic Planning in the Wake of Deregulation: A Study of the Travel Agent Industry," Journal of the Transportation Research Forum Vol. 29, No. 1, 1988, pp. 44-49.

22) Smith, K., C. Grimm, M. Chen and M. Gannon, "Predictors of Response Time to Competitive Strategic Actions: Preliminary Theory and Evidence," Journal of Business Research 18, 1989, pp. 245-258.

23) Corsi, T. and C. Grimm, "ATLFs: Driving Owner-Operators into the Sunset," Journal of the Transportation Research Forum Vol. 29, No. 2, 1989, pp. 285-290.

24) Grimm, C. and T. Corsi and J. Jarrell, "U.S. Motor Carrier Cost Structure under Deregulation," Logistics and Transportation Review Vol. 25, No. 2, Sept 1989, pp. 231-250.

25) Grimm, C., K. Smith and R. Blankinship, "Post-Deregulatory Strategic Performance of the Railroad Industry," Journal of Business Strategies Vol. 6, No. 1, Spring 1989. pp. 33-41.

26) Corsi, T. and C. Grimm, "Strategies and Performance in the Truckload General Freight Segment Before and After Deregulation," Journal of the Transportation Research Forum Vol. 30, No. 1, 1989, pp. 92-97.

27) Smith, R., T. Corsi and C. Grimm, "Motor Carrier Strategies and Performance," Transportation Research Vol. 24A, No. 3, May 1990, pp. 201-210.

28) Kling, J., C. Grimm and T. Corsi, "Hub-Dominated Airports: An Empirical Assessment of Challenger Strategies," The Logistics and Transportation Review Vol. 27, No. 3, 1991.

29) Grimm, C. and K. Smith, "Management and Organizational Change: A Note on the Railroad Industry," Strategic Management Journal Vol 12, 1991, pp. 557-562.

30) Smith, K. and C. Grimm, "A Communication Model of Competitive Response Timing," Journal of Management 17(1), 1991, pp. 5-23.

31) Corsi, T., C. Grimm, K. Smith and R. Smith, "Deregulation, Strategic Change, and Firm Performance Among LTL Motor Carriers," Transportation Journal Vol. 31, No. 1, 1991, pp. 4-13.

32) Smith, K., C. Grimm, M. Gannon, and M. Chen, "Organizational Information Processing, Competitive Responses and Performance in the U.S. Domestic Airline Industry," Academy of Management Journal 34(1), 1991 pp. 60-85.

33) Kling, J., C. Grimm and T. Corsi, "Strategies of Challenging Airlines at Hub-Dominated Airports," Journal of the Transportation Research Forum Vol. 31, No. 2, 1991, pp. 359-370.

34) Guthrie, J., C. Grimm, and K. Smith, "Environmental Change and the Top Management Teams," Journal of Management Vol. 17, No. 4, 1991, pp. 735-748.

35) Smith, R., T. Corsi, C. Grimm, and K. Smith, "The Impact of LTL Motor Carrier Size on Strategy and Performance," Logistics and Transportation Review Vol. 28, No. 2, 1992, pp. 129-145.

36) Emerson, C., C. Grimm and T. Corsi, "The Advantage of Size in the U.S. Trucking Industry: An Application of the Survivor Technique," Journal of the Transportation Research Forum, 1992, Vol. 32, No. 2, pp. 369-378.

37) Chen, M., K. Smith and C. Grimm, "Action Characteristics as Predictors of Competitive Responses," Management Science Vol. 38, No. 3, 1992, pp. 439-455.

38) Gannon, M., K. Smith and C. Grimm, "An Organizational Information-Processing Profile of First-Movers," Journal of Business Research 25, 1992, pp. 231-241.

39) Corsi, T., C. Grimm and J. Feitler, "The Impact of Deregulation on LTL Motor Carriers: Size, Structure, and Organization," Transportation Journal Vol. 32, No. 2, 1992, pp. 24-31.

40) Grimm, C., C. Winston and C. Evans, "Foreclosure of Railroad Markets: A Test of Chicago Leverage Theory," Journal of Law and Economics Vol. XXXV, October 1992, pp. 295-310.

41) Grimm, C., T. Corsi, and R. Smith, "Determinants of Strategic Change: A Discrete Choice Analysis," Transportation Journal Vol. 32, No. 4, 1993, pp. 56-62.

42) Grimm, C., and H. Sapienza, "Determinants of Shortline Railroad Performance," Transportation Journal Vol. 32, No. 3, 1993, pp. 5-13.

43) Grimm, C., and H. Milloy, "Australian Domestic Aviation Deregulation: Impacts and Implications," Logistics and Transportation Review, Vol. 29, No. 3, 1993, pp. 259-273.

44) Guthrie, J., C. Grimm and K. Smith, 'Environmental Change and Management Staffing: A Reply," Journal of Management Vol. 19, No. 4, 1993, pp. 889-896.

45) Xu, K., R. Windle, C. Grimm and T. Corsi, "Reevaluating Returns to Scale in Transportation," Journal of Transport Economics and Policy, September, 1994, pp. 275-286.

46) Schomburg, A., C. Grimm and K. Smith, "Avoiding New Product Warfare: The Role of Industry Structure," Advances in Strategic Management, P. Shrivastava, A. Huff and J. Dutton, eds, JAI Press, Vol. 10B, 1994, pp. 145-173.

47) Young, G., K. Smith and C. Grimm, "Austrian and Industrial Organization Perspectives on Firm-Level Competitive Activity and Performance," Organization Science, Vol. 7, No. 3, May-June 1996, pp. 243-254.

48) Emerson, C. and C. Grimm, "Logistics and Marketing Components of Customer Service: An Empirical Test of the Mentzer, Gomes and Krapfel Model," International Journal of Physical Distribution and Logistics Management Vol. 26, No. 8, 1996, pp. 29-42.

49) Smith, K, G. Young, M. Becerra, and C. Grimm, "An Assessment of the Validity of Competitive Dynamics Research," Best Paper Proceedings, Academy of Managment, August, 1996.

50) Sapienza, H. and C. Grimm, "Founder Characteristics, Start-Up Porcess and Strategy/Structure Variables as Predictors of Shortline Railroad Performance," Entreprenuership Theory and Practice Vol. 22, No. 1, Fall, 1997.

51) Feitler, J., T. Corsi and C. Grimm, "Measuring Firm Strategic Change in the Regulated and Deregulated Motor Carrier Industry: An Eighteen Year Evaluation," The Logistics and Transportation Review (forthcoming).

52) Smith, K., C. Grimm, G. Young and S. Wally, "Strategic Groups and Rivalrous Firm Behavior," Strategic Management Journal (forthcoming).

53) Emerson, C. and C. Grimm, "The Relative Importance of Logistics and Marketing Customer Service: A Strategic Perspective," Journal of Business Logistics (forthcoming).

Articles in Edited Volumes

54) Grimm, C., "Horizontal Competitive Effects in Railroad Mergers," Research in Transportation Economics, Vol. 2, Theodore E. Keeler, editor, JAI Press, 1985, pp. 27-53.

55) Harris, R. and C. Grimm, "Revitalization of the U.S. Rail Freight Industry: An Organizational Perspective," International Railway Economics, K.J. Button and D.E. Pitfield eds., Gower Publishing Company, 1985, pp. 49-84.

56) Grimm, C. and J. Holcomb, "Choices Among Encompassing Organizations: Business and the Budget Deficit," Business Strategy and Public Policy, David Beam, Al Kaufman, and Alfred Marcus, eds., Quorum Books, New York, 1987, pp. 105-118.

57) Smith, K., C. Grimm, and M. Gannon, "Competitive Moves and Responses Among High Technology Firms," Handbook of Business Strategy: 1989-1990, Harold E. Glass, ed., Warren, Gorham and Lamont, N.Y., N.Y., 1990, pp. 31-1 through 31-11.

58) Grimm, C. and G. Rogers, "Liberalization of Railroad Policy in North America," Transportation Deregulation: An International Perspective, K. Button and D. Pitfield, eds., Macmillan, London, 1991.

59) Grimm, C. and R. Harris, "Access and Competition Policy in the U.S. Rail Freight Industry: Potential Applications to Telecommunications," Sustaining Competition in Network Industries through Regulating and Pricing Access, D. Gabel and D. Weiman, eds., Kluwer Publishing, (forthcoming).

60) Grimm, C. and R. Windle, "Regulation and Deregulation in Surface Freight, Airlines and Telecommunications," in Regulatory Reform and Labor Markets, J. Peoples, ed., Kluwer Academic Publisher, (forthcoming).

Articles in Journals with Internal Review Boards

61) Grimm, C. and R. Harris, "The Financial Performance and Prospects of Railroads in the South and Southwest," Texas Business Review 56 (6), November/December 1982, pp. 257-262.

62) Grimm, C. and R. Harris, "Vertical Foreclosure in the Rail Freight Industry: Economic Analysis and Policy Prescriptions," ICC Practitioners' Journal 50 (5), July/August 1983, pp. 508-531.

63) Corsi, T. and C. Grimm, "Transportation Education in the 1980's: An Examination of Teaching Materials," Transportation Practitioners' Journal 52 (1), Fall 1984, pp. 27-39.

64) Grimm, C. and J. Kling, "Integrating Microcomputers into a Transportation and Logistics Curriculum," Defense Transportation

Journal Vol. 44, No. 5, October 1988, pp. 14-22.

Articles in Proceedings (other than those listed above)

65) Grimm, C., "Public Interest Evaluation of Recent Rail Mergers," 1981 Eastern Transportation Law Seminar Papers and Proceedings, Association of ICC Practitioners, Washington, D.C., pp. 171-176.

66) Grimm, C., "Promoting Competition in the Railroad Industry: A Public Policy Analysis," Transportation Research Forum Proceedings, 1984, pp. 222-227.

67) Grimm, C. and K. Smith, "Impact of Deregulation on Railroad Strategies and Performance," Transportation Research Forum Proceedings, 1985, pp. 540-544.

68) Corsi, T., C. Grimm and R. Lundy, "ICC Exemptions of Rail Services: Summary and Evaluation," Transportation Research Forum Proceedings, 1985, pp. 86-92.

69) Corsi, T., C. Grimm and R. Smith, "Motor Carrier Strategies in a Changing Environment: An Empirical Analysis," Transportation Research Forum Proceedings, 1986, pp. 177-180.

70) Grimm, C., K. Smith and R. Blankinship, "Railroad Strategies and Performance: An Exploratory Study," 1987 Eastern Academy of Management Proceedings, pp. 25-28.

71) Smith, E., M. Gannon, C. Grimm and G. Young, "Competitive Advantage in Diverse Industries," Proceedings of the Second Biennial High Technology Conference, University of Colorado, Boulder, Colorado, January 1990.

72) Grimm, C., "The Impact of Entry and Concentration in Australian Aviation: A Test of Contestability Theory," Transportation Research Forum Proceedings, 1992.

73) Sapienza, H. and C. Grimm, "The Importance of Founder, Start-Up Process, and Structural Variables in Entrepreneurial Firms: A Study of the Shortline Railroad Industry," Frontiers of Entrepreneurship Research, 1994.

Other Publications and Reports

Grimm, C., "Combining Scholarly Research with Public Policy Evaluation," ITS Review, Vol. 5, No. 2, Institute of Transportation Studies, University of California, February 1982.

Grimm, C., "Strategic Motives and Competitive Effects in Railroad Mergers: A Public Policy Analysis," Dissertation Series, Institute of Transportation Studies, University of California, August 1983

(UCB-ITS-DS-83-1).

Grimm, C., "Preserving and Promoting Rail Competition," Report to the National Industrial Transportation League, 1984.

Grimm, C., "Econometric Techniques to Estimate Rail Costs," Report to the Railroad Accounting Principles Board, General Accounting Office, Washington, D.C., October 1985.

Roberts, M., T. Corsi and C. Grimm, "Benefit-Cost Analysis of Weight Limit Exemption for Vehicles Carrying International Freight in the Route 50 Corridor," Study Prepared for the State Highway Administration, State of Maryland, February 1988.

Cambridge Systematics; Leeper, Cambridge and Campbell; T. Corsi, and C. Grimm, "A Guidebook for Forecasting Freight Transportation Demand," NCHRP Report 388, National Academy Press, Washington, D.C. 1997.

CONTRACTS AND GRANTS:

Course Development Grant, Joint MS Program in Telecommunications.

University of Maryland Center for International Education and Research (CIBER) Research Award, 1991.

University of Maryland Dingman Center for Entrepreneurship Research Award, 1990.

Small Business Administration, Small Business Development Center, University of Maryland. From 1985 - 1989, Ken Smith, Martin Gannon and I received funding to establish Center for the counseling and training of small business managers. We also conducted research on strategic management of small businesses, including travel agencies and electronic firms. (Amount: $200,000)

Department of Education Business and International Education Program. During 1988 and 1989, I was part of a team which received a two-year grant for curriculum development, research and professional outreach. The program involves collaboration with the Maryland Port Authority on research, outreach and internships. (Amount: $110,000).

Maryland Department of Transportation. During 1987/88 I worked with Tom Corsi and Merrill Roberts on a contract to study the impact of exempting Eastern Shore export container traffic from the 80,000 pound highway weight limitation. (Amount: 35,000).

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University of Maryland Grant to Integrate Computer Use into the Classroom, 1985.

University of Maryland General Research Board Summer Research Award, 1984.

CONFERENCE PAPER PRESENTATIONS:

"Public Interest Evaluation of Recent Rail Mergers," presented at the 11th Association of ICC Practitioners' Eastern Transportation Law Seminar, October 1981.

"Stand-Alone Costs: Use and Abuse in Railroad Maximum Rate Determination," presented at the Eastern Economics Association Annual Meeting, March 1984 (with Philip Fanara).

"Promoting Competition in the Railroad Industry," presented at the Transportation Research Forum Annual Meeting, October 1984.

"The Politics of the Budget Deficit and the Role of Political Interest Groups," presented at the Annual Meeting of the Association for Public Policy Analysis and Management, October 1984 (with John Holcomb).

"Impact of the Staggers Act on Rates and Shipper Quality: Role of Shipper Size and Competition," presented at the American Economics Association/Transportation and Public Utilities Group Annual Meeting, December 1984 (with Ken G. Smith).

"The Effects of Railroad Mergers on Industry Performance and Productivity," Transportation Research Board Conference on Rail Productivity, University of Illinois, June 1985, (with Robert G. Harris).

"Environmental Variation, Strategic Change and Firm Performance: A Study of Railroad Deregulation," presented at the Annual Meeting of the Academy of Management, August 1985 (with Ken G. Smith).

"Management Characteristics, Strategy, and Strategic Change," presented at the Strategic Management Society Annual Meeting, Barcelona, Spain, October 1985 (with Ken G. Smith).

"Impact of Deregulation on Railroad Strategies and Performance," presented at the Transportation Research Forum Annual Meeting, November 1985 (with Ken G. Smith).

"ICC Exemptions of Rail Services: Summary and Evaluation," presented at the Transportation Research Forum Annual Meeting, November 1985 (with Thomas M. Corsi and Robert Lundy).

"Excess Branchline Capacity in the Railroad Industry," presented at the Transportation Research Board Annual Meeting, January 1986.

"The Economics of Coal Transportation: Implications for Railroad Shipper Strategies," presented at the Transportation Research Board Annual Meeting, January 1986 (with Les Selzer and Kent Phillips).

"The Organization as a Reflection of its Top Managers: An Empirical Test," presented at the Annual Meeting of the Academy of Management, August 1986 (with Ken G. Smith).

"Motor Carrier Strategies in a Changing Environment: An Empirical Analysis," presented at the Transportation Research Forum Annual Meeting, September, 1986 (with Thomas M. Corsi and Raymond Smith).

"Shifts in Use of Owner-Operators Among LTL General Freight Carriers Since the Motor Carrier Act of 1980," presented at the Transportation Research Forum Annual Meeting, September, 1986 (with Thomas M. Corsi).

"Environmental Variation, Decision Comprehensiveness and Performance," presented at the Strategic Management Society Annual Meeting, Singapore, October, 1986 (with Ken G. Smith, Martin Gannon, and Terence Mitchell).

"Gambit and Repartee: A Theory of Competitive Action and Responses," presented at the Annual Meeting of the Academy of Management, August 1986 (with Ken G. Smith).

"The Impact of the Environment on Personnel Policies: Management Characteristics in the U.S. Railroad Industry," presented at the Annual Meeting of the Academy of Management, August 1987 (with James Guthrie and Ken G. Smith).

"Mobility Barriers in the Motor Carrier Industry," presented at the Transportation Research Forum Annual Meeting, November 1987 (with Thomas M. Corsi).

"Railroad Cost Structure - Revisited" presented at the Transportation Research Forum Annual Meeting, November 1987 (with Tony Barbera, Kent Phillips and Les Selzer).

"The Impact of Rail Rationalization on Traffic Densities: A Test of the Feeder Line Theory," presented at the Transportation Research Board Annual Meeting, January 1988 (with Les Selzer and Kent Phillips).

"Porter's Generic Strategies and Organizational Size," presented at the Strategic Management Society Annual Meeting, October 1988 (with Ken Smith).

"Predictors of Competitive Responses in the Domestic Airline Industry," presented at the Strategic Management Society Annual Meeting, October 1988 (with Ken Smith and Martin Gannon).

"ATLFs: Driving Owner-Operators into the Sunset," presented at the Transportation Research Forum Annual Meeting, November 1988 (with Thomas M. Corsi).

"Competitive Strategic Interaction: Action Characteristics as Predictors of Response," presented at the Annual Meeting of the Academy of Management, August 1989 (with Ming-Jer Chen and Ken G. Smith).

"Strategies and Performance in the Truckload General Freight Segment Before and After Deregulation," presented at the Transportation Research Forum Annual Meeting, October 1989 (with Thomas M. Corsi).

"Rivalry in the U.S. Domestic Airline Industry," presented at the Strategic Management Society Annual Meetings, October 1989 (with Ken Smith and Martin Gannon).

"Building Competitive Advantage in Diverse Industries," presented at the Boulder, Colorado Conference on the Management of the High Technology Firm, January 1990 (with Greg Young, Ken Smith, and Martin Gannon).

"Economic Effects of Surface Freight Deregulation," presented at the Transportation Research Board Annual Meeting, January 1990 (with Cliff Winston and Thomas Corsi).

"Strategies of Challenging Airlines at Hub-Dominated Airports," presented at the Transportation Research Forum Annual Meeting, October 1990 (with James Kling and Thomas M. Corsi).

"Size, Strategy, and Performance: LTL Motor Carriers," presented at the Transportation Research Board Annual Meeting, January 1991 (with Raymond Smith and Thomas Corsi).

"The Role of Firm Reputation in Competitive Interaction," presented at the Annual Meeting of the Academy of Management, August 1991 (with Leith Wain, Martin Gannon and Ken G. Smith).

"The Advantage of Size in the U.S. Trucking Industry," presented at the Transportation Research Forum Annual Meeting, November 1991 (with Carol Emerson and Thomas M. Corsi).

"The Impact of Entry and Concentration in Australian Aviation: A Test of Contestability Theory," presented at the Transportation Research Forum Annual Meeting, October 1992.

"Reevaluating Returns to Scale in Transportation," presented at the

Transportation Research Forum Annual Meeting, October 1993 (with K. Xu, R. Windle and T. Corsi).

"Access and Competition Policy in the US Rail Freight Industry: Potential Applications to Telecommunications," presented at a conference on Sustaining Competition in Network Industries through Regulating and Pricing Access, CITI, Columbia University, November 1993 (with R. Harris).

"Engaging Competitors," presented to the Whitmore Conference, Dartmouth College, New Hampshire, September 1994, (with G. Young and K. Smith).

"Engaging a Rival for Competitive Advantage: Firm Resources and the Competitive Environment as Predictors of Competitive Firm Activity," presented at the Annual Meeting of the Academy of Management, August 1994 (with G. Young, A. Schomburg and K. Smith).

"David and Goliath: Strategies for Challenging the Dominant Rival," presented at the Annual Meeting of the Academy of Management, August 1994 (with K. Smith, T. Corsi and J. Kling).

"Wealth Effects of New Product Rivalry," presented at the 14th annual international conference of the Strategic Mangement Society, Paris, September 1994 (with H. Lee, K. Smith, and A. Schomburg).

"Business Distress and a Firm's Propensity to be Rivalrous," presented at the 14th annual international conference of the Strategic Mangement Society, Paris, September 1994 (with C. MacFhionnlaoich and K. Smith).

"Industrial Organization Economics, Resource-Based Theory, and Schumpeterian Perspectives on Competitive Advantage: Toward an Action-Based Model of Advantage," presented at the Annual Meeting of the Academy of Management, August 1995 (with K. Smith).

"Strategic Groups and Rivalrous Firm Behavior: Towards a Reconciliation," presented at the Annual Meeting of the Academy of Management, August 1995 (with K. Smith and G. Young).

"Shareholder Wealth Effects of New Product Rivalry," presented at the Annual Meeting of the Academy of Management, August 1995 (with H. Lee and K. Smith).

"Creative Destruction and Competitive Dynamics: An Action-Based Study of Industry Dethronement and Market Share Erosion," presented at the Annual Meeting of the Academy of Management, August 1996 (with W. Ferrier and K. Smith).

"The Rate of International Alliance Formation: The Role of Firm Resources, Strategy, and Industry Structure," presented at the Annual Meeting of the Academy of Management, August 1996 (with G.

Young and K. Smith).

"An Assessment of the Validity of Competitive Dynamics Research," presented at the Annual Meeting of the Academy of Management, August 1996 (with G. Young, M. Becerra and K. Smith).

"The Rate of International Alliance Formation: The Role of Firm Resources, Strategy, and Industry Structure," presented at the 16th annual international conference of the Strategic Management Society, Tempe, Arizona, October 1996 (with G. Young and K. Smith).

"Performance Implications of Market and Non-Market Actions," presented at the Annual Meeting of the Academy of Management, August 1997 (with T. Quasney and B. Shaffer).

RESEARCH AWARDS:

Award for the best airline paper and best paper overall, 1990 Transportation Research Forum Conference.

Plowman Award for the best paper, 1987 Transportation and Logistics Educators Conference.

Regular Common Carrier Conference Award for the best motor carrier paper, Transportation Research Forum Annual Meeting, September, 1986.

EDITORIAL AND REVIEWING ACTIVITIES:

Consulting Editor (1991-1993) Journal of the Transportation Research Forum.

Editorial Review Board, Journal of Transportation Management (1993-present).

Editorial Review Board, Journal of the Transportation Research Forum (1993-present).

Frequent Referee for the following journals: Logistics and Transportation Review, Transportation Research, Transportation Research Record.

Occasional Referee for Journal of Business Logistics, Strategic Management Journal, Academy of Management Review, and Academy of Management Journal, and other journals.

Book Review Editor for the Journal of the Transportation Research

Forum (1988-1991).

National Review Board Member, Academy of Management Annual Meetings, Business Policy and Planning Division.

PROFESSIONAL AFFILIATIONS:

American Society of Transportation and Logistics; Transportation Research Forum; American Economics Association & Transportation and Public Utilities Group; Transportation Research Board/Member, Committee on Application of Economic Analysis to Transportation; Academy of Management; Strategic Planning Society.

TEACHING AND ADVISING:

Courses Taught

BMGT 370 (Introduction to Transportation: also served as course coordinator)
BMGT 372 (Introduction to Logistics Management)
BMGT 476 (Computer Models in Transportation and Logistics)
BMGT 495 (Business Policy)
BMGT 670 (Economic Environment of Business)
BMGT 671 (Managerial Economics)
BMGT 770 (Transportation Theory and Analysis)
BMGT 798 (Field Studies in Industry and Competitor Analysis)
BMGT 808 (Seminar in Industrial Organization and its Application to Strategic Management)
ENTS 631 (Telecommunications Policy)

Teaching Awards

Allen J. Krowe Award for Teaching Excellence, College of Business and Management, 1988.

Selected as one of the top 15% teachers in the College of Business and Management (12 times)

Member of the Following Ph.D. Dissertation Committees:

Wally Ferrier (co-chair)
August Schomburg (co-chair)
Greg Young (co-chair)
Hun Lee (co-chair)
Carol Emerson (chair)
Cormac Mac Fhionnlaoich (co-chair)

Pam Derfus
Ayesha Malhotra
Chris Lin
Constantinos Christou
Chul Moon
Deborah Lyons
Jane Feitler
Laura Power
Ming-Jer Chen
Harry Sapienza
Jack Scarborough
James Kling
Robert Trempe
George Rubenson
Ven Sriram
Raymond Smith
Ritu Lohtia
Jason Chang
Douglas Meade
Barbara Houchen
Leith Wain
John Burgess
Douglas LaBahn
Ker-Tsung Lee

SERVICE:

Department Chair, Transportation, Business and Public Policy Group (December 1994-present).

Member, MBA 4th Track Committee (subcommittee of executive committee) (1996-present).

Member, Strategic Planning Committee (subcommittee of executive committee). (1996-present).

College Workload coordinator (responsible for attending meetings with Provost and reps re: workload requirements and taking lead on filling out compliance forms).

Member, Executive Committee, Middlestates Accreditation Committee, University (Dan Fallon/Nelson Markley, Chair), Dec. 1995-present.

Member, Faculty Composition and Development Section, AACSB Accreditation committee (1995).

Lead College Member on Campus Committee to form and fund a Global China Institute (1995).

Chair of Search Committee, Transportation, Business and Public Policy Faculty Positions (1994-5, 1995-6, 1996-7).

Member, College Strategic Planning Committee (drafted section on MBA program), 1994-5.

Chair, MBA Oversight Committee, College of Business and Management (May 1994-Jan. 1995).

Member, MBA Oversight Committee, College of Business and Management (1992-1994).

Chair, ELM Coordinator's Committee, College of Business and Management, (1993-1994).

Member, External Communications Committee, College of Business and Management, 1994.

Chair, PR on Academic Quality Committee, 1993.

Member Technology Advancement Program Business Screening Panels (1986-present).

Member, Faculty Grievance Hearing Board, College Park Campus (1991).

Member, College Budget Committee (1990-1991).

Member, Strategic Planning Steering Committee, and Chair, MBA Subcommittee, College of Business and Management (1989-1990).

Member, General Committee on Faculty Affairs, College Park Campus Senate (1984-1986, 1987-1988).

Elected Representative to the College Park Campus Senate (1988-1991).

Member, Graduate Committee, College of Business and Management (1987-1988).

Chairman, MBA Case Competition Subcommittee of the Graduate Committee (1987).

Faculty Assistant Coordinator, MBA/Rutgers Invitational Case Tournament (1986-1987).

Faculty Judge, MBA Case Competition, College of Business and Management (1989).

Member, Undergraduate Committee, College of Business and Management (1987-1988).

Faculty Co-Advisor, University of Maryland Transportation and Logistics Club (1985-1990).

Member, International Task Force, College of Business and Management (1986-1987).

Member, Dean's Computer Integration Task Force, College of Business and Management (1986-1988).

Participant in Planning Session for External Activities, College of Business and Management, Wye Woods (Sept. 1987).

Member of Search Committee, Transportation, Business and Public Policy Faculty Positions (1985-1988, 1992).

In November, 1995, I presented testimony before the United States Senate and House Committees on Small Business at a joint hearing on "Railroad Consolidation: Small Business Concerns."

Exhibit A

THE IMPACTS OF THE UNION PACIFIC SERVICE DISRUPTIONS ON THE TEXAS AND NATIONAL ECONOMIES: AN UNFINISHED STORY

Prepared for the Railroad Commission of Texas by

Bernard L. Weinstein, Ph.D. and
Terry L. Clower, Ph.D.

Center for Economic Development and Research
The University of North Texas
Denton, Texas

February 9, 1998

Background and summary of findings

Since last July, the Union Pacific Railroad has experienced severe service disruptions that have resulted in delays, lost production, and higher shipping costs for a large number of businesses who depend on rail to move their products. In addition, the entire UP system has been plagued with safety problems since the merger with the Southern Pacific. More than a dozen crashes and derailments have occurred over the past year, including several last summer that killed seven people. So serious is the safety issue that the National Transportation Safety Board has scheduled three days of hearings from March 18th to 20th to ascertain the underlying causes of these accidents (*Dallas Morning News*, February 3, 1998).

Though the entire western U.S. has been affected by the UP's problems, Texas has been hit harder than any other state. This is not surprising considering the Union Pacific is the largest railroad in Texas and thousands of businesses are served by no other rail carrier. Within Texas, the greater Houston area has endured the most economic harm because of the UP's dominance in that part of the state. Indeed, nine of the 11 major rail lines running in and out of the Houston are controlled by the UP, while the Burlington Northern operates the other two.

Bulk commodity shippers, such as petrochemical plants, grain merchants, quarries and forest products companies, have been most inconvenienced as have electric utilities who depend on the UP to deliver coal from Montana and Wyoming to fire their generators. But retailers of consumer goods such as furniture and general merchandise have also been affected by the UP's partial suspension of intermodal service and other system disruptions.

Responding to shippers' complaints, on October 27th the Surface Transportation Board (STB) of the U.S. Department of Transportation conducted a 12-hour hearing to determine if federal intervention was required to alleviate the Union Pacific's service disruptions. Testimony was received by more than 60 witnesses, including the chairman of the Railroad Commission of Texas (RRC). Following the hearing, the STB found that a "transportation emergency" existed in the western U.S. that was having adverse effects on shippers and overall rail service. On October 31st, the Board issued an order allowing the Texas-Mexican Railway Company to accept traffic from Houston shippers currently under contract with the Union Pacific in an effort to alleviate some of the most serious tie-ups in south Texas and the Port of Houston. The Board also ordered the UP to facilitate the operations of the Tex-Mex and the Burlington Northern in the Houston area and to maintain open use of the main lines and sidings on its Houston-to-Memphis and Houston-to-Iowa Junction routes.

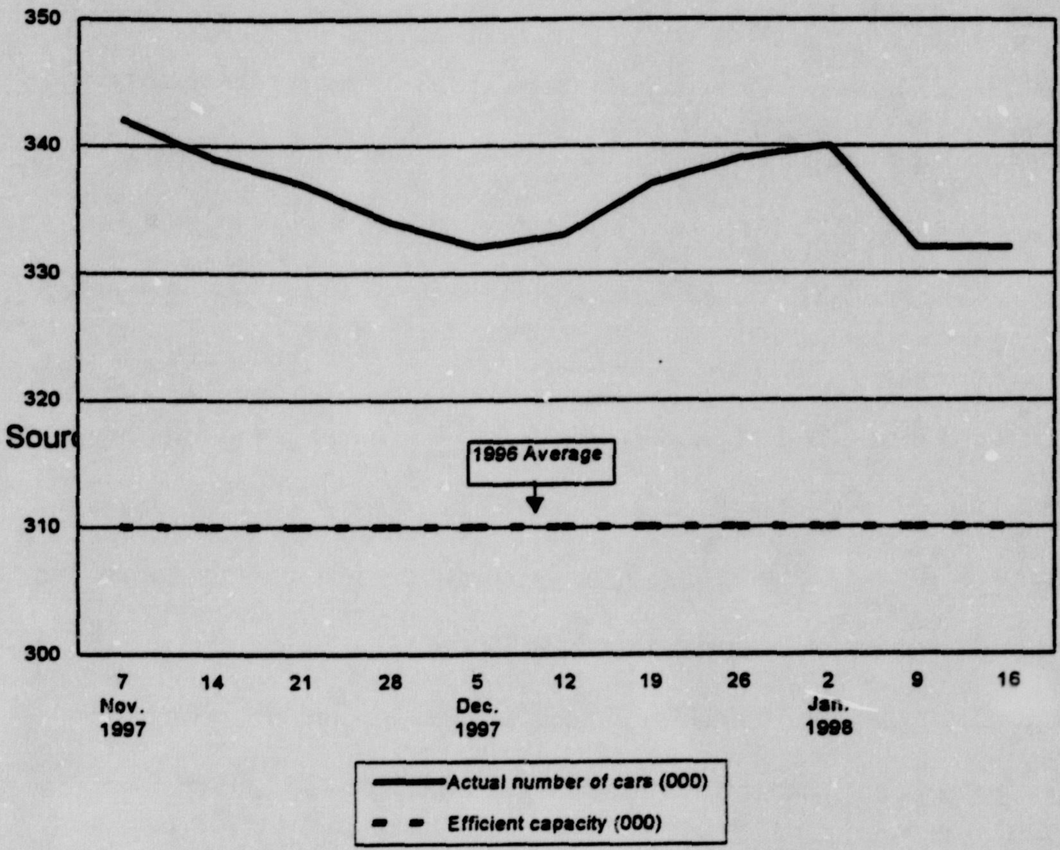
In the face of continuing complaints from shippers about poor service from the Union Pacific, on December 5th the STB extended its emergency service order until March 15, 1998. Complementing the relief provided in the initial service order allowing Houston shippers access to Tex-Mex service, the Board directed UP to release fully from their contracts all shippers in the Houston switching district so they could route traffic over the Burlington Northern in addition to the UP or Tex-Mex.

To date, however, it doesn't appear the STB's intervention has done much to improve rail freight service in the western U.S., Texas or the Houston area. Indeed, the UP's freight delays have been rising in recent weeks. At the beginning of the year, UP's average train speed was at the lowest level in four months (*Bloomberg Business News*, January 6, 1998). And in its January 23, 1998 filing with the STB, the railroad reported average speed had declined to 15.1 mph from 15.4 mph the week before and 17.9 mph in January 1997 (*Bloomberg Business News*, January 28, 1998). Significantly, the total number of cars on the UP system is still 24,000 above what company officials say is the maximum for efficient operations. Excess cars jam the railroad's tracks and sidings and make it difficult to run trains (see Figure 1).

Without question, the Union Pacific's logistical problems are imposing significant incremental costs on Texas manufacturers, growers and shippers that will eventually be passed on to businesses and consumers both in-state and out-of-state. ***We conservatively estimate the costs to date for Texas businesses, measured by lost sales, reduced output and higher shipping charges, at $1.093 billion. We have also identified $643 million in additional costs to businesses, consumers and taxpayers in Texas that may be incurred within the next few months unless the Union Pacific can quickly remediate its service delivery problems (see Table 1).***

Figure 1

Still Too Many Cars on the Union Pacific Railroad



Source: Union Pacific Railroad

Table 1

Short-Term Economic Costs for Texas from Union Pacific Service Disruptions July 1997 - January 1998 ($ millions)

Chemical industry	$ 400
Agriculture	150
Paper and forest products	292
Building materials	146
Electric utilities	25
Retail trade	80
Total	**$ 1,093**

Possible Additional Costs During 1998 ($ millions)

Utility fuel purchases	$ 393
Road construction materials	150
Higher consumer goods prices	100
Total	**$ 643**

The following discussion describes, illustrates and--where possible--documents these costs and also posits some long-term consequences for the state and the nation if the UP's problems aren't resolved in an expeditious manner. Finally, this report addresses the long-term policy issue of how to create a more competitive environment for rail transportation in Texas generally and the Houston area in particular.

The chemical industry

The Gulf Coast's $105 billion chemical industry has probably been hit harder than any other manufacturing sector by the UP's service problems since virtually all bulk chemicals are shipped by rail. Furthermore, large chemical companies typically own or lease their own rail cars. Thus, diverting shipments to trucks and barges imposes significant incremental costs to chemical companies.

A fall 1997 survey by the Chemical Manufacturers Association (CMA) found that 213 major production facilities along the Gulf Coast had been affected by disruptions in service, placing a large number of jobs at risk. (Employment at these facilities exceeds 95,450). According to 31 responding companies, the average monthly costs of service disruptions during the summer totaled $34.1 million and are now running at $62.3 million per month. About two-thirds of the total costs arise from lost sales or production while another 23 percent is attributed to higher freight and shipping costs. The remaining incremental costs are attributed to lost rail car utilization, additional inventory carrying costs, the higher cost of raw materials purchased from other producers, the cost of tracing rail cars, and other administrative expenses.

The appended press clippings and RRC public testimony offer several examples of lost sales and production cuts related to UP delivery problems. For example, the Huntsman Corporation-- a $5 billion chemical producer based in Salt Lake City-- recently reported it had reduced output at some of its plants because the Union Pacific had failed to bring in the necessary raw materials and deliver the finished products in time. According to Peter Huntsman, president and chief operating officer of the company, UP's service is "still abysmal." (*Wall St. Journal*, January 23, 1998). As another example, the Coastal Corporation of Houston estimates it is spending about $40,000 extra per month to ship asphalt by truck because of tank car delays on the Union Pacific rail system (see testimony of Marty Alday, Ft. Worth hearing, pp. 16-17). Dow Chemical, one of the Union Pacific's largest customers with about 50,000 rail cars a year, reports its service improved in November but worsened a week before Christmas. The company's plants in Freeport, Texas and Plaquemine, Louisiana can't get enough empty cars and have shipment delays, forcing Dow to use comparatively expensive trucking firms as an alternative (*Wall St. Journal,* January 6, 1998).

At a minimum, the Gulf Coast chemical industry-- located principally in Texas-- has incurred costs of about $500 million in lost production and higher freight charges since the UP's service problems began in June. For

the state of Texas, economic losses are probably in excess of $400 million with companies in the Houston Ship Channel area being the hardest hit.

What's more, because industrial chemicals are essential raw materials for many other industries-- including agriculture, automobiles, construction, food processing, pharmaceuticals, plastics and electronics-- production delays and higher shipping costs attending the UP service disruptions are no doubt being felt by other sectors of the state and national economies. Though these costs are indeterminate at this time, inevitably they will show up in higher prices to wholesalers, distributors and consumers over the next six to twelve months.

Agriculture

In 1996, the value of U.S. crop production totaled $86.3 billion, and the cost of transporting these crops to food processors was approximately $4 billion. For the state of Texas, cash receipts to farmers totaled $5.3 billion in 1996 and transportation costs came to about $250 million. As with chemicals, the nation's farmers and grain shippers depend largely on the railroads to get their crops to markets, both domestic and foreign. Agricultural shippers and receivers generally have limited access to alternative providers of transportation services because many are located beyond effective trucking distances from these markets. In addition, western growers and shippers have little access to waterway transportation, with the result that up to 80 percent of grains and cereals are shipped by rail in some states.

Grain shipments by the Union Pacific have slowed markedly in recent months. According to Association of American Railroads, the UP loaded 6,104 rail cars with grain during the first week of November-- 41 percent less than the 10,343 for the same week a year ago. The Burlington Northern, partly because of the UP tie-ups, has also seen a drop-off in grain shipments-- 8,475 cars per week versus 10,892 a year ago. Some elevator operators report waiting 30 to 60 days to receive rail cars.

During the STB's October 27 hearing, the National Grain and Feed Association reported that grain elevators were filled to capacity, particularly in Kansas, Oklahoma and Texas, and that local cash prices were declining because of a lack of storage. At both the STB and RRC hearings, some shippers cited numerous instances of rail cars that had been loaded with grain and billed but were sitting idle on their tracks for weeks because the Union Pacific was unable to provide locomotive power (see testimony of David Swinford, Ft. Worth hearing, pp. 7-9). Members from the Texas Panhandle reported that some customers were refusing to buy Texas-origin grain for fear of not receiving timely shipments (see testimony of Art Smith, El Paso hearing, pp. 2-3).

Disruptions of agricultural shipments have also been felt in South Texas, where delays of two to four weeks for hopper cars have been common (see testimony of William Lock, Corpus Christi hearing, pp. 1-2). Movements of rice, corn, milo, soybeans and cotton have been slowed, imposing additional pressures on farmers and co-ops in the face of bumper crops and low prices.

As of mid-December, grain deliveries by the Union Pacific were falling further behind schedule. These increasing delays prompted the Surface Transportation Board to order UP and the Burlington Northern Santa Fe Corporation to set up a system to minimize spoilage and get 1997's record grain harvests moving.

During the late fall, more than 50,000 carloads of grain typically flow through Texas Gulf Cost ports on their way to foreign markets. Undoubtedly, exports through these ports will be lower in 1998 because of the cumulative impacts of UP's service disruptions (see discussion of international trade below).

A conservative estimate of the losses incurred by Texas' farmers and grain shippers from lower prices, foregone sales opportunities and higher freight costs is $150 million to date. These higher costs may eventually show up at the dinner table, not only for households in Texas but in all other parts of the U.S. as well.

Paper and forest products

The forest products and paper industry records total annual sales of approximately $200 billion and generates seven percent of all U.S. manufacturing output. Annually, the industry exports in excess of $17 billion of product. It is also the fourth largest user of rail transportation in the country, moving an average of 24,000 carloads in a given week. The industry is responsible for 70 percent of all railroad boxcar traffic and also fills thousands of containers carrying finished goods for domestic and offshore distribution.

The American Forest and Paper Association (AF&PA) reports that many member companies have seen their businesses disrupted by the UP's problems. These disruptions have ranged from longer transit times to paper mill shutdowns. Some companies claim delivery problems have caused mill inventories to rise, resulting in extra warehousing costs, increased emergency delivery costs, and--ultimately--higher prices to customers.

East Texas is a major producer of timber, paper, plywood, particle board and other forest products with many manufacturing operations dependent on the Union Pacific for inbound raw materials as well as outbound product. Not surprisingly, a number of East Texas forest products companies are reporting delays and lost sales because of the UP's problems. For example, Champion International, with four manufacturing operations in East Texas, has experienced service problems with shipments destined to southern California. Transit times have increased to as long as 45 days, and the company claims business is being lost to competitors not dependent on UP service.

In Texas, forest products and paper companies shipped about $10 billion of processed goods in 1996. ***If the Union Pacific service disruptions have reduced sales of Texas' forest products companies by 5 percent since July, losses to date have totaled approximately $292 million.***

<u>Cement, concrete and other building materials</u>

Cement manufacture is tremendously reliant on rail transportation, both for inputs and product shipment. Aggregate must be hauled from quarries to cement kilns, while coal and/or coke are typically burned as kiln fuels. The Union Pacific's service disruptions have severely burdened the region's cement and concrete companies.

For example, Cemex USA, the second largest cement company in Texas and captive to the Union Pacific, has seen a 52 percent reduction in outbound trains since July. Consequently, sales have been reduced by 1/3 to 1/2 at rail supplied terminals, resulting in revenue losses in the hundreds of thousands of dollars per month as customers shift to other suppliers. Cemex also reports the loss of a contract to supply limestone to a TxDOT highway project near Beaumont because of an inability to maintain delivery schedules (see testimony of Trey Schmidt, San Antonio hearing, pp. 10-13).

Redland Stone Products Company of San Antonio reports a 23 percent drop in business during 1997 due to deteriorating Union Pacific service. During the month of September alone, lost sales and higher freight charges for the company totaled $1,000,000 (see testimony of Larry Roberts, San Antonio hearing, pp. 22-24).

Pioneer Concrete of Texas has been virtually abandoned by the Union Pacific for the hauling of aggregate and has been forced to rely on trucks instead. Pioneer estimates that lost sales and higher shipping costs have cost the company $2.7 million since June 1st, with no relief in sight. Other Houston-area cement and concrete companies report similar difficulties. North Texas Cement, located in Midlothian, is incurring lost profits and higher fuel costs of $113,000 per month because of slow coal and coke deliveries by the UP. In part because of the Union Pacific disruptions, cement has been on allocation in most parts of Texas for the past eight months.

Glass manufacturers in Texas and other parts of the U.S. are paying more for soda ash because most of the producers are located in the Green River basin of Wyoming and captive to the UP. Shippers have turned to trucks since the car shortage began on the UP several months ago and are paying the higher freight costs.

Producers of cement, pre-cast concrete, limestone, soda ash and other building materials usually enter into one-year contracts to supply their products to customers at fixed delivered costs. Thus they're having to absorb the higher freight charges incurred as a result of the UP's problems for the time being. But when these contracts are renegotiated over the next six to 12 months, producers will attempt to recover not only their higher shipping costs but their foregone earnings. Higher costs for building materials, in turn, will ripple through the construction industry and boost the nation's overall inflation by some percentage.

Texas could be hit especially hard, since the state is in the midst of a building boom. In 1996, manufacturers of construction materials recorded total shipments of approximately $5 billion. (Data for 1997 are not yet available). ***Assuming a five percent loss of business due to UP service disruptions, we estimate the foregone sales of Texas' cement, concrete and other building products at $146 million to date.***

Taxpayers may also feel the pinch of the UP's problems because roads and other infrastructure projects consume huge quantities of cement, pre-cast concrete and other building materials. For instance, the Texas Department of Transportation currently spends about $3 billion for highway construction and repair annually. ***Should construction costs rise five percent because of higher material costs, Texas' taxpayers will have to spend an additional $150 million to realize the same level of road improvement.***

Electric utilities

About 50 percent of Texas' electric power generation comes from coal and lignite fueled boilers, and most of the coal burned in the state is transported by rail from the Powder River Basin in Wyoming and Montana by the Union Pacific and the Burlington Northern. Although BNSF's coal shipments have remained on schedule, overall deliveries to utilities served by the UP have been curtailed or delayed since the company reduced the number of coal cars on its system by 19 percent in September in an effort to alleviate delays in shipping for other industries. Consequently, Houston Lighting & Power, City Public Service Company of San Antonio, the Lower Colorado River Authority (LCRA), Entergy, and Central Power & Light have all had to draw down their on-site stockpiles in order to meet customer demand. In some cases, stockpiles have been reduced to a 10 to 15 day supply (see testimony of Daniel Kuhen, Ft. Worth hearing, pp. 12-14). Entergy has filed a lawsuit against the Union Pacific for breach of contract, and the LCRA has threatened similar action.

Some Texas utilities have turned to other sources for coal or switched to natural gas to meet demands for power generation. City Public Service in San Antonio-- heavily dependent on the Union Pacific -- is importing coal from Colombia through the Port of Corpus Christi to help fuel its three coal-fired units. In Austin, the LCRA spent more than $8 million in 1997 to buy higher-cost natural gas and purchased power.

About half of Texas' coal-fired generators depend on out-of-state coal, while the others burn Texas-mined lignite that's easier to deliver. Fortunately, sufficient gas-fired generating capacity exists to make up for any shortfalls resulting from interruptions in coal deliveries.

The Gas Services Division of the Railroad Commission of Texas has examined a scenario in which Texas' coal fired plants dependent on out-of-state coal face a 50 percent reduction in supplies during the five month winter heating season of 1997-98, from November through March. Making up the shortfall would require these utilities to purchase an additional 131 billion cubic feet (Bcf) of natural gas for consumption on gas-fired power plants. This would represent an increase in Texas gas demand of 9.6 percent and total U.S. gas demand of 1.3 percent.

Substituting gas for coal is an expensive proposition, since natural gas prices on a Btu equivalent basis are about twice that of coal. With spot gas prices at $3 per thousand cubic feet, ***additional fuel purchases by Texas utilities could total $393 million during the winter of 1998 and be passed through almost immediately to businesses and households in the fuel***

adjustment portions of their bills. Fortunately, this winter has been exceptionally mild so far; thus, higher gas prices are not anticipated in the near term.

As of January 15, 1998, the Union Pacific was still well below its targets for on-time coal deliveries. In fact, coal deliveries had slowed for the previous six weeks and were running at only 72 percent of target (*Dallas Morning News*, January 23, 1998).

Retail trade and small business

As part of the strategy to clear gridlock on its system, the UP suspended intermodal service, which hauls general merchandise in containers and truck trailers, between the Midwest and Texas on November 1st. Partial service was re-established in mid-December. As a result of the suspension, some retailers and small businesses who previously relied on the UP to deliver their goods have had to pay premiums for truck or air service, or do without. Some stores were short of toys, furniture, consumer electronics and other products during the Christmas shopping season, which may have reduced overall sales in Texas and elsewhere in the U.S. (See testimony of Ruth Frierson and Russ Johnson, El Paso hearing, pp. 8-9 and 15-17).

Retail trade at general merchandise, apparel and furniture/home furnishings stores in Texas was approximately $40 billion in 1996. Stores typically record about 20 percent of their total retail sales during the holiday season. ***If Texas merchants realized even a one percent loss in sales due***

to the UP's inability to deliver goods in time for holiday shopping, retail trade was depressed by $80 million. In addition, state sales tax collections of $5 million and local sales tax receipts of $800,000 may have been foregone. Further losses of retail sales and state/local revenue may occur in 1998 if the UP service disruptions drag on.

Automobile dealers in Texas who depend on the Union Pacific have reported shipping times for new cars and light trucks doubling or tripling since August. This has been particularly harmful to smaller auto stores who do not keep much inventory on hand. In some cases, cars are being received more than a month past invoice, which means dealers wind up paying interest to the manufacturers on cars they haven't even received.

Presumably, automobile and light truck dealers will be able to recover lost sales once the UP solves its delivery problems. But in the short term, sales commissions are lower and interest charges are higher than they would be if deliveries of vehicles were on schedule.

International trade disruptions

International trade is of growing importance to the health of both the Texas and U.S. economies. Indeed, according to the U.S. Department of Commerce, about 40 percent of the nation's growth over the past year can be attributed to exports and imports. If anything, international trade is probably even more important to the Texas economy.

The Union Pacific's logistical problems have disrupted activity at two of the nation's busiest ports-- Los Angeles and Houston. At the Port of Los Angeles, which along with Long Beach accounts for 25 percent of all ocean-going container traffic, some vessels have been diverted because of congested terminals. Delays in loading and unloading cargo vessels are having the dual effect of increasing shipping costs and reducing the fees received by the Port.

The Port of Houston is affected somewhat differently since commodities, as opposed to containers, account for most of the volume. In 1996, the Port of Houston moved 86.5 million tons of cargo with a value of $34.1 billion. Chemicals, petroleum products, plastics, fertilizers, cereals and machinery constituting the major commodities and products. Though the Port of Houston has made no dollar estimates of lost business, ***it's likely that several billion dollars worth of shipments have been diverted from Houston and other Texas ports as a result of the UP's problems.*** In addition, shippers point out that it costs $50,000 a day to keep a ship sitting at anchor waiting to be unloaded (*The Economist,* December 6, 1997).

A number of local carting companies have begun imposing surcharges in response to congestion at Houston-area rail yards. Just recently, Empire Truck Lines and Canal Cartage of Houston began adding a $50 surcharge to the $100 average bill customers pay to have their containers transported from the rail yard to a ship terminal. Truckers say it now takes some of them up to six hours, instead of two, to retrieve a container because congestion on the Union Pacific

Railroad has backed up into the rail yards (*Houston Chronicle,* January 19, 1998).

Initially, the Port of Houston Authority was a strong supporter of the UP-SP merger. But the inability of the UP to implement promised service improvements has caused the Port to express some serious misgivings recently. "Our community is not being properly served because of this," states Port Chairman Ned Holmes. (*Houston Chronicle*, January 14, 1998). According to Chairman Holmes, the Port has suffered as a number of customers have steered their cargo and container ships to other Gulf and East Coast ports to avoid the rail congestion in the Houston ship channel area.

Data reported by the Port of Houston only reflect tonnage and berthings at the public docks. The Port's data do not include shipments going to and from the private terminals operated by chemical companies, grain elevators, and the like.

Union Pacific's service problems are particularly disruptive to NAFTA trade. The UP's lines stretch from the Canadian border to the Mexican border, and the UP recently acquired a Mexican concession through a joint venture. About 60 percent of U.S.-Mexico rail traffic crosses the border in Texas, with the Union Pacific accounting for the lion's share. The UP and the Tex-Mex share the huge gateway to Mexico at Laredo, which alone accounts for about 80 percent of rail shipments between Texas and Mexico. UP is also the primary railroad serving the Port of Houston, another important gateway for NAFTA trade.

In effect, the Ports of Laredo and Houston have become "chokepoints" for NAFTA-related trade. As the RRC hearing record indicates, because of the UP's problems cargo is piling up at both ports, and shippers have been forced to use more expensive truck transport to get their products to and from Mexico. If the Laredo and Houston gateways aren't unclogged soon, the rapid growth of U.S.-Mexico trade may be impaired with an attendant loss of jobs and income in both countries.

Other costs to the Texas and national economies from the Union Pacific service problems

The UP's system-wide problems are disrupting "just-in-time" delivery schedules for many industries. By reducing the amount of inventory on hand, businesses have realized substantial cost savings that have helped to hold down retail price increases. Indeed, effective inventory control is one of the reasons inflation has been muted during the economic expansion of the 1990s. As discussed earlier, the ultimate cost of lost production, delays and additional freight charges will be higher prices at wholesale and retail for food, construction materials and a wide range of manufactured goods. Some economists have estimated the UP's problems could boost the consumer price index (CPI) by one- to two-tenths of a percent over the next year.

The UP's service disruptions and their ripple effects may be having another insidious impact on the national economy. According to the National Association of Purchasing Management, manufacturing activity nationwide slowed in the latter part of 1997, and the industry's main index dropped to its lowest level in a year during the month of December. According to Norbert Ore, chairman of the association's survey committee, the economic crisis in Asia and "rail traffic delays" have hurt orders and production (*New York Times*, January 3, 1998). Coincidentally, the index fell again in January, its third straight decline. ***If the Union Pacific service disruptions have cost the state of Texas more than $1 billion so far, the national economic cost is probably in excess of $2 billion.***

Of course, some industries are capitalizing on the UP's tie-ups. The trucking business for one, has clearly benefited from the UP's delivery problems, as most shippers have no other alternative for moving their products. According to the American Trucking Association, truck tonnage has reached an all-time high in recent months. With few rigs or drivers available to serve new customers, not surprisingly long-distance trucking companies have boosted their rates by 10 to 20 percent.

At the same time, increased truck traffic is making Texas' (and the nation's) highways less safe while accelerating wear-and-tear on the pavement and roadbed. Higher TxDOT outlays for repair and maintenance of Texas' highways will soon follow. What's more, the growing number of trucks plying the roads in Houston and Dallas-Fort Worth because of the UP's service disruptions are causing potential negative results in air quality. Hydrocarbon emissions per billion ton-miles are nearly 10 times greater for trucks than trains while nitrogen oxide emissions are about three times greater. Both Houston and Dallas-Fort

Worth are currently classified as "serious" non-attainment areas, and the growing use of trucks to move freight will make compliance with EPA air quality standards even more difficult.

Some Texas businesses, who've been unable to deliver product in a timely fashion because of the UP's problems, worry about a permanent loss of customers. Only time will tell if markets lost in the past few months can be quickly recaptured if and when the UP brings order to its system. Some commodity shippers, such as aggregate producers, are concerned the UP may abandon them entirely because of the low profitability associated with their business.

The UP will eventually solve its logistical problems. But, barring some structural changes in ownership and access, the UP will continue to dominate the Houston rail market, charging high prices for deteriorating service. As Judge Learned Hand so eloquently stated early in this century, "Monopoly and its exercise must needs coalesce." In other words, a monopolist can't help but act like one.

The trackage rights granted to the Burlington Northern as part of the UP-SP merger agreement have proven to be totally inadequate as a competitive substitute. In a recent filing with the STB, the BN says that the Union Pacific's congestion has hampered its ability to serve the state and that the BN has "serious reservations" about being able to play the long-term competitive role the railroad and the agency had envisioned. "BN's operational experiences to date, in light of the cost and unreliability of service over the trackage rights lines, raise serious questions as to whether BN will be able to provide rail customers viable long-term competitive service, particularly in South Texas and along the Gulf Coast" (*Houston Chronicle,* January 13, 1998).

Against this backdrop, the Railroad Commission of Texas has called for divestiture of key stretches of the Union Pacific's Houston-area tracks, including the line from Houston to Beaumont, as well as expansion of a neutral switching railroad, such as the Port Terminal Railroad Association, to handle local traffic in the Houston area. The Commission's proposals offer the only practical solution presented to date for instilling workable rail competition into the Houston region that, in turn, will benefit shippers across the state of Texas.

BERNARD L. WEINSTEIN

Bernard L. Weinstein is director of the Center for Economic Development and Research and a professor of applied economics at the University of North Texas in Denton. The Center was established in 1989 to provide economic analysis and consulting services to university constituents in the private, non-profit and public sectors. He also serves as director of the Institute of Applied Economics, which offers masters degree programs in economic development.

Dr. Weinstein studied public administration at Dartmouth College and received his A.B in 1963. After a year of study at the London School of Economics and Political Science, he began graduate work in economics at Columbia University, receiving an M.A. in 1966 and a Ph.D. in 1973.

He has taught at Rensselaer Polytechnic Institute, the State University of New York, the University of Texas at Dallas, and Southern Methodist University. He has been a research associate with the Tax Foundation in Washington, D.C. and the Gray Institute in Beaumont, Texas. He has worked for several U.S. government agencies including the President's Commission on School Finance, the Internal Revenue Service and the federal Trade Commission.

Dr. Weinstein has authored or co-authored numerous books, monographs and articles on the subjects of economic development, public policy and taxation, and his work has appeared in professional journals such as LAND ECONOMICS, CHALLENGE, SOCIETY, POLICY REVIEW, ECONOMIC DEVELOPMENT QUARTERLY, POLICY STUDIES JOURNAL and ANNALS OF REGIONAL SCIENCE. His work has also appeared in THE NEW YORK TIMES, THE WALL ST. JOURNAL, THE LOS ANGELES TIMES and a number of regional newspapers and magazines. He is a former member of the editorial board of SOCIETY magazine and currently serves on the DALLAS MORNING NEWS Board of Economists.

Dr. Weinstein has been a consultant to many companies, non-profit organizations and government agencies, and he testifies frequently before legislative, regulatory and judicial bodies. His clients have included AT&T, Southwestern Bell, Texas Instruments, Conoco, Entergy, Central Power and Light, the Nuclear Energy Institute, the U.S. Conference of Mayors, the Western Governors Association, the City of San Antonio, and the Joint Economic Committee of the U.S. Congress.

Dr. Weinstein was director of federal affairs for the Southern Growth Policies Board from 1978 to 1980 and served as director of the Task Force on the Southern Economy of the 1980 Commission on the Future of the South. From 1984 to 1987 he was chairman of the Texas Economic Policy Advisory Council and from 1987 to 1988 served as visiting scholar with the Sunbelt Institute in Washington, D.C. In 1992 he was appointed by Lieutenant Governor Bob Bulluck to the Texas Partnership for Economic Development. He is currently a senior fellow with the Southern Growth Policies Board and the Texas Public Policy Foundation, and he serves on the boards of the Dallas Business Finance Corporation, Metroplex Citizens Against Lawsuit Abuse, and KERA Public Broadcasting. He is also a director of Beal Bank and AccuBanc Mortgage Corporation in Dallas, Texas.

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0011296.01

VERIFICATION

DISTRICT)
OF) ss.
COLUMBIA)

I, Curtis Grimm, being first duly sworn, upon my oath state that I have read the foregoing statements and the contents thereof are true and correct as stated.

Curtis Grimm

Curtis Grimm

Subscribed and sworn to before me this 1 day of July, 1998.

Sarah P. Londerio

Notary Public

My Commission Expires: 3/31/2003

0011224.01

VERIFICATION

DISTRICT OF COLUMBIA) ss

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

Joseph J. Plaistow
Joseph J. Plaistow

Subscribed and sworn to before me
this 5th day of July, 1998

Sarah P. Londere
Notary Public

My Commission Expires: 3/31/03

VERIFICATION

DISTRICT)
OF) ss.
COLUMBIA)

I, Curtis Grimm, being first duly sworn, upon my oath state that I have read the foregoing statements and the contents thereof are true and correct as stated.

Curtis Grimm
Curtis Grimm

Subscribed and sworn to before me this 1 day of July, 1998.

Notary Public

My Commission Expires: 3/31/2003

0011224.01

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 26)

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

REQUEST FOR ADOPTION OF A CONSENSUS PROPOSAL
IN ORDER TO RESOLVE SERVICE AND COMPETITIVE PROBLEMS
IN THE HOUSTON/GULF COAST AREA

VERIFIED STATEMENT

OF

GEORGE C. WOODWARD

VERIFIED STATEMENT

OF

GEORGE C. WOODWARD

INTRODUCTION

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

In the UP/SP merger proceeding, the Surface Transportation Board ("STB") granted the Texas Mexican Railway Company ("Tex Mex") trackage rights, allowing Tex Mex to provide a competitive alternative for NAFTA traffic in order to alleviate the anticompetitive impact of the merger. The first purpose of my statement is to explain why the current Tex Mex trackage rights do not allow Tex Mex to be an effective competitor to Union Pacific ("UP"). One of the elements of the present proposal is for Tex Mex to acquire and construct a new line from Rosenberg, Texas to Victoria, Texas and to gain the unrestricted ability to solicit traffic at Houston. The second purpose of my statement is to document how the Consensus Plan strengthens the Tex Mex competitive alternative for U.S.-Mexico traffic through the Laredo gateway, thereby facilitating implementation of the STB's decision with regard to NAFTA traffic.

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

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

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

The reduction in circuity for Tex Mex in the Houston to Laredo market is significant and valuable both from the standpoint of inherently lowering the cost structure of the Tex Mex railroad and providing the service consistency and reliability that the transportation market requires. Following the acquisition and rehabilitation of the Rosenberg to Victoria line, Tex Mex will have a route structure between Houston and Laredo that is comparable to the UP's on a mileage basis with sufficient traffic density to support profitable operations and the investment to acquire and rehabilitate the Rosenberg to Victoria line. (*See* Verified Statement of Joseph J. Plaistow.)

A second critical component of the Consensus Plan is to lift the Houston restriction. This restriction places Tex Mex at a great disadvantage to UP in providing the NAFTA competition intended by the STB. UP can solicit traffic at Houston to major markets in the Southeast, the Northeast, the Midwest, California, and the Pacific Northwest in addition to traffic to Mexico. Due to limitations placed upon Tex Mex's trackage rights, however, Tex Mex cannot offer an effective competitive alternative to UP for even U.S. - Mexico traffic. Under the Staggers Act, totality contracts or tying contracts are permitted whereby the UP can solicit all of a customer's freight and tie those shipments to areas in the United States, other than traffic destined to Mexico. As an example of the magnitude of this leverage, it should be noted that the traffic originating in and terminating at Houston BEA is a $2.8 billion total U.S. rail market, while the Houston to and from Laredo traffic segment was only $18.5 million in 1996. This suggests that the UP has sufficient competitive leverage to tie traffic to Mexico into UP's comprehensive totality contracts.

In order to provide Tex Mex a reasonable competitive opportunity, it is important that the Board allow Tex Mex to permanently solicit northbound freight from Houston in order to ensure that Tex Mex is effective in soliciting freight to Mexico, the primary market where Tex Mex is to provide competition. Without the ability to solicit traffic from Houston to other points in the United States (not just Mexico), Tex Mex will be relegated to the role of an ineffective niche player whose competitive reach will never allow it to be effective in the primary market that the

STB directed Tex Mex to be a competitive alternative to UP (*i.e.*, the U.S. to/from Laredo market).

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

As another example of how the restriction limits Tex Mex's ability to provide an effective competitive alternative to UP is the fact that dedicated trains for packaged freight, such as United Parcel Service or other LTL carriers from Monterrey and Mexico City, are often times "hubbed" at Houston and then combined with domestic U.S. freight destined for specific markets in the United States, including Chicago, Kansas City, and Atlanta. Only by having the unrestricted ability to solicit freight at Houston for both carload and intermodal can Tex Mex effectively bid on this traffic and realistically provide service in the primary market where the STB intended it to provide a competitive alternative.

Similarly, Tex Mex's ability to develop a transportation market for automotive customers directly hinges on their ability to use Houston as a gathering, distribution and mixing point for vehicle and parts traffic to and from Mexico. Automotive shippers have become adept in using the network capabilities of the U.S. rail system. Ford Motor Company's mixing center in Kansas City is an example of this concept where shipments of vehicles from widely dispersed assembly plants are re-sorted by dealer destinations and then taken by rail and truck to consuming markets.

Similarly, vehicles produced in Mexico can be mixed with vehicles imported through the Port of Houston for rail and truck distribution to markets in the United States and Canada. Tex Mex's ability to participate in these transportation network opportunities is severely and negatively impacted by its inability to solicit northbound freight in the Houston marketplace.

Another example of the restrictions preventing Tex Mex from fulfilling its intended competitive role can also be seen in the transportation of plastics resins manufactured in Houston. Plastics resins are usually produced without the final destination being determined at the time of production. Covered hoppers of plastics resins, usually pellets, are commonly taken to storage-in-transit yards in the Houston area before their ultimate destinations are determined. Unless Tex Mex has unrestricted traffic solicitation capabilities in Houston, Tex Mex will be frustrated by its restriction to solicit only Mexico destined traffic. Plastics shippers clearly want a rail carrier that can solicit freight to all major markets and deliver those cars to the appropriate connecting carriers when the destinations of the shipments are determined.

In summary, for Tex Mex to provide effective rail competition at the important Laredo gateway, it is necessary that the Board permanently provide Tex Mex the ability to solicit traffic northbound from its Houston "hub." The inability to solicit northbound freight at Houston will relegate Tex Mex to the role of niche transportation provider whose traffic solicitation efforts will be forever frustrated by the pervasive competitive network leverage of the UP.

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

As a direct result of its merger with Southern Pacific, UP now dominates the key Laredo gateway for U.S.-Mexico rail traffic, with approximately 90% of the carloads at Laredo to and from the U.S. (utilizing 1996 data). See Exhibit 1. The STB identified this dominance as an anticompetitive impact of the merger, and provided Tex Mex trackage rights to ensure effective competition for NAFTA traffic. However, we project that the Tex Mex trackage rights, restricted as they are and even with concessions made by UP to allow bi-directional flow, will still leave UP with a 85.6% market share at Laredo. The Consensus Plan proposal would reduce the UP share to 62.2%, providing shippers with a significantly stronger competitive alternative in Tex Mex.[1]

The Consensus Plan will allow Tex Mex to interchange directly with BN at Rosenberg, providing a Houston bypass interchange, and with KCS at Beaumont, providing an alternate route into and out of Houston. The Consensus Plan will provide Tex Mex much needed yard space, increase track capacity, allow Tex Mex to solicit both Mexico and Houston traffic in both north and south directions, and provide NAFTA and Houston shippers with an effective competitive alternative to UP. *See* attached Exhibits 1, 2, and 3 for an accurate projection of the traffic flows and market shares into and out of Laredo if the Consensus Plan is adopted.

CONCLUSION

The STB expects Tex Mex to provide an effective competitive alternative in the important Laredo to U.S. marketplace. Therefore, the Board should approve the acquisition of the Tex Mex owned and non-circuitous route from Rosenberg to Victoria with unrestricted traffic solicitation capability at Houston. The Consensus Plan would reduce the circuitry of the current Tex Mex route from Rosenberg to Victoria by 85%, add infrastructure and capacity, and improve Tex Mex's ability to compete against UP for Laredo and Houston traffic. With Consensus Plan traffic access at Houston (as described above) Tex Mex's traffic capabilities to and from Laredo at Houston will be further enhanced by Tex Mex's ability to cooperate with the KCS/CN/IC

[1] In this study we assumed "Consensus Plan" access for Tex Mex in Houston to competitively serve HBT/PTRA-served points plus access to traffic to and from the Bayport loop and the Clinton branch.

traffic alliance which will provide effective routes to gateways at Jackson, Memphis, St. Louis, Effingham, and Chicago.

Exhibit 1

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

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

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

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

Post UP/SP Merger Under Consensus Plan	Tex Mex Loads	Tex Mex M.S.%	UPSP Loads	UPSP M.S.%	Total Loads
General Merchandise	31,109	31.9%	66,436	68.1%	97,545
Intermodal	56,011	49.8%	56,469	50.2%	112,480
Coal/Bulk	9,469	31.1%	20,992	68.9%	30,461
Automotive Vehicles	16,189	27.8%	42,051	72.2%	58,240
Total	*112,778*	*37.8%*	*185,948*	*62.2%*	*298,726*

Exhibit 2

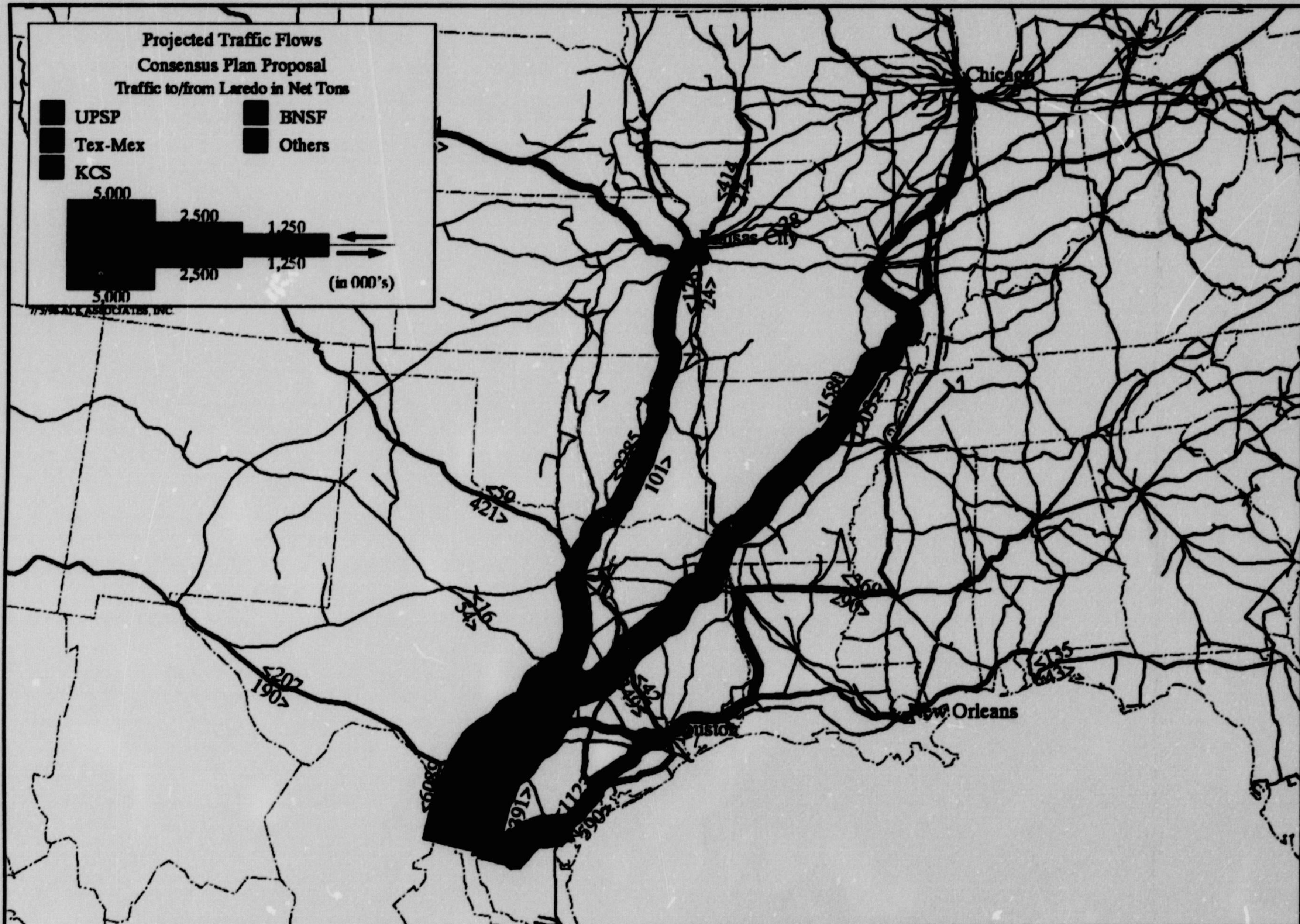
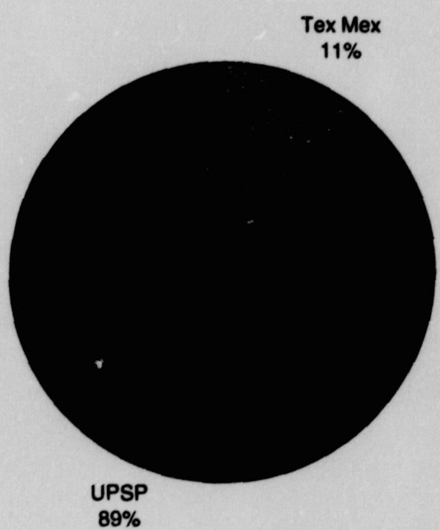

Projected Traffic Flows
Consensus Plan Proposal
Traffic to/from Laredo in Net Tons
UPSP
Tex-Mex
KCS
BNSF
Others
5,000
2,500
1,250
1,250
2,500
5,000
(in 000's)
Chicago
New Orleans
<207
190>
<59
421>
101>
<1588
<369
<135

Exhibit 3

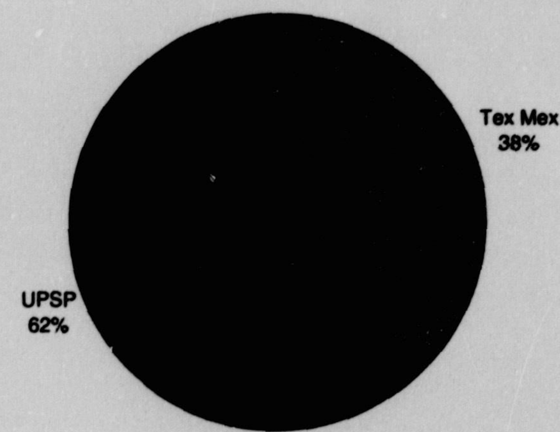
Laredo Market Shares

Carloads Handled Through Laredo Gateway

1996 Actual Market Shares



Consensus Plan Proposal Projected Shares



VERIFICATION

STATE OF NEW JERSEY)
) ss.
COUNTY OF MERCER)

I, George C. Woodward, being first duly sworn, upon my oath state that I have read the foregoing statements and the contents thereof are true and correct as stated.

George C. Woodward

Subscribed and sworn to before me this 2nd day of July, 1998.

Mary B. Kelly
Notary Public

My Commission Expires: MARY B. KELLY NOTARY PUBLIC OF NEW JERSEY MY COMMISSION EXPIRES DEC. 2, 1998

0011278.DOC

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 26)

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

REQUEST FOR ADOPTION OF A CONSENSUS PROPOSAL
IN ORDER TO RESOLVE SERVICE AND COMPETITIVE PROBLEMS
IN THE HOUSTON/GULF COAST AREA

VERIFIED STATEMENT

OF

SHELBY G. TURNER

VERIFIED STATEMENT

OF

SHELBY G. TURNER

My name is Shelby G. Turner and I am Regional Sales Manager for The Texas Mexican Railway Company. I am headquartered at Tex Mex's offices at 501 Crawford Street, Room 317, Houston, Texas. Immediately prior to joining the Tex Mex in my current position, I spent over thirty-nine years in the Southern Pacific's Sales and Marketing Department. My other qualifications have been stated in previous verified statements filed before the Surface Transportation Board ("STB" or "Board").

I intend to discuss in this verified statement: 1) The restriction imposed on Tex Mex's trackage rights by Decision No. 44 has been a serious and artificial commercial impediment to Tex Mex's ability to be an effective competitor to Union Pacific Railroad Company ("UP" or "Union Pacific") for U.S.-Mexico traffic; and 2) When the Board temporarily granted Tex Mex additional rights in Emergency Service Order No. 1518 and allowed Houston shippers out of their current UP contracts, the short-term duration of those actions, although repeatedly extended, prevented Tex Mex from transporting in and out of Houston anywhere near Tex Mex's capacity.

1) The restriction imposed on Tex Mex's trackage rights by Decision No. 44 has been a serious and artificial commercial impediment to Tex Mex's ability to be an effective competitor to UP for U.S.-Mexico traffic.

After the merger, and dissolution of the HBT, Union Pacific controls approximately 70% of the switching for traffic in the Houston area. As I understand it, UP's actual market shares to certain geographic markets reaches as high as 87%. Much of UP's business has been secured through contracts that extend as long as ten years. Many shippers, such as the petro-chemical shippers, put their business up for bid to transportation providers. Transportation providers place bids on the business based upon rates, service, and equipment needs. The shipper's traffic manager reviews the bids and awards a contract based upon the shipper's needs. Most rail contracts have volume commitments. Those volume commitments are usually for between 80 and 95 percent of all the shipments that are available to rail. If a large portion of a shipper's rail shipments are destined to points that are not accessible to Tex Mex, then Tex Mex is effectively precluded from bidding for most of the U.S.-Mexico traffic theoretically available to it. Some shippers will designate and sort specific traffic lanes and award those to more than one rail provider. However, if the shipper's business to Mexico is a relatively small percentage of its overall requirements, the shipper will lump its Mexico business with other business to other parts of the United States and award the contract based upon the successful bid of the entire package. This is where Tex Mex has not been able to meet the Board's intention of providing competition to the Union Pacific between Houston and the Laredo gateway. If the Board's restriction were to be permanently lifted, then Tex Mex would be able to bid on more lanes and thereby be better able to compete out of Houston over the Laredo gateway. Under the Board's Decision No. 44, Tex Mex's Houston-generated southbound business has been limited.

2) **When the Board temporarily granted Tex Mex additional rights in Emergency Service Order No. 1518 and allowed Houston shippers out of their current UP contracts, the short-term duration of those actions, although repeatedly extended, prevented Tex Mex from transporting in and out of Houston anywhere near Tex Mex's capacity.**

On October 31, 1997, when the Board recognized the emergency conditions inflicted upon the Houston and Gulf Coast area by the Union Pacific's service crisis, the Board issued an unprecedented Emergency Service Order No. 1518 ("ESO") for 30 days. In the ESO the Board recognized that Tex Mex had the capacity to move freight in and out of Houston despite the UP's congestion problems. The Board allowed certain Houston shippers, those served by the former

HBT and the PTRA, to be released from their current UP contracts for purposes of selecting a new competitive rail carrier. In early December in Supplement No. 1 to the ESO, the Board extended the ESO for an additional ninety days. Again in early March, the Board further extended the ESO until August 2, 1998. Although some shippers were able to take advantage of this opportunity, the temporary nature of the ESO rights deterred most Houston shippers from doing so, despite the fact that Tex Mex had the capacity to move a significant number of cars out of the congested terminal complex.

Shipping by rail is usually more complicated and not as "user friendly" as shipping by truck. Many railroads and shippers desire fixed-term contracts to provide some rate stability. With the modern days of computer, shippers have relied less upon human resources and more on technology to assist them in their day-to-day shipment transactions. The software technology provides that a shipper can establish software patterns, or models, that will allow their traffic personnel to enter just the origin and destination ("O/D pair") while the computer does the rest of the work. Once a software pattern is established and until such time as it is changed, and once an O/D pair is identified, that software will automatically enter routing, rates, and other billing information. However, the software will not route over a temporary route, in this case Tex Mex, unless a re-programming takes place. This "backroom" work done by shippers is costly and too labor and resource intensive for just a temporary change. Further complicating the situation is the fact that shippers are also required to re-negotiate "gateway" rates from other railroads to enable their products to reach their destination, which the eastern carriers have been unwilling to do. The shippers also run the risk of higher rates being assessed by UP once they are forced to return their business to UP lanes at the end of the ESO.

Many larger shippers have "master" contracts with "most favored nation" clauses. These contracts usually span longer time periods and encompass multiple facilities with many O/D pairs. These master contracts, although awarded in a competitive environment, leave restrained latitude if a carrier fails to provide service at only one or two of a shipper's multiple facilities.

The aforementioned are examples of ways that the temporary nature of the ESO has limited Tex Mex's ability to provide a competitive alternative. Despite the obstacles faced in securing traffic to provide congestion relief, the following spreadsheet shows the number of railcars that were handled by Tex Mex as a result of the Board's ESO 1518:

Number of Northbound Railcars Originating/Terminating in Houston that Tex Mex Moved Under the Provisions of ESO No. 1518

	Originating*	Terminating*	
Nov-97	86	58	
Dec-97	156	159	
Jan-98	142	148	
Feb-98	104	77	
Mar-98	185	215	
Apr-98	106	285	
May-98	260	151	
Jun-98	308	144	
Total	1347	1237	
Grand Total			2584

*Note: Totals do not represent empty railcars billed and shipped via Tex Mex by reverse routing.

VERIFICATION

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

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

S G Turner

Shelby G. Turner

Subscribed and sworn to before me this 2 day of July, 1998.

Kaye R. Gilmore

Notary Public

My Commission Expires: ____________________

NOTARY PUBLIC STATE OF TEXAS

KAYE R. GILMORE
NOTARY PUBLIC, STATE OF TEX
MY COMMISSION EXPIRES
FEB. 22, 2000

Document8

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

REQUEST FOR ADOPTION OF A CONSENSUS PROPOSAL
IN ORDER TO RESOLVE SERVICE AND COMPETITIVE PROBLEMS
IN THE HOUSTON/GULF COAST AREA

VERIFIED STATEMENT

OF

MICHAEL H. ROGERS

VERIFIED STATEMENT

OF

MICHAEL H. ROGERS

Introduction

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

Scope and Assumptions of Traffic Diversion Analysis

ALK was retained by the Consensus Parties in this proceeding, Finance Docket No. 32760 (Sub-No. 26), to study the impact upon traffic flows that would result from the Tex Mex acquisition of a less circuitous line from Rosenberg to Victoria and permanent, unrestricted traffic solicitation in the Houston market. This study includes both extended haul traffic and new business markets. ALK did not attempt to address changes in rail origin/destination patterns, transportation modal shifts, or economic growth considerations. In conducting this study, I operated under the following parameters:

a. The expanded Tex Mex will operate as a single-line system from Laredo to Houston and Beaumont and will cooperate with the KCS/CN/IC traffic alliance.

b. The Tex Mex will be assumed to have Consensus Plan Houston traffic access to points served by HBT and PTRA lines plus the Bayport loop and the Clinton branch.

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

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

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

Methodology

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

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

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

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

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

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

Results

The overall diversion projections are summarized as Exhibit 1 of this statement. ALK estimates that the proposed Tex Mex system will be able to attract approximately $55 million of additional freight revenue as a result of the less circuitous line from Victoria to Rosenberg and unrestricted traffic solicitation capabilities at Houston. This figure represents gains from both new markets served and extended haul opportunities for the Tex Mex.

Exhibit 1

TRAFFIC IMPACTS ON TEX MEX

Scenario

1 1996 TexMex Traffic
1996 Actual Traffic (TexMex 100% + Waybill)

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

2 1996 TexMex Projected Traffic under
UP/SP Merger Conditions in a Normal Year

Service Type	Cars	Car-Miles	Vans	Van-Miles	Tons	Ton-Miles	TM Revenue	Change TMRev
General Merch.	27,547	4,356,575	-	-	2,004,538	314,910,481	$ 16,663,966	$ 2,511,730
Intermodal	3,240	466,560	4,497	671,886	65,772	9,860,256	$ 887,527	$ 887,527
Coal/Grain	8,450	1,352,433	-	-	722,286	115,652,740	$ 4,139,160	$ (75,049)
Auto Racks	5,897	858,818	-	-	119,877	17,462,236	$ 5,448,639	$ 5,448,639
Total	45,134	7,034,386	4,497	671,886	2,912,473	457,885,713	$ 27,139,312	$ 8,772,847

3 1996 TexMex Traffic
Consensus Plan Proposal

Service Type	Cars	Car-Miles	Vans	Van-Miles	Tons	Ton-Miles	TM Revenue	Change in TMRev vs. Scenario 2
General Merch.	72,246	13,246,061	-	-	5,557,320	957,503,737	$ 46,282,143	$ 29,618,157
Intermodal	39,640	8,539,876	44,914	9,739,117	649,872	133,702,589	$ 7,642,955	$ 6,755,428
Coal/Grain	11,552	2,174,063	-	-	1,022,745	188,632,414	$ 6,048,078	$ 1,908,918
Auto Racks	20,850	6,792,715	-	-	428,072	138,580,230	$ 22,509,576	$ 17,060,937
Total	144,288	30,752,714	44,914	9,739,117	7,658,009	1,418,418,969	$ 82,482,752	$ 55,343,440