STB FD 32760 (Sub 30) 11-24-98 D 192390

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November 24, 1998

FD 32760 26 192386
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BY HAND

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

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D

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

Dear Secretary Williams:

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

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

I.

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

* Including related sub-dockets.

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

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

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

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

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

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

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

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

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

II.

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

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

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

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

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

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

- KCS/Tex Mex admit that the mix of shipments and routes measured for the pre-merger periods of 1995 and 1996 differ from the mix of shipments and routes measured for the post-merger periods of 1997 and 1998. KCS/Tex Mex admit that the five shippers who provided data to SPI have differing abilities to provide historical information and thus that "participation for 1995 and 1996 is less extensive than for 1997 and 1998." (P. 15.) In fact, the data for 1995 pertain to shipments by only two shippers; the 1996 data are for four shippers; the 1997 data are for five shippers; and KCS/Tex Mex now admit that additional shipments and routes were added at the end of 1997. (P. 15.) As a result, the SPI charts compare a small set of shipments in 1995 with a larger set of shipments from different origins to different destinations in 1996 with a still larger set of shipments from different origins to different destinations in 1997 and still a larger set of shipments in 1998.

- KCS/Tex Mex also acknowledge that the SPI charts include shipments from points not on the Texas Gulf Coast, a fact they did not voluntarily disclose to the Board or other public officials when they presented these charts. They include, for example, shipments from an Iowa origin that represents 7% of the total production capacity reflected in the data. (P. 15.) Significantly, KCS/Tex Mex also acknowledge that these Iowa shipments were not included in the SPI data for pre-merger years, but were added only after December 1997, again skewing the data unpredictably. (Id.) KCS/Tex Mex argue that it is reasonable to look at shipments that originate outside the Gulf Coast area, but it certainly is not reasonable to (a) include those shipments only in the post-merger half of the comparison, or (b) claim that the resulting charts reflect the quality of UP service in Texas.

- KCS/Tex Mex acknowledge that they presented to the Board charts labelled "UP Only" even though the transit times are not "UP only" data. The transit times are origin-to-destination transit times over all railroads for whatever traffic mix was being measured at a particular moment. In other words, delays could have occurred anywhere in the United States on any railroad. KCS/Tex Mex counsel, on the basis of no data or other information, assert that all delays must have occurred on UP and that delays on "on the lines of other carriers . . . were of short duration." (Id. at 17.) The Board has no reason to believe this self-serving assertion, which ignores events such as a major hurricane that wiped out CSX

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

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

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

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

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

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

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

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

Sincerely,

Arvid E. Roach II

cc: All Parties of Record

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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

Richard B. Peterson
RICHARD B. PETERSON

GENERAL NOTARY-State of Nebraska
DORIS J. VAN BIBBER
My Comm. Exp. Nov. 30, 2000

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

Doris J. Van Bibber
Notary Public

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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

Douglas J. Glass

Douglas J. Glass

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

GENERAL NOTARY-State of Nebraska
DORIS J. VAN BIBBER
My Comm. Exp. Nov. 30, 2000

Doris J Van Bibber

Notary Public

My Commission Expires:

Nov. 30, 2000

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William A. Mullins

November 24, 1998

FD 32760 - 26 192378
FD 32760 - 27 - 192379
FD 32760 - 28 - 192380
FD 32760 - 29 - 192381
FD 32760 - 30 - 192382
FD 32760 - 31 - 192383
FD 32760 - 32 - 192384

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

192378

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

Dear Secretary Williams:

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

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

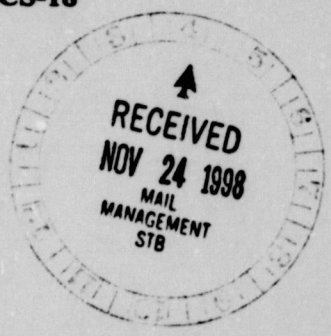
Sincerely,

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

cc: Parties of Record

* and emabraced sub-dockets

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



BEFORE THE

SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

NOTICE OF INTENT TO PARTICIPATE IN ORAL ARGUMENT

THE CHEMICAL MANUFACTURERS ASSOCIATION

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS CHEMICAL COUNCIL

THE TEXAS MEXICAN RAILWAY COMPANY

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

November 24, 1998

(* and embraced sub-dockets)

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

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

NOTICE OF INTENT TO PARTICIPATE IN ORAL ARGUMENT

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

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

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ATTORNEYS FOR THE SOCIETY OF PLASTICS INDUSTRY, INC.

CERTIFICATE OF SERVICE

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

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

0344073.01

STB FD 32760 (Sub 30) 11-20-98 D 192325

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

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November 20, 1998

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 711
1925 K Street, N.W.
Washington, D.C. 20423-0001

-192324
-192325
-192326

Re: Finance Docket No. 32760 (Sub-No. 26, 30 and 32)

Dear Secretary Williams:

Attached please find copies of the following additional statements in support of various conditions sought by The Burlington Northern and Santa Fe Railway Company in its Application For Additional Remedial Conditions in the Houston/Gulf Coast area in this proceeding:

ACM, Inc.
Corn Products International
HMM (Hyundai Intermodal, Inc.)
Farmrail System, Inc.
Ferrocarril Mexicano
International Paper Company
Kimberly-Clark Corporation
Louisiana & Delta Railroad, Inc.
Minnesota Corn Processors, Inc.
The Rice Company

Originals of these statements are already on file with the Board in the above-referenced proceeding.

Sincerely,

Erika Z. Jones

Erika Z. Jones

Attachments

cc: All Parties of Record (with attachments)

ACM, INC.
281 B MOORE LANE
COLLIERVILLE, TN 38017

October 16, 1998

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

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

My name is Carolyn Bledsoe, I am the Traffic Manager of ACM, Inc. Our company is located in Memphis, Tennessee and is in the business of cotton merchandising. We ship cotton from the U.S. to various destinations in Mexico. The routing that we use is determined by the railroad that serves each individual warehouse that the cotton is loaded from.

I am filing this Verified Statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant permanent trackage rights on the UP's San Antonio -Laredo line. I believe that this request will benefit our company and other shippers and will result in service improvements and create meaningful competition for rail shippers to the Laredo Gateway.

I believe that BNSF's request for trackage rights over the San Antonio - Laredo are designed to ensure that competition at this critical Mexican gateway does not continue to be adversely impacted by UP's south Texas congestion and service problems specifically on the UP's Algoa to Corpus Christi route.

Granting BNSF trackage rights to the Laredo Gateway through San Antonio will also allow BNSF to bypass the TexMex, with whom BNSF has been unable to conclude a competitive, long term commercial arrangement. We are also concerned that the unexpected lack of competition in the privatized Mexican rail system is preventing shippers from receiving a fully competitive service at the Laredo Gateway.

For all of these reasons, the Board should grant BNSF's request for trackage rights over the San Antonio - Laredo line. This would benefit our company and other shippers, and would result in service improvements to the Laredo Gateway, as well as provide a competitive alternative for shippers.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 16th day of October, 1998.

Sincerely,

Carolyn Bledsoe

Carolyn Bledsoe
ACM, Inc.

CornProducts
INTERNATIONAL

November 2, 1998

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

Re: Finance Docket No. 32760, Sub 26 & 28

Dear Mr. Williams:

My name is Thomas Waskiewicz, and I am the Director of North American Logistics for Corn Products International. Our company is a multinational organization, operating plants in Canada, the United States and Mexico, as well as, subsidiary and affiliate locations through out the world. Our Corporate Headquarters is located in Argo, Illinois and our business is the manufacture of corn derived products for the Beverage, Food, Pharmaceutical and Paper industries. In support of the above referenced docket, Corn Products is an active participant and supporter of NAFTA and currently ships product between all three NAFTA countries. As a supporter of the UP/SP merger, Corn Products continues to seek and support issues to increase competition and improve service. We currently ship direct rail and intermodal shipments via the Laredo Gateway and have experience delays as a consequence of congestion along the UP route.

I am filing this Verified Statement in support of The Burlington Northern and Santa Fe Railway's (BNSF) request that the Board grant permanent trackage rights on the UP's San Antonio - Laredo Line. I believe that this request will benefit our company and other shippers and will result in service improvements and create meaningful competition for rail shippers to the Laredo Gateway.

I believe that the BNSF's request for trackage rights over the San Antonio - Laredo line are designed to insure that competition at this critical Mexican gateway does not continue to be adversely impacted by UP's south Texas congestion and service problems specifically on the UP's Algoa to Corpus Christi route.

Granting BNSF Trackage Rights to the Laredo Gateway through San Antonio will also allow BNSF to bypass the TEXMex, with whom BNSF has been unable to conclude a competitive, long term commercial arrangement. We are also concerned that the unexpected lack of competition in the privatized Mexican rail system is preventing shippers from receiving a fully competitive service at the Laredo Gateway

For all of these reasons, the Board should grant BNSF's request for trackage rights over the San Antonio - Laredo line. This would benefit Corn Products and other shippers, resulting in service improvements to the Laredo Gateway, as well as provide a competitive alternative for all shippers.

I certify under penalty of perjury that this statement is true and correct. Executed this 2nd day of November, 1998.

Sincerely yours,

Thomas Waskiewicz
Director of North Amer. Logistics

cc: Mr. Delane D. Finke
Burlington Northern Santa Fe
1700 East Golf Road
4th Floor
Schaumburg, Illinois 60173

HMM

October 14, 1998

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

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

Dear Secretary Williams:

My name is Kee Soo Pahk. I am the president of Hyundai Intermodal, Inc.. Our company is located in Gardena, Ca. and is in the business of rail intermodal transportation service in the U.S., and supports the inland transportation needs of Hyundai Merchant Marine Co., Ltd. with over 305,000 ocean containers of inbound and outbound shipments in North America.

I am filing this statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal. We believe that this request will benefit our company and other shippers and will result in service improvements and needed dispatching flexibility in the Houston terminal.

Specially, this request would permit BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, and not just over the former HB&T East and West Belts. The result would be to reduce congestion caused by BNSF trains staged in the Houston terminal waiting for track time to use the main trackage rights lines they currently share through the terminal and on the former HB&T East and West Belt lines.

This request would create an important safety valve for dispatchers to permit BNSF trains to traverse clear routes in the Houston terminal. It is a reasonable measure to avoid congestion and should pose no harm to UP as it does not give any competitive advantage to BNSF's operations in the Houston terminal.

The request thus stands to benefit all rail carriers operating in the Houston terminal area and the shipping public. It is in everyone's best interest to achieve better service for shippers and to reduce the congestion in the Houston terminal area. Accordingly, the Board should grant BNSF's request.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14th day of October. 1998.

Sincerely,

Kee Soo Pahk
President

HYUNDAI INTERMODAL, INC.

Farmrail

Farmrail System, Inc., Post Office Box 1750, Clinton, OK 73601 580-323-1234

October 16, 1998

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

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

Dear Mr. Williams:

My name is George C. Betke, Jr. I am Chief Executive Officer of Farmrail System, Inc. and of its two common-carrier railroad subsidiaries, Farmrail Corporation and Grainbelt Corporation. They operate 354 miles of contiguous light-density trackage, referred to as "Western Oklahoma's Regional Railroad," from headquarters in Clinton, Oklahoma. At least 50% of the traffic base normally is hard red winter wheat, the preferred variety for export, which moves for the most part to Houston and Galveston.

This statement is filed in support of The Burlington Northern and Santa Fe Railway Company's request for trackage rights over certain lines of Union Pacific Railroad Company affecting traffic flows in and through the terminal area of Houston, Texas. The objective is to alleviate ongoing congestion by allowing the use of any available clear route to relieve back-ups which restrict access to the Houston Public Elevator and cause delays in reaching other Gulf Coast ports and international gateways. Transit times now are extended and irregular, and equipment utilization suffers accordingly.

The domestic railroad industry operates an interconnected system comprised of a few mega-carriers and about 550 small feeder lines that are attempting to coordinate management of a customer-driven service business. Those of us operating branch lines on the fringe of that system compete with truckers providing highly predictable one- or two-day delivery to most destinations. In comparison, we can offer only "best-efforts" transportation with a result that is totally dependent on the performance of a connecting trunk-line railroad. Current best efforts on agricultural and general merchandise traffic simply are not good enough to satisfy customer needs.

Every short line I know has substantial excess capacity - room to grow its business. That growth opportunity, particularly in truck-competitive freight, is constrained by trunk-line congestion in key terminal areas such as Houston that cascades throughout the national

network. Its adverse impact on the velocity of movement is devastating to an industry that is both intensely competitive and capital-intensive. Those bottlenecks must be relieved.

Though some observers attribute ongoing congestion in Houston to poor planning of Class I railroad mergers, I believe the problem is likely to persist as the railroads regain market share in a growing domestic economy and as additional international commerce is directed through the Gulf ports as a result of the North American Free Trade Agreement. This view calls for more than a stop-gap solution to a crisis situation that has not been corrected in nearly two years. The "fix" should not merely deal with current traffic volumes, but anticipate future demand as well.

Coordination of dispatching at the Spring Center was a positive step, and logical sequels are expansion of neutral dispatching territory and joint use of scarce trackage. Since BNSF's requests afford it no access to additional customers, I would hope that traditional "turf" issues can be overridden in the interest of improving the over-all competitiveness of our industry.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 16th day of October, 1998.

Yours truly,

George C. Betke, Jr.
Chairman and Chief Executive Officer

Ferrocarril Mexicano

October 16, 1998
DJ-699/98

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

Re. STB Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

Dear Secretary Williams:

I am writing this letter to supplement the September 14, 1998 verified statement executed by Javier Teilo Sandoval on behalf of Ferrocarril Mexicano, S.A. de C.V. (known as "FERROMEX") which was contained in Volume IV of UP's Opposition to Condition applications, filed with the Board on September 18, 1998.

In the September 14, 1998 statement, we indicated that FERROMEX opposed BNSF's request for overhead trackage rights over UP's line between San Antonio and Laredo. Although FERROMEX maintains that view, we would like to clarify that FERROMEX fully supports BNSF's request for permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio line for trains destined to Eagle Pass Tx. We believe that this request will benefit our company and as well as shippers and will result in service improvements and needed operational flexibility particularly for traffic using the Eagle Pass gateway.

BNSF's trackage rights on UP's Caldwell-Flatonia-San Antonio line were granted by UP in July, 1997 to permit BNSF to bypass its more congested permanent trackage rights route via Temple-Smithville-San Antonio. We understand that these rights, however, are temporary and cancelable on short notice. In its September 18 filing, UP indicated to the board that it intends BNSF to return to its permanent trackage rights route at some time in the future and commence directional operations on the Caldwell to Flatonia route.

The board must understand the importance of these bidirectional rights to our company and to shippers. These rights have allowed BNSF to use the route that is least congested and most able to handle traffic, and thus have enhanced the consistency in scheduled operations and service provided by BNSF for traffic interchanged with FERROMEX at the Eagle Pass gateway. Indeed, this routing was available to SP pre-merger since it was formerly a SP route, and BNSF's request would simply permit BNSF to replicate the competitive options offered to shippers by the former SP.

For all of these reasons, the Board should grant BNSF's request to maintain these bidirectional overhead trackage rights on a long-term basis. The granting of BNSF's request would ensure appropriate operational flexibility to permit BNSF to provide shippers with a long-term competitive, consistent and reliable service to the Eagle Pass gateway.

Bosque de Ciruelos No. 99, Col. Bosques de las Lomas, 11700 México, D.F.

Ferrocarril Mexicano

Concerning the request of BNSF to make permanent its temporary rights between Caldwell and Placedo, via Flatonia, being this a shorter route to the Tex Mex interchange at Robstown, and the Brownsville gateway to Mexico, FERROMEX opposes the granting of permanent trackage rights in this route for traffic destined to Mexico. We believe this could make less competitive the Eagle Pass gateway to Mexico.

I certify under penalty of perjury that the foregoing is true and correct. Executed this day of October 16,1998.

Sincerely,

LORENZO REYES RETANA
By FERROCARRIL MEXICANO, S.A. DE C.V.

Bosque de Ciruelos No. 99, Col. Bosques de las Lomas, 11700 México, D.F.

INTERNATIONAL PAPER

November 14, 1998

INTERNATIONAL PLACE I
6400 POPLAR AVENUE
MEMPHIS TN 38197
PHONE 901 763 6000

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Room 711
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

The International Paper Company, as a large rail shipper, applauds your decision to institute a new proceeding as part of the five-year oversight condition imposed in the Union Pacific/Southern Pacific merger decision to examine requests made for additional remedial conditions to the merger.

The International Paper Company is the world's largest paper company, conducting operations throughout the United States from over 650 paper and lumber mills, converting plants, warehouses, distribution centers, retail stores and related sales service support offices. Its manufacturing facilities in the United States produce paper and paper products, including wood-pulp, pulpboard, wrapping and printing papers, converted products, including corrugated boxes, folding cartons, and milk cartons, and wood products, including lumber, plywood, decorative panels and other special products to serve the building trades, as well as chemical products.

International Paper moves these products throughout the United States and North America utilizing the services of a number of transportation vendors. In particular, and as relevant here, International Paper is heavily dependent upon the nation's diminishing number of railroads to satisfy both its inbound and outbound long haul transportation needs. Accordingly, International Paper has been directly affected by the post -1980 trends that have resulted in both a heavy concentration in the rail industry, as well as the ever-diminishing nature of intramodal rail competition, and the concomitant deterioration in rail service quality.

The service meltdown resulting from the UP/SP merger is unprecedented in all aspects. The International Paper Company has suffered economic damages, experienced inconsistent service and unparalleled delays in transit. The Surface Transportation Board ("Board") has rightfully recognized Union Pacific's (UP) inability to promptly and effectively solve the problem and the Board has been wise to implement their oversight powers to review and remediate the service crisis.

The International Paper Company is served by the UP at all six of its primary paper mills in the southwestern United States, (Camden and Pine Bluff, AR; Bastrop, Mansfield and Pineville, LA; and Texarkana, TX). Immediately after the merger in September 1996, contrary to all UP media and public relations announcements, our UP/SP service levels dropped steadily through the Holidays and slowly recovered during the Spring of 1997. In June 1997, we encountered severe transit service problems to the west coast via UP, purportedly generated by systems

integration and consolidation "glitches". In July, overall transit performance started to deteriorate again and by August we were experiencing boxcar supply shortfalls at our southwestern mills, which continues to this day, affecting various mills ability to conduct business and serve their customers. On time transit performance via the UP has been a roller coaster ever since. Please see attached "Rail On Time Transit Performance for 1996 to 1998 YTD". This graph represents 145,000 carload shipments of outbound finished paper products from our mills to customers for the 33 month period noted. Union Pacific' sales, customer service and operating personnel worked feverishly during this period to correct problems and alleviate conditions with which we were suffering, with only limited success. Their management repeatedly made public pronouncements, gave assurances, and made promises, they could not and sadly did not meet. Plants were forced to curtail production or close for periods of time. Truck transportation for long haul moves was substituted at great expense, alternative rail routes were used in the few instances where that still was available; however, in the vast majority of cases we had little choice but to continue to use Union Pacific's service and endure their innumerable, ineffective efforts to bring their operating problems to heel in any reasonable time frame. No shipper should be compelled by reason of regulatory acceptance of what have turned out to be groundless commitments of railroad management or otherwise to face the possibility of any repeat of this "misadventure" in the future.

Where International Paper had the option of using alternative rail carriers during this crisis, we turned to those carriers, KCS and BNSF, in an attempt to preserve some semblance of rail operations in a marketplace numbed from a year of continuous, crippling service dysfunction not seen before on such a grand scale. Where rail alternatives were not available, we were compelled to continue to use UP service. Their overwhelming geographic dominance was gained through their merger with the SP and it has forced us to remain with them despite their intractable service problems and protracted inability to effectively deal with those issues in a timely and responsive manner.

I note in UP's July 1, 1998 Second Annual Report on Merger and Condition Implementation, that UP's attorney incorrectly states on Page 78, footnote 10, that International Paper "strongly opposed the BNSF (trackage) rights during the proceeding (and) now concedes that BNSF is replacing the competition that SP had provided in this (Houston-Memphis) corridor." For the record, International Paper did not so much oppose BNSF trackage rights as much as argue for track ownership by a replacement carrier, and BNSF would have certainly been an acceptable replacement carrier. While the BNSF is making substantive efforts to increase its presence on the line, it must, of course, be recognized that BNSF has to contend with UP operations and dispatch control over the line, something with which the SP did not have to contend and which will limit the BNSF's ability to be the complete replacement for the SP that was envisioned and promised. Because of this very situation, we have not yet been able to come to the conclusion that the BNSF has in fact replaced the SP competition in this corridor.

BNSF through the UP/SP merger obtained rights to serve our mills at Camden and Pine Bluff, Arkansas. Our ability to utilize their services as well as their ability to provide service during this crisis period was limited due to a number of significant issues and impediments. While BNSF's desire to serve our mills was communicated clearly, their ability to do so was constrained by

issues both within their control as well as beyond their control. The expected excess in boxcar equipment supply and locomotive power generated as a result of BNSF's own merger consolidation did not materialize as evidenced by BNSF's subsequent large orders for locomotive power as well as its inability to attract and handle anything but the most modest amount of traffic from these facilities. Notwithstanding the BNSF's overly optimistic pre-merger posturings about expected locomotive and boxcar supply surplus, International Paper is making every reasonable effort to employ BNSF services, as intended by this Board, but has only been able to achieve a modest degree of success. It is simply a fact that BNSF still does not have available the quantity and quality of cars suitable to meet our needs, which the pre-merger competitors UP and SP had.

Of course, it is manifestly unreasonable of us, as well as this Board, to think that BNSF could enter upon the Houston to Memphis scene and immediately serve a score of new customers to the degree and extent developed through years of operating experience and investment decisions of the pre-merger competitors now aligned as a post merger behemoth against the tentative efforts of this new entrant, BNSF, with its access limited to "2-to-1" customers and the need to subordinate its operational requirements to that of the landlord carrier, UP. It seemed plain then and it is clear now that BNSF cannot be the competitive replacement of the SP, as envisioned by the Board, anytime soon. Perhaps at some future date. We can only hope that the Board will respond and deal with all the unresolved competitive issues generated by the UP/SP merger.

Today we wish to inform the Board of operational issues beyond BNSF's control that can and should be changed to correct structural deficiencies in BNSF's rights as well as to improve movement of trains into, out of and through the Houston terminal which will favorably impact BNSF's ability to serve our mills on the Houston to Memphis corridor. For BNSF to be able to be a viable competitor to the merged UP and practicable replacement for the SP, it must gain access to all customers on branchlines as well as shortlines connecting to the Houston to Memphis corridor, formerly SP. One such case is before you today awaiting your action in Finance Docket 32760 (Sub No. 21) wherein the Arkansas, Louisiana, and Mississippi Railroad Company (ALM) seeks access to the BNSF at Fordyce, AR. International Paper strongly supported that pleading in our reply to the ALM's petition. I will not burden the record further on that point, but instead urge the Board to review our comments carefully. We urge your prompt and favorable consideration of these requests. The need to ameliorate serious structural defects in BNSF's rights as well as to alleviate the opportunity for future rail service meltdowns of the type experienced in Houston and radiating out over the whole UP system, cannot be overstated.

The UP/SP service meltdown has made it clear that alternative rail service is necessary to alleviate service problems when they occur, and that it is incumbent on the Board to take steps to preclude its recurrence in the future, here or elsewhere in the U. S. rail network. That this may lead to some lost business to the UP should not be controlling. Customers are not owned by railroads and should not be forced to endure such operational disasters. Therefore, consistent with the Consensus Party Plan and the principles outlined in our letter to the Surface Transportation Board in the matter of finance docket No. 32760 (Sub No. 30) dated August 27,

1998, the International Paper Company supports the following specific requests of the Burlington Northern and Santa Fe Railway:

A. **Correct Structural Deficiencies in BNSF's Rights**

1. Grant permanent bi-directional trackage rights.

- Caldwell-Flatonia-San Antonio, TX
- Caldwell-Flatonia-Placedo, TX

On the San Antonio route, BNSF's trackage rights are temporary and cancelable on short notice; UP provided these rights to permit BNSF to bypass BNSF's more congested permanent trackage rights route via Temple-Smithville-San Antonio in July, 1997. Depending on congestion on either route, BNSF would like to maintain these rights long-term, permitting BNSF to use whichever route is least congested and most capable, on a day-to-day basis, of permitting BNSF to operate consistent and scheduled operations. In its September 18 filing, UP indicated to the Board that it intends BNSF to return to its permanent trackage rights route at some time in the future and commence directional operations on the Caldwell to Flatonia route. The Board must understand the importance of these bidirectional rights to shippers. These rights have allowed BNSF to use whichever route is least congested and most capable, on a day-to-day basis, and thus enhance the consistency in scheduled operations and service provided by BNSF to shippers like our company.

On the Placedo route, BNSF's rights are also temporary, directional (southbound) and conditional on UP continuing directional operations south of Houston (UP filed with the Board on September 18, that they plan to discontinue it). BNSF would prefer to operate its Corpus Christi/ Brownsville business bi-directionally via this route on a permanent basis, rather than via Algoa if UP discontinues directional operation in this corridor. Operations via the Algoa route, BNSF maintains, brings traffic through the Houston terminal which need not go there; permanently rerouting via Flatonia would move this traffic to a less congested route away from Houston. I believe that BNSF needs to ensure that it can avoid operating over the Algoa route -- even if UP completes proposed capital improvements on that route -- to minimize the risk of delay for its trains.

Having permanent versus temporary trackage rights would also permit BNSF participation, as necessary and appropriate, in needed infrastructure investment (sidings, etc.) on those routes, something BNSF cannot justify when their rights can be canceled on short (15-30 day) notice by UP.

These routes are both former SP routes, which SP used to provide competition to UP. If BNSF has long-term access to these lines, BNSF is duplicating SP's lines, not improving on its competitive position vis-a-vis UP beyond what SP had the potential to do.

2. **Harlingen-Brownsville**

- Grant BNSF temporary trackage rights over both the UP and SP routes between Harlingen and Brownsville until new bypass trackage is completed north of Brownsville, permitting curtailment of the SP route

- Allow Brownsville & Rio Grande International Railroad (BRGI) to act as BNSF's agent in providing service, Harlingen-Brownsville-Matamoros

This will permit BNSF to commence trackage rights operations to south Texas, discontinue haulage via UP, which has proven unsatisfactory to customers, and provide effective service to both Brownsville and the border crossing. The bypass trackage connection will not be done, at best, until the end of 2000. We understand that BRGI and customers in Brownsville have already indicated their support to correct these structural deficiencies in BNSF's rights.

3. **Grant BNSF trackage rights over additional UP lines to permit BNSF to fully join UP's directional operations wherever instituted.**

- Fort Worth-Dallas via Arlington
- Houston-Baytown via the UP Baytown Branch

This request is aimed at improving service for BNSF customers, reducing congestion, and eliminating the potential for UP to favor its own traffic over that of BNSF moving on trackage rights lines. Presently, where BNSF has to run bi-directional operations over UP trackage rights lines where UP has instituted directional operations, BNSF trains are delayed when running "against the current" of UP's directional operations until the line is cleared of UP trains. Besides delaying BNSF traffic, UP traffic is potentially delayed while BNSF operates against the UP "current of traffic", consuming more of the line's capacity than a directional operation uses. BNSF views this request as a general principle to be applied wherever such issues exist.

B. **Improve movement of trains into, out of, and through the Houston terminal**

1. **Grant BNSF overhead trackage rights on additional UP Houston terminal routes to permit BNSF to bypass congestion and improve through flows,** for example, West Junction-Tower 26/Englewood Yard.

This request would permit BNSF (and TexMex) to operate over any available clear routes through the terminal as determined and managed by the Spring Texas Consolidated Dispatching Center, and not just over the former HB&T East and West Belts, potentially reducing congestion caused by BNSF (and TexMex) trains staged in the Houston terminal waiting for track time to use the main trackage rights lines they currently share through the terminal, the former HB&T East and West Belt lines.

This request thus stands to benefit all rail carriers operating in the Houton terminal area and the shipping public. It is in everyone's best interest to achieve better service for shippers and to reduce the congestion in the Houston terminal area. Accordingly, the Board should grant BNSF's request.

Specifically these BNSF proposed additional conditions are built on the following key themes, which we endorse:

- UP's service crisis affected BNSF's ability to provide viable competition, as expected by the STB (BNSF to replace SP competition to UP), at the new customers BNSF gained access to as a result of the UP/SP merger, i.e. International Paper mills at Camden and Pine Bluff, AR. BNSF cannot provide vigorous competition in an environment of unpredictable and unreliable UP service.

- The STB should ensure that the competitive problems induced by the UP service crisis do not recur, by making clearly targeted structural changes in the UP/SP merger conditions.

- BNSF cannot provide a competitive replacement for SP post-merger if BNSF is unable to use, at a minimum, the same routes used by SP to reach "2-to-1" customers and markets.

- Operating problems, as occurred with UP along the Gulf Coast and unanticipated at the time the UP/SP merger was approved, are amenable to operating solutions.

- Operating solutions can provide near-term service relief without waiting for long-term infrastructure investments to come on line.

- BNSF's proposed structural realignments would shift traffic away from Houston and to less congested routes, freeing up Houston-area rail infrastructure to handle Houston originating and terminating business.

- Expanded neutral switching and dispatching would improve competitive service and reduce the potential for UP favoritism of its traffic versus BNSF's or TexMex' traffic moving over trackage rights or in haulage and reciprocal switch service.

- New overhead trackage rights via UP between San Antonio and Laredo would ensure meaningful competition for shippers at the Laredo gateway.

- BNSF is not here requesting access to any additional customers.

We believe that these requests are complimentary to and supportive of the goals of the Consensus Parties and will produce tangible benefits for Houston shippers and all shippers, International Paper included, located on lines affected by the 1997-1998 UP service crisis by:

1. Expanding rail capacity and investment by all the existing rail carriers.

2. Providing neutral and fair dispatch of all rail traffic;

3. Ensuring that all shippers can be served by the rail carriers currently operating in the area; and,

4. Preserving competitiveness by ensuring that adequate rail service alternatives exist in the future.

These four principles are central to our concerns, have been conscientiously advocated and consistently supported by the International Paper Company in proceedings before this Board and its predecessor agency. The importance of alternative rail carriers, neutral switching and neutral dispatching cannot be overstated in today's rail markets. We urge you to bear them carefully in mind as this proceeding goes forward.

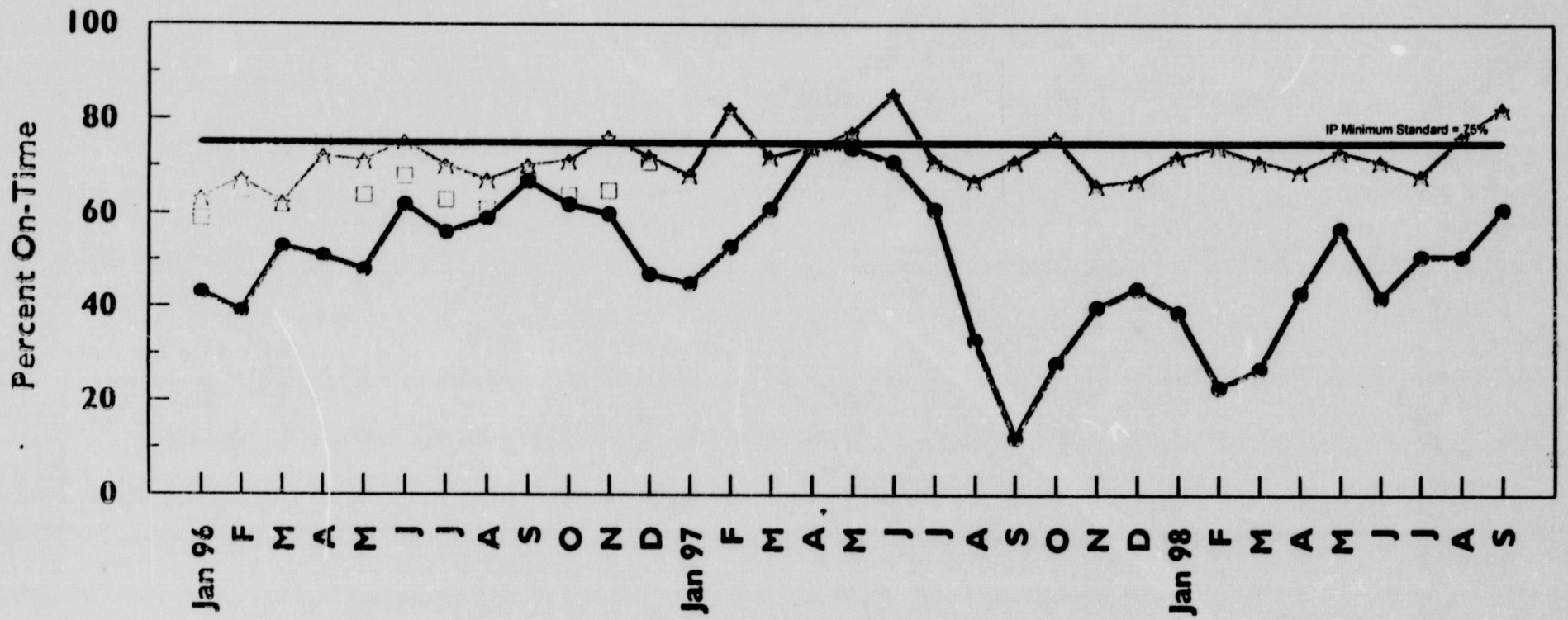
Thank you again for your responsive action in initiating this proceeding and we will watch closely as it unfolds in the weeks ahead.

I, Charles E. McHugh, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of the International Paper Company, executed on November 14, 1998.

Charles E. McHugh
Manager, U .S. Distribution Operations

Rail On-Time Transit Performance *

1996- 1998



	Jan 96	F	M	A	M	J	J	A	S	O	N	D	Jan 97	F	M	A	M	J	J	A	S	O	N	D	Jan 98	F	M	A	M	J	J	A	S
SP 96	59	65	62	75	64	68	63	61	67	64	65	71																					
UP 96	43	39	53	51	48	62	56	59	67	62	60	47	45																				
UP/SP 97-98													45	53	61	74	74	71	61	33	12	28	40	44	39	23	27	43	57	42	51	51	61
US RR (-UP)	63	67	62	72	71	75	70	67	70	71	76	72	68	82	72	74	77	85	71	67	71	76	66	67	72	74	71	69	73	71	68	76	82

*Data supplied by railroads

Intl Paper 10/98

Roswell
1400 Holcomb Bridge Rd.
Roswell, GA 30076-2199

23-October-1998

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

RE: Finance Docket No. 32760
Houston/Gulf Oversight Proceeding

My name is Justin R. Chan. I am a Logistics Coordinator with Kimberly-Clark Corporation, a major U.S. consumer products company with an administrative headquarters in Roswell, Georgia.

Kimberly-Clark is filing this statement in support of the Burlington Northern and Santa Fe Railway's ("BNSF") request in Finance Docket No. 32760, Houston/Gulf Oversight Proceeding, that the Surface Transp rtation Board grant overhead trackage rights to enable the BNSF to join the directional operations over any Union Pacific Railway ("UP") line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows.As a significant user of BNSF's rail services, Kimberly-Clark believes that this request will benefit our company and other shippers and will result in service improvements and needed operational flexibility.

It is Kimberly-Clark's understanding that under present operations, the BNSF has to run bidirectional operations in certain situations over UP trackage rights lines where UP has instituted directional operations such as over the Fort Worth to Dallas, TX line (via Arlington). In such instances, BNSF trains are delayed when running "against the current" of UP's directional operations until the line is cleared of UP trains. In addition to delaying BNSF traffic, UP traffic is potentially delayed while BNSF operates against the UP "current of traffic", consuming more of the line's capacity than would be utilized with directional operations. These delays to both BNSF and UP traffic adversely impact service to our company and other shippers.

UP's accommodation of its own operational needs – and later decisions to cease directional running on its lines such as on the former SP Caldwell-Flatonia-Placedo line -- causes disruption to BNSF's operations and inhibits BNSF's ability to provide consistent, predictable and reliable service to our company and other shippers.

Roswell
1400 Holcomb Bridge Rd.
Roswell, GA 30076-2199

Such significant changes in rail operations not only undermines the competitive rights BNSF was granted but understandably inhibits BNSF's incentive to make capital commitments to enhance service to shippers.

In sum, Kimberly-Clark believes that the BNSF's request would help to alleviate the degradation in service and reduce congestion on the lines over which UP has instituted directional operations. Kimberly-Clark is in favor of this request because it would eliminate the potential for UP to favor its own traffic over that of BNSF moving on trackage rights lines.

For all of these reasons, the Board should grant BNSF's request. It would benefit Kimberly-Clark and other shippers and will result in service improvements for both UP and BNSF.

Justin R. Chan
Fiber Procurement & Logistics
Kimfibers

From Forrest L. Becht, 402 W. Washington St., New Iberia, LA 70560
Phone: Office (318)364-9625, Home: (225)272-9728, Fax: Office (318) 369-1487, Home: (225) 272-9649
e-mail: Office: Fbecht@gwrr.com, Home: flbtrain@earthlink.net

October 21, 1998

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

Dear Secretary Williams:

Please find attached a statement representing Louisiana & Delta Railroad's position on the latest STB oversight hearings for the Union Pacific Railroad and the Houston/Gulf Coast. Our purpose in submitting a statement is that Louisiana & Delta Railroad serves customers of both BNSF and UP – in fact, both railroads compete head-to-head for our customer's business. As a consequence, we are vitally interested in service issues as far west as Houston and beyond that directly affect movement of our customer's shipments.

Please feel free to contact me if the STB has any questions concerning our statement. Thank you.

Cordially,

FLB

Forrest L. Becht
President & General Manager

VERIFIED STATEMENT
OF
LOUISIANA & DELTA RAILROAD, INC.

I am the President & General Manager of the Louisiana & Delta Railroad, Inc. We are in the business of owning and operating 112 miles of former Southern Pacific branch lines in south central Louisiana. We also operate via trackage rights on the BNSF/UP mainline from Raceland to Lake Charles, Louisiana. Louisiana & Delta handles 15,000 car loads of business a year and interchanges traffic with both Union Pacific and Burlington Northern Santa Fe.

Louisiana & Delta is vitally interested in and concerned about service problems and issues that may adversely affect movement of our customer's shipments. We must have improved fluidity and reduced congestion for all operations in the area.

Since mid 1997 Louisiana & Delta has lost over 2,000 carloads of business because of Union Pacific's inability to supply cars to load and because of customer dissatisfaction with Union Pacific's transit time. Much of the lost business was the result of congestion in Lake Charles, Louisiana, and Beaumont/Houston, Texas. It is critical that these terminal areas be kept fluid. BNSF's plan, from our perspective, goes a long way towards accomplishing that goal.

We do not support any conditions which would result in the handoff of UP traffic to any other railroad where UP has the potential to invest to handle the traffic safely and efficiently.

We urge the Surface Transportation Board to focus on mechanisms by which the physical handling of traffic can be improved. Operations in the Gulf Coast service area must be kept fluid for us to survive.

I declare under penalty of perjury that the foregoing is true and correct and that I am authorized to file this verified statement. Dated October 21, 1998.

FLB

Forrest L. Becht
President & General Manager

Minnesota Corn Processors, Inc.

October 26, 1998

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

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

My name is Gary E. Smith. I am the Transportation Manager for Minnesota Corn Processors which is located in Marshall, MN. Our company is commonly referred as a Corn Wet Milling company. Minnesota Corn Processors is predominately a rail shipper; shipping over 15,000 rail shipments in privately owned tank cars.

As with our prior filing in support of the BNSF position on access to the South Texas Liquid Terminal in San Antonio, TX, we believe it is important to support any initiative that would either preserve or improve the service to our customers. Therefore we support the BNSF's request the STB grant overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the directional flows. We believe that this request will benefit our company and other shippers and will result in service improvements.

One of the important benefits that was to result from the UP/SP merger was that service would be significantly improved by the ability to run directional operations over parts of the new UP line. By making the BNSF conduct bidirectional operations over directional lines contradicts the spirit of the merger. In such instances , BNSF trains are delayed when running "against the current" of UP's directional operations until the line is cleared of UP trains. In addition to delaying the BNSF traffic, UP traffic is potentially delayed while the BNSF operates against the UP traffic consuming more of the line's capacity than would be utilized with directional operations. These delays to both the BNSF and UP traffic adversely impact service to our company and other shippers. Certainly this not what the STB had in mind when the mergers were approved.

In summation we believe that the BNSF request is justified and would help to alleviate the degradation in service and reduce congestion on the line over which the UP has instituted directional operations. We, therefore, request that the STB grant the BNSF request.

Sincerely,

Gary E. Smith

Gary E. Smith
Transportation Manager

The Rice Company
1624 Santa Clara Street, Suite 230
Roseville, California 95661
U.S.A.
Telephone (916) 784-7745
Telex 6730750 BLC UW
Fax (916) 784-7681

WHITE RICE · BROWN RICE · ROUGH RICE

November 3, 1998

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

Dear Honorable Vernon A. Williams:

This letter is to lend support to the proposals being made by the Burlington Northern Santa Fe Railroad (BNSF) to reduce the rail congestion in the Gulf Coast area.

We, The Rice Company, believe that BNSF's proposed structural realignment proposal will restore the competitive situation at Laredo as it existed prior to the Union Pacific-Southern Pacific merger. We agree that BNSF should be allowed to seek overhead trackage rights on Union Pacific's line between San Antonio and Laredo. We believe if BNSF is allowed these trackage rights, it will reduce the rail congestion that has persisted in the Gulf Coast area for over a year.

Please feel free to contact us at Tel (916) 784-7745 if you have any questions.

Sincerely,

Vicki Manzoli
Operations Manager

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

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

William A. Mullins

October 16, 1998

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

D 30

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

191669 191670 191671 191672 191673 191674 191655

Dear Secretary Williams:

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

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

Sincerely,

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

cc: Parties of Record
Honorable Stephen J. Grossman

STB FD 32760 (Sub 30) 10-21-98 D 191770

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

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ERIKA Z. JONES
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October 21, 1998

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 711
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 26, 30 and 32)

Dear Secretary Williams:

Please note the following errata in BNSF's Rebuttal Evidence and Argument in Support of Requests for Additional Remedial Conditions, filed October 16, 1998, in the above-referenced proceeding:

Page 1, footnote 1:

Insert the word "and" after the word "Branches" in line 3, place a period after the word "Houston" in line 3, and delete the remainder of the footnote thereafter.

The corrected footnote 1 now reads: "BNSF has determined to withdraw from the Board's consideration at this time its requests for: (i) neutral switching supervision on the former SP Sabine and Chaison Branches; and (ii) PTRA operation of the UP Clinton Branch in Houston."

A corrected page 1 is attached hereto for the convenience of the Board.

Page 15, line 7:

Change "to ensure" to "so".

Page 32, line 4:

Change "could" to "to".

Tab 1, Verified Statement of Ernest L. Hord, page 7, line 13:

Delete "this".

Sincerely,

Erika Z. Jones

Attachment

cc: All Parties of Record (with encl.)

BNSF-10

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

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

-- CONTROL AND MERGER --

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

[Houston/Gulf Coast Oversight]

BNSF Rebuttal Evidence And Argument
In Support Of Requests For Additional Remedial Conditions

The Burlington Northern and Santa Fe Railway Company ("BNSF") submits this rebuttal evidence and argument in further support of its request that the Surface Transportation Board (the "Board") impose the additional remedial conditions proposed in its July 8, 1998 Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area ("Application").[1/]

[1/] BNSF has determined to withdraw from the Board's consideration at this time its requests for: (i) neutral switching supervision on the former SP Sabine and Chaison Branches; and (ii) PTRA operation of the UP Clinton Branch in Houston.

MAYER, BROWN & PLATT

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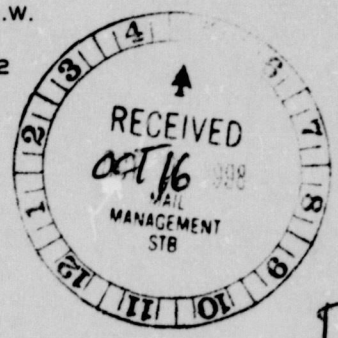

October 16, 1998

VIA HAND DELIVERY

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

Sub 30

Re: STB Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

191652 191653 191654

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five (25) copies of BNSF's Rebuttal Evidence And Argument In Support Of Requests For Additional Remedial Conditions (BNSF-10) in the above-referenced docket. Also enclosed is a 3.5-inch disk of the filing in WordPerfect 6.1 format.

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

Sincerely,

Erika Z. Jones/cds

Erika Z. Jones

Enclosures

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

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

-- CONTROL AND MERGER --

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

[Houston/Gulf Coast Oversight]

BNSF Rebuttal Evidence And Argument In Support Of Requests For Additional Remedial Conditions

---

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Michael E. Roper
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October 16, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

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

-- CONTROL AND MERGER --

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

[Houston/Gulf Coast Oversight]

BNSF Rebuttal Evidence And Argument
In Support Of Requests For Additional Remedial Conditions

The Burlington Northern and Santa Fe Railway Company ("BNSF") submits this rebuttal evidence and argument in further support of its request that the Surface Transportation Board (the "Board") impose the additional remedial conditions proposed in its July 8, 1998 Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area ("Application").[1/]

[1/] BNSF has determined to withdraw from the Board's consideration at this time its requests for: (i) neutral switching supervision on the former SP Sabine and Chaison Branches; (ii) PTRA operation of the UP Clinton Branch in Houston; and (iii) overhead trackage rights between San Antonio and Laredo.

INTRODUCTION

Just a year ago this month, the Houston/Gulf Coast area was in the midst of what UP itself has characterized as a "harrowing service crisis". UP's Opposition to Condition Applications ("UP Opposition") at 1. Responding to the numerous problems caused by UP's inability to provide timely or reliable service, and in some cases any service at all, to shippers and other railroads in the area, the Board instituted an emergency service order proceeding to provide all parties with an opportunity to be heard on whether the Board should enter a service order and, if so, how such an order should be structured. Although the Board acted promptly to address the service crisis, shippers and railroads incurred tremendous costs and expense in dealing with the crisis. The shipping public was harmed when it was unable to obtain essential rail transportation services, and rail carriers also suffered as they struggled with congestion, the inability to provide service to shippers, and related equipment and operating problems.

Now that the Service Order has expired and the service crisis appears to have abated, at least temporarily, UP argues in its own self-interest that no further action should be taken by the Board. However, real-life rail service problems show that limited modifications to certain of the existing UP/SP merger conditions are necessary to enable BNSF to provide long-term competitive, reliable service in the Houston/Gulf Coast area, both to customers to which BNSF gained access as a result of the UP/SP merger, and to customers on BNSF's system. Furthermore, the Board should take whatever action is necessary now to diminish the chance of a future service crisis in the Houston/Gulf Coast area.

Therefore, BNSF submits that the Board should act to adopt the modest operational modifications BNSF has proposed to ensure, to the extent possible, that BNSF can provide an effective competitive alternative for "2-to-1" shippers under "normal" operating conditions, as well as if UP's service problems recur. Such action would better implement the competitive structure of Decision No. 44 and help minimize the risk that shippers and other carriers will be forced to again endure the significant hardship and economic losses they experienced over the last year because of UP's admitted inability to provide viable service.

With respect to BNSF's proposal for overhead trackage rights on UP's line from San Antonio to Laredo, BNSF notes that this request was compelled by unanticipated service and related problems along the Algoa route, unanticipated changes in the development of the Mexican rail market, and Tex Mex's unwillingness or inability in the absence of KCS approval to negotiate competitive long-term service arrangements with BNSF for Mexican traffic.

Consistent with the intent of Decision No. 44, none of the proposed modifications would provide BNSF with any additional customer access.

BACKGROUND

BNSF and UP negotiated a settlement agreement which, as supplemented by the CMA Agreement and modified by the Board in Decision No. 44 (the "Settlement Agreement"), was designed to preserve competitive service for "2-to-1" and other shippers who otherwise would have lost two carrier service as a result of the merger of UP and SP. The Settlement Agreement provided BNSF with a variety of trackage,

haulage and other rights which, based on the reasonable expectations held by BNSF at the time, were expected to enable BNSF to be an effective replacement competitor to UP for the business of such shippers.

The Board expected BNSF to challenge UP with a fully competitive service along the trackage rights lines and at "2-to-1" points. Among the "public benefits" cited by the Board as it approved the conditioned UP/SP merger was the fact that "[s]hippers now served by SP, whose service is threatened by that carrier's decline, will now be assured of quality service by UP/SP or BNSF." Decision No. 44 at 108 (emphasis added).

However, no one anticipated the service crisis which UP would face as it merged its operations with those of SP. UP's implementation of the Operating Plan filed with the merger application as well as operating changes implemented in a "crisis setting" during the service meltdown caused UP to implement structural changes to the Houston/Gulf Coast area operating plan. Nor did anyone anticipate the massive structural changes UP would make in its combined operations in an effort to resolve the congestion and service problems at Houston and along the Gulf Coast, including the adoption of what UP has characterized as perhaps "the most extensive change in rail operations in American rail history" -- directional running over many key routes, including those shared by BNSF as a result of the Settlement Agreement. UP Opposition at 72. In addition, no one anticipated the extent to which UP would need to adopt short-term fixes to service problems, pursue permanent solutions to those problems, and revise its entire service and operations structure.

Against this background, described by UP itself as the successor to the "World War III" crisis faced by SP in the 1980's (UP Opposition at 63 et seq.), it should not come as a surprise that some of the service rights negotiated between BNSF and UP have not provided, and will not provide, shippers the fully competitive options contemplated by the parties at the time of the Settlement Agreement on a long-term basis. Indeed, given the complexity of rail operations in Houston and south Texas, it would have been surprising had the parties agreed upon a package which required no fine-tuning, even absent UP's service crisis. In fact, the Board retained oversight rights precisely in order to police the continuing utility of the conditions imposed by Decision No. 44. See Decision No. 44 at 146.

Of course, the service crisis did take place. UP's service problems and its responses directly impacted the efficacy of BNSF's rights, although this impact was obscured by the temporary operating rights granted BNSF and by the migration to BNSF of traffic which UP simply could not serve during the crisis. Reviewing post-merger operations, BNSF has identified structural deficiencies in some of the rights it currently holds on the Gulf Coast. Furthermore, some of UP's proposed long-term solutions to its service problems would, absent corrective relief, subject BNSF to significant and unanticipated operational problems in the future. Given the understandable incentive of a beleaguered incumbent UP to adopt strategies and solutions which solve its problems, even at the expense of its tenant competitor, the operational relief sought by BNSF is modest in nature and surgical in scope.

In deciding what new conditions are appropriate to adopt, the Board should look beyond the recently resolved crisis, including transient shifts in traffic distribution which were caused by the service crisis and which may not be sustainable. UP should not be penalized for the crisis by having to accept massive changes which, in essence, create an "open access" structure in Houston and south Texas. At the same time, however, the short-term gains of traffic to BNSF and Tex Mex -- influenced strongly by the temporary rights granted in the Emergency Service Order, UP's release of shippers from their contracts, and the migration of shippers from a UP which simply could not provide service -- cannot be viewed as evidence of long-term competition and should not be used to justify the denial of modest changes in BNSF's existing operating rights which are necessary to enable BNSF to provide long-term, reliable service to shippers.

These modifications should be imposed to enable BNSF to be an effective replacement for a competitive service option otherwise lost as a result of the UP/SP merger. BNSF and its shippers should not be locked into an operational "twilight zone" of trackage rights and customer access which, while forecast to be adequate and effective when they were negotiated in 1995 and 1996, have failed to keep pace with the unforeseen and significant changes in UP's operations as SP routes, customers, and flows have been merged into those of UP. Left unaddressed, BNSF's current trackage rights and customer access will diminish the value of BNSF's competition to these "2-to-1" and other shippers, adversely impact BNSF's operations for all its shippers in this area, and contribute to congestion, not fluidity, at "2-to-1" points and along trackage rights lines.

SUMMARY OF ARGUMENT AND EVIDENCE

The first question to be addressed in this oversight proceeding is the standard that should apply to the various requests for additional remedial conditions. UP has proposed a standard which effectively would prevent the Board from making any modifications to the conditions adopted in Decision No. 44 regardless of any identified deficiencies in those conditions or the impact of the service crisis, or UP's responses thereto on the ability of BNSF to provide competitive service for "2-to-1" and other shippers. In contrast to UP's self-serving formulation, BNSF believes that there are two categories of requests pending before the Board and that a different standard should apply to each category.

First, some parties, such as the Consensus Parties, request completely new competitive access, essentially giving many more Houston area shippers additional rail access beyond what they had pre-merger. In those cases, BNSF believes that the proper standard is the Board's traditional analysis. New competitive access should be granted only if it has been shown that (i) the UP/SP merger has actually resulted in a loss of pre-merger competitive options for shippers; (ii) the conditions imposed on the merger in the original decision have not effectively addressed the loss of pre-merger competitive options for identified shippers; and (iii) the proposed new conditions are narrowly tailored to address the identified competitive problem. In this respect, BNSF agrees with UP that general arguments about "open access" do not belong in an

oversight proceeding.[2/] See Verified Statement of Joseph P. Kalt ("V.S. Kalt") (Tab 3 hereto) at 6; Comments of the United States Department of Transportation ("DOT Comments") at 3 n. 1.

Second, in contrast, BNSF has requested conditions that would leave the basic competitive access structure unchanged from Decision No. 44, but which would modify a few specific limited operational rights in light of the lessons learned since implementation of the UP/SP merger and unanticipated changes made by UP. See V.S. Kalt at 6-7, 9-14; DOT Comments at 2 ("[T]he Department supports proposals that enhance the general efficiency of rail transportation if such proposals do not alter the relative competitive positions of the various railroads." These modifications would:

- not provide BNSF with additional access;
- preserve certain of the temporary operating rights which BNSF has used to date in order to provide service that is competitive with UP's service and which have proven beneficial to both carriers;
- limit the impact on BNSF's services of future changes in UP's operations;
- respond to specified changes in UP's operating practices that have hampered BNSF's ability to provide consistent, reliable competitive service in place of the pre-merger SP;

[2/] Both CSX Corporation and Norfolk Southern Corporation/Norfolk Southern Railway Company filed comments on the appropriate scope of Board action in merger oversight proceedings. Comments of Norfolk Southern Corporation and Norfolk Southern Railway Company on Request for Remedial Conditions, Comments of CSX Corporation on Requests for Remedial Conditions. BNSF's request is consistent with these views because BNSF is not seeking new conditions to create new competition; it is only seeking adjustments to the existing conditions to maintain the level of competition intended by the Board when it imposed the original conditions.

- provide BNSF with the planning certainty necessary for it to enter into long-term contracts with shippers and to make the long-term investments necessary to serve those shippers; and

- by adjusting BNSF's service rights to reflect UP's operations, forestall the need for the Board to micro-manage the steps which UP takes, today or in the future, to resolve service problems or to improve its services.

As Professor Kalt explains, the remedial conditions sought by BNSF which he reviewed should be imposed because such conditions are reasonably necessary to respond to: (i) operating circumstances unanticipated at the time of Decision No. 44; (ii) identified deficiencies in the rights obtained by BNSF; (iii) long-term incentives for UP to adopt operating policies which benefit it and, whether intentionally or not, harm BNSF's operations; and (iv) the dependence of BNSF's competitive position on UP's changing and evolving operating decisions and practices.[3/] See V.S. Kalt at 9-14. These conditions also would reduce the potential for service problems to recur in Houston and south Texas.

With respect to the proposal for overhead trackage rights to Laredo, BNSF's request should be imposed because it is reasonably necessary to respond to unanticipated service and related problems along the Algoa route, unanticipated developments in the structure of the Mexican rail market, and the unwillingness or

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[3/] Thus, contrary to UP's assertion, BNSF does not contend that its proposed conditions should be implemented simply because they would increase BNSF's competitiveness. What BNSF contends is that if, as it has shown, modifications to its existing conditions are necessary to enable it to effectively implement those conditions, the Board should act. The fact that UP's service problems may affect UP's ability to compete should not preclude the Board from acting to ensure that BNSF can effectively use its rights because the conditions were imposed to protect shippers and not to protect UP's ability to compete.

inability of Tex Mex, apparently due to KCS, to negotiate competitive long-term service arrangements with BNSF for Mexican traffic.

Accordingly, the Board should approve the operating refinements requested by BNSF because, as BNSF has shown, they are necessary and appropriate to preserve the intent of the original conditions approved by the Board. In addition, BNSF's operating refinements are in the public interest and are supported by various parties which have a vital stake in preventing the recurrence of a rail service crisis. Indeed, numerous shippers, shortlines and other entities have filed statements in this proceeding demonstrating their support of BNSF's requests.[4/] Importantly, DOT concurs that proposed modifications should be adopted "if they would better enable competing railroads to offer the level of competition provided before the merger." DOT Comments at 2.

UP has opposed BNSF's remedial conditions on several grounds. First, UP argues that BNSF is seeking "open access" to closed shippers. That argument is simply wrong as a matter of fact. BNSF has been appropriately responsive to rail shippers seeking relief from recent UP service failures as well as in clarifying merger conditions.[5/]

[4/] For the convenience of the Board, copies of statements in support of BNSF's requests (including those which were included in BNSF's Application) are provided at Tab 4.

[5/] To the extent that shippers and shortlines such as Dow Chemical Company, Formosa Plastics Corporation, USA and The Arkansas, Louisiana & Mississippi Railroad Company have themselves sought access to BNSF because of UP's inability to provide them with service, BNSF has simply described its ability to serve them should the Board grant the shippers' requests.

Second, UP argues that, because BNSF has gained market share in some areas since the merger, BNSF cannot make any showing that it needs additional relief to maintain its competitive position. This argument also fails. Initially, it is not possible to determine how much of BNSF's gains are attributable to UP's service crisis, including traffic BNSF attracted because UP could not serve the traffic or because of the temporary service rights granted BNSF during the service crisis.[6/] DOT Comments at 3. For example, as the service crisis worsened in 1997, UP voluntarily stopped serving some businesses and rail corridors and voluntarily released customers to BNSF and others from contract obligations committing volumes to UP. In addition, much of the traffic gained by BNSF, Tex Mex and others was obtained using rights granted by the Board pursuant to the Emergency Service Order or by UP in response to the emergency. Indeed, UP's comments about market share, particularly those involving the last 12-18 months, consistently ignore the negative and quite possibly temporary impact of the service meltdown on UP's market share. Now that the temporary rights have expired, UP will likely recapture and increase its market share, and it will have the incentive to adopt operational procedures which both enhance its competitive position and adversely impact BNSF's position.

[6/] DOT makes this very point in its September 18, 1998 comments, expressing concern that the Board not mistake as evidence of competition the increased traffic levels on BNSF and Tex Mex which "may well have been influenced by the terms of the Board's Emergency Service Order 1518 * * *" or by UP service reaching "a point where shippers that were able to switch traffic from UP probably did so." DOT Comments at 5-6.

Third, UP argues that BNSF's "proposals are largely requests for better routes than what BNSF negotiated in the Settlement Agreement and swore during the merger case was fully sufficient to preserve pre-merger competition." UP Opposition at 80. Again, this argument is incorrect. BNSF fully believed at the time that it entered into the Settlement Agreement that the rights it negotiated would be adequate to provide the intended level of service and expected competition following the merger, based on BNSF's understanding of UP's operating plans for the combined properties. However, given the scope of the UP/SP merger, it should not have been surprising if unforeseen developments offset some of the competitive results intended by Decision No. 44. See V.S. Kalt at 6. The prospect of such developments is, of course, heightened by the tenant nature of many of BNSF's rights. DOT Comments at 5. Of course, subsequent events have proven that many good faith expectations about the operations of the post-merger UP were incorrect, including UP's sworn statements and extensive testimony about its ability to run the merged railroads and the operating plans it submitted at the time of the merger filing.

Indeed, as UP changes its operations along trackage rights lines BNSF secured as a result of the merger, it is essential that these changes not have a discriminatory or adverse impact on the quality of service that BNSF, as a tenant, can provide as a competitor to the incumbent UP. See V.S. Kalt at 7; DOT Comments at 8. BNSF should not be forced to negotiate again for what it already negotiated: adequate trackage rights to provide an effective level of post-merger competition to customers who would have otherwise lost access to competition at "2-to-1" and other points. The Board should

ensure that the rights that BNSF received in fact enable BNSF to provide such competition on a continuing basis, and the fact that BNSF may have been able to negotiate a better or different deal in 1995 is irrelevant to the issue of whether BNSF is today able to effectively replace the competition provided by SP pre-merger. The need for continuing Board scrutiny is heightened when the original remedial conditions rely on the merged company to accept a tenant as a competitor. Whether the merged company intends to discriminate or not, there is the possibility that it will act in its own interest without regard to adverse and direct impacts on the quality of service provided by its tenant competitor. If that happens, as it has here, the Board should act. See V.S. Kalt at 7-12; DOT Comments at 8.

Fourth, UP argues that BNSF has failed to demonstrate that its requested remedial conditions are necessary to preserve the pre-merger level of competition, but instead is seeking only to add to pre-merger competition. Once again, UP is rebutting an argument BNSF did not make. BNSF is not seeking access to a single new shipper; it is only seeking to modify its operating rights to respond to UP's operating practices and to limit the ability of UP's operational decisions to negatively impact the ability of BNSF to provide competitive service to its existing shippers. In several instances, the additional permanent trackage rights BNSF is requesting are over the identical routes used by SP to provide competition to UP before the merger. Furthermore, as documented in BNSF's October 1, 1998 Quarterly Progress Report (BNSF-PR-9 at 17-19 and Attachments 13 to 24), BNSF continues to have difficulty in providing competitive

service to customers along trackage rights lines and at "2-to-1" points where UP provides haulage and reciprocal switch services to originate or terminate BNSF traffic.

Fifth, UP argues that imposition of the remedial conditions would subject UP to financial risk and undermine UP's efforts to recover from the service crisis. UP's only specific claim of potential financial harm arises from BNSF's request for overhead trackage rights via UP between San Antonio and Laredo; it does not attribute any financial harm to BNSF's other requested conditions. More fundamentally, UP's argument appears to be premised on the mistaken theory that it is entitled to some minimum share of Houston-area traffic and some guaranteed revenue level. While conditions proposed by other parties might significantly increase UP's risks by creating a system of open access, BNSF's requested conditions would only enable BNSF to compete on the same basis that SP competed pre-merger for the business of "2-to-1" and other shippers who otherwise would have been adversely impacted by the UP/SP merger. In any event, the Board is not obligated to make UP whole for the losses it incurred as a result of the service crisis, and it is not obligated to guarantee UP a constant or minimum share of the business of the shippers protected by Decision No. 44. See V.S. Kalt at 11. The goal of Decision No. 44 was to preserve the competitive options of shippers, and BNSF's proposals would do that, but no more.

Finally, despite UP's claims, the standard for review proposed by BNSF is consistent with the Board's views, expressed in its decision to retain oversight authority for five years after the merger. See Decision No. 44 at 146 (oversight condition imposed "to examine whether the conditions . . . imposed have effectively addressed the

competitive issues they were intended to address") (emphasis added). See also Finance Docket No. 32760 (Sub-No. 21), Decision No. 1 (served May 7, 1997) at 6 ("The oversight effort is intended to allow us to determine whether any problems have developed, with respect to implementation of the merger conditions addressing competitive harms, that require us to take further action."). Economic theory also requires that the Board respond to operational decisions by UP to ensure that the remedial conditions evolve to ensure that the intended competition opportunities for shippers are maintained. See V.S. Kalt at 6-8. Under UP's view of the scope of Board review, the Board would apparently review only the "narrow" question of whether there is "any link between merger-caused market power and [the] now-ended [service] crisis" regardless of the level or quality of service available. UP Opposition at 11. The Board would not have the ability to determine whether UP's changing operating practices or business strategies limit the ability of other railroads to provide competitive service. Rather, pragmatic fine-tuning of service rights to maintain competition is precisely the role the Board should play.

In short, the additional remedial conditions requested by BNSF are narrowly and appropriately designed: (i) to preserve the competitive balance approved by the Board in Decision No. 44; (ii) to respond to actual operating problems which have been identified since the UP/SP merger; (iii) to insulate BNSF from future UP operating decisions which could diminish BNSF's ability to provide competitive service; and (iv) to reduce the impact on BNSF and shippers of any future service crisis. Adoption of these conditions will enable BNSF to plan for long-term contracts with shippers and make the

capital and operational investments which will enable it to function, as all parties intended, as a long-term competitive alternative to the merged UP/SP. Adoption of these conditions is, therefore, fully consistent with and, indeed, required by Decision No. 44.

REBUTTAL ARGUMENT AND EVIDENCE

A. Permanent bidirectional trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo lines.

1. Caldwell-Flatonia-San Antonio

As a condition of the UP/SP merger, BNSF gained permanent trackage rights over the UP Temple-Smithville-San Antonio line in order to allow BNSF to offer shippers competitive service in the San Antonio market and for shipments via Eagle Pass to and from Mexico.[7/] However, congestion on that line has prevented BNSF from being able to provide that service over that route.

Accordingly, to reduce the impact of the congestion, UP granted BNSF temporary trackage rights (UP has termed the rights "haulage", but BNSF power and crews are used) over the former SP Caldwell-Flatonia-San Antonio route in July, 1997. UP states, however, that it will continue to allow BNSF to operate over the former SP line between Caldwell-Flatonia-San Antonio only "as long as [UP] believes that this is mutually desirable in light of capacity and operations on the track network in Central Texas." UP Opposition at 104. The agreement between BNSF and UP allows for cancellation by

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7/ As described in BNSF's Application, these trackage rights, establishing a shorter route for BNSF between Temple and San Antonio, were negotiated by BNSF and UP to replace haulage rights BNSF received from SP from Caldwell to Flatonia to San Antonio to serve Eagle Pass, TX, as part of BNSF's settlement with SP that preceded the BN/Santa Fe merger. See Application, Verified Statement of Ernest L. Hord ("V.S. Hord" at 4 n.1).

either party on fifteen days' prior written notice to the other. UP notes that it is "beginning to convert [its] Central Texas lines to directional running, which will increase southbound traffic on the Flatonia route and reduce traffic via the San Marcos route." UP's Opposition, Verified Statement of Howard Handley, Jr. ("V.S. Handley") at 45. UP also states that it will operate the Austin Subdivision between San Marcos and San Antonio bidirectionally for rock traffic and UP's "important manifest trains to and from Laredo." V.S. Handley at 46. Of course, as with many UP pronouncements in the pre- and post-merger period, these plans could be canceled, changed or modified before or after implementation by UP, with BNSF's competitive service left to operate over its assigned route as best it can.

To minimize the impact of these unforeseen changes, BNSF has requested the Board to grant BNSF permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio line, with the option of operating over either that line or the Temple-Smithville-San Antonio line as conditions require. The logical route for BNSF to use is the shorter route through Smithville and San Marcos; however, that route has not been available to BNSF for over a year, putting BNSF on a longer but less congested route via Flatonia to San Antonio and Eagle Pass.

UP opposes BNSF's request by arguing that BNSF can compete using its existing rights and that BNSF's concerns about congestion are unfounded since UP is making significant infrastructure improvements to the San Antonio-San Marcos line which should enable BNSF to return to its original trackage rights. However, as explained in Mr. Hord's Verified Statement, although UP's proposed infrastructure improvements will

facilitate operations south of San Marcos and into San Antonio, they will not improve operations north of San Marcos. The area north of San Marcos, from Temple to Smithville, is where BNSF has experienced and is likely to continue to experience the most significant congestion and delay. V.S. Hord at 3. Nothing contemplated by UP's improvements (such as the proposed construction of a single siding at Rosanky between Smithville and San Marcos) will reduce this congestion sufficiently to allow BNSF to operate on a consistent, reliable and competitive basis. Id.

UP further argues that BNSF's continued bidirectional operation on the Caldwell to Flatonia route could interfere with UP's planned directional operations in Central Texas. This concern could, however, be resolved by BNSF joining in this directional flow, to the benefit of BNSF and its customers and, through better flows and less bidirectional traffic on other routes, of UP and its customers. V.S. Hord at 4. Alternatively, in as much as the 60 mile route between Caldwell and Flatonia has six passing sidings providing existing capacity for meeting and passing trains, it is difficult to understand why structured and disciplined bidirectional operations could not continue. Indeed, as referred to above, UP itself contemplates continued bidirectional operations of some rock traffic and manifest trains.

All that BNSF is requesting is a measure of operational flexibility to limit the impact on BNSF's services of future changes in UP's operations and to respond to certain UP operating practices that have hampered BNSF's ability to provide consistent, reliable competitive service in place of the pre-merger SP. Therefore, BNSF seeks permanent bidirectional overhead trackage rights on the Flatonia route with the option

to use either it or the Smithville route, as conditions require. BNSF's request would simply permit it to operate over the same Caldwell-Flatonia-San Antonio routing used by SP pre-merger. The request would also free BNSF from being forced to "negotiate" with UP to return to the Flatonia route if congestion and delay recurred on the Smithville route for any reason. Absent adoption of this condition, pre-merger service competition will not be preserved because BNSF will not be able to turn to an alternative to avoid congestion which adversely impacts its ability to provide quality, reliable service to shippers. Several shippers support this request and their verified statements are provided for the Board's convenience at Tab 4.[8/]

BNSF's actual experience in Central Texas since the UP/SP merger shows that UP's unforeseen and constantly changing operations are a threat to BNSF's ability to restore the pre-merger competitive options to these markets and shippers on a long-term basis. These include changes in operational matters such as the unilateral adoption of directional running and organizational structure (three Executive VP's of Operations in the last year as well as the recent decentralization of operations). Not only were such operations not contemplated by BNSF when it negotiated its rights in the Settlement Agreement, but the Board was also not aware of any such UP plans when it issued Decision No. 44. Absent imposition of BNSF's request in this proceeding, BNSF would

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[8/] In addition to the evidence of shipper support BNSF provided the Board in its July 8, 1998 filing, the following shippers have added their support for this request: Abinsa Acero, Algondonera Comercial Mexicana, S.A. de C.V., Barton Beers, Ltd., Bell Paper Box, Inc., Brownsville & Rio Grande International Railroad ("BRGI"), Esso Mexico S.A. de C.V. (Exxon), Grupo Mabe, Hylsa, Kimberly-Clark de Mexico S.A. de C.V., OmniSource Corporation, Penford Products, Pinsa, Sysco, Volkswagen de Mexico S.A. de C.V and Westway Trading Corporation.

be left with permanent "bidirectional" trackage rights over UP's newly-announced and implemented "directional" routes in Central Texas.

2. Caldwell-Flatonia-Placedo

As a condition of the UP/SP merger, BNSF was granted the right to serve south Texas, including Corpus Christi, Brownsville, and a connection with Tex Mex at Robstown, using its own line to Algoa and permanent trackage rights or haulage over UP's Brownsville Subdivision. Because UP instituted directional running between Houston, Flatonia and Placedo in November, 1997 in order to reduce congestion on the UP Brownsville Subdivision, UP granted BNSF temporary trackage rights over the former SP Caldwell-Flatonia-Placedo line. UP states, however, that it will permit BNSF to use the Caldwell-Flatonia-Placedo rights only for so long as UP employs directional running between Houston and Placedo. UP Opposition at 107. UP indicates that it intends in the future to discontinue such directional running operation to permit it to run northbound trains directly from Placedo toward Fort Worth and Little Rock, bypassing Houston and operate bidirectionally over its shorter Houston-Placedo route through Algoa. Ibid.

BNSF's request is for permanent bidirectional overhead trackage rights on the Caldwell-Flatonia-Placedo line, whether used by UP bidirectionally or not. For example, under UP's proposed operating plan for this line, BNSF's trains could join UP's northbound flows by operating Placedo-Flatonia-Caldwell to Temple along with UP's trains. However, BNSF notes, even in the current "southbound only" directional flow operating on this route, UP is running its unit coal trains serving the Central Power & Light power plant at Coleto Creek, TX bidirectionally between Victoria and Caldwell.

UP opposes BNSF's request, arguing once again that the Board should not reform the parties' Settlement Agreement. However, BNSF (and UP for that matter) fully believed at the time that they entered into the Settlement Agreement that the negotiated rights for BNSF's access to south Texas would be adequate. Here, BNSF's request would simply permit BNSF to operate over the same routing as did SP pre-merger -- the pre-merger SP routed its traffic to south Texas via this route, thereby bypassing the Houston area.[9/] Therefore, the requested rights would not, as UP suggests, improve BNSF's competitive position as the successor to SP.

The evidence is clear that BNSF's ability to be as an effective competitor as SP has become unreasonably dependent upon UP's future operating decisions. UP's

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[9/] UP repeatedly argues in its Opposition that BNSF's use of the alternative route between Placedo and Caldwell through Flatonia would not have a beneficial impact on Houston traffic and congestion. However, UP's traffic to Houston flowing northbound on the UP route to Algoa moves in most instances into the Houston terminal. If, as has often been the case, the terminal is congested, UP trains will back up on the Algoa route. If BNSF trains are also operating over the line, they will be negatively impacted when the line's capacity is consumed by staged UP trains. Because the adversely impacted BNSF trains would be headed to Temple, TX, and not to Houston, it makes little sense for those trains either to be affected by Houston-area congestion or to consume capacity on this line, which includes "the primary chokepoint on the Brownsville Subdivision . . . at Angleton, TX . . ." UP "Report on Houston And Gulf Area Infrastructure," May 1, 1998 at 38.

Indeed, UP's Dennis Duffy appears to agree with BNSF's analysis concerning the benefits of rerouting traffic around Houston via the Flatonia line. In a chart on page 23 of his Verified Statement, Mr. Duffy states that BNSF's request "would reduce traffic on Algoa line." He further argues that BNSF should not be granted long-term trackage rights via the Placedo-Flatonia-Caldwell because "those rights would limit [SP's] ability to reroute traffic from the Rio Grande Valley toward the Midwest, which now runs through Houston, to the bypass route through Flatonia." Id. BNSF could join UP's proposed northbound directional flow, if necessary, to ensure that UP's operations are not adversely impacted and that no traffic, whether UP's or BNSF's, is unnecessarily routed through Houston.

unilateral and unanticipated institution of temporary directional flow between Houston, Flatonia and Placedo has limited and continues to limit the ability of BNSF to plan for the future, because it is "temporary".[10/] For example, UP's unilateral actions affect BNSF's ability to efficiently plan schedules and operate over the trackage rights as part of through routes over its system, disrupting BNSF's use of crew, facilities, and equipment and hampering its ability to make rate and service commitments to shippers. V.S. Hord at 7-8. It is undisputed that pre-merger SP was not subject to these same uncertainties in conducting its operations independent of UP and in providing service to shippers.

In addition, as demonstrated here, UP's ability to decide if and when it will cease those operations also hampers BNSF's planning and inhibits its incentive to make capital commitments to enhance service to shippers and to enter into long-term arrangements with shippers.[11/] It also impacts how BNSF provides service to customers at "2-to-1" points. Specifically, BNSF must establish service patterns to provide inbound and outbound services to such customers at the "2-to-1" locations without interfering with UP.

[10/] UP's original operating plan contemplated limited directional operations. V.S. Hord at 15-16. However, post-merger, UP has unilaterally decided to institute directional operations in South Texas on the Flatonia-Placedo-Algoa routes, the UP and SP Baytown Branches, the UP and SP routes between Houston and Beaumont and, ultimately when track work is completed, the routes between Houston, Iowa Junction and Kinder, LA.

[11/] In addition to those shipper support letters BNSF provided the Board in its July 8, 1998 filing, the following shippers have added their support for this request: Abinsa Acero, Alex Trading Inc., ASARCO Inc., Barton Beers, Ltd., BRGI, Commercial Metals, Esso Mexico S.A. de C.V., Grupo Cydsa S.A. de C.V., Grupo Mabe, Hugo Neu-Proler Co., Hylsa, Kimberly-Clark de Mexico, S.A. de C.V., OmniSource Corporation, Penford Products Co., Pinsa, Sysco, Volkswagen de Mexico S.A. de C.V., and Westway Trading Corporation.

These decisions cannot be made without knowing whether or not BNSF is or will be permitted, solely within UP's discretion, to join UP's directional flows. Finally, it threatens BNSF's ability to route traffic around Houston, thereby aiding both its and UP's operations.

Were the Board to grant this request, it would be necessary for the Board to retain BNSF's rights on the Algoa route to preserve pre-merger build-in, transload and other competitive options provided pre-merger by SP. In this regard, BNSF already has 59 miles of long-standing trackage rights over UP between Algoa and Bay City, TX to reach BNSF trackage servicing Newgulf and Wadsworth, TX.

B. Trackage rights over both UP and SP between Harlingen and Brownsville (until UP constructs a connection between UP and SP at Brownsville, completing the bypass project) with BRGI to act as BNSF's agent for such service.

As a condition of the UP/SP merger, BNSF received access to Brownsville, TX (a "2-to-1" point), Transportacion Ferroviaria Mexicana, S.A. De C.V. ("TFM") at Matamoros, and the Brownsville & Rio Grande International Railroad ("BRGI") (a "2-to-1" shortline) via haulage and trackage rights over the UP line between Algoa and Brownsville. Currently, BNSF traffic destined for Brownsville is delivered to UP at either Flatonia (unit trains) or Houston (other traffic) for haulage to Brownsville. In order to allow BNSF to begin direct service to the Mexico and Brownsville markets in an efficient manner, BNSF requested in its Application that it be permitted to retain its current trackage rights over the UP line and that it be granted temporary trackage rights, under the compensation terms and other conditions set forth in the Settlement Agreement, over the SP line from MP 172.6 at Harlingen to the line's intersection with the Port of

Brownsville new bypass trackage north of Brownsville. Additionally, BNSF asked for authority to use BRGI as its permanent agent for all traffic moving south of Harlingen.[12/]

Although UP's Opposition states that it is prepared to grant most of the rights BNSF seeks at Brownsville from the Board, that statement is not accurate. Under UP's proposal, BNSF would have to operate over the former SP route from Harlingen into downtown Brownsville to reach the junction with UP, located in the middle of a downtown street. This routing is problematic because of the congestion in downtown Brownsville. It also is not consistent with BNSF's request that the Board grant it access to the SP line from Harlingen to the point where the SP line intersects with the new bypass trackage north of Brownsville, and then down the completed portion of the bypass to the Port -- a routing designed precisely to avoid the entire downtown Brownsville area. UP's proposed routing is also of concern because BNSF has been advised that the physical connection between UP and former SP trackage in downtown Brownsville, proposed by UP to be an essential portion of BNSF's trackage rights route, has recently been removed by UP in conjunction with street rehabilitation.[13/]

[12/] AC Humko and BRGI support this request. See Tab 4. In its letter of support, BRGI observes "Whether done intentionally or not, UP's actions have seriously impeded BNSF's ability to establish the type of competitive presence in the Brownsville gateway that the merger-related settlement agreements had contemplated and that BRGI and its shippers expected." See Letter of Lorenzo E. Cantu, BRGI, at 3, Tab 4.

[13/] In its September 18 comments, DOT expressed support for BNSF's request because of "safety and environmental considerations." DOT Comments at 3. Specifically, DOT expressed concern about BNSF being forced to "operate trains along public streets," which it characterized as "an unacceptable safety hazard when such routings are easily avoided." Ibid. Thus, UP's proposal should also be rejected because of DOT's environmental and safety concerns.

UP also objects to the appointment of BRGI as a permanent agent for BNSF between Harlingen and Brownsville. UP erroneously argues that the use of BRGI as BNSF's permanent agent would complicate operations by adding a third carrier to the B&M Bridge and at Harlingen. UP Opposition at 110-112. Instead, use of BRGI, as BNSF's agent for all traffic moving south of Harlingen (including for BNSF grain trains moving over the B&M Bridge and all other BNSF traffic moving south of Harlingen) would actually eliminate the need for BNSF to act as a third carrier south of Harlingen.

Under BNSF's proposal, traffic would be interchanged with BRGI at the Harlingen Yard and carried by BRGI to Brownsville, the Port of Brownsville and Mexico. BRGI, as BNSF's agent, would move all unit trains of Mexico traffic over the UP line from Harlingen to Brownsville. BRGI, as BNSF s agent, would use the SP line to move Brownsville and Port of Brownsville traffic, consisting primarily of other export traffic and general merchandise and other carload traffic.[14/]

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

[14/] In expressing its support for this request, BRGI notes that appointing BRGI as BNSF's agent will "not only improve BNSF's competitive presence in Brownsville, but it will also permit **for all rail carriers concerned** a more efficient use of the critical Brownsville-Matamoros international gateway." (emphasis in original). Letter of Lorenzo E. Cantu, BRGI, at 4, Tab 4.

C. Overhead trackage rights on the UP Taylor-Milano line.

UP's opposes BNSF's request for overhead trackage rights on the UP Taylor-Milano line, contending that BNSF's existing rights here fully preserve pre-merger competition. UP Opposition at 119. That assertion is not correct. Pre-merger, SP had rights to utilize UP's Taylor-Milano line and competed in the Beaumont market by handling traffic from the Georgetown Railroad Company ("GRR"). BNSF's request would do nothing more than duplicate the former SP routing.

As detailed in BNSF's July 8 Application and in the attached Verified Statement of J.E. Robinson ("V.S. Robinson"), President of GRR, BNSF has been unable to provide consistent and reliable service to handle shipments for Texas Crushed Stone Company and other customers at Kerr/Round Rock, TX (which are served by GRR) using its existing rights due to congestion on UP's line. Indeed, GRR and Texas Crushed Stone Company fully support BNSF's request.[15/] In their October 15, 1998 letter, GRR notes that it "fully supports BNSF's request for overhead trackage rights on the UP Taylor-Milano line." (emphasis in original). See V.S. Robinson at Tab 4. Further, GRR notes that "BNSF seeks only to maintain its existing competitive access to handle shipments for Texas Crushed Stone Company and other customers at Kerr/Round Rock (which was served by GRR) by ensuring the proper functioning of the original condition." Id.

[15/] In the Verified Statement of Mr. Robinson, GRR modifies and supplements its August 12, 1998 statement which was contained in Volume IV of UP's Opposition to Condition Applications, filed with the Board on September 18, 1998. UP's Opposition characterizes that letter as opposing BNSF's request for overhead trackage rights between Taylor and Milano. All that GRR meant by its prior statement is that it generally opposes the imposition of additional remedial conditions that would provide carriers with new competitive access to shippers.

Likewise, Texas Crushed Stone Company observes that "BNSF could provide Texas Crushed Stone with better, more efficient service by avoiding much of the congested and circuitous trackage rights that BNSF if currently using" if its request were granted. See Letter of William M. Snead, Texas Crushed Stone, Tab 4.

UP argues that the granting of BNSF's request would harm operations by placing additional trains on the Taylor-Milano segment, which UP claims is near capacity, and by adding conflicting movements against UP's flow of traffic toward the northeast, creating train delays and congestion. UP Opposition at 120. However, the Taylor-Milano line over which BNSF seeks rights is not as congested as the Taylor-Smithville-Sealy line, the line over which BNSF has existing rights. Furthermore, adding bidirectional BNSF trains to the Taylor-Milano line would not interfere with UP's intermodal, automotive and manifest trains headed northeast on the line.[16/] V.S. Handley at 47. According to the Dispatching Protocol, BNSF's trains transporting aggregates that would be operating on the Taylor-Milano line would be given a lower priority than UP's intermodal, automotive and manifest trains.[17/]

[16/] It appears evident from UP's comments that UP has turned this route into a directional route for trains running northeast toward Little Rock. V.S. Handley at 47. Thus, to further minimize any risk of interference with UP's operations, BNSF could join UP in this directional flow on traffic from the Georgetown Railroad, with trains moving to the Georgetown Railroad at Kerr continuing to use other routes, and possibly join in other UP directional flows to reduce the impact of congestion on both carriers.

[17/] In addition, UP fails to cite the benefits accruing to it by moving BNSF's stone trains off the congested routes between Taylor and Temple, or Taylor and Sealy via Smithville, where they now operate and are subject to delays due to congestion.

UP's main basis for opposing this proposal by BNSF appears to be the marketing concern that the proposed routing "would allow BNSF to gain much more efficient access to stone destinations northeast of Houston, in the Beaumont-Silsbee area, where SP provided no competition before the merger". UP Opposition, Verified Statement of Richard B. Peterson at 23. UP's information is in error -- SP did compete for stone traffic northeast of Houston in the Beaumont area, as the three Transit Mix aggregates distribution facilities in the Beaumont area on former SP lines confirm. Thus, SP participated in aggregates movements from both the Georgetown and San-Antonio Elmendorff areas to the Beaumont areas on a competitive basis prior to the merger. BNSF seeks by its proposal to provide service that offers an effective competitive alternative to UP.

D. Order neutral switching supervision on the former SP Baytown Branch and Cedar Bayou Branch.

1. Baytown and Cedar Bayou Branches

BNSF has requested neutral supervision of switching activities on the Baytown and Cedar Bayou Branches. BNSF gained access to all industries on these branches as a result of the February 12, 1998 Term Sheet Agreement between BNSF and UP.[18/] UP's local switch service via haulage and reciprocal switch between BNSF and its customers has been inconsistent and, if unchanged, unacceptable over the long-term.

[18/] As explained in V.S. Rickershauser, filed as part of BNSF's Application, prior to February 12, 1998, BNSF had access to specific "2-to-1" and other customers on the Baytown and Cedar Bayou Branches. V.S. Rickershauser at 21.

UP opposes BNSF's request arguing that BNSF has not shown a failure to preserve pre-merger competition[19] and that BNSF's complaints about service on this line are unfounded. UP claims that, since BNSF's haulage shipments are handled in the same trains as the UP shipments, they cannot be receiving inferior treatment. To support this claim, UP asserts that its data shows that BNSF's haulage movements from the branches experience transit times comparable with those of UP's shipments. UP Opposition at 114-116. However, contrary to UP's assertions, UP's data allegedly showing that BNSF's haulage movements from the branches experience transit times comparable with those of UP's shipments is flawed.[20] See V.S. Hord at 13.[21]

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[19] UP attempts to obscure the real issues on these branches with its comments about "pre-merger competition." Customers on the branches fall into three categories: (a) customers directly switched by SP and UP in the Baytown area prior to the merger ("2-to-1" customers); (b) customers recognized by UP/SP, CMA and the Board as being "2-to-1" by virtue of a build-in in the Eldon/Mont Belvieu area proposed and being executed by UP at the time of the merger; and (c) customers accessible only to SP which BNSF gained access to as a result of the February 12, 1998 "50/50 Line" agreement. Customers in the first two categories were recognized in the merger as being entitled to competitive marketing and service by BNSF.

[20] UP's comparison of the transit times for BNSF cars handled in haulage on the Baytown Branch to Dayton to UP cars to Sjolander does not prove that BNSF's service is competitive with UP. Those movements are not comparable.

[21] In its Opposition, UP asserts that BNSF has no right to demand haulage service from UP on the Baytown and Cedar Bayou Branches under the Settlement Agreement, and thus BNSF's complaints about the inadequacy of UP's haulage service are disingenuous. However, it is undisputed that, in one manner or the other, BNSF must have the ability to serve "2-to-1" shippers on these branches, and the fact that UP and BNSF agreed that BNSF would access such shippers via UP haulage in no way excuses the poor service UP has been providing.

UP also criticizes BNSF for failing to provide a definition of the term "neutral switching supervision." UP Opposition at 118. As explained in BNSF's Application, neutral switching supervision has but one goal -- providing an absolutely even-handed switching service, favoring neither carrier, on BNSF-UP shared routes to ensure shipments move between customers' facilities and either BNSF or UP in a manner which favors neither carrier. It also means establishment of a schedule and service plan without consideration of whether the shipment is moving roadhaul via either carrier.

The neutral switching supervision BNSF seeks would lead to one entity, not two, providing switching service on the Baytown and Cedar Bayou Branches. BNSF believes that the best way to achieve this is for a neutral third party, such as the PTRA, to supervise the switching on the branches. Such third party management of the switching service on the branches would achieve sustainable equal service over the long-term for both BNSF and UP. DOT itself expressed a strong need for "fair and impartial service on these lines in order for the shippers to retain the competitive service they had before the merger." DOT Comments at 7. This supervision could be structured much the same as neutral dispatch at the Spring Center -- through a supervision structure in place of the current duplicate BNSF and UP organizations, accountable to both BNSF and UP, which would supervise the track, personnel, motive power and other resources on the branches to produce a service product of equal quality for BNSF, UP and their customers. Far from, as UP charges, "[t]he result [being] an additional layer of management and cost, with no apparent benefit," see UP Opposition at 118, the reverse would be true. There would be a reduction of duplicate costs, a requirement of fewer assets, and better use

of the existing assets -- including customers' facilities and track -- than occurs at present.[22/]

The congestion UP complains about on these branches, as well as the problems BNSF reports, would be eliminated if customers and BNSF could be assured of a switching service that performed equally well whether the cars moved in conjunction with UP or BNSF linehaul, permitting BNSF to modify or discontinue its switching operations which are layered on top of those provided by UP. Under existing conditions, BNSF can either rely on UP reciprocal switch and haulage service, a third party with UP's concurrence, or switch customers itself in order to provide competitive service at this and other "2-to-1" locations it gained access to as a result of the merger. Unless changes are made, if BNSF is to provide shippers with competitive service on the Baytown and Cedar Bayou Branches under its existing rights, it has no choice but to provide that service itself.

As reported in the past, the provision of this service directly by BNSF then can lead to a variety of problems, including the congestion and conflicting movements UP complains about, see UP Opposition at 117, as well as requiring customers wanting

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[22/] Even though UP's 1999 capital investment budget includes the installation of a second main track on the Baytown Branch, see UP Opposition at 116, there is no certainty as to when and if such improvement will be completed. UP itself acknowledges that "[u]ntil that work is done, no railroad will be able to provide the quality of service that is really needed on the Baytown Branch." UP Opposition at 116-117. Moreover, even assuming the installation of a double-track, it would increase capacity but will not address the need for better coordination and planning on the branches that a neutral switching supervisor would provide.

access to BNSF to permit BNSF as well as UP to switch their facilities each day. [23/] To do so, BNSF switching service would have to be scheduled around the switching service provided by UP. Given UP's directional operations on the branches, which BNSF is precluded by UP from joining,[24/] it is more difficult for BNSF and UP could agree to windows and schedules permitting BNSF to switch customers at the Baytown end of the line. Furthermore, for many customers, having two different switching carriers in their facilities is not feasible, due to production, infrastructure, systems or safety issues. The end result, then, for customers on the Baytown and Cedar Bayou Branches expecting competitive service from BNSF is to either accept the UP-directed switch service provided or permit BNSF and UP to switch their facilities. To the degree neither of these options is workable, the intended restoration of pre-merger competition is not accomplished.

UP apparently hopes that BNSF, as a competitor, will be reduced to handling traffic only to and from BNSF local points on the branches, and that customers, sampling

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[23/] Contrary to UP's allegations, BNSF has previously raised issues to the Joint Service Committee about problems with haulage on the Baytown and Cedar Bayou Branches. V.S. Hord at 14. Furthermore, UP's allegation that a BNSF representative stated that BNSF had no problems with UP's haulage service is also inaccurate; UP's officials are simply mistaken or misunderstood discussions that occurred. Id. at 14-15.

[24/] The fact that UP will not allow BNSF to join the directional flow contributes to the congestion UP complains about. BNSF either has to turn its empties over to UP in Houston -- an extra, congesting step, as BNSF cars move through Houston which need not go there, or seek to place them itself at the handful of SP Baytown Branch customers which can accommodate BNSF and UP switching their facilities on a daily basis. When BNSF places the cars into facilities on the branch, it must operate "against the flow" to do so.

BNSF service and finding it inadequate due to problems with switching and service at the local level, will return their competitive traffic to UP. BNSF and its customers will not accept the inferior role assigned by UP.[25/] BNSF intends to continue competing vigorously for this traffic, and customers will continue to require that BNSF provide service fully competitive with UP.

2. Chaison and Sabine Branches

BNSF has decided to withdraw from the Board's consideration at this time its request for neutral switching supervision on the former SP Sabine and Chaison Branches because service to shippers located on the branches has not been a problem. However, BNSF reserves the right to bring any such problems to the attention of the Board as may be necessary.

E. PTRA Operation of The UP Clinton Branch In Houston

BNSF is withdrawing its request related to the former SP Clinton Branch. While PTRA supervision or operation of the Clinton Branch would permit UP's operations to be combined with the adjacent PTRA yards, BNSF, UP, and Houston Public Elevator have, in recent months, largely mitigated the concerns raised by BNSF earlier this year. Starting in early July, BNSF, UP and the Elevator have held a daily conference call to allow preplanning and coordination of unit train movements to and from this facility. At

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[25/] In addition to those shippers BNSF included in its July 8, 1998 filing, which are reproduced at Tab 4 for the Board's convenience, KMCO Inc., OmniSource Corporation and Williams Energy have added their support for this request. In one such letter of support, the shipper noted "with only one neutral switcher on the branch, there would be less overall activity on the branch and generally less congestion for all rail activities on the branch. . . " which would lead to "improved service for all customers on the branch." See Letter of Greg Greer, Williams Energy, Tab 4.

this time, therefore, performance for BNSF traffic moving to and from this facility has improved, and congestion problems have eased.

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

Opponents of the UP/SP merger, notably Conrail and KCS, "argued that BNSF will face crippling operational obstacles in providing service over these trackage rights. They argue that BNSF's service will be . . . hampered by going against the flow of the directional running of certain lines . . .." Decision No. 44 at 132. Indeed, the parties recognized that BNSF could not provide competitive services in a trackage rights corridor if BNSF could not "go with the flow" of UP's directional operations.

BNSF now seeks application of this new widely-accepted principle to corridors where UP has instituted directional operations since Decision No. 44. As described above, one of the reasons BNSF has been hampered in its ability to replace the competitive options offered by SP is that UP has acted unilaterally to institute additional directional operations over routes in South Texas. V.S. Hord at 17. As shown in its July 8 Application, BNSF has not been able to secure from UP trackage rights over portions of UP's directional routes to join the directional operations. See Application, V.S. Hord at 18. In such instances, BNSF trains are forced to either run "against the flow" of UP on the trackage rights lines or reroute trains over other lines.[26/] Id. The overall impact

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[26/] Entergy Services, a facility served by KCS, UP and BNSF, identifies this very concern in its expression of support for this request, observing that "if BNSF trains are

on BNSF's operations is that BNSF is unable to provide consistent and reliable service to and from the "2-to-1" points it was granted the right to serve. Instead, it must "negotiate" with UP on a case-by-case, day-by-day basis whether it can join in the directional flow. SP was not subject pre-merger to this same uncertainty about its operations. Any delays brought about by BNSF having to run "against" a UP flow on a trackage rights line negatively impact BNSF and its customers [27/] and, if UP trains are delayed, increase the likelihood of congestion, which impacts UP and its customers as well.

DOT concurs with BNSF's request, noting in its comments that the request appears "reasonable and necessary if BNSF is to provide competitive service." DOT Comments at 8 (emphasis supplied). DOT further notes that it is implausible to argue that "confining a railroad to only one line while another operator directionally travels on

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forced to operate against the directional flow on the UP line between Fort Worth and Waxahachie," service to their Nelso station "could be adversely impacted due to delays in this area." Letter of Charles W. Jewell, Entergy Services, Tab 4.

[27/] For example, as previously described in BNSF's Application, UP has commenced northbound directional operations on the former SP line from Waxahachie to Fort Worth. BNSF has trackage rights over this line, and UP's directional operations will make it difficult for BNSF to run southbound traffic on the line. See Application, V.S. Hord at 17-18. BNSF has been unable to secure trackage rights over an alternative route or secure UP's permission to join the directional operations, and various shippers such as the Texas Municipal Power Agency, Houston Light and Power, and Texas Utilities Electric Company are filing statements supporting BNSF's request for trackage rights between Fort Worth and Dallas over the UP line so that BNSF can offer competitive service for southbound traffic from Fort Worth. See Tab 4 and the separate filing of Texas Utilities Electric Company.

The following shippers have also filed letters of general support for BNSF's request: BRGI, Entergy, HCH Marketing, Inc., KMCO Inc., OmniSource Corporation, and Westway Trading Corporation. Ibid.

two [lines] allows them to be competitive." Ibid. DOT is equally correct when it says that "[c]onfining a competing railroad to operating against the flow of traffic is tantamount to allowing it to operate only during what might be very narrow service windows." Ibid. Finally, DOT points out that the current situation is the same, for all intents and purposes, as if UP had provided a blanket refusal to allow the tenant railroad onto the line for an extended period of time -- a situation that DOT observes the Board would not have allowed originally. DOT also comments on the inefficiencies present in operating trains against the flow, arguing that UP "should not be allowed to set up an arrangement that is non-competitive as well as inefficient." Ibid.

UP's suggestion that it has voluntarily provided BNSF with trackage rights for directional operations where mutually beneficial overlooks the fact that UP's unilateral decisions whether to start or cease directional running on routes where BNSF operates on trackage rights impact over BNSF's ability to serve its customers. It is also incredible that UP has threatened not to use directional operations and "to forgo the efficiency benefits of directional operations" on the line between Ft. Worth and Dallas (and possibly elsewhere) if BNSF is granted the right to join directional operations as its requests. UP Opposition at 124. This statement is forceful evidence that UP's decisions about its operating practices in the Houston/Gulf Coast area are likely to be based on its perceived self-interest, irrespective of proven efficiencies presented by an alternative operating practice. This evidence alone supports the Board's imposition of BNSF's request.

UP's concern that BNSF's request would be unrestricted and apply systemwide is unfounded. UP's Opposition at 123. To clarify the situation, BNSF's request would apply only where BNSF operates over UP/SP lines in the Houston/Gulf Coast area, including through trackage rights as an UP/SP merger condition. Although there are other areas, such as the Central Corridor, where UP may contemplate directional operations, BNSF's request in this oversight proceeding is linked only to the Houston/Gulf Coast area.

Finally, UP relies on errors of fact in support of its complaint that BNSF should not be allowed to profit from the sale of its mainline between Fort Worth and Dallas (purportedly sold to DART) and then appropriate UP's capacity. UP Opposition at 124-125. BNSF never owned this line.

The Dallas-Fort Worth line was originally owned by the Chicago, Rock Island and Pacific Railroad Company ("Rock Island"), with whom BN's predecessor executed trackage rights agreements in 1908 and 1911. In 1982, a bankrupt Rock Island conveyed to the Missouri-Kansas-Texas Railroad ("MKT") a perpetual easement for exclusive local rail freight service and for non-exclusive overhead use of the line. The cities of Dallas and Fort Worth purchased Rock Island's remaining fee interest and MKT's easement in the line in 1984, simultaneously granting MKT overhead and exclusive local freight operating rights, subject to existing rights of BNSF and other unrelated terms and conditions. MKT was acquired by UP through its acquisition of Missouri Pacific Railroad in 1988. It is UP through its acquisition of MKT, therefore, which ultimately profited from the sale

of this line -- not BNSF.[28] Thus, it is inaccurate to assert that BNSF is using its profits to appropriate UP's capacity.

G. Trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, including, but not limited to, the former SP route between West Junction and Tower 26 via Chaney Junction.[29]

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

BNSF requests, therefore, that it be granted additional trackage rights on UP/SP in the Houston terminal area to operate over any available clear route through the

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[28] The only rights to this line BNSF has ever possessed remain the trackage rights first negotiated in 1908 and 1911, and subsequently renewed in 1993. City of Dallas, City of Forth Worth and D/FW Railtrain -- Petition for Declaratory Order, 1993 ICC LEXIS 299 (Finance Docket No. 32406, served Dec. 30, 1993).

[29] Tex Mex concurs with this request, but notes that the condition should apply to Tex Mex as well. Tex Mex argues that BNSF's proposal would benefit only one Houston carrier -- BNSF -- at the expense of others. Tex Mex urges the Board to reject this element of BNSF's proposal unless the Board also adopts the Consensus Plan proposal for terminal trackage rights for all Houston carriers through the proposed neutral switching and dispatching district. Tex Mex Opposition at 4-5. As BNSF stated in its Application, BNSF supports Tex Mex's request that carriers -- including Tex Mex and BNSF -- operating through the Houston terminal should be granted trackage rights to use the best available routes through Houston. BNSF Application at 16.

terminal as determined by the Spring Center. In this regard, it should be noted that UP already has unrestricted trackage rights over all of BNSF's limited but strategic routes in the Houston area including, as a result of the February 12, 1998 "50/50 Line" agreement between BNSF and UP, BNSF's unique "bypass" route around Houston between Beaumont and Navasota via Cleveland and Conroe, TX. BNSF also requests that UP be required to amend the 1981 Supplemental Agreement to allow BNSF to route any type of traffic over the former SP line between Rosenberg and Englewood via West Junction, Chaney Junction, and Tower 26.[30/]

UP opposes BNSF's request alleging that it lacks any competitive justification and is yet another "open access" opportunity for BNSF. UP Opposition at 130-132. These arguments wholly mischaracterize the nature of BNSF's request. BNSF is not seeking new access to a single new locally-served UP shipper on any of these routes. Thus, it cannot be seriously argued that BNSF is pursuing "open access" by seeking the imposition of modest operationally-driven improvements for the Houston terminal area which, by permitting the Spring Center to route BNSF (and Tex Mex) trains, without regard to ownership, around congestion points as required, reduce the likelihood of crippling terminal congestion in the future.

Furthermore, in opposing this request, UP ignores the fact that the Board instituted this oversight proceeding because of UP's service crisis in and around Houston

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[30/] As explained in BNSF's Application, pursuant to a 1981 Supplement to a 1920 Agreement between the former ATSF and the former SP, BNSF has trackage rights over this line; however, under the terms of the Supplemental Agreement, BNSF may only use those trackage rights to handle grain traffic. BNSF Application, V.S. Hord at 20-21.

and the terminal area. BNSF's request would create a vital safety valve for dispatching UP, BNSF and other trains over clear routes in the Houston terminal when deemed necessary by the jointly-operated Spring Center. The ability to use clear routes in Houston is no different than the general principle -- endorsed by UP -- that dispatchers "want more than anything else to get trains off their railroad," without regard to the identity of the trains.[31/] The access to and use of clear routes does precisely that, by allowing trains to move through the terminal as quickly as possible using any available clear route.

There is no serious dispute that BNSF's request adopts a common sense approach to addressing the operating constraints presented in the Houston terminal area which will benefit all carriers and shippers.[32/] Indeed, DOT has recognized the merit of BNSF's request. In its Comments, DOT states that BNSF's request appears to be "a reasonable measure to address congestion." DOT Comments at 8. And contrary to UP's assertion, DOT notes that BNSF's request does not appear to "confer any

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31/ See UP Opposition, Verified Statement of Dennis J. Duffy at 20.

32/ Several shippers have, in fact, filed letters of support for this request: Barton Beers, Inc., Commercial Metals, KMCO Co., Luzenac America, OmniSource Corporation, Sysco, Universal Foods Corporation and Westway Trading Corporation. Ronald Bird of Commercial Metals Co. supports the common sense value of BNSF's proposal: ". . . since operations via the Algoa route unnecessarily brings traffic through the Houston terminal area, an alternative routing such as BNSF requests makes sense." See Letter of Ronald Bird, Commercial Metals Co, Tab 4. Likewise, this request would "create an important safety valve for dispatchers to permit BNSF trains to traverse clear routes in the Houston terminal" and is " a reasonable measure to avoid congestion." See Letter of Clark Craig, KMCO Co., at 2, Tab 4. Another shipper notes that this measure will benefit shippers and "will result in service improvements and needed dispatching flexibility in the Houston terminal." See Letter of Paul Rasmussen, Universal Foods Corporation, Tab 4.

significant competitive advantage on BNSF." Ibid. UP's stated opposition to this request on competitive grounds is simply without merit.

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

BNSF is pleased that UP concurs in this request and accepts UP's representations to the Board.

I. Overhead trackage rights on UP's San-Antonio-Laredo line between MP 264.3 at South San Antonio and MP 412.51 at Laredo.

Because of the unanticipated service and related problems along the Algoa route and the unanticipated changes in the structure of the Mexican rail market (including Tex Mex's unwillingness to negotiate competitive long-term service arrangements with BNSF for Mexican traffic), BNSF requested in its Application that the Board grant it overhead trackage rights over UP's line from San Antonio to Laredo in order to ensure that BNSF can remain an effective competitor at Laredo. Both UP and Tex Mex strenuously oppose BNSF's requests, citing a variety of reasons ranging from arguments by both that an analysis of the current market shares at Laredo reveals that pre-merger competition has been preserved to UP's argument that, if BNSF has concerns about KCS' influence over Tex Mex, those concerns could be addressed in a KCS-Tex Mex common control proceeding.

However, as discussed above, the mere fact that UP's market share at Laredo is currently below its pre-merger market share does not establish that the Board should not be concerned about long-term competition at Laredo and take action to ensure that

shippers can receive effective competitive service from BNSF over that critical gateway. The market share numbers over last year have undeniably been influenced by the temporary rights granted to BNSF and Tex Mex under the Emergency Service Order, UP's release of shippers from their contracts, and UP's inability to provide service to a large number of shippers.[33/]

BNSF's evidence submitted with its July 8 Application establishes that there is sufficient uncertainty about BNSF's ability to provide long-term competition at Laredo for the Board to take action. First, if a service crisis were to occur again in the Houston area -- which could clearly happen given the admittedly inadequate infrastructure in the area, BNSF's ability to use its trackage rights over the Algoa route which it received under the Settlement Agreement would once again be jeopardized. It is no response to this concern for UP and Tex Mex to claim that UP's directional operations between Algoa and Placedo will alleviate BNSF's concern since -- as UP has made crystal clear in its Opposition -- UP reserves unto itself the sole discretion of service between Algoa and Placedo and has indicated its intent to terminate them in the future.

Second, notwithstanding the protestations of Tex Mex to the contrary, it is clear that, whatever KCS' influence over Tex Mex and its role in the interline divisions negotiations between BNSF and Tex Mex, BNSF still has not been able to achieve an

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[33/] In addition to those shippers whose support letters BNSF provided the Board in our July 8, 1998 filing, the following shippers have added their support for this request: Abinsa Acero, American Honda, Esso Mexico S.A. de C.V., GM Nao Logistics, Grupo Cydsa S.A. de C.V., Hylsa, Kimberly-Clark de Mexico S.A. de C.V., M. Shiefer Trading Co., Grupo Mabe, Nicor Steel, Penford Products, Pinsa, Rocky Mountain Steel Mills, Santa's Best, Tamco, Sysco, Volkswagen de Mexico, S.A. de C.F. and Westway Trading Corporation. See Tab 4.

interline arrangement with Tex Mex that will enable it to provide long-term competitive service. As set forth in the Verified Statement of Harold Weddle attached hereto as Tab 2, BNSF believes that Tex Mex's characterization of the negotiations in the Spring of this year is diametrically opposed to the actual course of the parties' negotiations. To date, despite continued efforts, BNSF has been unable to achieve a viable interline arrangement.

Indeed, negotiations with Tex Mex in 1997 and in early 1998 led BNSF to believe, based on advice from Tex Mex, that a broad agreement had been reached, only to have Tex Mex advise, early in March, 1998, that KCS objected to the agreement and would not permit its execution. The May agreement cited by Tex Mex in its Opposition was offered by Tex Mex to BNSF as a "take it or leave it" proposal. The BNSF negotiators advised Tex Mex at the time this proposal was presented that portions of the proposal did not meet BNSF's needs. BNSF senior management concurred with that assessment, and the proposal was rejected.

Third, the uncertainties in the Mexican rail market and the evident lack of effective competition in the market justify Board action. Prior to the Mexican rail privatization, FNM would on occasion provide SP with "equalized" pricing from Eagle Pass to interior points, compared with Laredo, which provided SP the ability to choose between the Laredo and Eagle Pass gateways on specific traffic. However, the new Mexican rail carriers, particularly Ferrocarril Mexicano, S.A. De C.V. ("FXE"), providing service via the Eagle Pass and El Paso gateways, have yet to fully adopt market-driven, competitive services, but instead continue to quote prices based on the former mileage driven tariffs.

This practice, coupled with FXE's longer mileages to many Mexican markets, drives traffic to Laredo, independent of any competitive actions on the part of TFM.

While UP and Tex Mex have asserted a number of arguments based on operational and capacity concerns,[34/] BNSF is prepared to pay its share of the improvements necessary to accommodate its request, and the concerns discussed above about possible future service problems, the inability to secure a long-term interline agreement, and the uncertain state of the Mexican rail market warrant Board action. Unless the Board does take action, BNSF will once again be placed in the position of being unable to assure potential shippers -- the very shippers to which it was granted access by the Board in Decision No. 44 to provide replacement competitive service -- that it will be able to provide those shippers with reliable consistent and dependable service over Laredo.

CONCLUSION

As set forth above, the limited structural modifications to certain of the existing UP/SP merger conditions BNSF has proposed are necessary to enable BNSF to provide the long-term competitive, reliable service in the Houston/Gulf Coast area and to ensure, to the extent possible, that BNSF will be able to provide the service alternative the Board

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[34/] Contrary to Tex Mex's assertions, the granting of BNSF's request for overhead trackage rights to Laredo would not threaten Tex Mex's financial viability or essential service to shippers on its line. As established by UP in its Opposition, the amount of traffic which Tex Mex carried from January to May of 1998 has, even without consideration of any BNSF interchanged traffic, exceeded the pre-merger volumes Tex Mex carried during the same months in 1996. See UP Opposition, Verified Statement of Richard J. Barber (Exhibit 8). Thus, even if BNSF were to transfer 100% of the traffic it currently interchanges with Tex Mex to a San Antonio-Laredo routing (which is more than BNSF projects would in fact be transferred to such a routing), Tex Mex would still be able to earn revenues in excess of its pre-merger revenues.

contemplated if UP's congestion and service problems recur. The modifications will also help to minimize the risk that shippers, as well as BNSF and other operationally-driven carriers, will be forced in the future to endure the significant hardship and economic losses they experienced over the last year from the failure to provide essential services. The modifications proposed by BNSF do not increase BNSF's access to any additional shippers, but instead are minimally necessary to ensure that the competition that the Board envisioned when it approved the UP/SP merger can be achieved, including competitive service.

Respectfully submitted,

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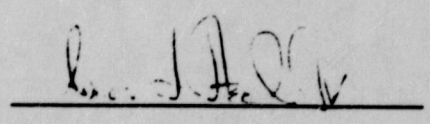
October 16, 1998

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing BNSF Rebuttal Evidence And Argument In Support Of Requests For Additional Remedial Conditions (BNSF-10) is being served, by first class mail or hand-delivery, on all parties of record in this proceeding.



VERIFIED STATEMENT
OF
ERNEST L. HORD

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

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

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

I am submitting this statement in support of BNSF's Rebuttal Evidence and Argument In Support of Requests for Additional Remedial Conditions. The purpose of this statement is to respond to various points made in opposition to BNSF's requests for additional remedial conditions as proposed in its July 8, 1998 Application.

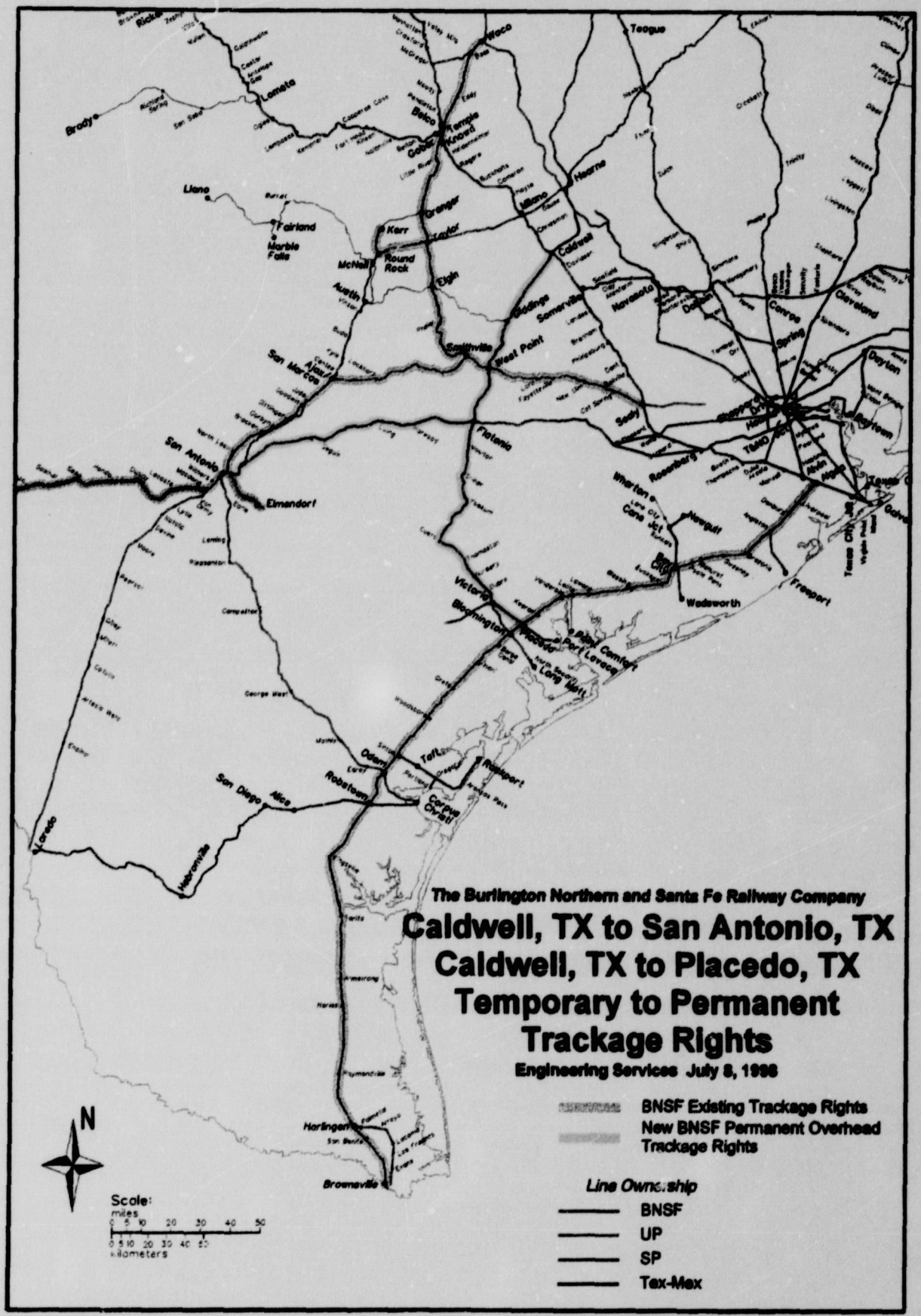
As demonstrated by BNSF's actual operating experience since the UP/SP merger, BNSF needs a measure of operational flexibility not provided by its existing rights to respond to certain UP operating practices that have hampered BNSF's ability to provide consistent, reliable competitive service and to limit the impact on BNSF's services of

future changes in UP's operations. Without these modifications, it is my view that BNSF cannot provide long-term competitive, reliable service in the Houston/Gulf Coast area. This is particularly the case in light of the unanticipated and massive operational changes UP has made and continues to make in its combined operations, including the unilateral institution of directional running over important routes in the Houston/Gulf Coast area which are shared by BNSF as a result of the merger settlement agreements and conditions. It is also my opinion that these conditions are necessary to minimize the risk of future service problems adversely impacting BNSF's ability to provide competitive service to the shipping public.

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

1. Caldwell-Flatonia-San Antonio

UP opposes BNSF's request that the Board grant it permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio line. This is the same line over which BNSF has been operating using temporary trackage rights since July, 1997, when BNSF and UP agreed to implement these temporary rights because of the impact on both BNSF and UP of the congestion on the shorter permanent trackage rights line between Temple and San Antonio via Smithville and San Marcos. This line is depicted on Map 1. UP argues that, upon completion of its infrastructure improvements to the San Antonio-San Marcos line, the congestion problems should end. Therefore, UP concludes that BNSF should be able to return to its original Temple-Smithville-San Antonio trackage rights. UP Opposition at 102-103.


The Burlington Northern and Santa Fe Railway Company
Caldwell, TX to San Antonio, TX
Caldwell, TX to Placedo, TX
Temporary to Permanent
Trackage Rights
Engineering Services July 8, 1998
BNSF Existing Trackage Rights
New BNSF Permanent Overhead
Trackage Rights
Line Ownership
BNSF
UP
SP
Tex-Mex
N
Scale:
miles
0 5 10 20 30 40 50
0 5 10 20 30 40 50
kilometers
Waco
Temple
Belton
Lometa
Brady
Llano
Fairland
Marble Falls
Kerr
Round Rock
McNeil
Austin
San Marcos
San Antonio
Elmendorf
Hearne
Calvert
Somerville
Navasota
Conroe
Cleveland
Dayton
Baytown
Texas City
Galveston
Flatonia
Wharton
Victoria
Bloomington
Placedo
Port Lavaca
Freeport
Wadsworth
Odem
Taft
Rockport
Robstown
Corpus Christi
San Diego
Alice
Laredo
Harlingen
Brownsville

MAP 1

However, UP's proposed infrastructure improvements are limited to areas south of San Marcos and into San Antonio, they will not improve operations north of San Marcos. The area north of San Marcos, specifically from Temple to Smithville, is where BNSF has experienced and continues to experience significant congestion and delay on traffic moving both to Halsted and between Taylor and Sealy. Nothing contemplated by UP's improvements (such as the proposed construction of a single siding at Rosanky which is between Smithville and San Marcos) convinces me that this congestion will be reduced sufficiently to allow BNSF to operate on a consistent, reliable and competitive basis using our permanent trackage rights on the route between Temple and San Antonio.

Because of the operating limitations affecting the Smithville route on which BNSF has existing permanent trackage rights, BNSF seeks permanent trackage rights on the Flatonia route with the option to use either route whenever the Smithville route is too congested to permit BNSF to run a scheduled, consistent operation. Such rights would simply enable BNSF to operate over the alternate former SP routing if the primary UP route was congested. Absent this operational flexibility, BNSF would be subject to the unilateral decisions of UP as to which route BNSF could use to provide service; alternatively, BNSF would be forced to "negotiate" with UP if it needed to return to the Flatonia route to offset UP's congestion and delay on the Smithville route.

If BNSF is not granted long-term access to the former SP route between Caldwell and San Antonio via Flatonia, it will be confronted with the heavy burden of using "bidirectional" traffic rights over UP's newly-announced "directional" routes in Central

Texas. UP has stated that the San Marcos-San Antonio route will be "bidirectional for rock traffic and for UP's important manifest trains to and from Laredo," but it has provided no information on the impacts on the operations of BNSF's trains and the routes used by BNSF between Temple and San Marcos via Smithville. See UP Opposition, Verified Statement of Howard Handley, Jr. ("V.S. Handley") at 45-46. If BNSF is faced with continuing changes to UP operations and the holds on its trains resulting from directional operations it is not permitted to join, BNSF will be unable to provide the consistent, scheduled service required for it to be competitive in this corridor.

UP also objects to BNSF's permanent bidirectional operation on the Caldwell to Flatonia route because such operations could interfere with UP's ever changing "plans" for directional operations on various lines in Central Texas. This concern of course could easily be eliminated if BNSF were permitted to join in UP's directional flow. This solution would appear to be particularly appropriate since it is UP that is changing its operations on routes that affect BNSF's existing trackage rights. Alternatively, inasmuch as the 60 mile route between Caldwell and Flatonia has six passing sidings providing existing capacity for meeting and passing trains, it is difficult to understand why structured and disciplined bidirectional operations could not continue.

UP's opposition to BNSF's request ignores the well-documented actual operating experience in Central Texas since the UP/SP merger that UP's constantly changing operations are a threat to BNSF's ability to restore the pre-merger competitive options to these markets and shippers on a long-term basis. This includes changes in operational matters, such as the unilateral imposition of directional running, impacting

a number of BNSF's trackage rights corridors, and organizational structure (three Executive VP's of Operations in the last year as well as the recent decentralization of operations).

Thus, BNSF needs to have the requested operational flexibility in order to limit the impact on BNSF's services of future changes in UP's operations along the trackage rights lines BNSF secured as a result of the merger. Such flexibility also is needed to respond to UP operating practices that have hampered BNSF's ability to provide consistent, reliable competitive service in place of the pre-merger SP.

2. Caldwell-Flatonia-Placedo

As a condition of the UP/SP merger, BNSF was granted access to "2-to-1" shippers and locations in south Texas, including Corpus Christi, Brownsville, and a connection with Tex Mex at Robstown, over UP's Brownsville Subdivision from Algoa, TX. As a result of its service crisis, in November, 1997, UP instituted directional operations between Algoa, Flatonia, and Placedo, TX, with BNSF and Tex Mex joining in the directional flow on these routes. As a result, BNSF, UP and Tex Mex operate southbound via Flatonia-Placedo, and northbound via Placedo-Algoa, although UP is now running empty unit coal trains returning Central Power & Light's Coleto Creek, TX generating station several times each week.

UP has stated that it will continue to allow BNSF to access Caldwell-Placedo via Flatonia as long as UP employs directional running between Houston and Placedo. UP

has also stated that it intends, in the long-term, to discontinue directional operations.[1/] However, UP's Brownsville Subdivision was highly congested during the service crisis and remains vulnerable to a return of congestion. Contrary to UP's assertions, the building of a single additional siding at Angleton -- to accommodate UP's announced return to bidirectional movements -- cannot by itself add sufficient capacity to alleviate the operating problems on the whole Brownsville subdivision. See V.S. Handley at 46. In addition, UP makes no commitment regarding the date it expects to complete the siding or when it expects to start the planned bidirectional movements which would then move BNSF and Tex Mex back to their original permanent trackage rights lines -- BNSF via Algoa-Placedo and Tex Mex via Flatonia-Placedo.

BNSF also disagrees with UP's assertions that BNSF's use of the alternative route between Placedo and Caldwell via Flatonia would not have a positive impact on Houston traffic and congestion. See V.S. Handley at 47. UP's traffic flowing northbound on the UP route to Algoa moves, in most instances, into the Houston terminal. When the terminal is congested, UP trains back up onto the Placedo-Algoa route. If BNSF trains are also operating over the line, they are negatively impacted by the decline in the line's capacity as meeting and passing siding space is consumed by staged UP trains. Because BNSF trains would have Temple, TX, not Houston, as their destination, it

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[1/] UP's Opposition is contradictory on its plans for directional running. On the one hand, UP seems to contemplate directional running on the Flatonia route for southbound trains. On the other hand, UP also contemplates running northbound trains on the same "directional" route. See V.S. Handley at 45-46.

makes little sense to add them to the Houston traffic or to subject them to Houston congestion.

UP apparently agrees with the logic of BNSF's position -- if applied only to UP. In Dennis Duffy's September 18 verified statement, he states that BNSF's request "would reduce traffic on the Algoa line." UP's Opposition, Verified Statement of Dennis Duffy at 23 (chart). He then argues that BNSF should not be granted long-term trackage rights via the Placedo-Flatonia-Caldwell route because "those rights would limit our ability to reroute traffic from the Rio Grande Valley toward the Midwest, which now runs through Houston, to the bypass route through Flatonia." Id. If rerouting UP's traffic to the bypass route assists Houston-area operations, the same solution should apply with equal force to BNSF traffic. Thus, BNSF could join in UP's proposed northbound directional flow to the benefit of both railroads.

Forcing BNSF to route its south Texas this traffic through Houston clearly impacts its ability to function as a competitive alternative to UP service. Pre-merger, SP was able to use its Flatonia-Placedo route to avoid Houston and could control its operations, independent of UP, when serving competitive customers. However, BNSF's existing rights make its operations dependent upon UP's unilateral operating decisions. UP's unilateral and unanticipated institution of directional flows between Houston, Flatonia and Placedo has limited, and continues to limit, the ability of BNSF to plan for the future because this directional operation remains "temporary." As a result, BNSF cannot efficiently plan schedules and operate over the trackage rights as part of through routes

over its system, thereby disrupting BNSF's use of its resources, including crews, facilities, and equipment and its ability to make service offerings to shippers.

To offset these adverse impacts, BNSF requested that the Board grant it permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line, whether or not UP discontinues directional running. The line is depicted on Map 1. BNSF needs this operational flexibility to avoid routing its trains through the Houston area, thereby removing additional sources of congestion in that area. The potential for renewed congestion would be particularly high if UP traffic, nearly all of which does have to pass through the Houston area, is staged on this line awaiting entry to the Houston terminal area.

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

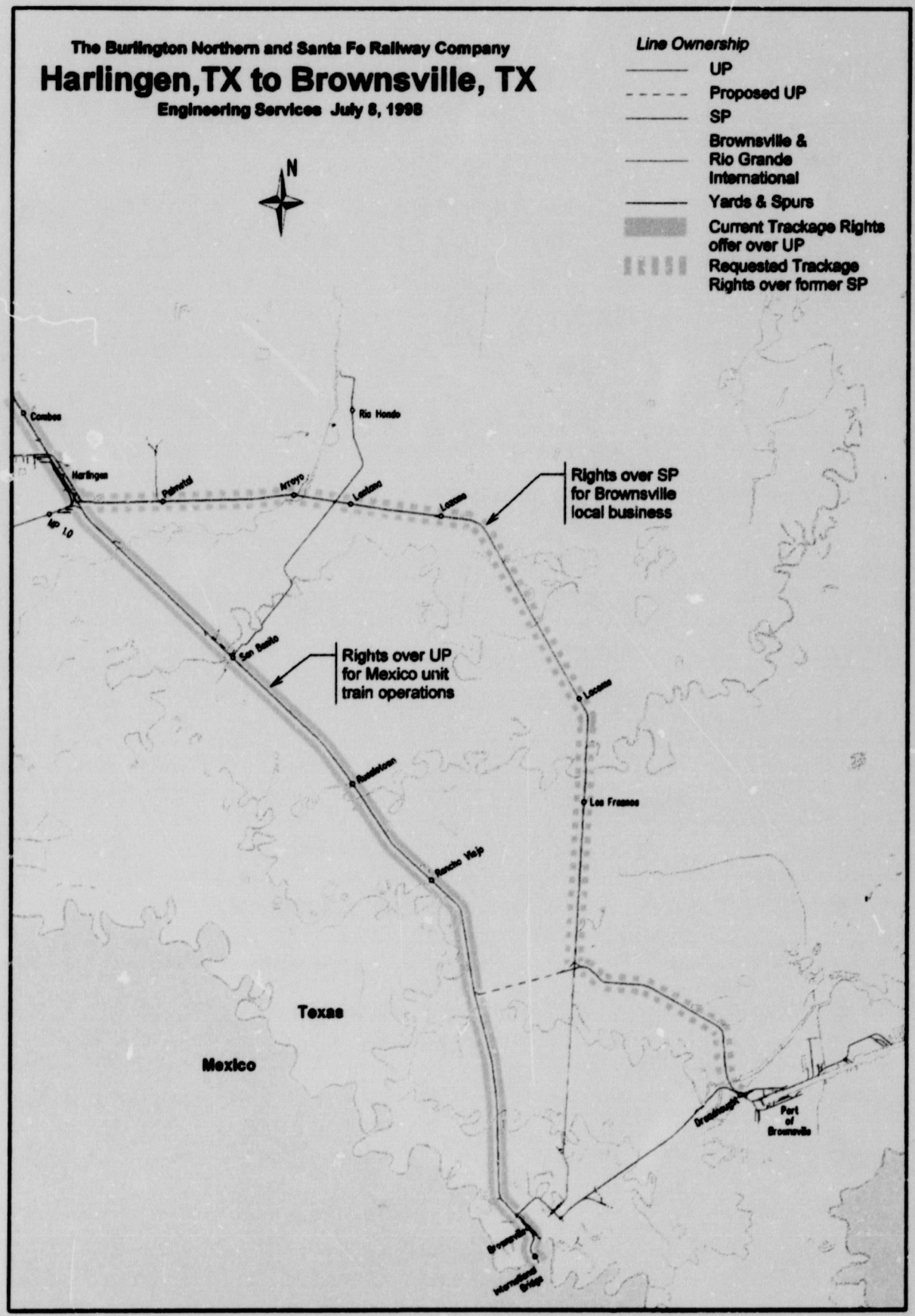
UP's Opposition states that it is prepared to grant most of the rights BNSF seeks at Brownsville from the Board. UP's offer to BNSF (and BRGI) was set forth in a September 5 letter from John W. Holm of UP to Rollin Bredenberg of BNSF and Larry Cantu of BRGI; this letter was attached to the Verified Statement of Gary W. Norman as part of UP's Opposition. On September 14, Mr. Bredenberg of BNSF responded that BNSF was studying UP's proposal and recommended, upon conclusion of that review, that the three parties meet to discuss and resolve issues concerning BNSF's operations in the Harlingen-Brownsville-Matamoros, TX area.

While progress has been made, there are some issues remaining which require Board intervention. Under UP's proposal, BNSF would have to operate over the former SP route from Harlingen into downtown Brownsville to reach the junction with UP,

located in the middle of a downtown street. Map 2 depicts the Harlingen to Brownsville line. This routing is problematic because of the congestion in downtown Brownsville. It also is not consistent with BNSF's request that the Board grant it access to the SP line from Harlingen to the point where the SP line intersects with the new bypass trackage north of Brownsville, and then down the completed portion of the bypass to the Port of Brownsville -- a routing designed precisely to avoid the entire downtown Brownsville area. UP's proposed routing is also problematic because BNSF has been advised that the physical connection between UP and former SP trackage in downtown Brownsville, proposed by UP to be an essential portion of BNSF's trackage rights route, has recently been removed by UP in conjunction with street rehabilitation.

In addition, UP objects to the appointment of BRGI as a permanent agent to perform BNSF's service between Harlingen and Brownsville. UP erroneously argues that the use of BRGI as BNSF's permanent agent would complicate operations by adding a third carrier to the B&M Bridge between Brownsville and Matamoros, Mexico and to the operations at Harlingen. UP Opposition at 110-112.

However, use of BRGI as BNSF's agent for all traffic moving south of Harlingen (including for BNSF unit grain trains moving over the B&M Bridge) would actually eliminate a third carrier -- BNSF -- south of Harlingen. BNSF is not proposing addition of a third carrier south of Harlingen to Brownsville and the TFM connection in Matamoros; its proposal would have UP and BRGI operating in this area, similar to the pre-merger operations of UP and SP. In other words, if BRGI is not permitted to serve


The Burlington Northern and Santa Fe Railway Company
Harlingen,TX to Brownsville, TX
Engineering Services July 8, 1998
N
Line Ownership
UP
Proposed UP
SP
Brownsville & Rio Grande International
Yards & Spurs
Current Trackage Rights offer over UP
Requested Trackage Rights over former SP
Combes
Harlingen
Palmetal
Mercedes
Rio Hondo
Lasara
Rights over SP for Brownsville local business
San Benito
Rights over UP for Mexico unit train operations
Rancho Viejo
Los Fresnos
Texas
Mexico
Port of Brownsville
Brownsville

MAP 2

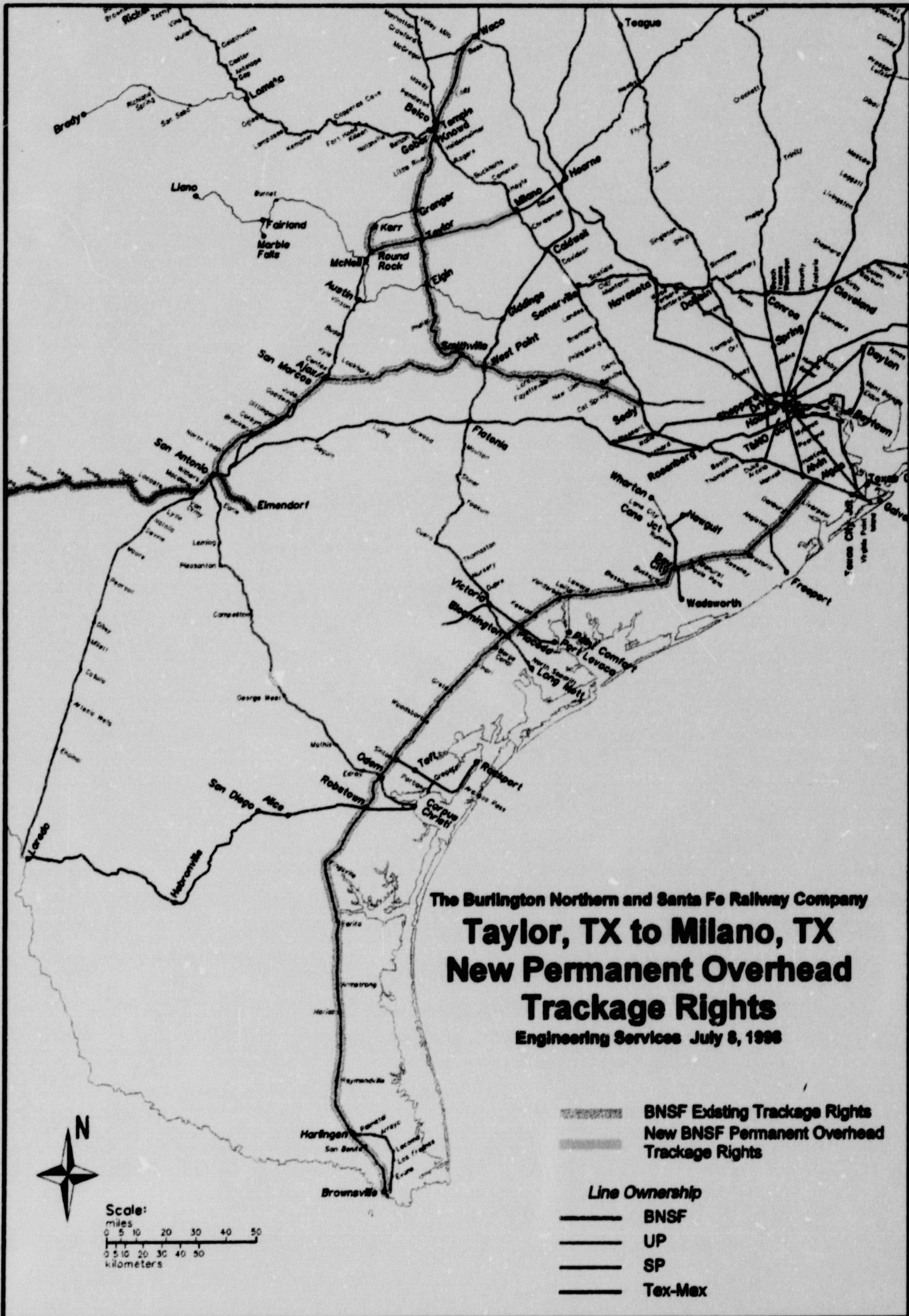
as BNSF's agent, then BNSF would be the third switching railroad if it were to start its own operations in the Brownsville area.

Under BNSF's request, traffic would be interchanged with BRGI at the Harlingen Yard and carried by BRGI to Brownsville, the Port of Brownsville and Mexico. BRGI, as BNSF's agent, would move all BNSF unit trains of Mexico traffic over the UP line from Harlingen to Brownsville. BRGI, as BNSF's agent, would use the SP line and the completed portion of the Brownsville bypass line to move Brownsville and Port of Brownsville traffic, consisting primarily of other export traffic and general merchandise and other carload traffic, to and from those markets.

Trackage rights over the SP line between Harlingen and the completed Brownsville bypass trackage would only be necessary until UP completes construction of the bypass connection from the UP line to the SP line north of Brownsville. Once this connection is complete, BRGI, as BNSF's agent, would use its trackage rights over the UP line to access the connection for traffic destined for Brownsville and the Port of Brownsville.

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

UP argues that granting BNSF's request would harm operations by placing additional trains on the Taylor-Milano segment, which UP claims is near capacity, and by adding conflicting movements against UP's flow of traffic toward the northeast, creating train delays and congestion. UP Opposition at 120. Map 3 depicts this line. UP is simply wrong about the operations on these lines. The Taylor-Milano line -- the same line used by pre-merger SP -- over which BNSF seeks rights is not as congested


The Burlington Northern and Santa Fe Railway Company
Taylor, TX to Milano, TX
New Permanent Overhead
Trackage Rights
Engineering Services July 8, 1996
BNSF Existing Trackage Rights
New BNSF Permanent Overhead
Trackage Rights
Line Ownership
BNSF
UP
SP
Tex-Mex
N
Scale:
miles
0 5 10 20 30 40 50
0 5 10 20 30 40 50
kilometers
Waco
Teague
Brady
Lometa
Belton
Temple
Hearne
Milano
Llano
Fairland
Marble Falls
Kerr
Granger
Taylor
McNeil
Round Rock
Austin
Elgin
Caldwell
Giddings
Somerville
Navasota
Smithville
West Point
San Marcos
Ajax
San Antonio
Elmendorf
Flatonia
Sealy
Rosenberg
Wharton
Cane Jct
Newgulf
Wadsworth
Freeport
Victoria
Bloomington
Placedo
Port Lavaca
Point Comfort
Long Mott
Odem
Taft
Rockport
Robstown
Corpus Christi
Alice
San Diego
Laredo
Hebbronville
Harlingen
Brownsville
Conroe
Spring
Cleveland
Dayton
Baytown
Alvin
Algoa

as the Taylor-Smithville-Sealy line, where BNSF has existing rights and is currently operating for much of this traffic.

Nor is it accurate that adding bidirectional BNSF trains to the Taylor-Milano line would cause interference with its intermodal, automotive and manifest trains headed northeast on the line. V.S. Handley at 47. According to the Dispatching Protocol, BNSF's trains transporting aggregates that would be operating on the Taylor-Milano line would be given a lower priority than UP's intermodal, automotive and manifest trains. Also, because the Taylor-Milano route is considerably shorter than the Taylor-Smithville-Sealy route, BNSF's trains would be off UP trackage rights and out of UP's way considerably sooner, and with less opportunity for congestion, than continuation of the present operation.

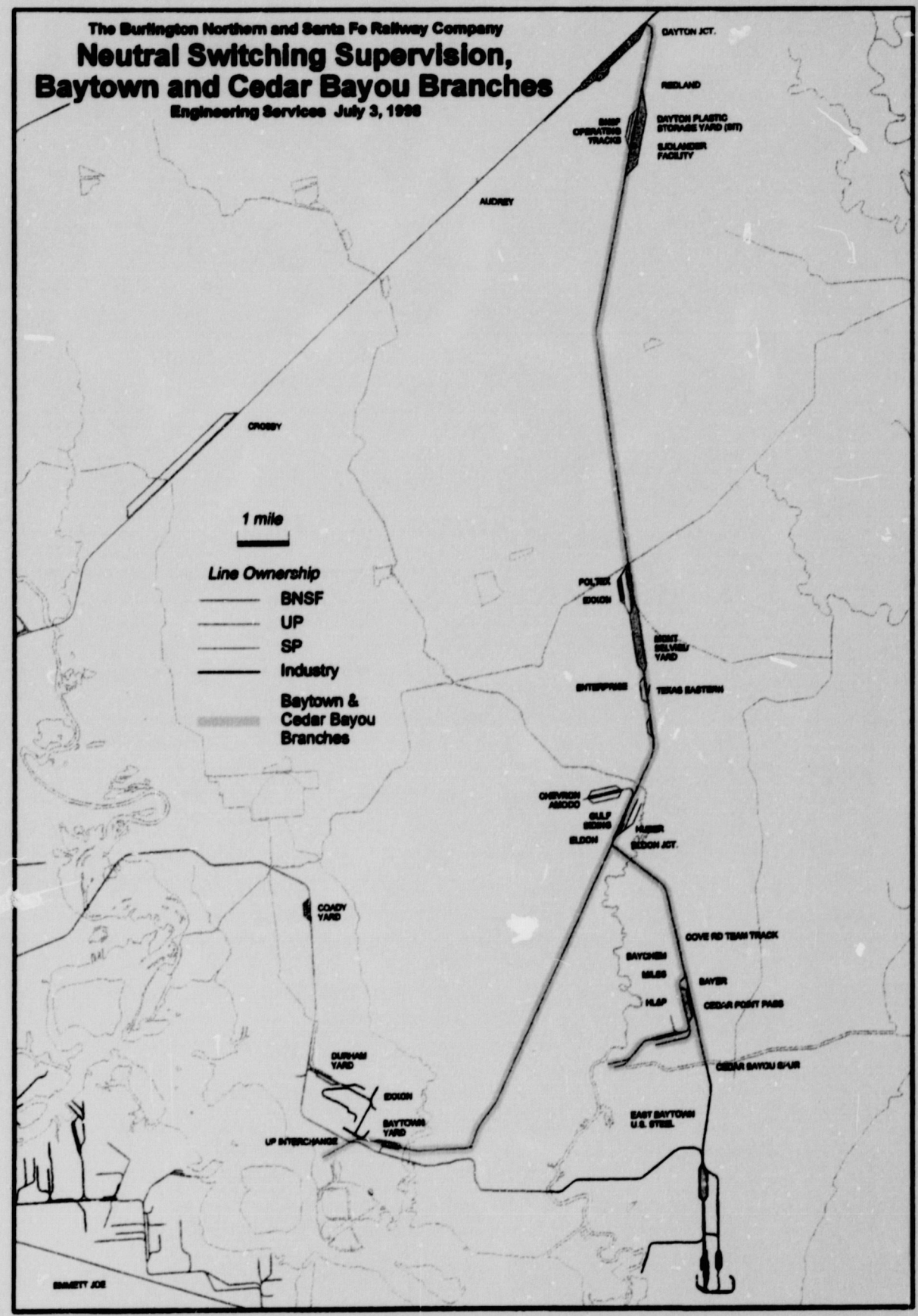
D. Neutral Switching Supervision Of The Baytown/Cedar Bayou Branches

UP has repeatedly acknowledged that there is limited capacity on the Baytown and Cedar Bayou Branches, and that the branches do not have the infrastructure necessary to support separate BNSF and UP switching operations within each customer facility. Given these facts, it is difficult to understand UP's opposition to BNSF's request that would provide a workable and realistic resolution for the operational constraints for both UP and BNSF on the branches. Instead of recognizing the benefits of BNSF's proposal, UP's opposition dwells on operating problems, alleging that BNSF contributes significantly to the capacity problems. However, as UP itself acknowledges, it contributes to the capacity problems on the branch by blocking the mainline, sometimes two or three times a day -- delaying BNSF trains while UP performs switching at the

Sjolander facility. See V.S. Handley at 48-49. BNSF also occasionally performs switching on the mainline when it has long cuts of cars.

Because both UP and BNSF at times need to use the mainline to switch traffic, neutral switching on the Baytown and Cedar Bayou Branches would significantly help with the problems both UP and BNSF encounter on these lines. The lines are depicted on Map 4. It would permit better planning and coordination of switching activities, would give customers as well as UP and BNSF the certainty of equal treatment with a "neutral" party supervising the switching, and would reduce the number of movements on the line because only one entity would be performing switching for BNSF and UP, not two as is currently the case.

The proposal would also reduce burdens on shippers. Operationally, it is very difficult for most customers to accommodate being switched by two carriers in a 24-hour period. Double-switching requires the shipper to have enough in-plant capacity to separate shipments for both railroads on a daily basis, which frequently requires the customer to have, at the very least, duplicate trackage and facilities or its own in-plant switcher to provide the required separation of shipments. In addition, the customers must have duplicate car tracing, billing and reporting systems. Finally, the customers need to be able to "shut down" their rail operations twice daily, if they are to be switched by two rail carriers, in order for cars to be placed for loading or unloading, or pulled for outbound movement. For most customers along the Baytown and Cedar Bayou Branches, this has proved, so far, to be a significant barrier to the use of both BNSF and UP direct, in-plant switching services. As a result, BNSF is at present directly switching


The Burlington Northern and Santa Fe Railway Company
Neutral Switching Supervision,
Baytown and Cedar Bayou Branches
Engineering Services July 3, 1998
DAYTON JCT.
REDLAND
DAYTON PLASTIC STORAGE YARD (BT)
SOLANDER FACILITY
AUDREY
CROSBY
1 mile
Line Ownership
BNSF
UP
SP
Industry
Baytown & Cedar Bayou Branches
EDDON
ENTERPRISE
TEXAS EASTERN
CHEVRON ASCOO
GULF SIDING
ELDON
ELDON JCT.
COADY YARD
COVE RD TEAM TRACK
BAYCHEM
BAYER
CEDAR POINT PASS
DURHAM YARD
CEDAR BAYOU SAUR
EAST BAYTOWN U.S. STEEL
BAYTOWN YARD
UP INTERCHANGE
EMMETT JCT

MAP 4

only two customers on the Baytown Branch, despite having offered, since early May 1998, customers the access to direct BNSF switching services.

UP's data allegedly showing that BNSF's haulage movements from the branch experience transit times comparable with those of UP's shipments is flawed. UP claims that, since BNSF's haulage shipments are handled in the same trains as the UP shipments, they cannot be receiving inferior treatment. Yet data provided by UP itself, see Verified Statement of Jerry S. Wilmoth at 8, shows differing levels of service in July and August 1998 which undercut comments about BNSF and UP traffic receiving identical service: in July, transit times to BNSF at "Baytown" (should be Dayton) were half a day shorter than UP's transit times; in August, half a day longer. While BNSF does not have comparable data on UP traffic, Mr. Wilmoth's statements about different transit times between BNSF and UP shipments contradict UP's assertions that these shipments receive the same service because they move on the same trains.

UP's Opposition also misstates BNSF's position. BNSF has stated that, for a significant period of time up to and after July 8, 1998, BNSF was receiving inferior service because UP was unable to consistently meet the transit standards established with BNSF for movement of loaded cars off this line. Although UP is now meeting and, in some cases, exceeding those standards,[2/] it is still the case that UP switch and haulage service to BNSF for customers on the Baytown and Cedar Bayou Branches

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[2/] As explained in BNSF's Application, much of the reason for this improvement stems from BNSF's close car-by-car monitoring and communication with UP, as carried out by BNSF's Logistics Trackage & Haulage Team in Fort Worth. See Application, V.S. Rickershauser at 11.

remains totally under the control of UP. UP's switch and haulage service for BNSF is not covered by the Dispatching Protocol.

Because UP solely controls its switch and haulage service to BNSF, it can intentionally or unintentionally degrade its service for BNSF destined traffic. For example, cars moving from plastics shippers on the line through the Sjolander Dayton Storage-In-Transit (SIT) facility are mostly unaffected by differential switching service: the roadhaul carrier for these outbound shipments is not identified until, in the vast majority of cases, the cars are at the SIT. At that time, the SIT blocks the cars for interchange to UP or BNSF directly. However, inbound cars, which BNSF originally delivered to UP at Dayton and UP now requires be delivered at Houston, are more affected by differential switching. Besides the potential for delay on the Baytown Branch itself, in part due to the inadequate movement and status reporting UP concedes, there is additional dwell time of these cars moving through additional yards and interchanges in Houston.

UP's allegations, contained in UP's Reply filed September 30, 1998 in the Sub-No. 21 oversight proceeding, that BNSF has "never" presented joint-facility issues concerning the Baytown Branch to the Joint Service Committee, established pursuant to the Dispatching Protocol, for resolution are inaccurate. UP's Reply at 59. Indeed, BNSF has previously raised issues to the Joint Service Committee about problems with haulage on the Baytown Branch. UP's allegation that a BNSF representative stated that

BNSF had no problems with UP's haulage service is also inaccurate; UP's officials are simply mistaken or misunderstood discussions that occurred.[3/]

Thus, UP's opposition to BNSF's request is baseless. UP has expressed its unhappiness about providing haulage service to BNSF, but it is also unhappy about the congestion problems caused by BNSF's switching operations on these lines. While customers are entitled to access under Decision No. 44 to competitive BNSF service on the Baytown and Cedar Bayou Branches, they are left with a choice between UP reciprocal switch/haulage service to reach BNSF or the "double" daily switching by both UP and BNSF which many, if not most, cannot accommodate. UP has yet to offer a workable proposal that would allow BNSF to compete effectively with UP. In contrast, BNSF's proposed neutral switching supervision would reduce switching moves and the number of trains operating on the branches toward the line's capacity, meet the needs of customers, and address the complaints of both UP and BNSF.

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

As shown by the events that have occurred since the UP/SP merger and the service crisis, UP's long-term operating plans with respect to directional operations remain uncertain and unknown. Indeed, directional running was originally contemplated in its operating plans to be used only in limited circumstances such as on SP's "Rabbit" line between Houston and Lewisville and in Central Texas. However, post-merger, UP has unilaterally decided to institute additional directional operations on UP's Flatonia-

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[3/] In fact, I do not believe that a meeting took place on September 16 as UP states; I recall a meeting on September 22.

Placedo-Algoa routes, the UP and SP Baytown Branches, the UP and SP routes between Houston and Beaumont and, ultimately when track work is completed, the UP and SP lines between Beaumont, Iowa Junction and Kinder, LA.

The operational impacts of directional running for the merger, both positive and negative, were recognized by a number of parties in the UP/SP merger proceeding. On the positive side, directional running could increase a line's capacity. However, opponents to the UP/SP merger, notably Conrail and KCS, "argued that BNSF will face crippling operational obstacles in providing service over these trackage rights. They argue that BNSF's service will be hampered by going against the flow of the directional running of certain lines . . . ." Decision No. 44 at 132. The Board's decision, which included adoption of the CMA Agreement, addressed the issue of directional running by granting BNSF additional trackage rights specifically to join UP's directional flows between Houston, Memphis and the St. Louis area. These parties, as well as UP and BNSF, recognized that BNSF could not provide competitive service to "2-to-1" customers in a trackage rights corridor if BNSF could not "go with the flow" of UP's directional operations.

UP fully understands the issues for BNSF's operations of being required to run bidirectionally in a corridor where UP has instituted directional running. When it discussed the commencement of directional running between Flatonia and Placedo in November, 1997, Mr. Handley, UP's operating witness, stated that "BNSF joined in the directional operation by running its trains south from Caldwell to Placedo through Flatonia. This kept BNSF trains from running against the flow of traffic." V.S. Handley

at 46. At that time, UP recognized that having as many trains as possible running in the same direction in a directional corridor, without regard to ownership, is the best way to maximize available capacity and minimize or avoid congestion on a route.

BNSF's actual operations and service have been, and will continue to be, adversely impacted by UP's decision to adopt these directional operations if BNSF has trackage rights over some, but not all, of the routes where UP is operating directionally. BNSF simply cannot provide consistent, reliable and competitive service to customers when it is forced to operate "against the flow." Nor does the future hold the prospect of improved BNSF operations since UP can decide to institute directional operations on other routes (just like it did on the Baytown Branch), forcing BNSF to move against the UP flow to serve any BNSF customers directly or reroute trains over other heavily congested lines. Pre-merger SP was not operating with these uncertainties or constraints.

Another example, as previously described in my earlier Verified Statement contained in BNSF's Application, is reflected in UP's decision to commence northbound directional running on the former SP line from Waxahachie to Fort Worth, over which BNSF has trackage rights.[4/] Map 5 depicts these trackage rights. UP's decision to commence directional operations will make it difficult for BNSF to run southbound traffic

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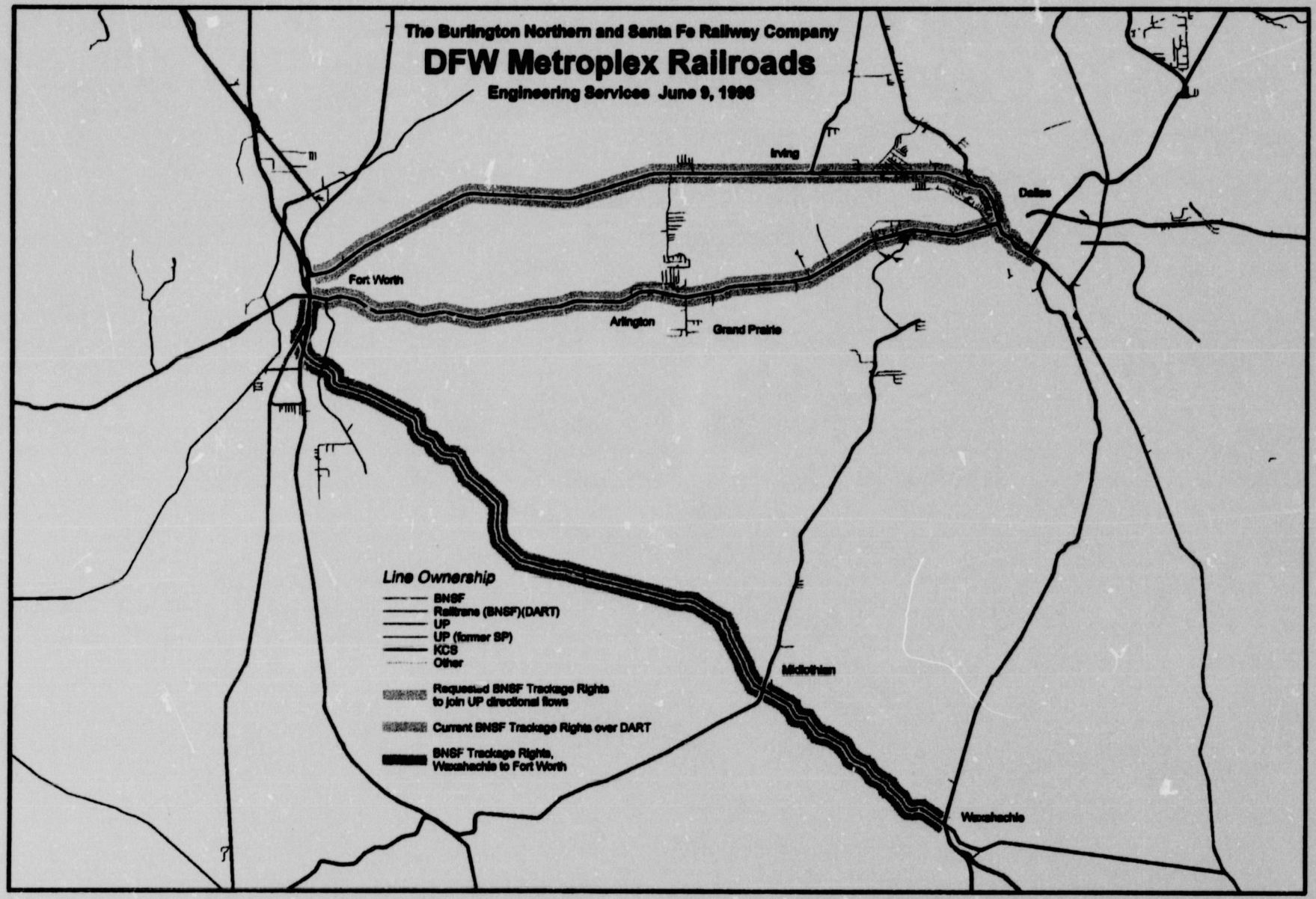
[4/] In my verified statement contained in BNSF's Application, I discussed the Fort Worth to Waxahachie line as an example where UP has begun or plans to begin directional operations and BNSF has been unable to secure trackage rights over the bidirectional route. This situation also has arisen, or may soon arise, on UP's routes between Taylor and San Antonio, TX, and on the Baytown Branch between Houston and Baytown.


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

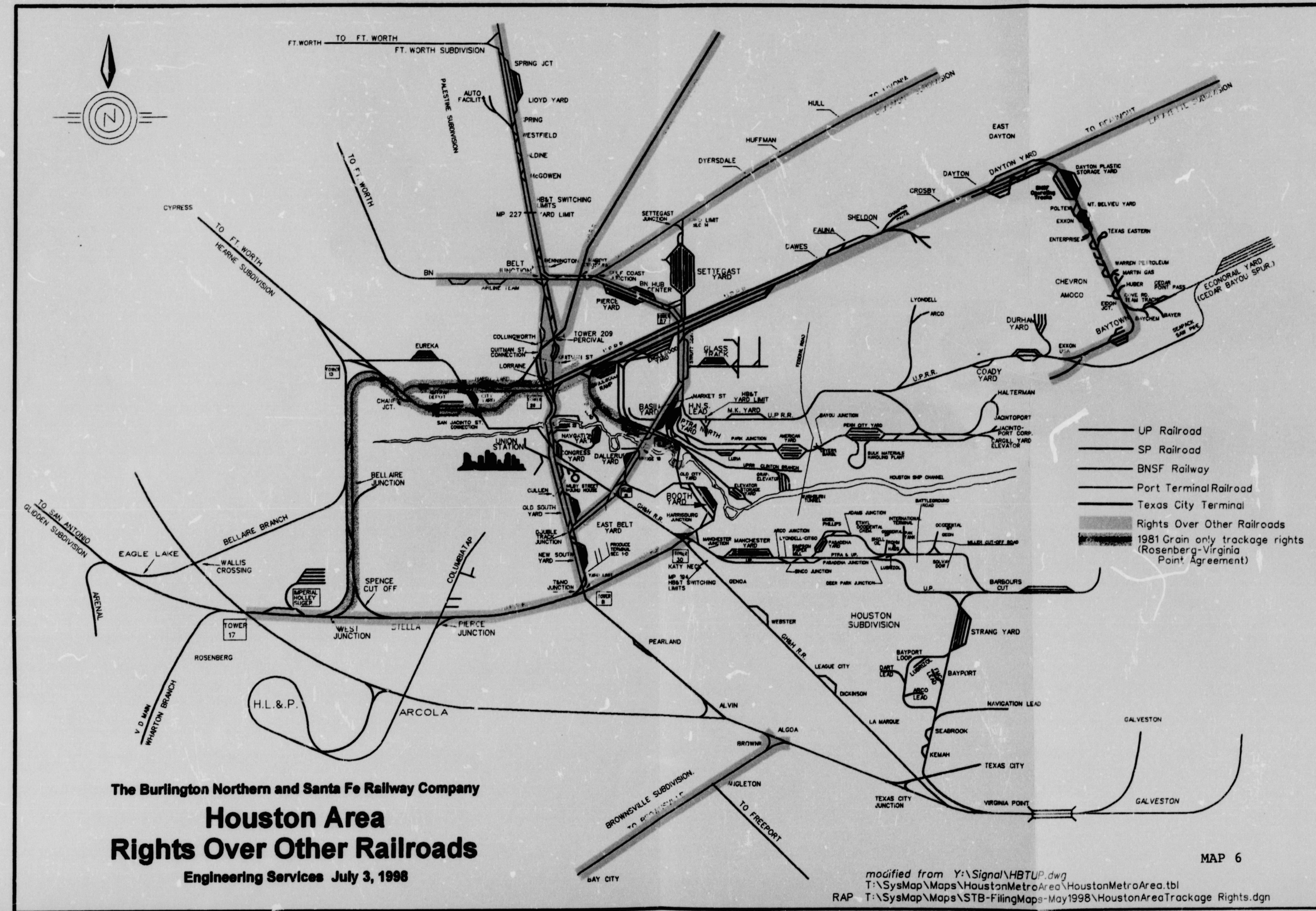
MAP 5

over its trackage rights line from Waxahachie to Fort Worth, delaying BNSF traffic and potentially contributing to congestion in the Fort Worth area with negative impacts on shippers. Various shippers like the Texas Municipal Power Agency, Houston Light and Power, and Texas Utilities Electric Company are supporting BNSF's request for trackage rights over UP's line between Fort Worth and Dallas so that BNSF can offer competitive service for traffic moving southbound from Fort Worth.

UP's threat to discontinue use of directional operations in the event the Board were to grant BNSF's request for trackage rights between Fort Worth and Dallas (and possibly elsewhere) if BNSF is granted the right to join directional operations shows that UP's decisions about its operating practices in the Houston/Gulf Coast area have been and will continue to be based on its perceived self-interest, irrespective of proven efficiencies presented by an alternative operating practice.

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

Contrary to UP's opposition, this request would not permit BNSF any new competitive access to shippers. It would permit the dispatchers and corridor managers, already working in the Spring Center, to take advantage of every possible route to move through trains of UP, BNSF and Tex Mex through Houston in order to keep the Houston terminal complex as fluid as possible. Today, there is an artificial barrier to dispatching trains within and through the Houston terminal area. Map 6 depicts the Houston terminal area. Dispatchers cannot dispatch BNSF or Tex Mex trains over routes where the



The Burlington Northern and Santa Fe Railway Company

Houston Area
Rights Over Other Railroads

Engineering Services July 3, 1998

MAP 6

modified from Y:\Signal\HBTUP.dwg
T:\SysMap\Maps\HoustonMetroArea\HoustonMetroArea.tbl
RAP T:\SysMap\Maps\STB-FilingMaps-May1998\HoustonAreaTrackage Rights.dgn

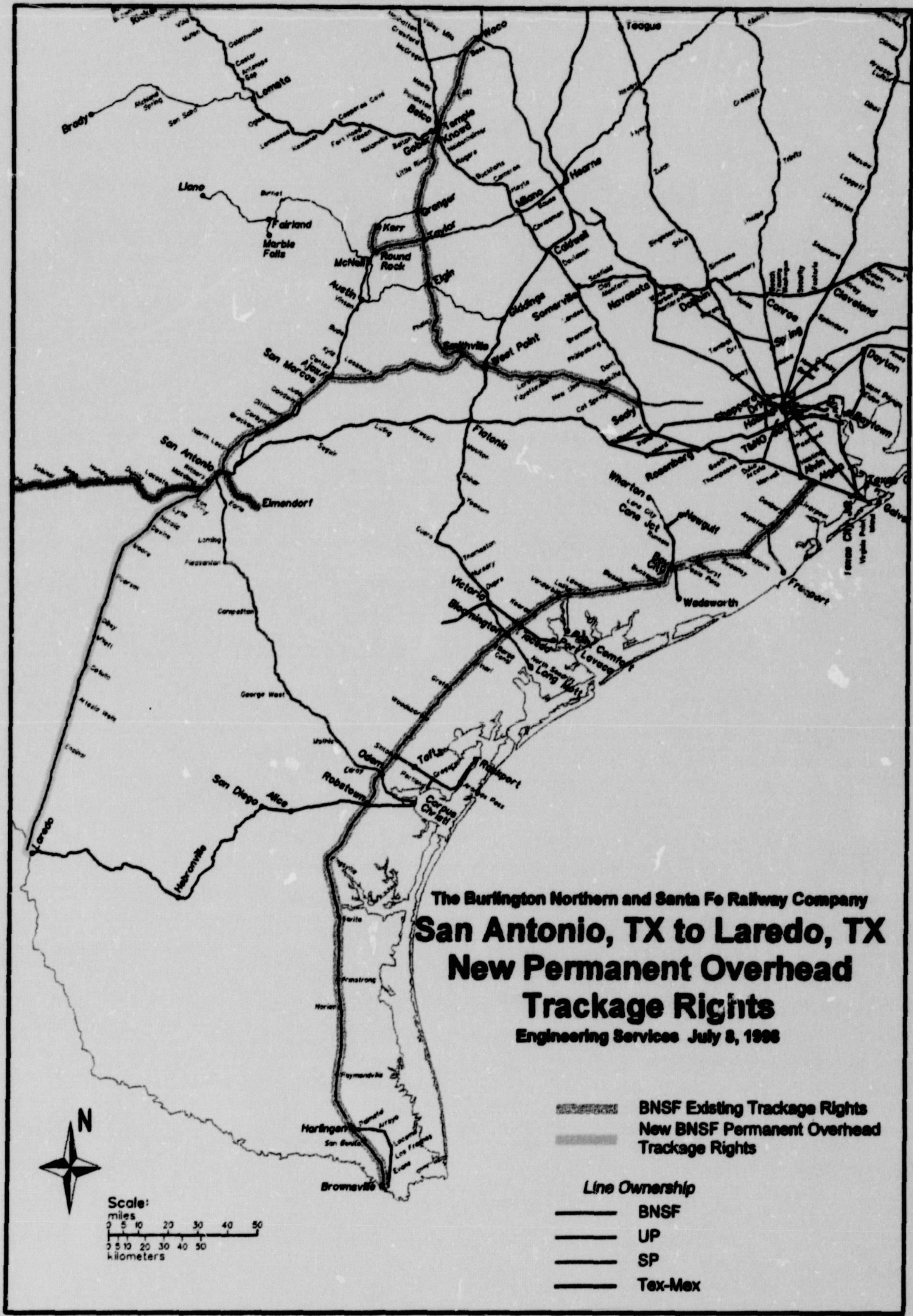
carrier is not the owner or does not have trackage rights. While BNSF's network in the Houston area is limited, UP already has unrestricted trackage rights over all BNSF Houston terminal area routes including, as negotiated in February, BNSF's strategic Houston "bypass" line between Beaumont and Navasota via Cleveland and Conroe.

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

UP's and Tex Mex's opposition to BNSF's request for trackage rights to Laredo raises a number of operating issues that can be resolved with expanded capacity to accommodate additional traffic. Map 7 depicts the San Antonio to Laredo line. If the Board were to grant BNSF's request, BNSF is willing to enter into discussions with UP and Tex Mex as to what capital is necessary to support BNSF's additional movements.

With respect to operations at the International Bridge at Laredo, it is anticipated that customs activity will not be performed on the Bridge as has been past practice, thus freeing up operating windows for train movement between the United States and Mexico. Moreover, were the Board to grant BNSF's request, BNSF believes that it would be able to work with the other carriers to establish a mutually acceptable time frame for its operations.

In addition, UP has built a crossover at Heafer, TX between the UP and SP mainlines through San Antonio, permitting UP to route trains around its congested SoSan Yard using the SP double track, easing congestion at that point. Accordingly, BNSF's operations using this same trackage will have no adverse impact on yard operations at SoSan Yard.


The Burlington Northern and Santa Fe Railway Company
San Antonio, TX to Laredo, TX
New Permanent Overhead
Trackage Rights
Engineering Services July 8, 1996
BNSF Existing Trackage Rights
New BNSF Permanent Overhead
Trackage Rights
Line Ownership
BNSF
UP
SP
Tex-Mex
N
Scale:
miles
0 5 10 20 30 40 50
0 5 10 20 30 40 50
kilometers
Waco
Temple
Brady
Llano
Fairland
Marble Falls
McNeil
Round Rock
Austin
Elgin
Smithville
San Marcos
San Antonio
Elmendorf
Laredo
Hebbronville
San Diego
Alice
Robstown
Odem
Taft
Rockport
Corpus Christi
Victoria
Bloomington
Port Lavaca
Long Mott
Wadsworth
Freeport
Harlingen
San Benito
Brownsville
Giddings
Somerville
Caldwell
Hearne
Navasota
Conroe
Cleveland
Dayton
Baytown
Rosenberg
Sealy
Wharton
Flatonia
Newgulf

MAP 7

VERIFICATION

THE STATE OF TEXAS)
)
COUNTY OF Harris)

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

Ernest L. Hord

Ernest L. Hord

Subscribed and sworn to before me on this 14th day of October, 1998.

Susan E. Lorence

Notary Public

My Commission expires:

10-27-99

SUSAN E. LORENCE
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
OCT. 27, 1999

VERIFIED STATEMENT
OF
HAROLD F. WEDDLE

My name is Harold F. Weddle, and I am Assistant Vice President, Mexico Business Unit, for The Burlington Northern and Santa Fe Railway Company ("BNSF"). My business address is 2650 Lou Menk Drive, Fort Worth, TX 76131. In my position, I am responsible for developing and managing Mexico business for BNSF.

I started my rail career with the Southern Pacific Transportation Co. in 1955, progressing through many operating positions to head up SP's first intermodal operating and marketing business unit from 1968 to 1980. From 1980 until 1988, I operated a small warehousing and trucking distribution service in Houston, TX. From 1988 until early 1991, I worked with American President Distribution Services ("APDS") and, in particular, helped develop stack train services for American President Lines ("APL") into and out of Mexico. From 1991 until 1996, I was Director of Sales for SP's Mexico Business Unit, headquartered in Houston, TX. In January, 1997, I joined BNSF to assist in establishing a Mexico business unit, for which I am now responsible. I received a BBA degree from the University of Houston in 1961.

I am submitting this Verified Statement to respond to certain allegations made by the Texas Mexican Railway Company ("Tex Mex") in its September 18, 1998 response ("Tex Mex Opposition") to BNSF's July 8, 1998 Application for Additional Remedial Conditions Regarding the Houston/Gulf Coast Area. Specifically, as a part of its response, Tex Mex submitted the Verified Statement of its President, Larry D. Fields, to respond to BNSF's contention that the Board should grant BNSF trackage rights over

UP's San Antonio-Laredo line because BNSF has been unable to establish a competitive long-term interchange arrangement with Tex Mex for traffic to and from Mexico via Laredo. Mr. Fields asserts that the Term Sheet Agreement proposed to BNSF in mid-May of this year by Tex Mex was acceptable to BNSF's negotiators although it was not accepted by BNSF's upper management. As I explain below, the provisions of Tex Mex's proposed Term Sheet Agreement were not acceptable to any of BNSF's negotiators, including myself, because, in fact, the provisions proposed in the Term Sheet Agreement would not enable BNSF to compete effectively over the Laredo gateway.

In its decision approving the UP/SP merger, the Board imposed two conditions that were intended to ensure that the merged UP/SP system faced competition for traffic crossing between the United States and Mexico at Laredo. The first condition embodied in the settlement agreement between UP/SP and BNSF, gave BNSF a connection to Tex Mex at Corpus Christi to create a BNSF/Tex Mex routing over Laredo. The second condition gave Tex Mex a connection to the Kansas City Southern Railway Company ("KCS") at Beaumont to create a KCS/Tex Mex routing over Laredo.

Since the merger, BNSF and Tex Mex have cooperated where possible with each other to make the BNSF/Tex Mex routing a reality, and have continued negotiations in an attempt to reach a durable, long-term agreement that would make the BNSF/Tex Mex routing attractive to shippers and market competitive. Of course, UP was and is the dominant rail competitor at the Laredo gateway. Therefore, our negotiations had to factor in the circuity of the BNSF-Tex Mex route to Laredo, compared with UP, as well

as the interrelationship of making our two-line haul competitive with a frequently more direct single-line haul.

BNSF and Tex Mex began negotiating on these issues to reach a longterm interline agreement in 1996. Beginning in midyear 1997, Pete Rickershauser, Richard Miller and I became responsible for these negotiations, working with Mr. Fields of Tex Mex, and, on occasion, senior representation from KCS and Transportacion Ferroviaria Mexicana ("TFM"). As a result of our mutual efforts, BNSF and Tex Mex reached agreement in late February of this year on the provisions of such a long-term agreement which would have enabled us to jointly offer a competitive service product via the Laredo gateway. In fact, BNSF was prepared to execute this agreement on March 5, 1998 at a scheduled meeting in San Antonio, but we were advised by Mr. Fields that the provisions were unacceptable to Tex Mex's parent, KCS, and no final agreement was executed. As BNSF has previously advised the Board, BNSF was unaware until that time that the December 1995 Joint Venture agreement between KCS and Transportacion Maritama Mexicana ("TMM") might limit the ability of Tex Mex to accept the terms it had agreed to in the ongoing BNSF/Tex Mex negotiations

Subsequently, negotiations resumed and, as Mr. Fields has outlined in his Verified Statement, Tex Mex proposed a revised Term Sheet Agreement to BNSF in May 1998. Mr. Fields told us that Tex Mex was unable to resolve any of BNSF's concerns about the high level of rates and divisions in Tex Mex's proposed Term Sheet Agreement and that essentially BNSF would have to "take it or leave it". Mr. Fields' assertion that the proposed Term Sheet Agreement was acceptable to "BNSF negotiators" is inaccurate.

Neither I nor any of BNSF's other negotiators believed that the provisions were acceptable, and we explicitly advised Mr. Fields of our concerns and reservations. Indeed, it was only at Mr. Fields' insistence that the Term Sheet Agreement be presented to BNSF's upper management that we agreed to do so. Upon review of the proposed Term Sheet Agreement by BNSF's upper management, it was determined that BNSF would affirm the position taken by its negotiators that the terms were unacceptable, did not permit BNSF to be competitive, and had, in fact, changed considerably from those agreed to in late February.

Mr. Fields asserts that Tex Mex's proposed Term Sheet Agreement would enable BNSF to compete with UP because (i) the agreement would provide BNSF with the authority to quote through rates over Tex Mex's lines, (ii) the agreement would establish a mechanism for addressing situations where the divisions set by the agreement caused specific movements not to be competitive and imposed an obligation on the parties to negotiate in good faith to make the divisions market competitive if economically feasible; and (iii) the agreement would be "long-term" (five-year initial term renewable for successive five-year terms). Tex Mex Opposition at 11-12.

However, these provisions were not sufficient to meet BNSF's, or the market's, commercial needs. While BNSF would indeed have the authority to quote through rates over Tex Mex's lines, the level of divisions provided in the agreement would not have permitted BNSF to be competitive, in my estimation, for traffic moving to or from Mexico via the Laredo gateway. In addition, while the agreement would have allowed the parties to negotiate competitive rates for specific movements, the basic level of the divisions in

the term sheet agreement would have meant that nearly every opportunity would have to be negotiated, a laborious and time consuming process, frequently time-constrained because of customers' requirements and UP's ability to quote single-line pricing and service packages. While the proposed agreement provided for a five year term with renewal provisions, the agreement also contained a clause where either party could terminate it in the second year. This cancellation provision obviously made it difficult for BNSF to negotiate long-term, stable contracts and service products in response to shippers' needs, a factor not hampering any of our rail competitors over the Laredo gateway.

While it seemed apparent to me that Tex Mex and TFM negotiators worked with BNSF in good faith, and tried repeatedly to reach an agreement permitting both Tex Mex and BNSF to increase our mutual traffic through the Laredo gateway over the long term, our efforts were undone time and again by the need to secure KCS approval, which was never granted.

VERIFICATION

THE STATE OF TEXAS)

COUNTY OF TARRANT)

Harold F. Weddle, being duly sworn, deposes and says that he has read the foregoing statement and the contents thereof are true and correct to the best of this knowledge and belief.

Harold F. Weddle

Subscribed and worn before me on this 15th day of October 1998.

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

Notary Public

My Commission Expires: 09/15/2001

In the Matter of

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

— Control and Merger —

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

Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

[Houston/Gulf Coast Oversight]

Verified Statement of

Joseph P. Kalt

I. QUALIFICATIONS AND INTRODUCTION

My name is Joseph P. Kalt. I am the Ford Foundation Professor of International Political Economy and former Academic Dean for Research at the John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts 02138. I am also the Faculty Chairman of the Economics and Quantitative Methods Program at the Kennedy School. In addition, I work as an economic consultant with The Economics Resource Group, Inc., One Mifflin Place, Cambridge, Massachusetts 02138. The Economics Resource Group is an economics consulting firm specializing in matters of antitrust and regulated industries. I have previously filed a verified statement in this matter,[1] and here submit a statement in response to issues now raised in the statements of other parties.

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

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[1] 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],

University. In these capacities, I had primary responsibility for teaching the graduate and undergraduate courses in the economics of antitrust and regulation. Since joining the faculty of the Kennedy School as a Professor in 1986, I have continued to teach on such matters in graduate courses covering microeconomics for public policy analysis and natural resource policy.

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

In the present oversight proceeding, The Burlington Northern and Santa Fe Railway Company (BNSF), among others, has proposed modifications of conditions imposed as part of the Union Pacific/Southern Pacific (UP/SP) merger. The proposed modifications and the response by UP and other parties raise questions about the appropriate public policy standard

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Verified Statement of Joseph P. Kalt, July 8, 1998.

for merger oversight. I have been asked by BNSF to consider the extent to which the following requests for remedial conditions are consistent with appropriate policy considerations in a merger oversight proceeding:

- Permanent bidirectional trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo lines;
- Trackage rights over both the UP line and the SP line between Harlingen and Brownsville (until UP constructs a connection between the UP and SP lines at Brownsville, completing the bypass project);
- Trackage rights on the UP Taylor-Milano line;
- Neutral switching supervision on the former SP Baytown Branch and Cedar Bayou Branch;
- Trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows, including, specifically, over the Fort Worth to Dallas, TX line (via Arlington);
- Trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, including, but not limited to, the former SP route between West Junction and Tower 26 via Chaney Junction.

In performing this analysis, I first address the standards that, consistent with sound economic policy, should be applied to merger oversight and address issues raised by the

responding parties concerning these conditions. I then apply those standards to the requests of BNSF.

I conclude that BNSF's requests for modifications of the rights it received under Decision No. 44[2] that I have examined are consistent with appropriate standards of regulatory oversight. Under these requests, BNSF does not seek access to new shippers; rather, BNSF desires to respond to specified operational issues that impact the efficacy of the operating rights originally granted BNSF in Decision No. 44 to maintain competitive service to shippers who otherwise would have been adversely affected by the UP/SP merger. By maintaining the basic competitive structure envisioned by the Board and enabling BNSF to provide the quality of service necessary for it to serve as an effective competitor to UP, the changes sought by BNSF would continue to maintain and further the public benefits which the Board determined would result from the merger. In contrast, if BNSF cannot provide the quality of service necessary to serve as a long-term effective competitor, the public benefit arising from the merger will be adversely impacted.

II. ECONOMIC POLICY UNDERLYING MERGER OVERSIGHT STANDARDS

In reviewing rail merger applications, the Board has frequently determined that conditions are necessary to preserve competition that might otherwise be eliminated as a result of the consolidation of two carriers into one. Thus, the merger approval process is employed to protect existing levels of competition; it is not the venue for using regulatory

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[2] STB Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver

policy to try to inject expanded competition into affected rail markets.[3] The Board's underlying approach is consistent with sound economics underlying merger policy: merger oversight is properly used solely to protect and preserve competition that would otherwise be reduced or eliminated by the merger.

In Decision No. 44, the Board followed these objectives in approving an extensive negotiated agreement between BNSF and UP that preserved competitive options for rail shippers through a combination of trackage rights, haulage rights, line purchases, and build-in/build-out rights, with the majority of concerns resolved through trackage rights agreements. In addition, the Board approved a number of other competition-preserving conditions, including a five-year oversight process designed to enable the Board to monitor the efficiency of adopted procedures for maintaining competition at no less than pre-merger levels. The Board's continuing oversight role allows it to monitor how the merger conditions are functioning in practice in promotion of the competitive goals established in Decision No. 44 under the initial decision, and fine-tuning those conditions as warranted.

The economic rationale properly underlying the standards for oversight and modification of initial remedial conditions is the same as for initial review. Merger conditions are designed to maintain pre-merger levels of competition, at adequate levels of service quality, in a manner that preserves potential public benefits arising from the merger.

Rio Grande Western Railroad Company, Decision No. 44, served August 12, 1996.

[3] STB Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver Rio Grande Western Railroad Company, Decision No. 44, served August 12, 1996.

In practice, this means introducing effective railroad alternatives for "2-to-1" shippers to replace competitive rail options that would otherwise be lost as a result of the merger. The merger oversight process, designed to determine whether the selected conditions have in fact preserved effective railroad alternatives for "2-to-1" shippers, is certainly not the appropriate venue for more intrusive intervention, such as the pursuit of a general policy of divestiture or open access. It also is unsound economic policy to renegotiate, through after-the-fact regulatory imposition, new conditions on a merged railroad in the absence of evidence or experience that the conditions designed to preserve pre-merger competition have not been or are likely not to be effective. Nevertheless, given the complexity of the national railroad system, the operational changes resulting from the merger of two extensive railroad systems, and the impacts that the actions of the merging railroads may have upon a replacement tenant competitor, it would hardly be unexpected that some specific operational rights would require fine-tuning based on experience and the evolution of events.

What kinds of situations can warrant after-the-fact alterations of already-approved merger conditions? As pointed out in my first verified statement in this matter, a merger which yields operational benefits from economies of scale and network integration can, in fact, strain the physical capacity of a post-merger system. The resulting service problems can, as has happened in the case of the UP, have deleterious effects on the service offerings which a competitive railroad can provide, and this can inhibit the competitive force of that railroad. In addition, in the case of a far-reaching industrial restructuring such as the UP/SP merger, unforeseen developments may arise that serve to offset the competition-preserving

results that original conditions were hoped to have. Finally, particularly when original conditions rely on the merged company to accept a competitor as a tenant (as under trackage and haulage arrangements), the prospect of self-serving, discriminatory behavior can threaten structural approaches to trying to preserve competition. Indeed, even if the incumbent railroad does not intend to discriminate against its tenant, one would expect the incumbent, particularly an incumbent responding to crisis and severe operational distress, to take steps to remedy its problems without regard to possible discriminatory or adverse impact on the tenant and the quality of service that the tenant can provide as a competitor to the incumbent. Under such circumstances, it is not at all inconsistent with sound merger policy for the Board to exercise oversight authority and redress the deleterious impacts on the ability of the tenant to serve its role as replacement competitive carrier.

This last point deserves emphasis. The efficacy of structural conditions, such as trackage or haulage rights, depends on the behavior of the landlord railroad. This is exemplified by the BNSF/UP agreement approved in Decision No. 44. The competitive alternative provided by BNSF's agreements utilizes, variously, haulage services and trackage rights provided by UP. While such arrangements can effectively introduce competitive alternatives to shippers, they require the new competitor to rely on the service and operations of the competing merged railroad to provide service which maintains competition at a quality and level necessary to accomplish the Board's objectives. The practical implementation of such arrangements can be very difficult to predict beforehand, and they are further subject to the behavioral response of the merged railroads to evolving conditions, such as the service

crisis in Houston, or changes in operational plans not conceived of at the time of the merger. As such, arrangements that require the merged railroad to provide access to competitors warrant continued oversight, especially as they evolve operationally in response to external events and management decisions of the merged railroad. In short, because the efficacy of structural remedies to merger-related competitive problems depends on post-merger behavior of the merged firm, it is not at all "going beyond" proper principles of merger policy for the Board to concern itself with post-merger behavior and to fine-tune merger conditions as necessary.

These economic principles of competitive oversight are widely applied and are not novel to the railroad industry. Regulatory oversight over the actions of an incumbent providing access to a competitor in order to preserve or enhance competition, either in the context of a merger or in other structures in which access or services are provided to competitors, is widespread across regulated industries. In the electric, telecommunications, and natural gas industries, for example, regulators frequently exercise oversight over the actions and standards of conduct of incumbents that would have the intended or unintended effect of discriminating against tenant service providers and thereby thwarting policies of protecting competition. As appropriate, policy then aims to prevent anti-competitive self-dealing or otherwise self-serving conduct.[4] In the face of such conduct, it is appropriate that

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[4] See, e.g., Federal Energy Regulatory Commission, 18 CFR Parts 35 and 385; [Docket Nos. RM95-8-000 and RM94-7-001] "Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities" Order No. 888. Final Rule. Issued April 24, 1996. The Telecommunications Act of 1996, Federal Energy Regulatory Commission [Docket No. RM87-5-000] "Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines" Order No. 497. Final Rule. Issued June 1,

regulators require operational or other changes in the provision of services to competitors. The oversight can be in response to proposed operational decisions by the regulated incumbent or as a result of changes in the marketplace that require different solutions to preserve the desired competitive impact. In either situation, the appropriate regulatory goal is to insure that the intended competitive opportunities are preserved.

III. BNSF's REQUESTS FOR CONDITIONS

The principles outlined above are the appropriate ones for evaluating the remedial conditions proposed by BNSF and others. BNSF's proposed conditions that I have examined are narrowly drawn and reflect the appropriate scope for the adjustment of remedies in the review stages of a merger proceeding. BNSF has identified specific impediments to its ability to operate fully in its role as a competitive alternative to shippers where UP and SP would have otherwise competed. As a group, the requested conditions I have examined properly are focused narrowly on responding to such impediments, rather than on expanding its access to shippers. Its requests are thus tailored to making sure that the conditions that it originally was granted work to protect competition from merger-related harm.

The modifications requested by BNSF are limited in scope. They would have the effect of coordinating BNSF's operations with UP's new directional running or implementing non-discriminatory competitive options to shippers granted access under the terms of the merger. BNSF is not asking for access to any shippers it does not already have the rights to under the terms of the merger decision. The requested conditions do not represent an

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expansion of competition or access to shippers from that approved by the Board.

The post-merger service failures of UP are by now well-documented. While the recent service problems have apparently receded, the prospect of future reappearance is uncertain and, at any rate, this recent experience provides important implications for the going-forward oversight of the UP/SP transaction. As far as the effectiveness of the BNSF service conditions as protectors of competition are concerned, at least two principles stand out.

First, whether the impact on BNSF is intentional or not, operational changes by UP, taken in response to its service crises, can adversely affect the quality of service that BNSF, as tenant, can offer. Examples of such effects are seen, for example, in the effects of UP's move to directional running on lines upon which BNSF must depend (see, e.g., Verified Statement of Ernest L. Hord). It is not sufficient for UP to attempt to ward off fine-tuning of merger conditions by arguing, in essence, that BNSF's service may have been harmed, but UP's service has been equally harmed.[5] Absent the merger, at least where SP operated on its own lines, SP would not have been a dependent tenant on UP, and it would have been accordingly relatively insulated from the kinds of deleterious effects of UP's crisis operations that a tenant such as BNSF confronts. Under such conditions, therefore, service crises of the type that UP has been confronting could well put UP at a relative disadvantage in the

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[5] 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], UP's Opposition to Condition Applications, Volume 1 – Narrative, at 80.

of a tenant such as BNSF by subjecting the tenant to uncertainty and vacillation in the service that it can commit to. UP is obviously in a better position to anticipate and adapt the operational changes that it undertakes and would undertake in the face of future service problems. As such, UP can optimize with respect to its customers' responses. BNSF-as-competitor, on the other hand, will remain at the mercy of UP's operational behavior — absent protections of the kind it is now requesting. If left in its current position, BNSF will continue to confront risks and uncertainties that inhibit its ability to make firm commitments of service levels and quality to customers, and to make the long term investments to back up such offerings — as documented by Mr. Hord's Verified Statement. Again, such dependence is the result of its position as tenant and was not faced to the same degree by a non-merged SP. Therefore, preserving competition at pre-merger levels properly means fine-tuning merger related structural conditions to ensure that UP's operational decisions do not have the effect of discriminating against BNSF's ability to function as an effective competitive tenant under the rights granted in Decision No. 44. BNSF's requested modifications are properly seen in this light.

As discussed in Mr. Hord's Verified Statement, the introduction of directional running over various lines in Texas, and continuing changes in the implementation of directional running adopted by UP, inhibit BNSF's ability to adapt competitively to decisions by UP management. These operational changes may yield benefits to UP in the operation of the rail network and in relieving congestion, and they may not be intentionally discriminatory. It is widely recognized, however, that bi-directional trackage rights on lines

that have been changed to directional running can disadvantage the tenant railroad from its original competitive position.[7] When this occurs, it is appropriate for the Board to exercise its post-merger oversight authority in response. With future marketplace developments uncertain, UP's possible responses to various unforeseen developments, and the capacity of UP-as-landlord to respond in ways that hinder the effectiveness of the original merger conditions, policy should appropriately adopt prophylactic standards which protect competition and the effectiveness of the merger-related rights of BNSF. It is no solution to the problems that BNSF will face in committing to longer term service and related investments to force BNSF to return to negotiations with UP if and when future problems return. At such times, UP will have little incentive to negotiate provisions which protect the service quality of its tenant-rival. Indeed, armed with the capacity to adversely affect BNSF's ability to perform its role as a competitor, UP will be in the position to extract concessions which reduce the public benefit from the planned post-merger operations of the merger.

A final, clear illustration of proper fine-tuning of the rights granted BNSF in Decision No. 44 is provided by BNSF's request for non-discriminatory switching to shippers on the Baytown Branch. This is a specific limited response to operational difficulties in providing post-merger competitive options that could only be identified with the benefit of experience. The evidence presented by Mr. Hord demonstrates the actual operation of the

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[7] Finance Docket No. 32760 (Sub-Nos. 26 et seq.), Comments of the U.S. Department of Transportation, STB Finance Docket No. 32760 (Sub-Nos. 26 et seq.), September 18, 1998, at 8.

merger conditions on the Baytown Branch.[8] This evidence demonstrates how BNSF has been disadvantaged through the implementation of the merger agreement in its ability to provide the competitive option to shippers intended by the Board. The targeted remedy to these problems proposed by BNSF is just the type that ought to be granted under economically appropriate merger oversight standards. The susceptibility of BNSF's service quality to the vicissitudes of UP's operational behavior also supports BNSF's request to operate over available clear routes through the Houston terminal area as determined and managed by the Spring Consolidated Dispatching Center. This request, which would not provide BNSF with access to any new shippers, would enable BNSF to respond to the fluid Houston terminal situation as UP continues to adjust its operations there and if and when UP finds itself once again facing service difficulties. This condition would prevent UP from instituting operational changes which benefit it, but which, coincidentally or not, have absolutely or relatively adverse impacts on BNSF's operations.

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[8] Verified Statement of Ernest L. Hord.

VERIFICATION

THE STATE OF MASSACHUSETTS)

COUNTY OF MIDDLESEX)

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

Joseph P. Kalt

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

Notary Public

My commission expires: 8-17-2001

STATEMENTS OF SHIPPERS AND OTHERS IN SUPPORT OF APPLICATION

SUPPORTER	NAME
Abinsa Acero, S.A. de C.V.	Traffic Customs Department
AC Humko	Jim Fryman
Alex Trading Inc.	Alan L. England
Algondonera Comercial Mexicana, S.A. de C.V.	Leopoldo Hernandez Romano
American Honda Motor Co., Inc.	Richard D. Frick
American Natural Soda Ash Corporation	John W. Reinacher
Aqua Oceano, S.A. de C.V.	Pedro Diaz Barreiro
ASARCO Inc.	David C. Brotherton
Barton Beers, Ltd.	Thomas J. Wyness
Bell Paper Box, Inc. (3 separate statements)	Tim Bunkers
Brownsville & Rio Grande International Railroad (BRGI) (2 separate statements)	Lorenzo E. Cantu
Commercial Metals Co.	Ronald W. Bird
Degussa Mexico S.A. de C.V.	Karen Werner M.
Dynegy Inc.	Janice Rowland
Entergy Services, Inc.	Charles W. Jewell, Jr.
Esso Mexico, S.A. de C.V.	Elizabeth Martinez R.
Fimexpo Metales S.A. de C.V.	Alejandro Cervantes R.

Georgetown Railroad Co.	J.E. Robinson
General Motors Corporation	D. M. Mishler
Georgetown Railroad Company	J. E. Robinson
Grupo Cydsa, S.A. de C.V.	Jesus Hernandez
Grupo Mabe	Arturo Chavez Rios
Grupo Vitro	Armando Diaz Orozco
HCH Marketing, Inc.	Andrew Schwartz, Jr.
Houston Lighting & Power Company	Carla Mitcham
Hugo Neu-Proler Co.	Jeffrey Neu
Hylsa	Jaime Trevino
IBP, Inc.	Perry M. Bourne
Kimberly-Clark de Mexico, S.A. de C.V.	Jose M. Robles
KMCO Inc. (3 separate statements)	Clark Craig
Luzenac America	William S. Carrier
M. Schiefer Trading Co.	Manfred Schiefer
National By-Products, Inc.	Robert A. Blank
Nucor Steel	Kenneth Huff
OmniSource Corporation (5 separate statements)	Phillip R. Bedwell
Penford Products Co.	Dan Curran
Pinsa	Marco Medina
Rocky Mountain Steel Mills	Larry G. Scharton

Roquette America, Inc.	William R. Mudd
Santa's Best	Richard Nugent
South Texas Liquid Terminal, Inc.	Miles Lee
Sysco	Richard Kell
Tamco	Luke M. Pietrok
Texas Crushed Stone Company	William B. Snead
Texas Municipal Power Agency	Earle Bagley
Tosco Refining Company	Charles W. Pegram
Ultramar Diamond Shamrock Corporation	Steve Geneva
United Salt Corporation	Mike Causseaux
Universal Foods Corporation	Paul Rasmussen
Vitromex	Ing. Francisco J. Garza O. de M.
Volkswagen de Mexico, S.A. de C.V.	Francisco Torres
Westway Trading Corporation	A. Whitfield Huguley, IV
Williams Energy Services	Greg Greer

ABINSA ACERO

July 03, 1998
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street, N.W.
Washington, D.C. 20423-0001

Subject: Docket No. 32760
Sub-No. 26

By means of this letter we kindly request that the STB approve the BNSF Railway Co. to obtain trackage rigths on the UP's San Antonio -Laredo line in order that there can be competition between both lines, since at present the BNSF does not serve direct Laredo but thrugh the Tex-Mex Railway, and onthis scenario when an aditional Railroad participates on a traffic is is not really competition on equal circumsances.

We are a company dedicated to the manufacture of steel square bars, which have been doing business with enterprises in the USA..

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

The delays as we all know have been due the problems that the UP/SP merger have incurred in handling appropiately this merger.

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

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

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

sincerely yours

Traffic Custom Dept

ABINSA, S.A. DE C.V.

AVE. LOPEZ MATEOS KM. 6.5 SAN NICOLAS DE LOS GARZA, N. L. MEXICO
TELS.: (8) 313 73 73 FAX (8) 313 73 01 Y 313 73 33

AC HUMKO

P. O. BOX 343, MEMPHIS, TN

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

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

Dear Secretary Williams:

My name is Jim Fryman, and I am the Traffic Manager for AC Humko, P.O. Box 343, Memphis, Tennessee 38101. I am submitting this verified statement in support of The Burlington Northern and Santa Fe Railway Company's ("BNSF") request for trackage rights over both the UP line and the SP line between Harlingen and Brownsville, TX and for BRGI to act as BNSF's agent for such service.

Our company has facilities in Jacksonville, Illinois and Oklahoma City, Oklahoma that ship lard and tallow via BNSF in various destinations in the United States, including Texas. We have a new business opportunity to ship our product to Mexico via the Brownsville gateway.

We are concerned that the rights BNSF received in the UP/SP merger have not allowed BNSF to provide customers with viable competitive alternative to UP over the Brownsville and other Mexican gateways. We understand that currently, BNSF traffic (other than unit trains) destined for Brownsville is delivered to UP at Houston for haulage to Brownsville. BNSF's service offering, via UP haulage, is simply not what our company needs in rail services to Mexico. This is particularly true since UP's haulage operations have been erratic and untimely. While BNSF has expressed an interest in beginning trackage rights operations over the lines between Harlingen and Brownsville, because UP will only allow BNSF to operate over either the SP or the UP route, it does not have the operational flexibility needed to provide service that is competitive with UP.

Our ability to compete for customers in Mexico is dependent on our ability to provide competitive, reliable and timely delivery of product. We are concerned that the UP/SP merger and the privatization of Mexico's railroads has resulted in a significant reduction in competition of rail services for shippers over the Mexican gateways. As a result, our company's ability to gain market share in Mexico is directly impacted by the lack of competitive service under the conditions the Board imposed in the UP/SP merger proceeding.

We support BNSF's request for temporary trackage rights in order that BNSF has the flexibility to avoid routing carload traffic through the streets of downtown Brownsville if and

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when BNSF begins trackage rights over the UP or SP line between Harlingen and Brownsville. If the Board were to grant BNSF's request, it would permit BNSF through its agent BRGI to provide effective competition for us and other shippers at the Brownsville gateway. It is the only long-term solution to address the service and competition problems that have and continue to affect outbound traffic over Brownsville and other Mexican gateways.

Thank you for taking into consideration our company's views on this important issue of national transportation policy.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Sincerely,

Jim Fryman

Alex Trading Inc.

77 St. Anne's Place
Pawleys Island, SC 29585
Phone: (843) 237-7866
Fax: (843) 237-7622
aleengland@aol.com

URGENT RE: DOCKET NO. 32760 (SUB-NOS 26 & 28) October 9, 1998

GENERAL. My company ATI sells and CMV manufactures strontium carbonate and barium carbonate in Mexico and ships via rail to U.S. customers predominantly in the Eastern U.S. These inorganic chemicals are added to the glass in panel / screen of TV and computer monitor cathode ray tubes. **They serve a barrier property function to keep the x-rays / gamma rays from passing through the TV panel / screen to protect the viewer. Like TV and computer monitor users my company and our customers also need protection – in this case from the STB in the above issue.**

Now here comes Alan L. England, VP Marketing Sales of Alex Trading Inc. (ATI) with my office in South Carolina and our corporate main office in Brownsville TX.
ATI sells strontium carbonate and barium carbonate that is manufactured by Compania Minera LaValenciana in Mexico since that is where the ore deposits of celestite and barite are located that are required for manufacture / chemical processing of these materials. Strontium carbonate and barium carbonate are used by TV / computer monitor cathode ray tube glass manufacturers who add these materials to the glass in the tube panel or faceplate. These materials perform the function of barrier properties or preventing the x-rays or gamma rays from passing through the screen and thus protecting the viewer.

I am filing this Verified Statement in support of The Burlington Northern and Santa FE Railway's request that the Board grant it permanent bi-directional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line for reasons as outlined herein. If the temporary rights are not made permanent the BNSF will no longer be able to use this line. This will place a high risk that the problems of congestion and critical service problems that existed after the UP / SP merger will reoccur as discussed below.

We ship a high number of bulk rail covered hopper cars monthly from Mexico through the Brownsville Texas gateway to several customers in the Eastern U.S. Our competition ships from Europe, China, Southern US and Mexico by rail, truck and container few of which are faced with regulatory agency authorized monopolies in their transportation routing. Our customers and we have sustained severe and crippling penalties in both financial and service terms since the UP / SP merger and before you authorized the BNSF rights for bi-directional overhead trackage rights on UP Caldwell-Flatonia-Placedo line. Additional benefits will accrue to us and other shippers upon your making these rights and authority permanent. Therefore we request you authorize permanent vs. temporary trackage rights. I cannot stress enough the enormity of the problem that existed prior to your temporary authorization. We simply cannot take the risk of the deterioration of service that is likely to occur if these rights are not made permanent. The losses incurred by shippers like ourselves and our customers in terms of financial penalties for emergency truck shipments, production lost time and service disruptions were quite real after the UP / SP merger. This provision should have been made in the original UP / SP merger agreement.

Why is the UP afraid of the competition that will result from making these rights permanent? - Since it will:

- Allow shippers to be able to compare the UP's service with others.
- Provide shippers with rates based upon competition rather that all the rate reasonableness and revenue adequacy junk taking up valuable regulatory and oversight time and resources of shippers.
- Solve all the problems in this specific area we have experienced as a result of the SP / UP competition that has been lost with the approval of this merger.
- Increase badly needed infrastructure investment over and above that proposed by the UP.
- BNSF needs to ensure that it can avoid operating over the Algoa route- (even if the UP completes proposed capital improvements on that route) to minimize the risk of delays and congestion of its trains. Moreover, since operations via the Algoa route unnecessarily brings traffic through the Houston terminal area, an alternate routing such as the BNSF requests makes sense. From a faimess perspective, this routing was available to SP prior to the merger since it was formerly an SP route and the BNSF request would simply permit BNSF the same competitive options available to shippers by the former SP. We were a former SP customer in this regard and did not support the UP / SP merger. The cost benefit relationship in authorizing the BNSF their request in this regard can be summarized by saying " what is there to lose" and What are we afraid of in promoting the competition that made our free enterprise system so successful?
- Our transit times have substantially improved since these temporary rights were granted and this solves all the obvious service problems in addition to better equipment turn around time resulting in improved rail car utilization. The shortage of rail equipment is becoming critical and this will go a long way to correct.

The above paragraphs are intended to show from a positive perspective why the Board should grant BNSF's request to maintain these bi-directional trackage rights on a long-term basis. There are a number of negative points as to what will happen if such approval is not granted, but the positive argument in favor of approval is so compelling that the negative side of the issue is academic and unnecessary. I am a rail user who has seen my company and my customers suffer as a result of the SP /UP merger approval. Please listen to me when I tell you that your approval will benefit our company, customers and other shippers who too frequently are silent because they do not even understand this issue is being considered. Finally, approval will provide BNSF greater operational flexibility and reduce congestion in the Houston terminal area that has been such a big part of the problems.

I certify under penalty of perjury that the above is true and correct to the best of my ability to judge. Executed this 9 th day of October 1998.

Respectfully Submitted,

Alan L. England
VP Marketing & Sales

algodonera
comercial
mexicana, s.a. de c.v.

October 15th, 1998.

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1926 K Street, NW
Washington, D. C. 20423-001
U. S. A.

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

My name is Leopoldo Hernandez. I am the Purchases Director of Algodonera Comercial Mexicana, S. A. Our company is located in Mexico City, Mexico and is in the business of cotton trade.

I am filing this Verified Statement in support of the Burlington Northern and Santa Fe Raiway's ("BNSF") request that the Board grant permanent bi-directional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio line. We believe that this request will benefit our company and other shippers and will result in service improvements and needed operational flexibility.

BNSF's trackage rights on UP's San Antonio line were granted by UP in July, 1997 to permit BNSF to bypass its more congested permanent trackage rights route via Temple-Smithville-San Antonio. These rights, however, are temporary and cancelable on short notice. In its September 18 filing, UP indicated to the Board that it intends BNSF to return to its permanent UP trackage rights route at some time in the future and commence directional operations on the Caldwell to Flatonia route.

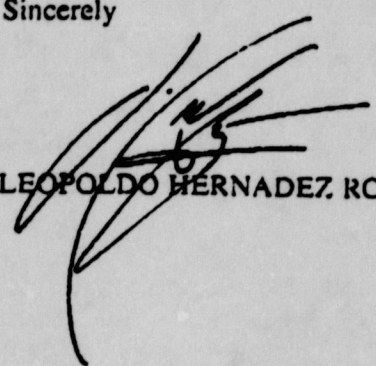
The board must understand the importance of these bi-directional rights to shippers. These rights have allowed BNSF to bypass congestion on BNSF's permanent UP trackage right route, and to operate with greater consistency between Temple and San Antonio, TX, providing service at San Antonio and, in conjunction with additional routes, to the vital Eagle Pass, TX, gateway with Mexico. BNSF to shippers like our company, without causing congestion for UP. Indeed, this routing was available to SP pre-merger since it was formerly an SP route and BNSF's request would simply permit BNSF to replicate the competitive options available to shippers by the former SP.

In addition, having permanent versus temporary trackage rights would also permit BNSF to participate, as necessary and appropriate, in needed infrastructure investment on this line. Understandably, BNSF is not likely to commit to such investment when its rights can be canceled on short notice by UP.

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

I certify that the foregoing is true and correct. Executed 15th of October 1998.

Sincerely



LEOPOLDO HERNADEZ ROMANO

(40016

HONDA

AMERICAN HONDA MOTOR CO., INC.

1919 Torrance Boulevard • Torrance, CA 90501-2746

(310) 783-2000

July 14, 1998

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

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

Dear Secretary Williams:

I am filing this verified statement on behalf of American Honda Motor Co., Inc. (Honda) in support of the request of The Burlington Northern and Santa Fe Railway Company for permanent overhead trackage rights between San Antonio and Laredo. My name is Richard D. Frick, and I am Manager, Automobile Logistics.

Our company headquarters in the United States is located at 1919 Torrance Boulevard, Torrance, California 90501. We also have a wholly owned subsidiary in El Salto, Mexico where we manufacture automobiles, motorcycles and automotive parts. It is expected that production at that facility will be increasing particularly over the next four to five year period and that we will need efficient and competitive rail services, both for inbound and outbound traffic to/from our plant, to and from points in the United States and Canada. We anticipate our needs will include shipping tri-levels and double-stack containers over the gateways of Laredo, Brownsville and Eagle Pass.

We are concerned that BNSF's current rail services over the Laredo gateway are not as competitive as the Board anticipated during the UP/SP merger proceeding because of the delays that often result when BNSF interchanges traffic with the Tex Mex and routes such traffic through the congested Houston area via UP's Algoa-Corpus Christi line. Were Honda to ship over the Laredo gateway, Honda's traffic would not need to go through the Houston or Gulf Coast areas. However, since BNSF's only access to the Laredo gateway is by connecting with the Tex Mex via the heavily congested Algoa-Corpus Christi line, our traffic would be unnecessarily subject to considerable delay and congestion with that routing.

Because of Honda's anticipated rail transportation needs to/from Canada and the United States, the Board should evaluate long-term solutions which will ensure efficient and competitive service over the Mexican gateways. Honda is concerned that BNSF's ability to compete vigorously at the Laredo gateway has been impeded in ways not anticipated by the Board in the UP/SP merger proceeding. The lack of a long-term divisional agreement with

Tex-Mex and BNSF's limited trackage rights for Laredo gateway traffic, forcing it through the congested Houston and Gulf Coast areas, are important issues for the Board to evaluate in this proceeding.

In Honda's view, under the current conditions imposed by the Board, BNSF is hampered from providing the competition to UP that SP did in the Houston and Gulf Coast regions. The Board should, therefore, grant BNSF's request for overhead trackage rights on UP's line between San Antonio and Laredo.

Under penalty of perjury, this statement is true and correct to the best of my belief and knowledge.

Sincerely,

Richard D. Frick
Manager Automobile Logistics
AMERICAN HONDA MOTOR CO., INC.

STATE OF California

COUNTY OF Los Angeles

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 16th DAY OF July, 1998,

BY Oraetta R. Minor

NOTARY PUBLIC

MGC1 Oraetta R. Minor Comm. #1049218 NOTARY PUBLIC - CALIFORNIA LOS ANGELES COUNTY Comm. Expires Jan. 8, 1999 MGC1

ANSAC

July 6, 1998

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

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

Dear Secretary Williams:

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

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

. . . / . . . continued

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

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

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

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

. . . / . . . continued

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

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

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

Sincerely yours,

ANSAC

J. W. Reinacher
Director of Distribution

JWR/dg

AQUA OCEANO, S.A. DE C.V.
R.F.C. AOC-861106-4Q2

Aqua Ocean

CARRETERA 57 ESQUINA EJE 102
ZONA INDUSTRIAL
SAN LUIS POTOSI, S.L.P C.P. 78090
TELS. 91 (48) 24-74-36
24-74-38
24-74-84
FAX. 91 (48) 24-74-95
E-mail aocean@www.orb.org.mx

July 2nd., 1998

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

Subject: Docket No. 32760
Sub-No. 26

Honorable Mr. Vernon A. Williams:

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

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

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

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

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

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

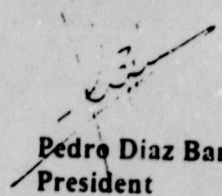
Our company will use approximately 1,000 rail cars for 1999, and a similar amount of trucks when it is impossible to use rail, due the reasons mentioned above.

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

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

Thank you in advance for kind attention to the present.

Yours very truly,
Aqua Oceano



Pedro Diaz Barreiro
President

ASARCO

David C. Brotherton
Director of Traffic

October 13, 1998

VIA FEDERAL EXPRESS

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

REFERENCE: FINANCE DOCKET NO. 32760
(SUB NOS. 26 AND 28)

Enclosed is our Verified Statement supporting the above proceeding.

Please call me if you have any questions - (212) 510-1837.

Yours very truly,

David C. Brotherton

att.

ASARCO

David C. Brotherton
Director of Traffic

VERIFIED STATEMENT OF
DAVID C. BROTHERTON
ASARCO INCORPORATED

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

REFERENCE: FINANCE DOCKET NO. 32760
(SUB NOS. 26 AND 28)

My name is David C. Brotherton. I am employed by ASARCO Incorporated as Director National Transportation with corporate offices located at 180 Maiden Lane, New York, NY 10038.

ASARCO Incorporated is one of the world's leading producers of nonferrous metals, principally copper, lead, molybdenum, zinc and precious metals, including gold and silver. ASARCO also produces specialty chemicals, aggregates and other industrial products and environmental services operations.

ASARCO or its subsidiaries and associated companies operate mines in the United States, Canada and Peru. In addition to mining and treating copper, lead and zinc ore from its own

mines as a fully integrated smelter and refiner, ASARCO is a custom smelter and refiner of lead ores mined by others. ASARCO is a major producer of sulfuric acid which is recovered as a by-product of the environmental control system at its smelters.

ASARCO also mines or produces construction aggregates and nonmetallic minerals, such as limestone and stone, from mines and quarries in the United States. In specialty chemicals, ASARCO's wholly owned subsidiary produces coating chemicals and technologies for engineering, functional, and decorative applications throughout the world.

ASARCO is filing this Verified Statement in support of the Burlington Northern Santa Fe Railway's (BNSF) request that the Surface Transportation Board grant permanent bi-directional overhead trackage rights on the Union Pacific's Caldwell-Flatonia-Placedo line. We believe that with the permanent bi-directional trackage rights, our transportation flows will benefit and it appears that the same will result for other shippers of freight on this line. Further service

improvements are expected; and this will provide operational flexibility especially by keeping unnecessary freight out of the Houston terminal area.

ASARCO has shipments in and out of the Corpus Christi area on a regular basis. These shipments flow in and out of our Encycle Texas facility and we also import copper concentrate utilizing the Port of Corpus Christi facility. Based on the flows on these shipments, we feel that the BNSF bi-directional use of the Caldwell-Flatonia-Placedo line would benefit ASARCO from an operational and service perspective.

It has also been stated that on any rail merger, competition would be preserved as much as possible. This line was formerly a Southern Pacific route and by allowing the BNSF to permanently operate over it, competition will be preserved. It would seem logical that a permanent status on this line would allow the BNSF to make necessary investments to further improve the property which would serve to provide better service and operational efficiencies to the shippers and receivers of freight.

We feel that we will benefit, along with other shippers, from the granting of permanent bi-directional overhead trackage rights on the Caldwell-Flatonia-Placedo line and feel that the Board should indeed grant these rights on a long term basis.

Respectfully submitted,

David C. Brotherton
Director of Traffic

VERIFICATION

State of New York

David C. Brotherton, sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and the same are true as stated.

David C. Brotherton

Director National Transportation
ASARCO Incorporated
180 Maiden Lane
New York, NY 10038

Subscribed and sworn before me this 13TH day of October, 1998.

Notary Public of New York

DORIS A. REISCHACH
Notary Public State of New York
No. 01RE5027311
Qualified in New York County
Commission Expires May 9, 2000

BARTON BEERS, LTD.

Executive Office
55 East Monroe Street
Chicago, Illinois 60603

Telephone: 312/346-9200
Facsimile: 312/346-3084

October 15, 1998

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

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

My name is Thomas J. Wyness. I am the Executive Vice President - Transportation of Barton Beers, Ltd. Our company is located in Chicago, Illinois and will import 35 million cases of Grupo Modelo (Corona) beer from Mexico in 1998. Barton Beer imports have increased by eight million cases from 1997 alone. Barton currently utilizes the Laredo and Eagle Pass gateways heavily, as well as the Nogales and Calexico gateways occasionally. Approximately 90% of our Mexican imported beer is handled by railroads, and we ship to destinations throughout the western U.S. including Chicago, Kansas City, Albuquerque, Denver, Phoenix, Seattle, Los Angeles and Benecia, California.

Our company's need for reliable, efficient and competitive rail transportation services is expected to grow significantly in 1999. It is therefore important to our business that competition be preserved for access to Mexico and that efficient and fluid rail service be available in the Houston/South Texas market. We have seen a degradation in service and fewer competitive options available for our rail transportation needs since the UP/SP merger. For these reasons, I am submitting this Verified Statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") requests for additional remedial conditions.

Specifically, Barton has seen a deterioration of UP service from Eagle Pass, Texas, to Southern California. In 1997, transit time in this lane was 12 days. Through August, the 1998 performance has been 22 days. Likewise, service from Eagle Pass, Texas, to Northern California has lengthened from an average transit time of 16 days in 1997 to 28 days in 1998.

In order to address these and other service issues, we support the requests of BNSF for: (i) permanent bi-directional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo lines; and (ii) trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal.

BNSF's trackage rights on UP's Caldwell-Flatonia-San Antonio line were granted by UP in July, 1997 to permit BNSF to bypass its more congested permanent

trackage rights route via Temple-Smithville-San Antonio. I understand that these rights, however, are temporary and cancelable on short notice. In its September 18 filing, UP indicated to the Board that it intends BNSF to return to its permanent trackage rights route at some time in the future and commence directional operations on the Caldwell to Flatonia route.

The Board must understand the importance of these bidirectional rights to our company and to shippers. These rights have allowed BNSF to use the route that is least congested and most able to handle traffic, and thus have enhanced the consistency in scheduled operations and service provided by BNSF for traffic interchanged at the Eagle Pass gateway. Indeed, this routing was available to SP pre-merger since it was formerly an SP route, and BNSF's request would simply permit BNSF to replicate the competitive options offered to shippers by the former SP.

In addition, having permanent versus temporary trackage rights would also permit BNSF to participate, as necessary and appropriate, in needed infrastructure investment (sidings, etc.) on this line. Understandably, BNSF is not likely to commit to such investment when its rights can be canceled on short notice by UP. BNSF's request would provide no new competitive access, and I believe that it would not interfere with UP's operations.

For all of these reasons, the Board should grant BNSF's request to maintain these bidirectional overhead trackage rights on a long-term basis. It is our position that were the Board to grant BNSF's requests, they would help to diminish the congestion on UP's lines in and around Houston and South Texas, as well as preserve competition as the Board originally envisioned in its decision approving the UP/SP merger. Granting BNSF's requests would also benefit our company and other shippers and result in long term, competitive, consistent and reliable service, needed operational flexibility, and the ability to avoid adding unnecessary traffic to the Houston terminal area.

In sum, BNSF's requests for remedial conditions stand to benefit all rail carriers operating in the South Texas and the shipping public. It is in everyone's best interest to achieve better service for shippers, to reduce the congestion in the Houston terminal and South Texas areas, and to preserve efficient and competitive service to all the Mexican gateways. Accordingly, the Board should grant BNSF's requests.

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

Sincerely,

Thomas J. Wyness

Thomas J. Wyness
Executive Vice President, Transportation

BELL PAPER BOX, Inc.
Committed to creating indispensable relationships resulting in quality, profit, growth and value for all.

October 12, 1998

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

Dear Sir:

My name is Tim Bunkers. I am the Traffic Coordinator for Bell Paper Box, Inc. Our company is located in Sioux Falls, S.D. and is in the business of manufacturing folding cartons. Our company imports paperboard at the rate of about four carloads per week.

I am filing this statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal. We believe that this request will benefit our company and other shippers and will result in service improvements and needed dispatching flexibility in the Houston terminal.

Specifically, this request would permit BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, and not just over the former HB&T East and West Belts. The result would be to reduce congestion caused by BNSF trains staged in the Houston terminal waiting for track time to use the main trackage rights lines they currently share through the terminal and on the former HB&T East and West Belt lines.

This request would create an important safety valve for dispatchers to permit BNSF trains to traverse clear routes in the Houston terminal. It is a reasonable measure to avoid congestion and should pose no harm to UP as it does not give any competitive advantage to BNSF's operations in the Houston terminal.

Telephone (001) 605.332.6721 • Toll Free 800.658.3396 • Fax 605.336.7992
800 West Delaware Street • Sioux Falls, South Dakota 57104

The request thus stands to benefit all rail carriers operating in the Houston terminal area and shipping public. It is in everyone's best interest to achieve better service for shippers and to reduce the congestion in the Houston terminal area. Accordingly, the Board should grant BNSF's request.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 12th day of October, 1998.

Sincerely,

Tim Bunkers

Tim Bunkers

BELL PAPER BOX, Inc.
Committed to creating indispensable relationships resulting in quality, profit, growth and value for all.

October 12, 1998

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

Dear Sir:

My name is Tim Bunkers. I am the Traffic Coordinator for Bell Paper Box, Inc. Our company is located in Sioux Falls, S.D. and is in the business of manufacturing folding cartons. Our company imports paperboard at the rate of about 4 carloads per week.

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

BNSF'S rights on the Placedo route are temporary, directional (southbound) and conditional on UP continuing directional operations south of Houston. On September 18, 1998, UP indicated to the Board that it intends to end it directional running operations after it completes an additional siding near Angleton, TX. When UP ends directional operations on this route, BNSF will be barred by UP from further use of this line.

I believe that BNSF needs to ensure that it can avoid operating over the Algoa route – even if UP completes proposed capital improvements on that route – to minimize the risk of delay for its trains. Moreover, since

Telephone (001) 605.332.6721 • Toll Free 800.658.3396 • Fax 605.336.7992
800 West Delaware Street • Sioux Falls, South Dakota 57104

operations via the Algoa route unnecessarity brings traffic through the Houston terminal area, an alternative routing such as BNSF requests make sense. Indeed, this routing was available to SP pre-merger since it was formerly an SP route and BNSF's request would simply permit BNSF to replicate the competitive options available to shippers by the former SP.

In addition, having permanent versus temporary trackage rights would permit BNSF to participate, as necessary and appropriate, in needed infrastructure investment (sidings, etc.) on this line. Understandably, BNSF is not likely to commit to such investment when its rights can be canceled on short notice by UP.

I certify under the penalty of perjury that the foregoing is true and correct. Executed this 12th day of October, 1998.

Sincerely,

Tim Bunkers

Tim Bunkers

BELL PAPER BOX, Inc.
Committed to creating indispensable relationships resulting in quality, profit, growth and value for all.

October 13, 1998

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

Dear Sir:

My name is Tim Bunkers. I am the Traffic Coordinator for Bell Paper Box, Inc. Our company is located in Sioux Falls, S.D. and is in the business of manufacturing folding cartons. Our company imports paperboard at the rate of about four carloads per week.

I am filing this Verified Statement in support of The Burlington Northern and Santa Fe Railway's (BNSF") request that the Board grant permanent bidirectional overhead trackage rights on UP's Caldwell-Flatonia-San Antonio line. We believe that this request will benefit our company and other shippers and will result in service improvements and needed operational flexibility.

BNSF's trackage rights on UP's San Antonio line were granted by UP in July, 1997 to permit BNSF to bypass its more congested permanent trackage rights route via Temple-Smithville- San Antonio. These rights, however, are temporary and cancelable on short notice. In its September 18 filing, UP indicated to the Board that it intends BNSF to return to its permanent UP trackage rights route at some time in the future and commence directional operations on the Caldwell to Flatonia route.

The Board must understand the importance of these bidirectional rights to shippers. These rights have allowed BNSF to bypass congestion on BNSF's permanent UP trackage rights route, and to operate with greater consistency between Temple and San Antonio, Tx., providing service at San Antono and, in conjunction with additional routes, to the vital Eagle Pass,

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800 West Delaware Street • Sioux Falls, South Dakota 57104

Tx. gateway with Mexico. BNSF's request is that it be provided the option by UP to use either the former SP or the former UP routes between Temple and San Antonio, whichever route is least congested and most capable, on a day-to-day basis, of providing for scheduled operations. This flexibility would enhance the consistency in BNSF's scheduled operations and service provided by BNSF to shippers like our company, without causing congestion for UP. Indeed, this routing was available to SP pre-merger since it was formerly an SP route and BNSF's request would simply permit BNSF to replicate the competitive options available to shippers by the former SP.

In addition, having permanent versus temporary trackage rights would also permit BNSF to participate, as necessary and appropriate, in needed infrastructure investment (sidings, etc.) on this line. Understandably, BNSF is not likely to commit to such investment when its rights can be canceled on short notice by UP.

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

I certify under penalty of perjury that the foregoing is true and correct. Executed this 13th day of October, 1998.

Sincerely,

Tim Bunkers

Tim Bunkers

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

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

[Houston/Gulf Coast Oversight]

VERIFIED STATEMENT OF
LORENZO E. CANTU

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

As the Board is no doubt well aware, BRGI was an active participant in the original UP-SP merger proceeding, and has

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

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

To this date, BNSF has been unable to convert to trackage rights its existing haulage rights service to Brownsville, which makes our area the only major point where BNSF

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

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

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

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

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

Today, UP trains from Mexico (TFM) must obtain U.S.D.A. and U.S. Customs clearance to proceed northward into the U.S. interior. To obtain this clearance, UP must hold its trains on

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

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

traffic. Thus, BRGI operations south of Harlingen could make cross-border operations more fluid, while BNSF stand alone operations would only further congest this critical gateway.

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

Given the potential benefits that BRGI operations south of Harlingen would offer for all railroad operations through the Brownsville gateway, I can think of only one reason why UP would object to the BNSF/BRGI agency proposal -- BNSF would become an effective competitor where it is not today.[1] To me, UP's refusal to permit the proposed agency operation reflects its desire to-

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

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

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

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

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

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

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

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

VERIFICATION

COUNTY OF CAMERON)
) ss:
STATE OF TEXAS)

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

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

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

Notary Public

My Commission Expires :

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

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

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

[Houston/Gulf Coast Oversight]

SHIPPERS' PETITION IN SUPPORT OF

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY AND

THE BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

Port of Brownsville-based Shippers
(Signatures affixed below)

Signature: Martin Johnson

Name (printed): Martin Johnson

Title: Plant Manager

Company: Premier Refractories

Date: 7-1-98

Signature: Gracie Rodriguez

Name (printed): Gracie Rodriguez

Title: Officer Clerk.

Company: Brownsville Gulfside Warehouse, Inc.

Signature: Rosario Bernal

Name (printed): Rosario Bernal

Title: Manager.

Company: Crossing of Mexico Forwarding Inc

Date: 7-1-98

Signature: Edward M. McLaughlin

Name (printed): EDWARD M. McLAUGHLIN

Title: PRESIDENT

Company: [illegible]

Date: [illegible]

Signature: Frank Puglisi

Name (printed): FRANK U. PUGLISI

Title: VP FINANCIAL CONTROLLER

Company: HILFELS, INC

Signature: [illegible]

Name (printed): MAURICIO MARTINEZ

Title: Mgr - PRES

Company: GULMAR, INC

Date: 6-30-98

Signature: _____

Name (printed): Craig Elkins

Title: General Manager

Company: Port Elevator - Brownsville, LC

Date: 1 July 98

Signature: _____

Name (printed): Craig Elkins

Title: Secretary

Company: SOUTHWEST GRAIN CO, INC

1-July-98

Signature: _____

Name (printed): Craig Elkins

Title: Representante legal

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

Date: 1-July-98

Signature: Janette G. Reyna

Name (printed): Janette G. Reyna

Title: Manager

Company: [illegible]

Date: June 30 1998

Signature: Adriana Gaiza

Name (printed): Adriana Gaiza

Title: Manager

Company: Chem USA Corp

Signature: Ramiro Martinez

Name (printed): RAMIRO MARTINEZ

Title: Superintendent

Company: INTERLUBE CORP

Date: JUNE 30, 1998

Signature: William Challenger

Name (printed): William Challenger

Title: Terminal Manager

Company: Statia Terminals Southwest Inc

Date: 6-30-98

Signature: R M Walsdorf

Name (printed): Robert M Walsdorf

Title: Pres

Company: RM Walsdorf, Inc

Signature: Sylvia M. Lara

Name (printed): Sylvia M. Lara

Title: Office Manager

Company: Gulf Facilities Inc.

Date: 6/30/98

Signature: MARK HOSKINS

Name (printed): MARK HOSKINS

Title: Gen Mgr

Company: Gulf Stream Marine Inc

Date: 6/30/11

Signature: Benito Ramirez

Name (printed): Benito Ramirez

Title: Vice President

Company: Transforma Marine

Signature: David O. Bueno

Name (printed): DANIEL O. BUENO

Title: V.P./CONTROLLER

Company: F. S. L.

Date: 7/1/11

Signature: _____

Name (printed): _____

Title: _____

Company: _____

Date: _____

Signature: _____

Name (printed): _____

Title: _____

Company: _____

Signature: _____

Name (printed): _____

Title: _____

Company: _____

Date: _____

Signature: _____

Name (printed): Jim Wilkinson

Title: President

Company: Wilkinson Jim Ins & Mtl Fed, Inc.

Date: 7-3-98

Signature: _____

Name (printed): _____

Title: _____

Company: _____

Signature: _____

Name (printed): _____

Title: _____

Company: _____

Date: _____

BROWNSVILLE AND RIO GRANDE
INTERNATIONAL RAILROAD

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

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

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

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

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

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

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

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

Sincerely,

Lorenzo "Larry" Cantu

MAYRA H LEAL
Notary Public, State of Texas
My Commission Expires
January 29, 2002

Mayra H. Leal

Commercial Metals Company P.O. Box 1046 Dallas, Texas 75221-1046

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

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

Dear Secretary Williams,

My name is Ronald W. Bird. I am the Transportation Manager for the Secondary Metals Division of Commercial Metals Company. Our company headquarters is located in Dallas, Texas, and we operate forty-three scrap metal processing facilities located in the Southwest and Southeastern United States. Commercial Metals Company owns or leases a private fleet of approximateiy 370 rail gondola cars that are custom designed for transporting steel scrap. Commercial Metals Company produces approximately 1.3 million tons of processed steel scrap annually, which is shipped to steel mini-mills for melting, casting, and rolling into steel bars and billets. The primary mode of transportation for steel scrap is rail because it is the most economical and efficient method to handle a low value commodity that moves in large quantities.

Commercial Metals Company has fifteen scrap metal locations in the state of Texas which have been adversely affected by the continued failure of the Union Pacific Railroad to return service to pre-merger levels of the former Southern Pacific Railroad. In that regard, I am filing this verified statement in support of Burlington Northern and Santa Fe Railway's (BNSF) request that the Board grant permanent bi-directional overhead trackage rights on UP's Caldwell-Flatonia-Placedo line. I believe that this request will benefit our company and other shippers and will result in service improvements, needed operational flexibility and the ability to avoid adding unnecessary traffic to the Houston terminal area.

BNSF's rights on the Placedo route are temporary, directional (southbound) and conditional on UP continuing directional operations south of Houston. On September 18, 1998, UP indicated to the Board that it intends to end its directional running operations after it completes an additional siding near Angleton, TX. When UP ends directional operations on this route, BNSF will be barred by UP from further use of this line.

I believe that BNSF needs to ensure that it can avoid operating over the Algoa route – even if UP completes proposed capital improvements on that route – to minimize the risk of delay for its trains. Moreover, since operations via the Algoa route unnecessarily brings traffic through the Houston terminal area, an alternative routing such as BNSF requests make sense. Indeed, this routing was available to SP pre-merger since it was formerly as SP route and BNSF's request would simply permit BNSF to replicate the competitive options available to shippers by the former SP.

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

In addition, I am filing this statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal. We believe that this request will benefit our company and other shippers and will result in service improvements and needed dispatching flexibility in the Houston terminal.

Specifically, this request would permit BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, and not just over the former HB&T East and West Belts. The result would be to reduce congestion caused by BNSF trains staged in the Houston terminal waiting for track time to use the main trackage rights lines they currently share through the terminal and on the former HB&T East and West Belt lines.

This request would create an important safety valve for dispatchers to permit BNSF trains to traverse clear routes in the Houston terminal. It is a reasonable measure to avoid congestion and should pose no harm to UP, as it does not give any competitive advantage to BNSF's operations in the Houston terminal.

The request thus stands to benefit all rail carriers operating in the Houston terminal area and the shipping public. It is in everyone's best interest to achieve better service for shippers and to reduce the congestion in the Houston terminal area. Accordingly, the Board should grant BNSF's request.

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

Sincerely,

Ronald W. Bird

Ronald W. Bird
Transportation Manager

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

July 1st. 1998

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

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

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

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

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

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

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

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

Sincerely yours

Karen Werner M.
Logistics and Distribution
Manager

Oficina matriz: Calz. México-Xochimilco 5149, C.P. 14610 México, D.F. Tel.: 673-13-70 Apartado Postal 22-252 Fax 673-1016 Telex: 017-73815 y 017-64385
Sucursal en Guadalajara: Calle 6 # 2191 Zona Industrial C.P. 44940 Guadalajara, Jal. Tel.: 6-11-70-59 Fax 6-11-75-74
Sucursal en León: Degussa México, S.A. de C.V. Clemente Orozco 210 y 212, Col. Prados Verdes C.P. 37480, León Gto. Tel.: 12-83-48 Fax 12-24-55
Sucursal en Monterrey: Calle América del Norte # 211, Col. Las Américas C.P. 67120 Monterrey, N.L. Tel.: 34-09-45 al 47 Fax 34-09-48

Dynegy Inc
1000 Louisiana Street, Suite 5800
Houston, Texas 77002
Phone 713 507 6400
www.dynegy.com

DYNEGY

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

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

Dear Mr. Williams;

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

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

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

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

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

Sincerely,

Janice Rowland

Janice Rowland
Rail Operations Supervisor
Dynegy Inc.

Entergy

Entergy Services, Inc.
Parkwood II Building, Suite 300
10055 Grogans Mill Road
The Woodlands, TX 77380
Tel 281 297 3562

Charles W. Jewell, Jr.
Director
Coal Supply

October 14, 1998

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

Dear Mr. Williams:

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

My name is Charles W. Jewell, Jr., Director-Coal Supply, at Entergy Services, Inc. a wholly owned subsidiary of Entergy Corp. Entergy Services, Inc. is a service company which purchases and manages the fuel and transportation for Entergy Corp.'s generating subsidiaries (Entergy Gulf States, Inc. and Entergy Arkansas, Inc.). Entergy Gulf States owns and operates the Roy S. Nelson Generating Station ("Nelson"), a coal-fired electric generating station located near Mossville, Louisiana.

The Nelson facility is served by three carriers: The Kansas City Southern Railway Company ("KCS"), Union Pacific Railroad Company ("UP") and The Burlington Northern and Santa Fe Railway Company ("BNSF"). (BNSF recently obtained access to the Nelson facility by virtue of its becoming a one-half owner of the former UP line between Houston and Iowa Junction, LA). The facility can receive shipments of coal from mines located in the Southern Powder River Basin served by both UP and BNSF, or from all PRB locations served by BNSF. We rely on the railroads for 100% of our coal deliveries.

I am filing this statement in support of BNSF's request that the Board grant BNSF overhead trackage rights over the UP line between Fort Worth and Dallas, TX (via Arlington), to enable BNSF to join the directional operations recently instituted by UP between Dallas/Fort Worth and Waxahachie, TX. We believe that this request will result in service improvements and needed operational flexibility. As I understand the situation, BNSF presently has trackage rights over UP between Fort Worth and Waxahachie and that line is now used for southbound movements while the BNSF line between Waxahachie and Dallas over which UP has operating rights is being used for UP's northbound operations. BNSF could better join in UP's directional flow plans for this route if it were provided trackage rights on UP's main line route between Fort Worth and Dallas via Arlington, TX, which would minimize delays to both carriers and their customers.

In the future, Entergy may use BNSF direct service to provide coal to the Nelson station. If BNSF trains are forced to operate against the directional flow on the UP line between Fort Worth and Waxahachie, service to the Nelson station could be adversely impacted due to delays in this area. To avoid that result, Entergy supports BNSF's request for overhead trackage rights over UP's line between Fort Worth and Dallas via Arlington to join in the directional operations in the area.

For these reasons, the Board should grant BNSF's request. It would benefit our company and other shippers, will result in service improvements for both UP and BNSF, and be one more step in insuring the congestion which impacted the Gulf Coast area and much of Texas, including the Fort Worth/Dallas area, does not reoccur.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14 day of October 1998.

Sincerely,

Charles W. Jewell, Jr.
Director-Coal Supply

jb

cc: The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

ESSO MEXICO, S.A. DE C.V.

División Química

EXXON CHEMICAL

July 3rd. 1998

HONORABLE MR. VERNON A WILLIAMS
SECRETARY
SURFACE TRANSPORTATION BOARD
1925 K. Street, N.W.
Washington, D.C. 20423-0001

Subject: Docket No. 32760
Sub No. 26

We are a Company in Mexico dedicated to commercialize in bulk Chemical products, which have been doing business with our Filial in the USA.

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

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

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

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

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

Thanking you in advance for your kindly attention to my request and hopping thet it will be approved.

Sincerely yours

Elizabeth Martinez R

Elizabeth Martinez R
Logistics Supervisor

Aristoteles No. 77-101
Col. Polanco Chapultepec
11560 México, D.F.
Tels. 280-09-60 Fax. 280-00-70

TERMINAL TUXPAN
Carr. Santiago de la Peña a Cabos Km.3.8
Tuxpan de Rdz. Cano. Ver. C.P. 92800
Tels. 783- 4-25-80 Fax. 783- 4-70-46

June 29th, 1998

Subject: Docket No. 32760
Sub-No. 26

To whom it may concern:

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

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

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

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

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

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

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

Sincerely yours,

Alejandro Cervantes R.
General Director

FIMEXPO METALES S.A. DE C.V.
Río Sena No. 54 P.A. Col. Cuauhtémoc 06500 México, D.F.
Tels.: 566-37-00 705-15-16 Fax: 535-96-97 703-19-83

GEORGETOWN RAILROAD COMPANY
5300 South IH-35
Georgetown, Texas 78627-0529
512-863-2538
Fax: 512-869-2649

JAMES E. ROBINSON
President

October 15, 1998

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

Re: STB Finance Docket No. 32760 (Sub-Nos. 26, 30 and 32)

Dear Secretary Williams:

I am writing this letter to clarify and supplement my August 12, 1998 statement of support on behalf of Georgetown Railroad Company ("GRR") for the Union Pacific which was contained in Volume IV of UP's Opposition to Condition Applications, filed with the Board on September 18, 1998.

In my August 12, 1998 letter, GRR indicated that it opposed requests for new remedial conditions in this proceeding. What I meant by that statement is that the GRR generally opposes the imposition of additional remedial conditions that would provide carriers with new competitive access to shippers. GRR still maintains that view.

However, I would like to clarify that GRR fully supports BNSF's request for overhead trackage rights on the UP Taylor-Milano line. BNSF's request would not create any new competitive access. Rather, BNSF seeks only to maintain its existing competitive access to handle shipments for Texas Crushed Stone and other customers at Kerr/Round Rock (which are served by GRR) by ensuring the proper functioning of the original condition. Specifically, it has been our company's experience since the merger that BNSF has been unable to provide consistent and reliable service to handle shipments for such customers using its existing rights due to congestion on UP's Temple-Taylor line. These problems, which have arisen since the merger, were not foreseen at the time UP and BNSF reached their Settlement Agreement or when the Board issued its decision approving the merger.

GRR notes that pre-merger, SP had rights to utilize UP's Taylor-Milano line. Thus, BNSF's request would simply provide BNSF with the ability to use that same route to maintain adequate, competitive service to shippers and thus restore the competition that SP provided pre-merger.

In sum, while GRR stands by its original August 12, 1998 letter to the Board opposing requests for remedial conditions that seek new competitive access, it also fully supports BNSF's request for overhead trackage rights on UP's line between Taylor and Milano, TX. The reason our company supports BNSF's request is that it would provide no new competitive access, but would allow BNSF to route traffic over a more logical and historic route. It would allow more efficient service by avoiding much of the congested and circuitous trackage rights that BNSF is currently using. GRR believes that granting BNSF's request would not harm UP and would provide our customers with more consistent and reliable service.

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

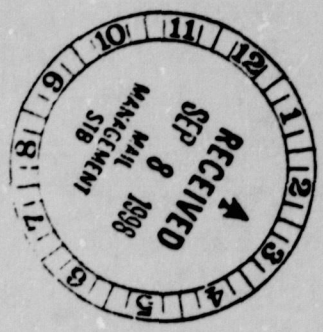
Sincerely,

J. E. Robinson

J. E. Robinson

191044

NAO Logistics



General Motors Corporation

4th Floor Annex
3044 West Grand Boulevard
Detroit, Michigan 48202

August 24, 1998

ENTERED
Office of the Secretary

SEP 10 1998

Part of
Public Record

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

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

Dear Secretary Williams:

As one of the nation's largest private sector users of the U. S. rail freight system, General Motors is submitting this statement in support of the Burlington Northern and Santa Fe Railway Company's ("BNSF") request for trackage rights between San Antonio and Laredo, Texas.

With three assembly plants and over seventy-five component manufacturing facilities, GM has established itself as one of the largest corporations in Mexico. Although the majority of GM's freight moves through Eagle Pass, with only tri-levels currently moving through Laredo, projections indicate that increased growth will force GM to depend more heavily on the Laredo gateway.

Of concern to General Motors is the reduction in competition of rail services via the Laredo gateway due to the UP/SP merger and the privatization of Mexico's railroads. Without viable rail alternatives, General Motors faces possible delays in freight movement and potential rate increases in the future. In addition, BNSF currently routes freight to the Laredo gateway by connecting with the Tex Mex via the Algoa-Corpus Christi line creating considerable congestion and transportation delays. Granting BNSF's request would allow them to route freight more effectively and eliminate congestion.

Because GM relies heavily on rail service, it is imperative that the service provided be both cost effective and efficient. Otherwise, GM would be at a competitive disadvantage within the United States and global marketplace. For these reasons, GM supports the BNSF request for trackage rights between San Antonio and Laredo, Texas.

Thank you for taking the time to review GM's views concerning this issue of national transportation policy.

Sincerely,

D. M. Mishler
Executive Director
NAO Logistics

cc: C. Gilroy
M. E. MacDonald
L. Sorchevich

Grupo Cydsa, S.A. de C.V.

Ave. Ricardo Margáin Zozaya No. 325
Garza García, N. L., México
Apartado Postal 642
Tel. (8) 335-90-90
Fax: (8) 335-33-30

July 8th, 1998

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

Subject: Docket No. 32760
Sub-No. 26

Dear Sirs:

Grupo Cydsa S.A. de C.V. is a group of companies dedicated to the manufacture of various commercial and industrial products such as: PVC resins, PVC pipe and fittings, acrilyc fiber and yarn, rayon filament, textile home products and garnments, flexible packing films, chlorine and caustic soda, salt, toluendiamine, refrigerant gases and propelants among others, with annual sales close to 1 billion dollars with exports of 30% of the total.

Founded in 1945, Cydsa employs over 10,000 people and has 18 plants distributed nation wide with the corporate headquarters based in Monterrey Mexico suburbs.

In many of our manufacturing process we use various types of chemical products as raw materials which we import from the U.S. due to advantages in quality, availability, price, etc., mostly from the Texas, Mississipi and Luisiana areas.

Such chemical products include among others but not limited to: carbon tet, chloroform, toluenediamine, acrylonitrile, coke, celulose pulp, polipropilene resins, etc. Our traffic department handles about 25 million dlls/year using several types of freight and our rail traffic corresponds to approximately 200,000 tons/year or 30% of the total.

Since the merger of UP/SP we have experienced constant delays in our business from the U.S. mainly because of the congestment problems on the rail transportation over the Laredo, Tx. / Nuevo Laredo, Tamps. border.

These delays, we have identified are caused by the unproper handling of our shipments as a result of the UP/SP merger, have come close to produce plant shutdown, thus jeopardizing our business in general. This situation as been affecting us to the extension that we have been forced to seek alternate ways of transporting into México our raw

Cydsa

Grupo Cydsa, S.A. de C.V.

Ave. Ricardo Margáin Zozaya No. 325
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materials, such as truck shipping and vesseling from near ports with the implied additional cost.

Our company strongly believes that the UP/SP merger has not given us the opportunity of an "alternate solution" on rail transportation services through the mentioned border as the STB envisioned it when this merger was aproved.

Therefore, and for the benefit of the parties involved, we kindly request that the BNSF should be given overhead trackage rights over the UP's San Antonio - Laredo line, as well as permanent bi-directional trackage rights on UP's Caldewell - Flatonia - Placedo lines which are currently in place on a temporary basis.

We do not think that the BNSF-Tex Mex via Laredo could be considered an option because the congestion along the Algoa-Corpus Christi route prevents the BNSF-Tex Mex from offering a timely, efficient and reliable service.

We believe that by approving these trackage rights, all parties involved, including the UP/SP will benefit, since it will allow a more fluid traffic and hardly incur in any congestion as it happened in the previous months; moreover we think that the inclusion of another railroad will enforce both companies to become more efficient as they seek to participate in the market.

We hope you will find these facts pertinent to our request and we thank you in advance for your kind attention to this letter, I remain yours.

I declare under penalty of perjury that the foregoing is true and correct to the best of my beliefs. Executed on this day of July 8th, 1998.

Signature

Jesus Hernandez
Import and Traffic Corporate Manager.
Grupo Cydsa S.A. de C.V.

Mabe

DIRECCION DE DISTRIBUCION Y TECNOLOGIA DE INFORMACIÓN
GERENCIA DE TRAFICO

July 24th, 1998.

Honorable Vernon A. Williams
Secretary
SurfaceTransportation Board
1925 k. Street, N.W.
Washigton, D.C. 20423 - 0001.

Grupo Mabe, a holding company that gathers a group of plants in Mexico, dedicated to manufacture white appliances, stoves and refrigerators, requires different modes of transportation services. In fact, we use truck, rail, air and water services. But rail transportation plays a key roll for us to be able to have all our raw materials imported from both USA & Canada, and to ship our finished products too. The NAFTA has made our business grow dramatically and thus, the quality on transportation service has been very important for our company.

Since the merger of UP/SP in September of 1996, we started looking for new alternatives in order to receive our raw materials in time and in the most competive market conditions. It is well known for you the fact the UP/SP merger has not brought ot us the competitive efficiencies, nor the improved service they promised to all the industries. On the contrary their service has been deteriorated since last summer,to the point that we have jeopardized our international business due to delays incurred in rail traffic via Union Pacific.

BSNF has been railroad alternative with good results. But they have not been able either to perform100% on time, as their operations has been impacted by the UP service problems, mostly in the texas area. As you have requested all interested parties to submitt new proposals and file new conditions focused to remedy the service problem, we kindly request that BNSF obtains overhead trackage rights on UP's San Antonio - Laredo line, and that also obtain permanent bi- directional trackage right on Up's Cadwell - Flatonia - San Antonio and Cadwell - Flatonia Placedo Lines, in place of temporary trackage rights at present.

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

Sincerely, Yours

Arturo Chavez Rios

Av. Insurgentes Sur 617 3er piso Col. Napoles C.P. 03180

GRUPO VITRO

July 02. 1998

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

Subject: Docket No. 32760
Sub-No. 26

Vitro serves commercial, industrial and consumer markets with glass containers, flat glass, automotive glass, glassware, plastic container, aluminium cans and household goods. Based in Monterrey, México, Vitro was founded in 1909 and employs over 30.000 people. It has its own production and distribution facilities in 8 countries, including México and the United States.

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

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

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

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

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

Armando Díaz Orozco
Logística Vitro

cc Carlos Mattei
Jaime Galván

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

HCH
MARKETING, INC.

P.O. Box 159
Manvel, Texas 77578
(281) 331-7788
Fax (281) 585-3685

October 15, 1998

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

My name is Andrew K. Schwartz, Jr. I am the Chairman of HCH Marketing, Inc. Our company is located in Manvel, Texas and is in the business of manufacturing and marketing alcohols and acetate ester solvents for customers throughout the United States.

I am filing this statement in support of the Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows. We believe that this request will benefit our company and other shippers and will result in service improvements and needed operational flexibility.

Under present operations, BNSF has to run bi-directional operations in certain situations over UP trackage rights lines where UP has instituted directional operations such as over the Fort Worth to Dallas, Texas line (via Arlington). In such instances, BNSF trains are delayed when running "against the current" of UP's directional operations until the line is cleared of UP trains. In addition to delaying BNSF traffic, UP traffic is potentially delayed while BNSF operates against the UP "current of traffic", consuming more of the line's capacity than would be utilized with directional operations. These delays to both BNSF and UP traffic adversely impact service to our company and other shippers.

We believe that UP's unilateral and unanticipated institution of temporary directional flows on various lines in Houston/Gulf Coast area have harmed the effectiveness of the rights granted to BNSF by the Board. UP's accommodation of its own operational needs – and later decisions to cease directional running on its lines such as on the former SP Caldwell-Flatonia-Placedo line – causes disruption to BNSF's operations and inhibits BNSF's ability to provide consistent, predictable and reliable service to our company and other shippers. Such significant changes in rail operations not only undermines the competitive rights BNSF was granted but understandably inhibits BNSF's incentive to make capital commitments to enhance service to shippers.

In sum, we believe that the BNSF's request would help to alleviate the degradation in service and reduce congestion on the lines over which UP has instituted directional operations. We are also in favor of this request because it would eliminate the potential for UP to favor its own traffic over that of BNSF moving on trackage rights lines.

For all of these reasons, the Board should grant BNSF's request. It would benefit our company and other shippers and will result in service improvements for both UP and BNSF.

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

Sincerely,

HCH MARKETING, INC.

A. K. Schwartz

Andrew K. Schwartz, Jr.
Chairman

Houston Lighting & Power Company

A Division of Houston Industries Incorporated

Verified Statement in Support of BNSF's
Joining UP's Directional Operations

My name is Carla J. Mitcham, I am General Manager, Fuel & Energy Management at Houston Lighting & Power Company ("HL&P"), a division of Houston Industries Incorporated. HL&P owns and operates the Limestone Generating Station ("Limestone Station"), an electric generating plant located near Jewett, Texas.

Currently, the Limestone Station is fueled primarily by local lignite. However, HL&P is considering the use PRB coal at the plant. Such coal would be delivered by the Burlington Northern and Santa Fe Railway Company ("BNSF"), which is currently the only carrier serving the plant.

Due to our possible expansion of the use of PRB coal, I am filing this statement in support of BNSF's request that the Board grant BNSF overhead trackage rights over the UP line between Fort Worth and Dallas, Texas (via Arlington), to enable BNSF to join the directional operations recently instituted by UP between Fort Worth and Waxahachie, Texas. HL&P believes that its future shipping interests and those of other shippers will benefit from the resulting service improvements and operational flexibility. I understand that, at the moment, BNSF has trackage rights over UP

P. O. Box 1700 ♦ Houston, Texas 77251-1700 ♦ (713) 207-3200

between Fort Worth and Waxahachie and that the line is now used for southbound and northbound movements by the BNSF. The southbound BNSF traffic must run counter to the UP directional operations. BNSF could better join in UP's directional flow plans for this route if it was provided trackage rights on UP's main line route between Fort Worth and Dallas via Arlington, Texas, which would minimize delays to both carriers and customers such as HL&P.

As I stated, in the future, HL&P may use BNSF direct service to provide PRB coal to the Limestone Station. If BNSF trains are forced to operate against the directional flow on the UP line between Fort Worth and Waxahachie, service to the Limestone Station could be adversely impacted due to delays in this area. To avoid that result, HL&P supports BSNF's request for overhead trackage rights over UP's line between Forth Worth and Dallas via Arlington to join in the directional operations in the area.

The Board should grant BNSF's request because (i) it will result in service improvements for both UP and BNSF thereby benefitting HL&P and other shippers; and (ii) it represents another important step toward preventing the severe congestion problems that plagued the Houston/Gulf Coast area and much of Texas over the past year.

Houston Lighting & Power Company

A Division of Houston Industries Incorporated

STATE OF TEXAS)
) SS:
COUNTY OF Harris)

Carla J. Mitcham, being duly sworn, deposes and says that she has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated, except as to those statements made on information and belief, and as to those, that she believes them to be true.

Carla J. Mitcham

Carla J. Mitcham

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

Charlotte A. Bailey

Notary Public for the County of Harris, Texas

My Commission expires 1-21-2001.

CHARLOTTE A. BAILEY
Notary Public, State of Texas
My Commission Expires 1/21/2001

October 15, 1998

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20006-1882

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

Honorable Vernon,

My name is Jeffrey Neu, I am the General Manager of Hugo Neu-Proler Company. Our Company is located is Terminal Island, California and is in the business of Steel Scrap Recycling. We produce Steel Scrap that is shipped to various destination, California, Arizona, Texas and Mexico. Because of the low value of steel scrap, rail transportation is necessary for us to supply our customer.

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

BNSF's rights on the Placedo route are temporary, directional (southbound) and conditional on UP continuing directional operations south of Houston. On September 18, 1998 UP indicated to the Board that it intends to end its directional running operations after it completes an additional siding near Angleton, TX. When UP ends directional operations on this route, BNSF will be barred by UP from further use of this line.

I believe that BNSF needs to ensure that it can avoid operating over Algoa route – even if UP completes proposed capital improvements on that route – to minimize the risk of delay for its trains. Moreover, since operations via the Algoa route unnecessariiy brings traffic through the Houston terminal area, an alternative routing was available to SP pre-merger since it was formerly an SP route and BNSF's request would simply permit BNSF to replicate the competitive options available to shippers by the former SP.

BERTH 210-211 P.O. BOX 3100 901 NEW DOCK STREET TERMINAL ISLAND CA 90731 PHONES: (213) 775-6626 • (310) 831-0281 FAX: (310) 833-5122

HUGO NEU-PROLER COMPANY

In addition, having permanent versus temporary trackage rights would permit BNSF to participate as necessary and appropriate, in needed infrastructure investment (sidings, etc.) on this line. Understandably, BNSF is not likely to commit to such investment when its rights can be canceled on short notice by UP.

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

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

Sincerely,

Jeffrey P. Neu
General Manager

189701

Hylsa

Division Aceros Tubulares

RECEIVED
MANAGEMENT

July 6, 1998

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

ENTERED
Office of the Secretary
JUL 17 1998
Part of
Public Record

Subject: Docket No. 32760
Sub-No. 26

Hylsa Division Aceros Tubulares serves commercial, industrial and consumer markets with steel pipe products such as: standard pipe for gas and water conduction, conduit pipe for electrical purposes, structural pipe, etc... **Hylsa Division Aceros Tubulares** is currently based in Monterrey, Mexico; it was founded in 1954 and employs over 500 people.

Our traffic department handles about 150,000 Tons/year using several types of freight, and our rail traffic corresponds to approximately 12,000 tons/year or 8% of our total traffic.

The commodities currently shipped into the USA are basically: Square and rectangular structural pipe, conduit pipe and API line pipe (petroleoum applications), and the major destinations are: Los Angeles, Cal., Brewster, Ohio, Vancouver, B.C., Calgary, Edmonton, and Winnipeg, Canada.

Lately, or better said since the merger of UP/SP we have experiencing delays in our business towards the USA mainly because of the lack of competitiveness on rail transportation over the Laredo, Tx. / Nuevo Laredo, Tamps. border.

Ave. Guerrero 151 - San Nicolás de los Garza, N.L. - C.P. 66452, MEXICO
Tels. Nos. (8) 351-8836, 351-2066, 328-1747, 328-1673 - Fax Nos. (8) 328-1848, 328-1881

Hylsa

Division Aceros Tubulares

Such delays as we all know have been caused by the unproper handling of our shipments as a result of the UP/SP merger to the extension that it is jeopardizing our current international business.

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

Therefore, and for the benefit of the parties involved, we kindly request that the BNSF should be given overhead trackage rights over UP's San Antonio - Laredo line, as well as permanent bi-directional trackage rights on UP's Caldwell - Flatonia - San Antonio as well as Caldwell - Flatonia - Placedo lines which are currently in place on a temporary basis.

We do not think that the BNSF-Tex Mex via Laredo could be considered an option because the congestion along the Algoa-Corpus Christi route prevents the BNSF-Tex Mex from offering a timely, efficient and reliable service.

We believe that by approving these trackage rights, all parties involved, including the UP/SP will benefit from it since it will allow a more fluid traffic and hardly incur in a congestion as it happened in the previous months; moreover we think that the inclusion of another railroad will enforce both companies to become more efficient as they seek to participate in the market.

Thanking you in advance for your kindly attention to our request, I should remain yours.

Sincerely yours.

Jaime Treviño.
Export Sales Manager.
HYLSA DIVISION ACEROS TUBULARES.

Ave. Guerrero 151 - San Nicolás de los Garza, N.L. - C.P. 66452, MEXICO
Tels. Nos. (8) 351-6836, 351-2066, 328-1747, 328-1873 - Fax Nos. (8) 328-1848, 328-1881

July 6, 1998

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

IBP, inc.'s Support for BNSF Trackage Rights

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

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

UP SERVICE FAILURES

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

TEMPORARY TRACKAGE RIGHTS

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

ibp.

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

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

RECOMMENDATION

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

Sincerely,

Perry M. Bourne

Perry M. Bourne
AVP Transportation

APPENDIX A

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

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

ORIGIN: AMARILLO,TX

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

ORIGIN: HOLCOMB, KS

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

ORIGIN: JOSLIN, IL

PRODUCT	POUNDS SHIPPED	RAIL SHIPMENTS
FROZEN MEAT	882,000	7

Kimberly-Clark de México, S.A. de C.V.

July 8th, 1998

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

Kimberly-Clark de México, S.A. de C.V. is a company dedicated to the manufacture of consumer and paper products which is located in the country of Mexico. In the course of our business we import into Mexico materials from the US and Canada which are transported via rail, truck and air services.

To handle our rail traffic into Mexico, we utilize a number of railroad companies which provide services to Laredo, Eagle Pass and other points in the US/Mexico border, these companies include the Burlington Northern Santa Fe (BNSF) railroad company.

The BNSF has requested us to evaluate and make a recommendation on a request presented to your office for overhead trackage rights on UP's San Antonio - Laredo line, and permament bi-directional trackage rights on UP's Caldwell-Flatonia-San Antonio and Caldwell-Flatonia-Placedo line in place of temporary trackage rights.

We understand that the BNSF's request will promote healthy competition between the different railroad companies, providing customers with additional transportation options, increasing the available equipment to haul goods on the above mentioned tracks and increasing the overall efficiency and availability of railroad services.

Based on the above, we support BNSF's request to obtain the previously mentioned trackage rights.

I thank you in advance for your kind attention to this letter.

Sincerely Yours,

José M. Robles
Imported Raw Materials
Purchasing Manager

c.c. P. Desdier

José Luis LaGrange 103, Polanco, 11510 México D.F.
Tels: (915) 282-7300 Apdo. Postal 10-1003.
Telefax (915) 282 7272

Oficinas Administrativas

KMCO

Specialty Chemicals and Manufacturing

High Vacuum Distillations Chemical Processing And Manufacturing

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

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

My name is Clark Craig. I am Customer Service Manager for KMCO, Inc., Crosby, Texas. I am charged with ensuring safe, efficient, and reliable transportation services to KMCO, Inc. and KMCO, Inc. subsidiaries. Subsidiaries include South Coast Terminal, Houston, Texas, South Coast Terminal, Port Facility, Houston, Texas, KMTEX, Inc., Port Arthur, Texas, and South Coast Terminal, LaPorte, Texas.

Our companies specialize in custom chemical processing and packaging. We serve customers such as DOW USA, Exxon Paramins, Union Carbide Corporation, Ethyl Petroleum, Lyondell, Condea Vista, and Wagner Brake Fluid. We move product by rail to other points in Louisiana, California, Utah, Oklahoma, Illinois, South Carolina and our marketing efforts are beginning to pay off in other areas as well. We produce and market brake fluids, antifreeze, oil field chemicals, and other glycol-related products. However, as a toll processor, we move customer owned material by rail in and out of our facilities to a much larger degree. In other words, rail traffic is relative to the amount of business generated not only by KMCO efforts, but the toll customers it serves (customer material shipped from their facility, customer material received at our facilities, and customer product shipped from our facilities).

As evidenced by twenty-four years at Crosby, six years at Port Arthur, and thirty-plus years at the South Coast facilities, the UPRR has been reluctant to serve companies such as ours. Now that BNSF is a factor at the Crosby facility, service has increased by the UPRR from 20 - 58% before service rights were given to BNSF to better than 75% afterwards. Today, we are convinced that KMCO, as well as other facilities, would benefit from any rights granted as described in the statement below.

I am filing this Verified Statement in support of The Burlington Northern and Santa Fe Railway's request that the Board order that a neutral switcher shall supervise the Baytown/Cedar Bayou Branches. We believe that this request will benefit our company and other shippers on the branch and will result in service improvements for both UP and BNSF.

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KMCO, Inc.
16503 Ramsey Rd. • Crosby, Texas 77532 • 281-328-3501 • Fax: 281-328-9528

A neutral switcher would enhance the efficiency of operations for several reasons.

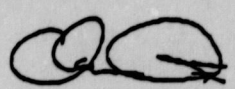
First, with only one neutral switcher on the branch, there would be less overall activity on the branch, a likely reduction in the number of switches and generally less congestion for all customers on the branch whether their rail services are provided by BNSF or UP. More specifically, with one carrier switching a shipper's facilities instead of two (potentially) now, there will be savings in the amount of time needed to perform the switching services, a reduction in rail movements through the plant or sidetrack, less need for supervision of the switching function, and the elimination of a need to separate shipments and cars between two directly servicing carriers.

Second, if there is only one neutral party supervising the switching of our plant, it would provide for better coordination of all activities including loading and emptying cars. Third, with increased efficiencies that a neutral switcher could provide, we would expect improved turnaround times on cars. Lastly, shippers like our company would benefit by having equal access to the linehaul service of BNSF and UP.

In sum, shippers need improved, efficient and competitive rail transportation service. We believe that this request will benefit our company and other shippers on the branch and will result in service improvements for both UP and BNSF.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14th day of October, 1998.

Sincerely,



Clark Craig, CSM

KMCO

Specialty Chemicals and Manufacturing

High Vacuum Distillations Chemical Processing And Manufacturing

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

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

My name is Clark Craig. I am Customer Service Manager for KMCO, Inc., Crosby, Texas. I am charged with ensuring safe, efficient, and reliable transportation services to KMCO, Inc. and KMCO, Inc. subsidiaries. Subsidiaries include South Coast Terminal, Houston, Texas, South Coast Terminal, Port Facility, Houston, Texas, KMTEX, Inc., Port Arthur, Texas, and South Coast Terminal, LaPorte, Texas.

Our companies specialize in custom chemical processing and packaging. We serve customers such as DOW USA, Exxon Paramins, Union Carbide Corporation, Ethyl Petroleum, Lyondell, Condea Vista, and Wagner Brake Fluid. We move product by rail to other points in Louisiana, California, Utah, Oklahoma, Illinois, South Carolina and our marketing efforts are beginning to pay off in other areas as well. We produce and market brake fluids, antifreeze, oil field chemicals, and other glycol-related products. However, as a toll processor, we move customer owned material by rail in and out of our facilities to a much larger degree. In other words, rail traffic is relative to the amount of business generated not only by KMCO efforts, but the toll customers it serves (customer material shipped from their facility, customer material received at our facilities, and customer product shipped from our facilities).

As evidenced by twenty-four years at Crosby, six years at Port Arthur, and thirty-plus years at the South Coast facilities, the UPRR has been reluctant to serve companies such as ours. Now that BNSF is a factor at the Crosby facility, service has increased by the UPRR from 20 – 58% before service rights were given to BNSF to better than 75% afterwards. Today, we are convinced that KMCO, as well as other facilities, would benefit from any rights granted as described in the statement below.

I am filing this statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant overhead trackage rights to enable BNSF, should it determine to do so, to join the directional operations over any UP line or lines where UP commences directional operations and where BNSF has trackage rights over one, but not both, lines involved in the UP directional flows. We believe that this request will benefit our company and other shippers and will result in service improvements and needed operational flexibility.

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Under present operations, BNSF has to run bidirectional operations in certain situations over UP trackage rights lines where UP has instituted directional operations such as over the Forth Worth to Dallas, TX line (via Arlington). In such instances, BNSF trains are delayed when running "against the current" of UP's directional operations until the line is cleared of UP trains. In addition to delaying BNSF traffic, UP traffic is potentially delayed while BNSF operates against the UP "current of traffic", consuming more of the line's capacity than would be utilized with directional operations. These delays to both BNSF and UP traffic adversely impact service to our company and other shippers.

We believe that UP's unilateral and unanticipated institution of temporary directional flows on various lines in Houston/Gulf Coast area have harmed the effectiveness of the rights granted to BNSF by the Board. UP's accommodation of its own operational needs - - and later decisions to cease directional running on its lines such as on the former SP Caldwell-Flatonia-Placedo line - - causes disruption to BNSF's operations and inhibits BNSF's ability to provide consistent, predictable and reliable service to our company and other shippers. Such significant changes in rail operations not only undermines the competitive rights BNSF was granted but understandably inhibits BNSF's incentive to make capital commitments to enhance service to shippers.

In sum, we believe that the BNSF's request would help to alleviate the degradation in service and reduce congestion on the lines over which UP has instituted directional operations. We are also in favor of this request because it would eliminate the potential for UP to favor its own traffic over that of BNSF moving on trackage rights lines.

For all of these reasons, the Board should grant BNSF's request. It would benefit our company and other shippers and will result in service improvements for both UP and BNSF.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14th day of October, 1998.

Sincerely,

Clark Craig, CSM

KMCO

Specialty Chemicals and Manufacturing

High Vacuum Distillations Chemical Processing And Manufacturing

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

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

My name is Clark Craig. I am Customer Service Manager for KMCO, Inc., Crosby, Texas. I am charged with ensuring safe, efficient, and reliable transportation services to KMCO, Inc. and KMCO, Inc. subsidiaries. Subsidiaries include South Coast Terminal, Houston, Texas, South Coast Terminal, Port Facility, Houston, Texas, KMTEX, Inc., Port Arthur, Texas, and South Coast Terminal, LaPorte, Texas.

Our companies specialize in custom chemical processing and packaging. We serve customers such as DOW USA, Exxon Paramins, Union Carbide Corporation, Ethyl Petroleum, Lyondell, Condea Vista, and Wagner Brake Fluid. We move product by rail to other points in Louisiana, California, Utah, Oklahoma, Illinois, South Carolina and our marketing efforts are beginning to pay off in other areas as well. We produce and market brake fluids, antifreeze, oil field chemicals, and other glycol-related products. However, as a toll processor, we move customer owned material by rail in and out of our facilities to a much larger degree. In other words, rail traffic is relative to the amount of business generated not only by KMCO efforts, but the toll customers it serves (customer material shipped from their facility, customer material received at our facilities, and customer product shipped from our facilities).

As evidenced by twenty-four years at Crosby, six years at Port Arthur, and thirty-plus years at the South Coast facilities, the UPRR has been reluctant to serve companies such as ours. Now that BNSF is a factor at the Crosby facility, service has increased by the UPRR from 20 – 58% before service rights were given to BNSF to better than 75% afterwards. Today, we are convinced that KMCO, as well as other facilities, would benefit from any rights granted as described in the statement below

I am filing this statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal. We believe that this request will benefit our company and other shippers

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and will result in service improvements and needed dispatching flexibility in the Houston terminal.

Specifically, this request would permit BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, and not just over the former HB&T East and West Belts. The result would be to reduce congestion caused by BNSF trains staged in the Houston terminal waiting for track time to use the main trackage rights lines they currently share through the terminal and on the former HB&T East and West Belt lines.

This request would create an important safety valve for dispatchers to permit BNSF trains to traverse clear routes in the Houston terminal. It is a reasonable measure to avoid congestion and should pose no harm to UP as it does not give any competitive advantage to BNSF's operations in the Houston terminal.

The request thus stands to benefit all rail carriers operating in the Houston terminal area and the shipping public. It is in everyone's best interest to achieve better service for shippers and to reduce the congestion in the Houston terminal area. Accordingly, the Board should grant BNSF's request.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14th day of October, 1998.

Sincerely,

Clark Craig, CSM

Luzenac AMERICA
Western Talc Operations • 767 Old Yellowstone Trail • Three Forks, MT 59752-9313 • (406) 285-5300 • FAX: (406) 285-3323

October 15, 1998

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

RE: Finance Docket No. 32760 (Sub-Nos. 26 and 28), Houston/Gulf Coast

Dear Mr. Williams:

My name is William S. Carrier. I am the Distribution Manager. Our company is located in Three Forks, Montana and is in the business of mining, processing and marketing talc products. Our customer base is spread throughout the midwest, eastern and southern states and a small number of customers in northern Mexico.

I am filing this statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant trackage rights on additional UP lines in the Houston terminal area for BNSF to operate over any available clear routes through the terminal. We believe that this request will benefit our company and other shippers and will result in service improvements and needed dispatching flexibility in the Houston terminal.

Specifically, this request would permit BNSF to operate over any available clear routes through the terminal as determined and managed by the Spring Consolidated Dispatching Center, and not just over the former HB&T East and West Belts. The result would be to reduce congestion caused by BNSF trains staged in the Houston terminal waiting for track time to use the main trackage rights lines they currently share through the terminal and on the former HB&T East and West Belt lines.

This request would create in important safety valve for dispatchers to permit BNSF trains to traverse clear routes in the Houston terminal. It is a reasonable measure to avoid congestion and should pose no harm to UP as it does not give any competitive advantage to BNSF's operations in the Houston terminal.

The request thus stands to benefit all rail carriers operating in the Houston terminal area and the shipping public. It is in everyone's best interest to achieve better service for shippers and t reduce the congestion in the Houston terminal area. Accordingly, the Board should grant BNSF's request.

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

Sincerely,

William S. Carrier
Distribution Manager

M. SCHIEFER TRADING CO.
COTTON

P.O. BOX 1065 • LUBBOCK, TEXAS 79408
PHONE 806--762-0700
FAX 806--762-0078

MEMBER:
Lubbock Cotton Exchange
Texas Cotton Association
American Cotton Shippers Association

10/12/98

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

Dear Sir:

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

My name is Manfred Schiefer, I am the president of M. Schiefer Trading Co.. Our company is located in Lubbock, Texas and is in the business of Raw Cotton Exports. Since many years now we have been exporting cotton to Mexico using mostly US rail service from all points of Texas and Oklahoma as well as eastern states and California. Just in the past we have exported about 30 Million dollars worth of cotton to Mexico, this translates to about 500 plus rail cars.

During the past 2 years we have experienced severe delays due to the terrible service we received from Union Pacific Railroad. Needless to say that we have suffered severe losses because of unavailability of cars, delays and re-routing of our cars to different railroads eventhough this cost us more freight. We estimate our losses at about $50,000.00.

I am filing this Verified Statement in support of The Burlington Northern and Santa Fe Railway's ("BNSF") request that the Board grant permanent trackage rights on the UP's San Antonio- Laredo Line. I believe that this request will benefit our company and other shippers and will result in service improvements and create meaningful competition for rail shippers to the Laredo Gateway.

I believe that BSNF's request for trackage rights over the San Antonio Laredo Line are designed to ensure that competition at this critical Mexican gateway does not continue to be adversely impacted by UP's south Texas congestion and service problems specifically on the UP's Algoa to Corpus Christi route.

M. SCHIEFER TRADING CO.
COTTON
P.O. BOX 1065 • LUBBOCK, TEXAS 79408
PHONE 806—762-0700
FAX 806--762-0078

MEMBER:
Lubbock Cotton Exchange
Texas Cotton Association
American Cotton Shippers Association

Granting BNSF trackage rights to the Laredo gateway through San Antonio will also allow BNSF to bypass the TEXMEX, with whom BNSF has been unable to conclude a competitive long term commercial arrangement. We are also concerned that the unexpected lack of competition in the privatized Mexican rail system is preventing shippers from receiving a fully competitive service at the Laredo Gateway.

For all these reasons, the Board should grant BNSF's request for trackage rights over the San Antonio- Laredo Line. This would benefit our company and other shippers, and would result in service improvements to the Laredo Gateway, as well as provide a competitive alternitive for shippers.

I certify under the penalty of perjury that the foregoing is true and correct. Executed this 12th. day of October, 1998

Yours very truly,
M. SCHIEFER TRADING CO.

By: Manfred Schiefer

NATIONAL
BY-PRODUCTS, INC.

1514 So. 33rd Street
P.O. Box 7234
Omaha, NE. 68107
402-342-2074
FAX 402-342-2136

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

July 2, 1998

Dear Mr. Williams,

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

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

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

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

189701

nucor steel

A Division of NUCOR Corporation

Post Office Box 126 Jewett, Texas 75846 Telephone 903/626-4461

July 9, 1998

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

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

Secretary Williams,

My name is Kenneth Huff, and I am the General Manager of Nucor Steel - Texas and a Vice President of Nucor Corporation. I am submitting this statement in support of The Burlington Northern and Santa Fe Railway Company's (BNSF) request for permanent overhead trackage rights between San Antonio and Laredo, Texas.

In 1997, this facility shipped 11,490 tons of K061 (Electric Arc Furnace Dust) for the recycling of zinc and other metals through the Laredo gateway. In addition to this material, we shipped more than 2000 tons of structural steel to customers in Mexico through Laredo, Texas by truck and rail.

The Union Pacific Railroad and Southern Pacific Railroad (UP/SP) merger and the privatization of Mexico's railroads has affected the competition and quality of rail services for our company over the Mexican gateways. Because Nucor Steel - Texas must rely on rail transportation to and from Mexico, and the fact that the majority of its rail traffic is best served through the Laredo gateway (access to end users and the expediting of paperwork through brokers located in Laredo, Texas), we have been directly impacted by service under the conditions the Board imposed in the UP/SP merger proceeding.

In statements from the BNSF, they are hampered from providing Nucor Steel - Texas with the most competitive service possible over the Laredo gateway for several reasons. First, the congestion problems associated with shipping traffic via BNSF over the Laredo gateway are a source of concern. Second, our traffic does not need to go through the Houston or Gulf Coast areas. Since BNSF's

only access to the Laredo gateway is by connecting with the Tex Mex via the heavily congested Algoa-Corpus Christi line, our traffic is subject to considerable delay and congestion. Third, the reluctance of Tex Mex to enter into any long term agreement with BNSF prevents BNSF from offering rates competitive to UP/SP. Finally, the privatization of Mexico's railroad system (FNM) has provided less than anticipated competition within Mexico, preventing shippers from realizing competitive service at the Laredo gateway.

If the Board were to consider BNSF's request, it could permit BNSF the opportunity to provide effective and competitive service for us and other shippers at the Laredo gateway. Nucor Corporation has always been a strong supporter and participant in the competitive market. We support any solution that allows Nucor Steel - Texas to provide better service to our customers and to optimize our costs through competitive shipping.

Sincerely,

Kenneth Huff

Kenneth Huff
Vice President and General Manager