STB FD-32760(SUB32) 7-8-98 A ID-189409 1 OF 2

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189409

BEFORE THE
SURFACE TRANSPORTATION BOARD

CMTA-1

Union Pacific Corporation, Union Pacific	§	
Railroad Company, and Missouri Pacific	§	
Railroad Company -- Control and Merger	§	
-- Southern Pacific Rail Corporation,	§	
Southern Pacific Transportation Company,	§	Finance Docket No. 32760
St. Louis Southwestern Railway Company,	§	(Sub-No. ~~21)~~ ~~26~~ 32
SPCSL Corp., and the Denver and Rio	§	
Grande Western Railroad Company	§	

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S
REQUEST FOR LIMITED REMEDIAL CONDITION

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- (h) Mike Heilgenstein, Williamson County Commissioner, Precinct 1
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BEFORE THE
SURFACE TRANSPORTATION BOARD

CMTA-1

Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company	§ § § § § § § §	Finance Docket No. 32760 (Sub-No. ~~21)~~ 26

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S REQUEST FOR LIMITED REMEDIAL CONDITION

Pursuant to the Surface Transportation Board's ("the Board") Decision No. 12,[1] Capital Metropolitan Transportation Authority ("Capital Metro") hereby submits this Request for Limited Remedial Condition. Through this Request, Capital Metro asks the Board to grant the Central of Tennessee Railway & Navigation Company, Incorporated d/b/a the Longhorn Railway Company ("Longhorn") a connection with the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company ("BNSF") at McNeil, Texas. This interchange at McNeil would require a 4.4 mile extension of BNSF's trackage rights from Round Rock to McNeil.

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[1] Decision No. 12, served March 31, 1998, initiated an oversight proceeding to address "Requests for Additional Conditions to the UP/SP Merger for the Houston, Texas/Gulf Coast Area."

I. INTRODUCTION

Through Finance Docket No. 32760, Decision No. 44, served August 12, 1996 ("Decision No. 44"), the Board granted the application of Applicants Union Pacific ("UP")[2] and Southern Pacific,[3] ("SP") for prior approval of the merger of the UP and SP rail systems, subject to certain limited conditions designed to preserve competition throughout the national rail system. Among other conditions imposed, the Board granted the Giddings-Llano shortline, located in Austin, Texas and now owned by Capital Metro, a connection with the BNSF at Elgin, Texas. In Decision No. 44, the Board granted conditions and trackage rights to several other carriers including Texas Mexican Railway Company ("Tex Mex"), premising the relief in part on evidence that the carrier might not financially survive the merger, absent imposition of certain conditions. The Board also granted BNSF trackage rights over segments of The Kansas City Southern Railway Company's ("KCS") line, upon a public interest showing pursuant to 49 U.S.C. §11102 (1997).[4] Both rationales have direct applicability to Capital Metro's instant request for a limited condition.

The market power the merged UP and SP (together "UP/SP") gained through the merger has

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[2] "UP" as used herein means the Union Pacific Corporation, Union Pacific Railroad Company, its subsidiaries and affiliates, as further identified in Decision No. 1 of Finance Docket 32760.

[3] "SP" as used herein means the Southern Pacific Rail Corporation, Southern Pacific Transportation Company, its subsidiaries and affiliates, as further defined in Decision No. 1 in Finance Docket No. 32760.

[4] 49 U.S.C. §11102 governs terminal facilities. The McNeil interchange qualifies as a terminal facility. *See infra* Section V.

resulted in a failure of service on the Giddings-Llano; has prevented BNSF from providing the competition on which the Board conditioned the merger; and has placed the Giddings-Llano operator on the brink of failure. Capital Metro herein seeks a limited remedial condition ("the Limited Condition"), which would limit the impact to Giddings-Llano shippers of UP's market dominance and would provide the opportunity for the BNSF to provide the competitive service the Board ordered through Decision No. 44. Because of the alternate routing BNSF currently uses for Giddings-Llano traffic, the Limited Condition would also help alleviate Houston area congestion. The Limited Condition would further provide the Giddings-Llano operator an opportunity to avoid financial ruin, which would make it extremely difficult, if not impossible, for Capital Metro to obtain a replacement and maintain rail service in the Austin area. The Limited Condition seeks only a 4.4 mile extension of BNSF's existing trackage rights, from Round Rock to McNeil. With this extension, Longhorn Railway could interchange with BNSF at McNeil, and meet the unfulfilled service needs of the shippers on the line.

II. FACTS

1. Capital Metro is a regional transit authority, a body corporate, and political subdivision of the State of Texas. In May of 1998, Capital Metro became the owner[5] of the Giddings-Llano

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[5] At the time of Capital Metro's Responsive Application, CMTA-10 Finance Docket No. 32760 (Sub-No. 10) (March 29, 1996), Capital Metro was the holder of a perpetual mass transit easement over a segment of the Giddings-Llano and was also manager of the Line. On May 14, 1998, Capital Metro filed its Notice of Exemption to acquire the Giddings-Llano, *see* 63 Fed. Reg. 29060 (May 27, 1998), which became effective on May 21, 1998, *see* 49 C.F.R. §1150.32(b).
(continued...)

line, which is approximately 162 miles long and extends from Giddings, Texas to Llano, Texas. Exhibit 1(b).

2. The City of Austin purchased the Giddings-Llano from SP in 1986. The SP fulfilled the common carrier obligation on the Giddings-Llano until the City of Austin and Capital Metro (then manager of the line) retained the Austin & Northern Western Railroad ("AUNW") as the operator. Exhibit 4, ¶5.

3. At the time AUNW began operations, both the SP and UP had connections with the Giddings-Llano at McNeil. Exhibit 4, ¶5. The SP served Giddings-Llano shippers by interchanging with their traffic at McNeil, which is a terminal facility. Among these shippers was Austin White Lime, which ships outbound limestone products over the Giddings-Llano to the Houston area from McNeil, Texas. Exhibits 3, p.2 & 4, ¶6.

4. Once AUNW commenced operations from the SP in 1986, the UP became the only class I carrier to interchange Giddings-Llano traffic at McNeil. Prior to that time, the Giddings-Llano had two-carrier service at McNeil. Exhibits 3, pp.2, & 8 & 4, ¶6.

5. The AUNW's service as operator of the Giddings-Llano was rifled with failures: the AUNW simply disregarded some 100 yards of trackage rights that SP enjoyed over UP track in order to serve Austin White Lime (the UP no longer acknowledges the availability of these trackage rights to the AUNW's successor -- Longhorn); in 1994, the AUNW discontinued

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[5] (...continued)
(1998). The sale of the Giddings-Llano by the City of Austin to Capital Metro closed on May 22, 1998.

service over the westernmost segment of the line, which extends from Scobee to Llano; in 1995, the AUNW discontinued operations over the easternmost segment of the line, which extends from Smoot to Giddings; particularly toward the end of its tenure, AUNW scaled back maintenance and crews on the line, and conducted no betterment or marketing activities. Exhibit 4, ¶8.

6. Longhorn has operated the Giddings-Llano since May 3, 1996. Exhibit 4, ¶10.

7. Presently, the Giddings-Llano has two possible, and one theoretical point of interchange with another carrier: i) McNeil (the westernmost interchange point); ii) Elgin (toward the center of the Line); and iii) Giddings (on the east end of the Line). Exhibit 1 (b). Because of the UP/SP induced financial hardship sustained by Longhorn, Longhorn does not run cars between McDade (east of Elgin) and Giddings. Exhibit 3, p.5. Giddings is thus a theoretical interchange only.

8. On March 29, 1996, Capital Metro filed its Responsive Application in Finance Docket No. 32760 (Sub-No. 10), requesting that, should the Board approve the Merger of the UP and SP railroads, the Giddings-Llano operator be granted the right to a connection with a third party unaffiliated with the Applicants. *See* CMTA-10, Finance Docket 32760 (Sub-No. 10) (March 29, 1998).

9. Through Decision No. 44, the Surface Transportation Board ruled with regard to the Giddings-Llano that, "to preserve the existing potential competition," the Giddings-Llano "would be regarded as a 2-to-1 shortline for purposes of Section 8i of the BNSF agreement."

Decision No. 44, p. 182. In other words, the Board ruled that Capital Metro would be treated as other shortlines that, prior to September 25, 1995, had the option of interchanging with both the UP and the SP and no other railroad. The Board did not grant Capital Metro's request for an interchange with BNSF at McNeil.

10. To effect its ruling, the Board stated that Capital Metro had the right to a connection with the BNSF at Elgin or at Giddings. The Board explained: "CMTA has a right to a connection with BNSF either at Giddings (because we will require such a connection) or at Elgin (because we will hold applicants to their representation that they will allow such a connection)." Decision No. 44, p. 182.

11. Based on a series of considerations, including anticipated future provision of reasonable service from UP/SP; BNSF's intentions to relocate its mainline operations through Elgin *see, E.g.* BN/SF-76, pp.2-3 Finance Docket 32760 (Sub-No. 10) (Jan. 21, 1997); and what was then the discontinued status of the track between Elgin and Giddings, Capital Metro selected Elgin. *E.g.*, Decision No. 69, Finance Docket 32760 (Sub-No. 10) (March 7, 1997) (hereinafter "Decision No. 69").

12. Traffic interchange between the BNSF and Longhorn at Elgin began on March 10, 1997. *E.g.*, BNSF Quarterly Progress Report (hereinafter "BNSF-PR"), p. 4 (July 1, 1997).

13. At the time Capital Metro selected Elgin, BNSF planned shortly to relocate its mainline operations such that BNSF would run three through-trains in each direction per week at Elgin. *E.g.* Decision No. 69 (March 7, 1997); BNSF Operating Plan, BNSF-1, Exhibit A at

p.12 (Dec. 29, 1996); BNSF-PR (Oct. 1, 1996); BNSF-76, pp.2-3.

14. As of the time of this filing, BNSF has no through trains at Elgin. BNSF-PR, p.9 (April 1, 1998). As reason therefore, BNSF informs Longhorn that its inability to run through trains at Elgin is a result of the congestion on UP lines south of Elgin, which lines lead to the Houston area or, alternately, into Mexico. In lieu of through-trains, BNSF provides limited local service at Elgin twice per week. Id; Exhibit 2, pp.13-14 ("BNSF provides a shuttle service").

15. The UP/SP service to Longhorn and Giddings-Llano shippers has been an unmitigated catastrophe, bringing Longhorn to the brink of failure. Exhibit 3, p.9 The service failures have damaged Longhorn -- directly, through unreasonable turnaround times to Houston and failure to provide needed equipment for example; and indirectly, through congestion that has prevented BNSF from relocating its mainline operations to run through Elgin.

16. According to Longhorn, the disastrously poor service from the UP regarding Giddings-Llano traffic has necessitated Longhorn's reliance to the fullest possible extent on the BNSF for movement of Giddings-Llano traffic. Exhibit 3, p.7.

17. Turn around time "on good occasions" for Longhorn traffic on the UP is 17 days, Exhibit 3, p.7, while turn around time for Longhorn traffic on the BNSF averages 9 or 10 days, *Id.*

18. Most Giddings-Llano freight traffic either originates or has as its destination the Houston, Texas/Gulf Coast region. Exhibits 3, p.3 & 5(d).

19. Owing to structural limitations of the interchange facilities at Elgin, including its location

within 12 car lengths of a major car traffic intersection, and given local rather than through-train BNSF operations, BNSF and Longhorn can reliably interchange only about twelve cars at any one time. Exhibit 3, p.12.

20. Longhorn has incurred severe and excessive debt as a result of increased expenses and decreased income caused by UP service problems and unreliability, and Longhorn's inability to rely on BNSF to provide the level of service the Board approved through Decision Nos. 44, 67, and 69. Exhibit 3, p.9.

21. Longhorn's failure could irreparably injure Capital Metro and the rail-dependent shippers on the Giddings-Llano. First, if Longhorn fails, as did its predecessor AUNW, Capital Metro anticipates that it would be very difficult, if not impossible, to find a replacement operator. Exhibit 4, ¶13. If Capital Metro were eventually able to retain a substitute operator, the costs incurred in the interim would likely be extremely high. Capital Metro has no budget allocation for such eventuality. Some of the costs Capital would likely incur include the costs of a new procurement, costs to obtain temporary substitute operator service (which likely would be at a premium and devoid of any line maintenance or other obligations that would require investment in the line), and personnel changes commensurate with these revised responsibilities. The situation could also jeopardize pending and prospective grants and federal funds. *Id.* at ¶14.

22. In this eventuality, Capital Metro would likely have no choice but to seek to discontinue freight operations on the line. Exhibit 4, ¶12. Many of the shippers on the line currently rely

on rail for 100% of their transportation needs, and possibly would have to close or relocate their businesses in the event rail service is no longer available on the Giddings-Llano. *Id.* at 15. A domino effect would ensue, since the Austin Steam Train Association, and other rail enthusiast organizations and the public, who now enjoy shared use of the line with Longhorn, would be impacted by an operator failure as well. *Id.*

23. The balance of the interests overwhelmingly favors the granting of this limited, narrowly tailored condition. Adverse consequences to the Austin area can be avoided, and significant benefit will be conferred by granting the requested interchange rights of the BNSF.

III. STANDARD FOR GRANTING ADDITIONAL CONDITION

Through Decision No. 12, the Board set forth certain factors it would consider in this Oversight Proceeding, in determining whether to impose an additional remedial condition on the UP/SP merger proceeding. Specifically, the Board limited additional conditions to be granted through this proceeding to those that "pertain to rail service in the Houston, Texas or Gulf Coast region." Decision No. 12, p. 2. The Board plans to "re-examine whether our imposed conditions have effectively addressed the consequences they were intended to remedy; and to impose additional remedial conditions if those previously afforded prove insufficient." Decision No. 12, p. 4. Finally, the Board intends to determine "whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred here, and, if so, whether the situation should be addressed through additional remedial conditions." Decision No. 12, p. 4, citing Decision No. 44, at 100. The Board emphasized that, as part of its continuing oversight jurisdiction, "the Board's prior rejection of . . . any . . . party's limited conditions -- whether in the Board's approval of the merger or in a subsequent oversight proceeding -- does not preclude their fresh consideration now." Decision No. 12, p. 4.

As addressed below, Capital Metro's Limited Condition pertains to service in the Houston and Gulf Coast region. The Giddings-Llano line is located near Austin, Texas, and most of the traffic on the line is destined for the Houston area. The condition the Board imposed through Decision No. 44 has proved ineffective, primarily because the UP/SP market power and UP/SP service problems have prevented BNSF from implementing the Board-ordered competition, and also because the UP/SP service problems have had a severe negative impact on the line's operator. There is a direct and dramatic relationship between the market power the UP/SP gained through the merger, and the failure of service that is occurring on the Giddings-Llano. The Limited Condition would help reconcile the insufficiency of the previously granted condition.

IV. UP/SP MARKET POWER PREVENTS BNSF FROM PROVIDING BOARD-ORDERED COMPETITION

There is a direct relationship between the market power UP/SP gained through the merger and the failure of service on the Giddings-Llano. The impact of UP/SP market power has had a dramatic impact on Giddings-Llano service, and has prevented BNSF from providing the competition the Board ordered through Decision No. 44.

Unanticipated conditions caused by the UP/SP merger and the market power UP/SP gained thereby prevent BNSF from carrying out the competition the Board ordered through Decision No. 44. UP/SP-caused congestion south of Austin and in the Houston and Gulf Coast region has prevented BNSF from being an effective competitor at Elgin. Specifically, merger-related congestion south of Austin has prevented BNSF from relocating its mainline operations. This inability of BNSF to reroute its trains causes Elgin to fall short of the Board-ordered competition BNSF was to provide Giddings-Llano shippers. The bottleneck UP has generated south of Austin has prevented BNSF from shifting its through train operations from the Temple-Caldwell-Sealy line, Exhibit 1(a), to the Temple-Elgin-Smithville line, as the BNSF Agreement requires and both BNSF and UP intended, *id.* Exhibit 2, p.12 and n.17.; *see also* BNSF-PR, Exhibit A at p.12 (Oct. 1, 1996); UP/SP-232, Vol. 3, p.18 (April 29, 1996). Owing to BNSF's inability to shift its through train operations, BNSF's service at Elgin has been dramatically below the level of service it agreed to provide through the BNSF Agreement, which prevents BNSF from providing the competition that the STB ordered, *see e.g.*, Decision Nos. 67 and 69.

In making the determination between a BNSF connection at Giddings or at Elgin, Capital Metro considered as a key element the service BNSF planned to provide at either interchange point. *E.g.*, Decision No. 67, p.2 (noting "CMTA adds that the parties will carry out the interchange under the terms provided for in the BNSF agreement"); Decision No. 69, p.5 ("there is good reason to believe that BNSF will be able to offer a much higher level of service at Elgin than at Giddings"). A major factor in Capital Metro's selection of the Elgin interchange point was BNSF's plans to run three through trains per week in each direction at Elgin, in addition to BNSF's concern that traffic volumes would not be sufficient to warrant BNSF's providing a similar level of service for what were expected to be branch operations at Giddings. *Id.*; CMTA-13 (Finance Docket No. 32760 (Sub-No. 10)), p. 4 (December 10, 1996); BNSF-76, pp.2-3. The Board identified Capital Metro's consideration of BNSF's "planned mainline operations at Elgin," as a valid consideration in selecting Elgin as the line's interchange point with the BNSF. As the Board itself explained: "CMTA had every reason to expect that, in terms of frequency and transit time, the level of service provided by a BNSF "branchline" operation . . . for the sole purpose of serving an interchange with Longhorn, would likely be inferior to BNSF's planned mainline operations at Elgin." Decision No. 69, p. 5.

Now, some fifteen months after BNSF initiated its connection with the Giddings-Llano, BNSF has still been unable to relocate its mainline operations from the Temple-Caldwell-Sealy line, Exhibit 1(a), to the Temple-Elgin-Smithville line. Instead, BNSF provides Temple to Elgin local service only, and has no through train service from Temple to Smithville and on into the Houston area. This "branchline operation" at Elgin is far inferior to the service Capital Metro selected, on which the Board conditioned the merger. The branchline operation entails BNSF sending a locomotive from Temple, Texas nearly eighty miles south to Elgin for the sole purpose of interchanging with Longhorn traffic, then having the locomotive return to Temple those same eighty miles with the Longhorn cars, where the cars then connect with a BNSF train that moves the Longhorn cars to their destinations. Exhibit 3, p.7-8.

Moreover, BNSF provides local service to Elgin only about twice per week, Exhibit 3, p.8. This local service is far from the six times per week service the BNSF anticipated it would provide, and far from the competition the Board approved and ordered to take place. *See, e.g.*, BNSF-PR, Exhibit A, p.12 (Oct. 1, 1996); BNSF-PR (Dec. 29, 1996); BNSF-PR (Jan. 2, 1997), BN/SF-76 at 1, n. 1.; Decision No. 69, pp. 5 and 7-8. The provision of this level of service is consistent, however, with BNSF's own previously expressed concerns as to why a BNSF connection at Giddings might be an inferior connection to the pre-merger SP connection at Giddings. CMTA-12 (Dec. 10, 1996). Specifically, while the SP had the option of running through trains at Giddings, BNSF would not provide such service at Giddings after its anticipated relocation on mainline operations through Elgin. *See, e.g.*, BNSF-76, pp.2-3 and n.1. BNSF expressed concerns as to whether, given a lack of through train operations, the volume of traffic on the line would warrant a high level of service at Giddings. Somewhat ironically, owing to the UP service abuses, it is Elgin, not Giddings, that requires local service.[6] BNSF's own concerns previously expressed, have become a reality. Thus, Elgin has also proved to be an inferior interchange point to that the SP was able to provide pre-merger, and an inferior interchange point to that the Board ordered by way of replacement.

According to the BNSF, it has been unable to relocate its mainline operations to the Temple-Elgin-Smithville route because of UP/SP's severe congestion south of Elgin. As indicated in BNSF's quarterly progress reports, UP/SP-induced congestion and service problems in the area have been too severe to permit BNSF the mainline relocation, as initially planned and agreed upon

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[6] In Decision No. 69, the Board acknowledged the contingency of a delayed relocation of BNSF's mainline operation. The Board declined to address this contingency, explaining: "Because no party has addressed problems that may arise if there is a long delay in implementing BNSF's operations via Elgin, we will not address this matter . . . ." Decision No. 69, p. 7.

through the BNSF Agreement. In its April, 1998 quarterly report, BNSF explains:

> [E]xtreme congestion on the former SP "Sunset Route" east and west of San Antonio, as well as along the former SP route between Caldwell and Placedo, Texas, has negatively impacted BNSF service in these areas, specifically to and from south Texas, Laredo and Eagle Pass.

BNSF-PR, p. 9 (April 1, 1998); *see also* Exhibit 1(a). BNSF has explained how its inability to implement the merger conditions casts serious doubt on its ability to provide the viable, long-term competition that the Board ordered and intended, and why the emergency service order currently in effect is insufficient to remedy this deficiency.

> With respect to implementation of the merger conditions, the fourth quarter of 1997 continued to be dominated by the very serious congestion problems and other significant service deficiencies on UP lines in and around Houston, TX. While the Board's Service Order No. 1518 has resulted in improvement in some areas, service and operational problems still are significantly interfering with BNSF operations in south Texas. **Because of the conditions under which BNSF conducts its operations on UP lines, BNSF has reservations about its ability long-term to fulfill the competitive role that BNSF and the Board anticipated pursuant to the trackage rights lines, raise serious questions as to whether BNSF will be able to provide to rail customers viable long-term competitive service, particularly in south Texas and along the Gulf Coast.**

BNSF-PR, p. 2 (Jan. 2, 1998) (emphasis added).

BNSF goes on to explain that even the current service it provides is in jeopardy over the long term, since UP/SP congestion and other service problems have increased BNSF's costs, which costs BNSF is not in a position to absorb indefinitely. BNSF predicts that, over the long term, it will not be in a position to provide even the level of competitive service it manages to provide now, which as explained above, falls short of the competition the Board-ordered through conditions and the

BNSF Agreement. BNSF explains:

> The delays on the trackage rights lines are both impacting the competitiveness of BNSF's operations and significantly increasing BNSF's costs. With a good, reliable operation, BNSF can be competitive over these lines given the mills per ton mile trackage rights rate it pays and the expenses of operation it incurs, but the significant delays being experienced increase its per diem costs for equipment handled, increase crew expenses as additional crews are required, and result in greater consumption of locomotive power.

BNSF-PR, p. 22 (Jan. 1998). BNSF goes on to reveal:

> Accordingly, it is not clear that BNSF can continue to provide competitive service to rail customers given these delays and increased costs. Because of extended transit times, BNSF is providing an inferior product; and in the long-term, this situation continues, BNSF will not be able to meet its representations regarding competitive service. As long as these service and operational impediments continue, BNSF will be unable to offer fully competitive service across the trackage rights lines as the Board intended. From the rail customers's viewpoint, BNSF's alternative service will not be acceptable long-term if BNSF cannot meet the customer's expectations for reliable service and price competitiveness. Because BNSF already has a smaller presence in these markets than UP, the impediments BNSF faces have a greater impact on BNSF's competitiveness.

Id. at pp.22-23.

BNSF has consistently advanced that UP/SP service problems remain an obstacle that prevents BNSF from providing fully competitive service at 2-to-1 points, such as the Giddings-Llano. BNSF-PR, p. 5 (April 1, 1997). In BNSF's most recent Quarterly Report, BNSF reiterated that "BNSF continues to experience significant delays in moving traffic under the rights it was granted in the UP/SP merger proceeding due to the congestion and deficiencies." *Id.*

While the Board's Service Order No. 1518 and UP/SP's own efforts have apparently had a positive impact, BNSF apparently finds this impact insufficient to remedy its concerns regarding its ability to provide the competition the Board has ordered. In BNSF's most recent quarterly report, BNSF explains that, "[w]hile various steps have been taken to improve operations in the Houston area during the first quarter of 1998, the results of those efforts have so far not been adequate to meet BNSF's customers' needs. BNSF still is unable to provide the competitive service that it desires in the Gulf Coast area, and its current service in the area is not up to the standard BNSF would like it to be because of the continuing operational problems in Houston." BNSF-PR, p. 27 (April 1, 1998).

The Giddings-Llano, and the service BNSF has been able to provide at Elgin, is no exception: BNSF has not instituted mainline service through Elgin; its service at Elgin is branchline and far less frequent than that contemplated by the BNSF Agreement; and rather than providing service directly to or through Houston, BNSF is forced to use the more circuitous route through Silsbee. All of these factors prevent BNSF from providing the service the Board ordered -- and BNSF and UP/SP agreed to provide or permit, respectively. BNSF simply is unable, owing to the UP/SP service deficiencies and UP/SP-induced congestion in the area, to provide effective competition at Elgin, and its ability to provide in the long-term the limited competition it now provides is in question.

As R.L. Banks & Associates analyzes in its verified statement:

> The interchange rights as granted have failed to fulfill the Board's expectations, but certainly not because of a lack of effort on the part of CMTA's operator or BNSF. The merger itself has created the conditions which have defeated the instrument by which the benefits of the merger were to be guaranteed. UP's congestion has prevented BNSF from providing the

service which it intends and which CMTA anticipated at the time of the Board's decision.

Exhibit 2, p. 6-7 (footnote omitted).

Owing to BNSF's inability to provide an effective alternative at Elgin, UP/SP has a de facto monopoly over shippers located on the western end of the line, in particular. Most of the Giddings-Llano traffic originates west of McNeil. Because of the unanticipated limitation on BNSF's operations as a connecting class I carrier, these western-located shippers effectively have only one carrier with whom they can interchange: UP/SP. Given that Longhorn is limited to interchanging only about twelve cars at any one time at Elgin, and given that BNSF serves the line by branchline service and only two times per week, shippers located west of McNeil simply have no effective interchange with BNSF at Elgin. *See* Exhibit 3, p.12. UP/SP is a de facto monopolist for those shippers, since they have no reasonable alternative. Merger-related congestion and UP's exercise of its market power on the line and related lines, Exhibits 1(a), 3 & 5(b), (g), have prevented BNSF from providing a class I alternative for Giddings-Llano traffic, for shippers located west of McNeil in particular.

In sum, the market dominance UP/SP gained through the merger has had unanticipated impacts on the Giddings-Llano: UP/SP's market dominance and related service failures have caused the unanticipated congestion south of Austin; the unanticipated congestion in Houston; BNSF's inability to provide through train service at Elgin; and BNSF's limited local service at Elgin. All of these factors combine to prevent BNSF from providing the competition the Board ordered as a condition to the merger.

V. LIMITED CONDITION WOULD PERMIT BNSF TO PROVIDE THE BOARD - ORDERED COMPETITION, MITIGATE HOUSTON CONGESTION, AND LIMIT IMPACT OF UP/SP MARKET POWER

BNSF's inability to provide the competition the Board ordered is remediable. An alternative exists that will permit BNSF to exercise the competition available from the SP before the merger. Owing to BNSF's routing and superior reliability (both addressed in more detail below), this alternative would also help relieve Houston congestion. Moreover, the alternative would impede UP/SP's attempts to exercise its de facto market power on the Giddings-Llano.

A. Summary of Requested Limited Condition

Capital Metro requests that the Board impose the Limited Condition of a Longhorn-BNSF connection at McNeil. A detailed description of this request is provided in Capital Metro's Responsive Application, CMTA-10 Finance Docket No. 32760 (Sub-No. 10) (March 29, 1996), and Capital Metro reasserts, reaffirms, and recommends the connection initially requested through its Responsive Application.

In sum, Capital Metro requests on behalf of BNSF,[7] trackage rights over what is now UP/SP

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[7] Capital Metro initially requested trackage and interchange rights on behalf of an unnamed class I carrier unaffiliated with the Applicants. *See* CMTA-10, Finance Docket No. 37620 (Sub-No. 10) (March 29, 1996). It has, since Decision No. 44 become clear that BNSF is the only logical choice for a class I carrier to obtain and exercise the requested interchange rights. *See, e.g.*, Decision No. 44, p. 182.

track between McNeil and Round Rock, Texas, with interchange rights with BNSF at McNeil.[8] *See* Exhibits 1(b) & (c). Pursuant to the BNSF Agreement, BNSF was granted trackage rights from Taylor, Texas to Kerr, Texas. *See* Exhibit 1(a). In granting these rights, UP/SP brought BNSF within only 4.4 miles of the McNeil interchange. Capital Metro requests that the Board extend BNSF's trackage rights the additional 4.4 miles to McNeil, and grant interchange rights to the Giddings-Llano operator at McNeil.[9]

Although the BNSF currently conducts mainline operations through Giddings, a Giddings connection would not suffice to remedy UP/SP market abuses and post-merger service problems. Exhibits 1(a) & 3, p.2. As explained in detail below, UP/SP-induced increased expenses and loss of traffic to other modes of competition have caused Longhorn to operate at a severe loss. Although Longhorn has reopened approximately 70 miles of the line that were previously discontinued, for

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[8] Through its Responsive Application, Capital Metro requested that the Board grant interchange rights at either McNeil, Texas, or Kerr, Texas, as appropriate. CMTA-10 (March 29, 1996). For various reasons, including the fact that the Georgetown Railroad then objected to the requested rights at Kerr, Capital Metro herein requests that the interchange occur at McNeil, and does not propose Kerr as an alternative interchange point. This request necessarily involves carrier-specific issues, including the service BNSF will provide at McNeil. Should the Board grant this Request, as with Capital Metro's initial request via its Responsive Application, these matters could be resolved in a follow-up proceeding through which site specific operational and other carrier-specific issues are resolved.

[9] The BNSF would only require trackage rights between the Round Rock Y and McNeil, since the BNSF Agreement granted BNSF rights from Kerr through the Round Rock Y and north to Hearne. *See* Exhibit 1(c). The trackage rights the BNSF would require to complete the transaction is approximately 4.4 miles.

financial reasons it has not yet reopened the segment of the line between McDade and Giddings.[10] Exhibit 3, p.5. (Also, after the merger was approved and thus SP no longer had an independent presence at Giddings, and Capital Metro selected Elgin over Giddings for a BNSF connection, the larger part of Longhorn's incentive to reopen that segment of the line vanished.) Moreover, assuming *arguendo* that the BNSF connection were relocated to Giddings,[11] should the BNSF one day relocate its mainline operations, such an additional -- or altered -- remedial condition will prove to have been a pyrrhic victory. The McNeil solution promises to be a long term solution, regardless of when or whether the congestion south of Austin or in the Houston Gulf Coast area improves, and regardless of where or whether BNSF relocates its mainline operations.

B. The Limited Condition Would Permit BNSF to Provide the Competition the Board Ordered

A connection with the BNSF at McNeil would put the BNSF in a position to provide the competitive service the Board ordered through Decision Nos. 44, 67 and 69. Facilities at McNeil permit Longhorn and BNSF to interchange as many as ninety cars at any one time. Exhibit 3, p.7.

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[10] Capital Metro has made substantial financial commitments to improving the Giddings-Llano line. Exhibit 4, ¶16. No budget allocations, however, will be dedicated to reopening the rest of the formerly discontinued segment out to Giddings. For fiscal year 1998, Capital Metro has budgeted over $1.6 million for rail line improvements, and anticipates funding about an additional $1 million. *Id.* For fiscal year 1999, Capital Metro has approved another $2 million for rail line improvements, and has in addition obtained a $2.4 million federal grant which will be dedicated to track infrastructure improvements on the eastern end of the line. *Id.*

[11] Capital Metro was granted through Decision No. 44 the sole right to choose between Giddings and Elgin as the point of interchange with the BNSF for Giddings-Llano traffic. Capital Metro does not herein request a relocation of the interchange point to Giddings.

By comparison, Longhorn and BNSF currently can interchange only twelve cars or less at Elgin, absent extreme measures that are operationally both intricate and awkward. Exhibit 3, pp.12-13. Thus, even if BNSF were to provide the same frequency of branchline operations at McNeil as it currently provides at Elgin, the service to the line would increase threefold. BNSF might be able to provide even more frequent service to Giddings-Llano shippers, however. Should it be operationally feasible for BNSF to service Giddings-Llano traffic with its trains that currently service the Georgetown Railway at Kerr, Exhibit 1(b) and (c) then BNSF would be in a position to interchange with Giddings-Llano traffic without conducting a separate branch line operation.

Moreover, Giddings-Llano shippers indicate that, if possible, they would rely on BNSF for an increased percentage of their traffic. Exhibits 5(a)-(h). For example, shippers that, since the UP/SP merger have increasingly had to rely on trucks, but who would prefer to rely on rail, support the interchange relocation. As Rick Carpenter, District Vice President of BFI Recycling ("BFI"), explains in his Verified Statement:

> Most of the commodity being shipped on trucks could be shipped out on rail cars, which is preferred by the customer. . . . Over the past two years we have been relying on the trucking industry more and more due to the railroad's inability to meet our transportation needs. For this reason I believe if we had access to BNSF at McNeil it would allow our business an option for improved service."

Exhibit 5(a). Jeffrey Parnell of Guthrie Lumber Sales ("Guthrie") conveys a similar story, but further cautions that a BNSF connection at McNeil is "the only thing that can sustain our business," given the severe service problems that are related to the UP/SP merger. Exhibit 5(g). Mr. Parnell states that UP service deficiencies have caused Guthrie's average shipment time to change from 14 days (pre-merger) to as many as 47 days (post-merger). *Id.* According to Mr. Parnell, the increase in shipment time and related increased expenses has had a "crippl[ing]" impact on Guthrie, a family-owned business that has been an important building materials distributor in the booming Austin area for over fifteen years. *Id.* Guthrie has reportedly been repeatedly informed that UP/SP's quality of service will improve, but Guthrie perceives no improvements. *Id.* Mr. Parnell explains:

> For our company to have a future in this industry we must have access to materials in a more timely order. And the only way we can be sure that this will take place is for the Surface Transportation Board to allow the Longhorn Railway to have interchange rights for the BNSF at McNeil.

Id. Giddings-Llano shipper support for a viable BNSF interchange is manifest. *See, e.g.*, Exhibits 5(a)-(h).

Based on these shipper verified statements and Longhorn's predictions, BNSF's percentage of Giddings-Llano shipper traffic could increase substantially should the Board grant the Limited Condition. Should the volume of Giddings-Llano traffic BNSF serves sufficiently increase as a result of its service enhancement, this increased volume of traffic might provide an incentive for BNSF to increase the frequency of its branchline operations.

Should the Board grant Capital Metro's Limited additional condition, BNSF would be in the position the Board initially intended: a position to provide a competitive alternative equal to the competitive opportunity the Giddings-Llano lost as a result of the UP and SP merger.

C. Limited Condition Would Mitigate Houston Congestion

Capital Metro's Limited Condition would mitigate Houston congestion. Most of the traffic on the Giddings-Llano is destined for the Houston area. Exhibit 3, p.3. BNSF has developed a means to bypass Houston, yet deliver cars to their destinations in the Houston area. *E.g.*, BNSF-PR, p.11, (July 1, 1998). BNSF's alternate route is appropriate for much of the Giddings-Llano traffic. Exhibits 3, p.7 & 5(h). BNSF avoids the Houston area by moving traffic that is bound for the Houston area from Temple through Somerville and east to Silsbee -- north of Houston. Exhibits 1(a) & 3, p. 7. This alternate routing is an important factor in the lower turn around time of BNSF as opposed to UP/SP. Shippers report that BNSF turn around time is approximately half of UP/SP's, once the cars are in the class I carrier's possession. Exhibits 3, pp. 7 and 10 & 5(h).

Chemical Lime Company, which is one of the larger shippers on the Giddings-Llano and moves 90% of its product via the line, concurs that granting BNSF the interchange at McNeil "would also help alleviate UP congestion by offering an attractive routing option bypassing Houston." Exhibit 5(h), p. 10.

Most shippers on the Giddings-Llano have as their major market the Houston, Texas area. *See, e.g.,* Exhibit 3, p.3 ("[m]ost of LHRR's traffic with UP involves aggregate and rock products, most of which are headed to Houston . . . " in addition, fertilizer inbound over the line is a product from the Houston Chemical industry); Exhibit 5(d), ("[o]ur major market is the Houston, Texas area which we service by rail").

The Limited Condition would further alleviate Houston congestion by helping to free up UP/SP cars and facilities, which UP/SP could dedicate to other shippers who have no alternative but to rely on UP/SP. R.L. Banks & Associates opines:

> *Third*, the proposed condition will . . . relieve UP of some of the pressure entailed in servicing Giddings - Llano, particularly that which would be moving "against the grain" or extremely circuitously on the directional-running line through McNeil. Where BNSF's service is likely to be more economical, such as Houston-bound traffic routed off UP and onto the Silsbee corridor, UP would avoid operating losses while earning a not-insignificant contribution to overhead via trackage rights charges. This traffic will be divereted to less-congested BNSF lines, causing a salutary effect on the largely Houston-oriented traffic which is characteristic of that generated on the Giddings-Llano branch.

Exhibit 2, p.10.

In sum, the Limited Condition would help alleviate Houston congestion, since the Limited Condition would make BNSF available to an increased number of shippers whose traffic would otherwise be bound for Houston, but which can avoid Houston through BNSF's alternate routing. Giddings-Llano cars would also be "tied up in the system" for less time, since BNSF's turn around time is about half that of UP/SP's for Giddings-Llano traffic. Moreover, the Limited Condition would help make UP/SP services and equipment that would otherwise be used for Giddings-Llano traffic available for shippers who have no other option.

D. **Limited Condition Would Mitigate The Impact of Union Pacific Market Dominance**

The Limited Condition will limit the impact of UP/SP's market dominance that now prevents BNSF from carrying out the terms of the BNSF Agreement. Currently, UP/SP's market dominance in the Austin and Houston areas permits UP/SP to "virtual[ly] shutdown rail service in the Houston/Gulf Cost area," Decision No. 12, p. 4, and prevent BNSF from carrying out the merger conditions and being an effective competitor for Giddings-Llano traffic. Because of UP/SP's market power, BNSF is not in a position to assert itself and prevent UP/SP's market power abuse. BNSF simply has no options now, owing to UP/SP's dominance in the area. Providing limited branchline service at Elgin (at substantial additional effort and expense to BNSF than what the BNSF Agreement and Decisions 67 and 69 in this proceeding contemplate) simply is the best BNSF is able to provide at this time. BNSF is unable to wield control over the UP/SP machine, and cannot force UP/SP to meet its obligations pursuant to the terms of the BNSF Agreement.

Implementation of the Limited Condition will limit the impact of UP/SP's market dominance, since BNSF will be able to effectively interchange with Giddings-Llano traffic, and provide the competition the Board ordered -- regardless of whether UP/SP resolves the congestion problems, and regardless of whether UP/SP ever manages its operations so as to permit BNSF to move its mainline operations to Elgin, as originally agreed. The Limited Condition will prevent the Board and the parties from having to readdress these issues in the future, since, regardless of whether UP/SP attempts to exercise its market dominance (through indifference or otherwise), BNSF's ability to provide effective competition will limit the impact of UP/SP dominance over the Giddings-Llano.

VI. GIDDINGS-LLANO OPERATOR SURVIVAL REQUIRES ADDITIONAL CONDITION

Granting BNSF the 4.4 miles of requested trackage rights is essential to the survival of the Longhorn Railway, and to the viability of future shipper service along the Giddings-Llano line.

Failure of Longhorn would place these essential services at risk. *See, e.g., Lamoille Valley Railroad Co. v. Interstate Commerce Commission*, 711 F.2d 295, 309 (D.C. Cir. 1983), ("essential services" test is threshold test to determine "when conditions may be needed to reduce the adverse effects of a merger"). Prior to Longhorn's operations, AUNW provided shipper service on the Giddings-Llano. AUNW's tenure was for the most part a failure, represented by service declines, two discontinuance proceedings, lack of investment, and a deterioration of track conditions. Exhibit 4, ¶ 8. Given the failure of Longhorn's predecessor, a second consecutive operator failure would, for all intents and purpose, end rail freight service on the Giddings-Llano, and would trigger a chain reaction of adverse impacts on the Austin economy. Joe Ramirez, Interim Rail Development Officer of Capital Metro states that there is no budget authority for either a new operator or the significant costs associated with temporary service. Exhibit 4, ¶ 18. Mr. Ramirez also indicates that a likely consequence of a Longhorn failure might even be discontinuance by Capital Metro of all service on the line, to the severe detriment of captive shippers and other constituencies. *Id.* at ¶ 15.

Longhorn states that UP/SP's service failures have caused Longhorn to incur serious debt. Exhibit 3, p. 9. Longhorn states that it is currently $900,000 in debt, and that Longhorn is incurring losses at a rate of $80,000 a month or more. *Id.* Longhorn concedes that it "cannot, over the long term, continue to sustain these losses and remain in business." *Id.*

Longhorn's traffic base has also eroded, owing to UP/SP's service deficiencies. Exhibit 3, p. 9 ("there is an overall 50% loss of traffic compared to the baseline traffic at the time LHRR began operations"). Shippers concur with Longhorn, stating that they have shifted traffic from rail to truck

-- not as a matter of preference -- but because UP/SP service deficiencies have forced them to do so. For example, Rick Carpenter, District Vice President of BFI Recycling, which ships commodities from the Austin area to various domestic and international locations -- primarily by moving to or through Houston -- explains:

> We ship on the average 60 cars and 200 trucks per month. Most of the commodity being shipped on the trucks could be shipped out on rail cars, which is preferred by the customer, if they were available. I estimate we could ship between 80 to 100 cars per month if we knew we had a reliable source of rail cars. We must schedule our shipments in the beginning of each month to assure our having enough transportation for the volume we produce. Over the past two years we have been relying on the trucking industry more and more due to the railroad's inability to meet our transportation needs.

Exhibit 5(a).

Similarly, the Texas Granite Division of the Cold Springs Granite Company ("Texas Granite") has also begun to rely on alternatives to rail transportation, owing to UP/SP's service problems. Texas Granite explains that it ships "an average of approximately 250 tons of product per week from our Marble Falls, Texas location. Exhibit 5(e). Most of this product is headed for the Houston, Texas region. According to Texas Granite, "Virtually none of this [traffic] goes by rail." Texas Granite explains that it has had to ship its traffic by other modes because of "the lack of service we receive from the UP[/SP]." *Id.* The verified statements of other shippers reveal similar problems with the UP/SP. *See* Exhibits 5(a)-(g). Major shippers on the line strenuously argue for this relief. *See* Exhibits 5(a)-(h).

The evidence demonstrates that an interchange at McNeil with BNSF would be a lifeline for

Longhorn, as it would allow some semblance of the level of service promised Longhorn by UP and contemplated by the Board when it granted BNSF trackage rights at Elgin. As Longhorn explains, "BNSF incremental traffic will be replacing the traffic the UP/SP has steered off." Longhorn understands that the McNeil/BNSF interchange presents its only remaining opportunity to reestablish a sufficient amount of traffic to sustain its business. According to Longhorn, "The only way LHRR can regain viability is to be able to interchange with BNSF at McNeil." Longhorn is on the brink of failure; rejecting the 4.4 miles of BNSF trackage rights would be to reject its only remaining option for revival.

Granting the Limited Condition would strengthen Longhorn's customer base over the long term. As R.L. Banks & Associates states:

> [T]he long term effects will be a strengthening of the customer base on the Giddings-Llano line, reflecting the rail service provided by two carriers. Just as the eventual benefits of the merger itself will be largely tied to the expanded the reach of single-line service to UP and SP shippers, the presence of an effective second carrier will expand service even further. A rational expectation is that an existing shipper, presented with market opportunities previously foreclosed, will generate *incremental* traffic bound for BNSF points. There would be no compelling reason for it to abandon UP if UP is providing single-line service to its preexisting market base. (Summary Exhibit 3 encapsulates the less-speculative elements of this discussion.) An upward-cycle could result as the desirability of locating on the line becomes evident.

In this proceeding, Longhorn's posture is in many ways parallel to that of Tex Mex in the original UP/SP merger application proceeding. As indicated through Decision No. 44, the Board gave significant weight to Tex Mex's claims that it could not survive the merger as structured, could not absorb revenue losses without significant service reductions, and that its shippers would be "significantly harmed" because they were dependent upon Tex Mex. Decision No. 44, p. 32. The Board thus partially granted Tex Mex's responsive application, finding that approval was "required to ensure the continuation of an effective competitive alternative." Decision No. 44, p. 150.

Longhorn's circumstances, and those of shippers along the Giddings-Llano line call for the same relief granted to Tex-Mex. Like Tex-Mex, Longhorn's very survival hinges on the STB granting this narrow condition. Exhibits 3, pp. 9, 11. As in the Tex-Mex application, shippers along the Giddings-Llano will continue to be harmed by UP/SP's market dominance and severe service failures, absent the Board's granting the Limited Condition. Chemical Lime, for example, one of the largest shippers on the Giddings-Llano, is dependent on Longhorn for 90% of its product shipments, and truck service cannot substitute. Exhibit 5(h). Loss of Longhorn service could force area shippers to close their doors or to relocate, and would saddle Capital Metro with an unsustainable burden. Exhibit 4, ¶ 15. Rail service over the Giddings-Llano is in jeopardy.

VII. THE CONDITION MAY ALSO BE GRANTED UNDER THE TERMINAL FACILITIES STANDARDS AT 49 U.S.C. 11102

In addition to the STB's general power to impose conditions upon the mergers it approves, the Limited Condition Capital Metro seeks may also be granted under authority of the terminal facilities provisions at 49 U.S.C. §11102.[12] In Decision No. 44, the Board invoked this power in

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[12] **§11102. Use of terminal facilities**

(continued...)

BNSF's favor under circumstances similar to Capital Metro and Longhorn's current posture. Specifically, in Finance Docket 32760 (Sub-No. 9), the Applicants and BNSF sought an order permitting BNSF to have trackage rights over small segments of KCS track in Beaumont and Shreveport, arguing that the rights were necessary for BNSF to conduct operations between Houston, Memphis and New Orleans. KCS objected, arguing, inter alia that the trackage rights would impair its ability to operate over its own line. The Board granted the trackage rights request under the broad public interest standards of 49 U.S.C. 11102, finding that the segments were terminal facilities, that the owner would not be substantially impaired, and that the use would be practicable and in the public interest.

In ruling that the trackage rights grant was in the public interest, the Board cited a condition imposed in the 1982 UP/Missouri Pacific R.R. Co./Western Pacific R.R. Co. merger in which it

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[12] (...continued)

> (a) The Board may require, terminal facilities including mainline tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another under this section.

The purpose of the section was to allow, where reasonably practicable and in the public interest, carriers to share common facilities in order to accommodate both public and private interests. The provision has only been minimally modified over time, most significantly by the Staggers Act of 1980, which added Sections (c)(1) and (c)(2).

similarly granted a carrier trackage rights over a non-applicant's line. The Interstate Commerce Commission ("ICC") found that it was in the public interest to grant the trackage rights to give effect to other merger conditions. *See SPT v. ICC*, 736 F.2d 708, 722-724 (D.C. Cir. 1984). The U.S. Court of Appeals for the District of Columbia later affirmed the ICC's application of the public interest standard. *Id.*

In the Sub-No. 9 docket of this merger proceeding, the Board considered and rejected KCS's objection that allowing BNSF trackage rights over the disputed segments would interfere with its operations. The Board noted that BNSF trains would complicate existing operations, since three carriers instead of two would be operating over the relevant segments. Nonetheless, the Board held that the situation would simply "require coordination of operations between the parties." Decision No. 44, p.168. Similarly here, coordination between the parties apparently would address any operational issues raised by the trackage rights. In any event, as noted above, any carrier-specific and operational issues here could be handled in a follow-up proceeding.

The reasoning used by the Board in Docket Sub-No. 9 is applicable to Capital Metro's request for the Limited Condition. As illustrated by the attached Verified Statement of R.L. Banks & Associates, Inc. Exhibit 2, the McNeil interchange area is a terminal facility within the meaning of 49 U.S.C. 11102,[13] and there is little doubt that preserving the viability of a shortline through Austin

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[13] It has long been established that the term "terminal facilities" should be broadly construed because the purpose of the Section 11102 is highly remedial. *Southern Pacific Transport Co. v. I.C.C.* 736 F.2d 308 (D.C. Cir 1984). *See also, CSX Corp.--Control--Chessie System, Inc. & Seaboard Coast Line Industries, Inc.*, 363 I.C.C. at 585; *City of Milwaukee v. Chicago & N.W. Ry.*, (continued...)

is in the overwhelming public interest. The Limited Condition would cause no substantial impairment of UP's operations; as with the BNSF/KCS matter, operational issues here, if any, can be addressed through coordination. The 4.4 miles of trackage rights sought for BNSF are minor compared to the rights granted BNSF in Docket Sub-No. 9, but the importance to the entire Austin region is overwhelming.

VIII. CONCLUSION

In sum, Capital Metro seeks the Limited Condition in an effort to remedy unanticipated impacts of the UP/SP merger on the Giddings-Llano line. These impacts include severe service failures and congestion problems south of Austin and in the Houston area, which is either the source or the destination of most Giddings-Llano traffic. UP/SP service problems have prevented BNSF from carrying out the terms of the BNSF Agreement, which include the relocation of mainline operations through Elgin, the Board-ordered point of interchange between Longhorn and BNSF. BNSF's inability to carry out the terms of the BNSF Agreement prevents BNSF from being a meaningful competitive force in the Austin area. Longhorn simply cannot rely on BNSF to interchange any more traffic with Longhorn than BNSF already does. Thus -- nomatter how poor the service UP/SP provides -- Longhorn and Giddings-Llano shippers have no alternative but to rely on UP/SP.

The requested 4.4 miles of trackage rights so that BNSF may connect with Longhorn at

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[13] (...continued)
283 I.C.C. 311, 314 (1951).

McNeil will limit the impact of UP/SP's market dominance, and permit BNSF to be the competitive force the Board intended. Additionally, these rights will help mitigate Houston congestion, since BNSF uses alternate routing for Giddings-Llano traffic, which routing avoids direct entry into the Houston area. Moreover, Longhorn's very survival depends upon access to reasonable class I carrier service, which UP/SP simply is not able to provide, and apparently will not be able to provide for the foreseeable future. A Longhorn failure could make it impossible for Capital Metro to retain a replacement. Absent the Limited Condition, rail service in Austin is in jeopardy. Finally, the Board's terminal facilities standards provide further rationale for granting Capital Metro's Limited Condition.

WHEREFORE, Capital Metro respectfully requests the Board to grant BNSF trackage rights from Round Rock to McNeil, with commensurate interchange rights with Longhorn at McNeil, and further, to order that related carrier-specific issues be resolved in a follow-up proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 8th day of July, 1998 a copy of the foregoing Capital Metropolitan Transportation Authority's Request for Additional Remedial Condition was served by overnight mail, postage prepaid on:

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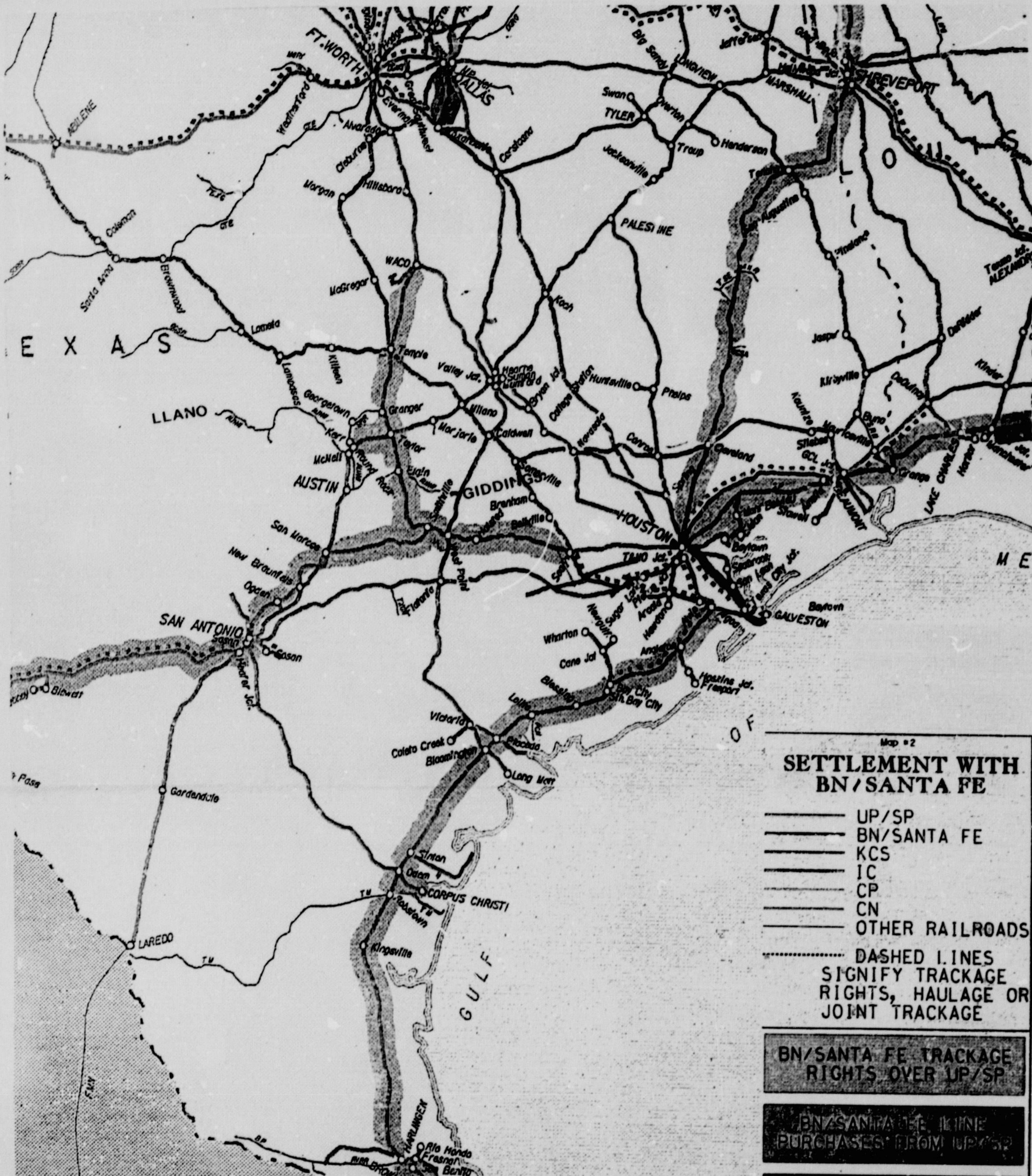

Map #2
SETTLEMENT WITH BN/SANTA FE
UP/SP
BN/SANTA FE
KCS
IC
CP
CN
OTHER RAILROADS
DASHED LINES SIGNIFY TRACKAGE RIGHTS, HAULAGE OR JOINT TRACKAGE
BN/SANTA FE TRACKAGE RIGHTS OVER UP/SP
BN/SANTA FE LINE PURCHASES FROM UP/SP
TEXAS
GULF
OF
FT. WORTH
DALLAS
SHREVEPORT
LONGVIEW
MARSHALL
TYLER
ABILENE
WACO
Temple
LLANO
AUSTIN
GIDDINGS
HOUSTON
SAN ANTONIO
LAREDO
CORPUS CHRISTI
GALVESTON
HARLINGEN
Port of Brownsville
LAKE CHARLES
BEAUMONT
PALESTINE
Victoria
Kingsville

EXHIBIT 1(a)

EXHIBIT 1(b)

Giddings-Llano and Surrounding Web

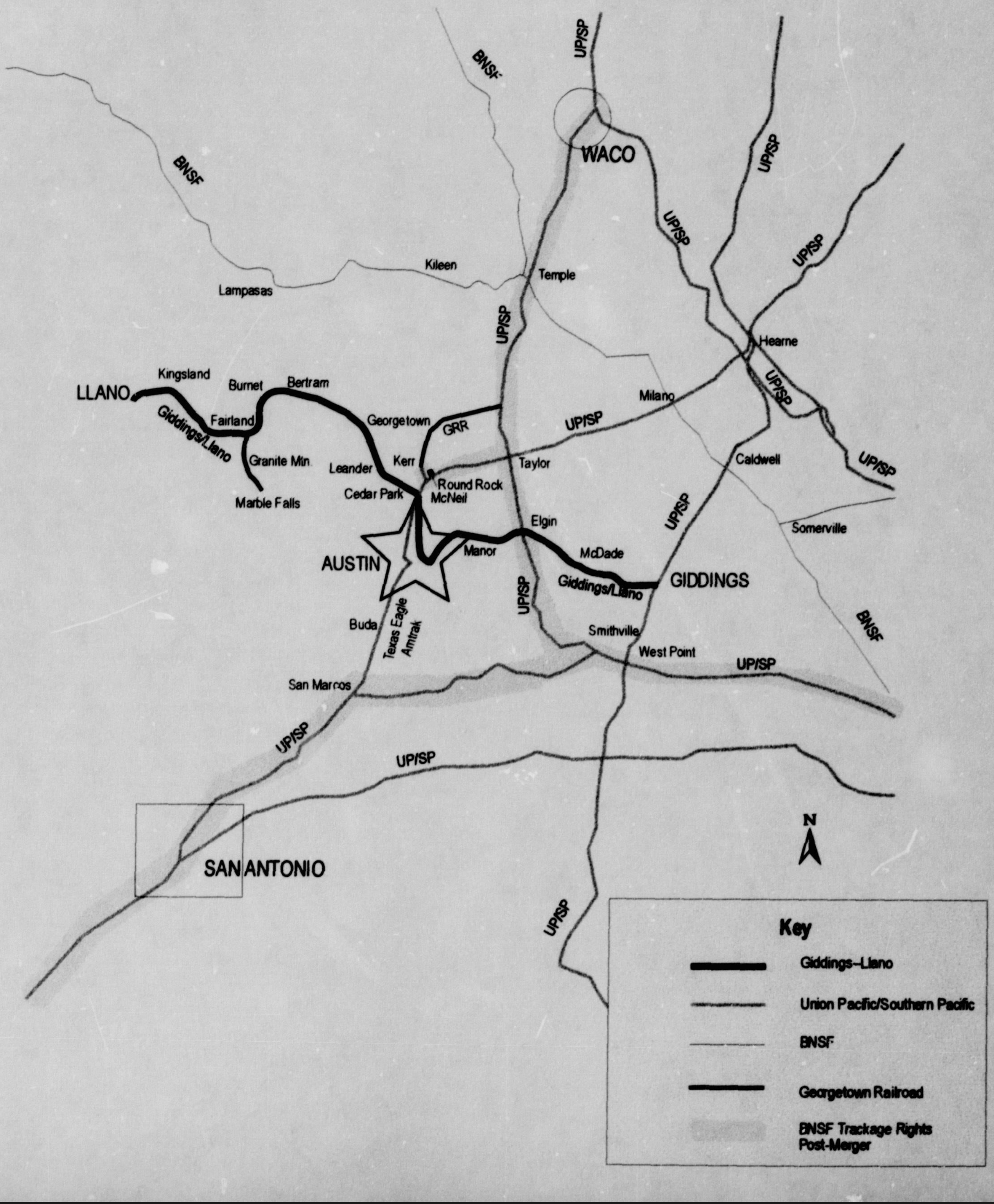
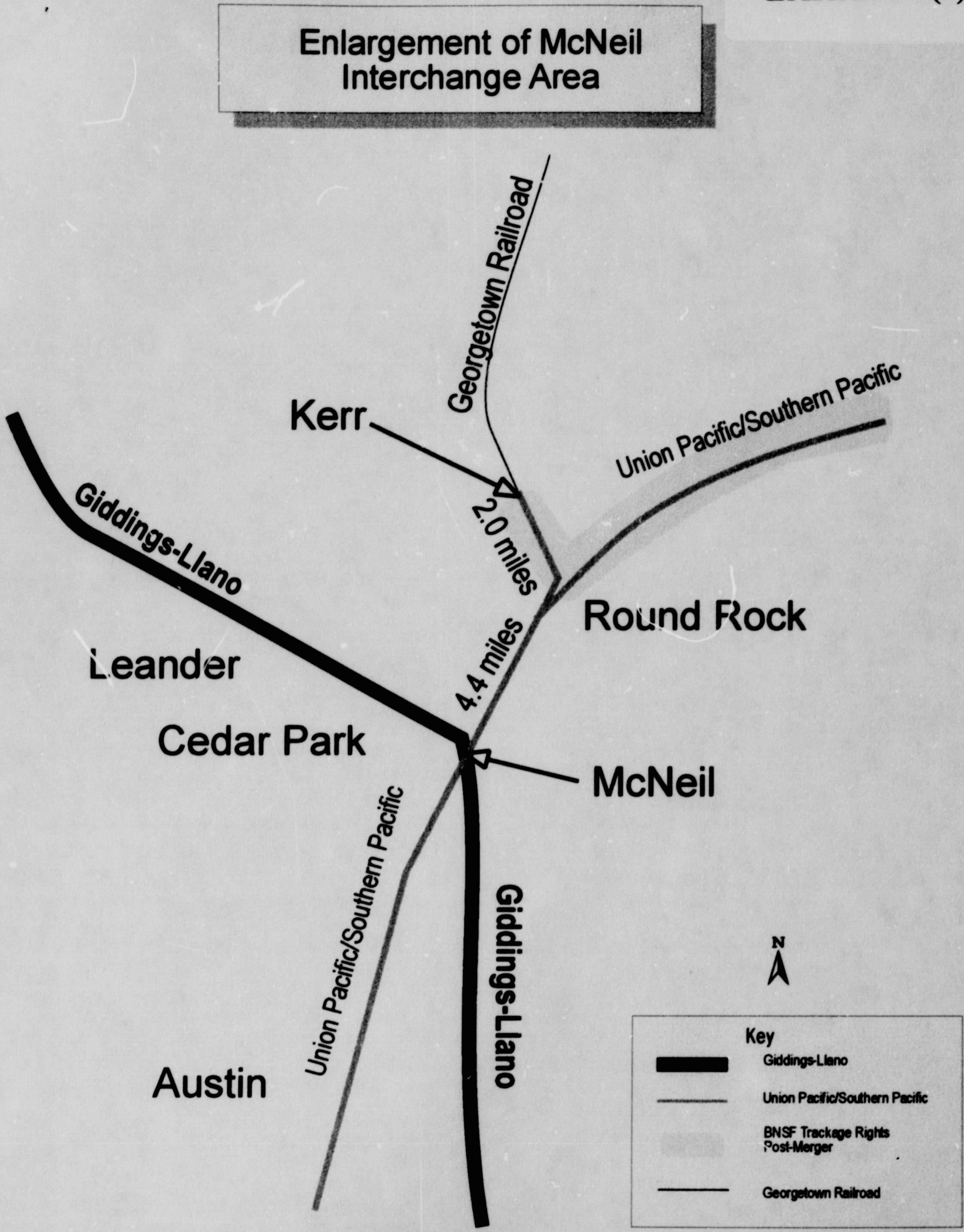


EXHIBIT 1(c)


Enlargement of McNeil Interchange Area
Georgetown Railroad
Kerr
Union Pacific/Southern Pacific
Giddings-Llano
2.0 miles
Round Rock
4.4 miles
Leander
Cedar Park
McNeil
Union Pacific/Southern Pacific
Giddings-Llano
N
Austin
Key
Giddings-Llano
Union Pacific/Southern Pacific
BNSF Trackage Rights Post-Merger
Georgetown Railroad

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Joint Verified Statement
Of
Robert L. Banks and David J. Shuman

We are Robert L. Banks and David J. Shuman, both consultants at the firm of R.L. Banks & Associates, Inc., transportation economists and engineers, located at 1717 K Street, N.W., Washington, DC. Our respective positions with the firm are Chief Executive and Managing Director. We testified earlier in this proceeding on behalf of Capital Metropolitan Transportation Authority of Austin, TX ("CMTA") in support of its request for conditions.[1] We have been asked by CMTA to evaluate these renewed requests for conditions under changed economic circumstances.[2]

In approving the merger of the Union Pacific ("UP") and the Southern Pacific ("SP") organizations and component railroads, this Surface Transportation Board ("STB" or "Board") conditioned the transaction on a number of largely privately-negotiated grants and exchanges of unprecedented scale, purpose, and promise.[3] With foresight superior to that now generally associated with the primary phases of the

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[1] Joint Rebuttal Verified Statement of Robert L. Banks and David J. Shuman, Rebuttal of CMTA, CMTA-11, May 14, 1996. STB Finance Docket 32760 (Sub. No. 10)

[2] The originally requested conditions would have provided access to the McNeil interchange north of Austin, TX via trackage rights to be granted to BNSF. These requested rights would entail a 4.4 mile extension (McNeil - Round Rock Y) of the trackage rights agreed to by Burlington Northern/Santa Fe ("BNSF") and UP and rights over a further 2.0 miles north of Round Rock TX, to Kerr, TX. CMTA sought interchange rights with BNSF at either McNeil or Kerr, as appropriate.

[3] The most significant of these agreements, both in general and as pertinent to CMTA's petition, is that concluded by BNSF and the merger applicants, UP and SP on September 25, 1995 and modified by supplemental agreements dated November 18, 1995 and June 27, 1996. ("BNSF agreement").

merger proceeding, the Board recognized that no matter how well intended or crafted, unanticipated events could compromise the conditions' efficacy. Thus, in its words, the Board "impose[d] as a condition to approval of this merger, oversight for 5 years to examine whether the conditions we have imposed have effectively addressed the competitive issues they were intended to remedy."[4]

Too-familiar events led to Decision 1 of the *Houston-Gulf Coast Oversight* proceeding, in which STB invoked this reserved oversight jurisdiction.[5] Among the stated purposes of the instant proceeding are that: "given the gravity of the service situation, [the Board] should thoroughly explore anew the legitimacy and viability of longer-term proposals for new conditions to the merger as they pertain to service and competition in that [Houston – Gulf Coast] region…to impose additional remedial conditions if those previously afforded prove insufficient…"[6] And, significantly, the Board was explicit that the oversight process is dynamic, not static, "so that the Board's prior rejection of …any…party's requested conditions… does not preclude their fresh consideration now."[7]

The Board's decision to revisit the effectiveness of previously imposed conditions has been timely for CMTA and for its rail operator, doing business as Longhorn Railroad Company ("LHRR"). CMTA and LHRR have been extremely concerned that the adequacy of conditions previously granted has been eviscerated by local effects of the service crisis. As the Board is aware, CMTA and LHRR have engaged in ongoing but unproductive negotiations with UP in the hope of obtaining a privately

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[4] STB Finance Docket 32760, Decision No. 44, decided August 6, 1996, p. 146.

[5] STB Finance Docket 32760, Sub No 26, served May 19, 1998. (Corrected decision). While the events precipitating this proceeding are well known, there will be dispute for years to come as to the causes communicate.

[6] Ibid., p.5

[7] Ibid.

structured remedy.[8] Over the course of these negotiations, we have been given to understand that UP has objected to CMTA's proposal to have a McNeil interchange authorized, on two grounds: 1) interference with UP operations and 2) the STB's August 6, 1996 decision rejecting CMTA's requested condition at McNeil in favor of either Giddings or Elgin, at CMTA's option.[9]

We have been asked by CMTA to evaluate whether and to what extent its proposed conditions are consistent with the Board's criteria for approval, and, additionally, whether approval of the conditions would be consistent with the economic rationale underlying these criteria. Our conclusions, in full recognition of the stringent standards by which such proposals are assessed, is that all tests are easily met. In fact, CMTA's request for modified conditions presents a rare opportunity to the Board: approval would produce clear economic benefits while producing negligible, if any economic harm to any party in interest. Further, and critically (unless there soon are unexpected and salutary developments in the talks with UP), the positive results we anticipate would flow from a second carrier interchange at McNeil will only come about with the intervention of the Board.[10]

The Board's Standards and the Public Purposes of Merger Conditions

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[8] "We understand that UP has turned down Longhorn's request to interchange with BNSF at McNeil due to operational concerns. Longhorn and UP, however are continuing to negotiate over operational issues affecting the two railroads." letter from Linda J. Morgan, Chairman STB to Senator Phil Gramm, April 13, 1998, Attachment 1.

[9] See Letter from Dennis J. Duffy, Sr. Vice President Customer Service Planning & Delivery, UP, to Gerald Robichaux, Interim General Manager, CMTA, March 10, 1998, Attachment 2.

[10] UP's objections to CMTA's proposed conditions appear to center on the requirement that conditions be operationally feasible. As the Board suggested in granting BNSF trackage rights over KCS in the instant merger, trackage rights conditions can usually be made feasible with a little incentive, good faith in the bargaining and a strong enough public interest.

As discussed in Decision 44, at 144, the Board's criteria for approval of requested conditions adhere to those set out by the ICC in UP/WP/MP. Although the Board's authority to impose conditions is broad, its exercise of this authority has been narrowly self-constrained. These criteria reflect years of regulatory experience, during which the lesson has been learned that the substitution of political for economic forces in allocating economic resources may be extremely costly in terms of lost economic efficiency. In particular, Federal regulators have learned to control their impulse to generously dole out gifts at the expense of impairing the ability of merged carriers to generate the benefits anticipated by their consolidation.

The Board requires that a condition must serve to "ameliorate or eliminate" effects of a merger transaction that would be harmful to the public interest. Conditions must be narrowly tailored to address specific transaction-generated effects, and yet not undermine the ability of any given merger to produce benefits. Thus, the corollary that conditions must produce net public benefits and "[o]rdinarily" would not be imposed if they serve to place the proponents in superior positions to those, which existed prior to the consolidation.[11] As the heft of the Interstate Commerce Act has steadily declined, evincing a Congressional intent to abandon to the regulators the job of regulating, there is little in the way of direct instruction as to the form or scope of evaluative guidelines. However, the imposition of trackage rights as merger conditions is specifically circumscribed by the requirements that they be both fair and effective.[12]

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[11] STB Finance Docket 32760, Decision No. 44, decided August 6, 1996, pp. 144-145.

[12] Paragraph (c) of 49 U.S.C. §11324 [*Consolidation, merger and acquisition of control: conditions of approval]* provides that *"any trackage rights and related conditions imposed to alleviate anti-competitive effects of* ... [an approved] *transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated."* The clear intent is that conditions must be effective; they should achieve their purpose. The need to legislate this requirement is, of course, telling.

Merger conditions are normally imposed prior to actual operational consolidation of rail carriers: they are intended to constrain the ability of the merged carriers to act anticompetitively. Presumably the same standard applies in the instant proceeding: requests for conditions need not be premised on actual abuse of market power by UP, only that the market now exhibits structural flaws which are not necessarily self-correcting.

The stress placed by public policy - and emphatically in the National Transportation Policy ("NTA") - on maintaining market competition is not a pronouncement of ultimate objectives. As recognized in the NTA a competitive marketplace is but a means to an end: that end being an efficient and effective transportation marketplace. While competition may be the most important prerequisite to efficiency - at least that competition which manifests itself as the striving to provide more and better goods and services at lower costs[13] - it is not the sole prerequisite. There are no granite-inscribed admonishments that failures of the market are the only failures properly addressed through governmental intervention. Collapse of the ability of infrastructure to handle demand under unanticipated circumstances is one highly relevant example of a public harm that should require no academic proof of corporate thievery to justify intervention; responding to natural disasters is similarly a legitimate governmental function.

Consistency of Requested Conditions with the Board's Public Purpose Standards

The operational and infrastructure-related catastrophes that have confounded the integration of UP and SP have impaired the efficacy of the Board's previously imposed merger conditions. To this there can be little dispute. Trackage rights rendered unexercisable by UP congestion do not provide the basis for a competitive

[13] As opposed to competition characterized by striving to prevent others from achieving that same purpose.

environment as intended. This is easily understood. Less obvious is the fact that when the congestion eases and tracks are passable, the damage does not disappear. A business that fails in a depression doesn't begin to show profits in a recovery. BNSF does not gain a foothold in trackage rights markets simultaneously with the merged UPSP. UP has gained a headstart by means of uncertain virtue. We thus believe it is most probable (certainty as to the future is no longer available to witnesses in merger proceedings) that the UP service failure has created an impediment to both the current and the future functioning of an effective, competitive market.

The proposed intervention - granting of permanent interchange rights with the BNSF at McNeil - appropriately responds to three separate and specifically identifiable public harms, any one of which would justify imposition of the remedial conditions.

First, as synopsized in Figure I, the proposed conditions address the public harm embodied in the loss of intramodal competition occasioned by the merging of UP and SP and to which the BNSF agreement was directed.

The Board has determined that BNSF-LHRR interchange at Elgin is a component of §8i of the BNSF agreement, and granted the right to interchange based upon the loss of potential competition to the Austin areas which the merger would otherwise have engendered. The interchange rights as granted have failed to fulfill the Board's expectations, but certainly not because of a lack of effort on the part of CMTA's operator or BNSF.[14] The merger itself has created the conditions which have defeated the instruments by which the benefits of the merger were to be guaranteed. UP's congestion has prevented BNSF from providing the service which it intended and which CMTA anticipated at the time of the Board's decision. In reading, the benefits claimed for the merger in the UP/SP application, there is an element of irony in the situation -- if irony is an appropriate descriptor of an autoimmune disease.

FIGURE 1

SOLUTIONS TO MERGER RELATED HARMS OFFERED BY CMTA'S PROPOSED CONDITIONS:

MAINTENANCE OF COMPETITIVE DISCIPLINE ON MARKET AT PRE-MERGER LEVELS.

PROBLEM: ADEQUACY OF BOARD-IMPOSED REMEDY IN PERMITTING ELGIN INTERCHANGE ASSUMED COMPLIANCE WITH OPERATING PLAN ASSOCIATED WITH BNSF AGREEMENT; ADDITIONAL INVESTMENT IN FACILITIES WOULD REFLECT INHERENT ECONOMIC VALUE OF SECOND CLASS I CARRIER SERVICE. COMPLIANCE WITH OPERATING PLAN MADE ECONOMICALLY UNSOUND AS A CONSEQUENCE OF UP CONGESTION IMPAIRING BN ABILITY TO USE TRACKAGE RIGHTS

SOLUTION: GRANT INTERCHANGE RIGHTS AT ONLY OTHER LOCATION CAPABLE OF ACCOMMODATING SERVICE AT LEVEL INTENDED

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[14] As indicated by the Board, section 8i *"represents a commitment by UP/SP to enter into arrangements with BNSF which.... [through mutually acceptable means] BNSF will be able to provide competitive service to all 2-to-1 shippers not [expressly covered in BNSF agreement.] We ... wish to clarify that the BNSF agreement does provide rights and claims (and by implication, remedies to persons other than the signatories. ...a shipper at a point opened UP to BNSF under the BNSF agreement is such a person; a subsequent UP/SP-BNSF arrangement restricting BNSF's ability to serve that shipper would...violate that shipper's rights under the BNSF agreement."* (Decision, 44 pp.12-13)

The requested conditions would help restore the effectiveness of the BNSF agreement, at least to the extent that CMTA's contribution would be limited to that possible in "thinking globally - acting locally." The conditions require no divestiture of track, no confounding of operations (anticipated BNSF volumes would be less than one percent of UP's traffic over a 4 mile stretch), and no requirement of any significant new capital investment; in fact, it would reduce facilities investment requirements.

All that is asked is that UP simply provide a connection at the only other location where an interchange is now feasible both economically and operationally. Thus, a mandated interchange at McNeil would provide BNSF with an opportunity to provide competitive service roughly equal in quality to that which it would have been able to provide at Elgin absent the UP meltdown.

Second, as reflected in Figure 2, the McNeil interchange would cure, mitigate or at a minimum forestall the public harm inherent in the permanent loss of rail service to shippers on the Giddings-Llano line.

LHRR has sustained serious financial setbacks and may be facing insolvency largely because of the cumulative impacts of UP's service failures upon LHRR's ability to maintain an adequate equipment supply, an adequate infrastructure, adequate service reliability and other essential components of business survival.[15] These service failures have thus imposed financial costs on CMTA's rail operator which, among other effects, have prevented it from undertaking the investments required to rectify the well-documented physical inadequacies of the Elgin interchange.

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[15] Our understanding of LHRR's circumstances is not based upon a formal study of the issue, but is distilled from a review of LHRR's financial statements, traffic records, other Verified Statements prepared for CMTA, and discussions with Mr. Donald T. Cheatham, General Manager, LHRR.

FIGURE 2

SOLUTIONS TO MERGER RELATED HARMS OFFERED BY CMTA'S PROPOSED CONDITIONS:

ALLOW GIDDINGS-LLANO FREIGHT SERVICE THE SAME RELATIVE OPPORTUNITY TO SURVIVE ON ITS OWN MERITS AS EXISTED PRIOR TO THE UP SERVICE CRISIS AT TIME OF MERGER

PROBLEM: UP CONGESTION CREATES ECONOMIC CRISIS ON LINE; AFTER OVER A CENTURY OF CONTINUOUS OPERATION, "SHORT-TERM" ECONOMIC DISTORTION CAUSED BY UP DIFFICULTIES LIKELY TO RESULT IN END OF SERVICE ON LINE DESPITE INDICATIONS THAT VIABILITY OF LINE WOULD OTHERWISE BE MARKEDLY IMPROVING.

SOLUTION: RAPIDLY COUNTERACT CONGESTION EFFECTS BEFORE DECLINE IRREMEDIABLE. BETWEEN ALTERNATIVES OF EMPLOYING ALREADY EXISTING INTERCHANGE AT MCNEIL AND UP BEING REQUIRED TO PROVIDE AN EQUITABLE REMEDY (I.E., UNDERWRITING THE COST OF CONSTRUCTING NEW, VIABLE CONNECTIONS FOR BNSF IN SHORT ORDER), CHOICE IS OBVIOUS.

Notably, the change in circumstances occasioned by UP's troubles has negated the applicability of part of the Board's reasoning denying CMTA's request for the right to have LHRR and BNSF interchange traffic at McNeil. That is, any physical inadequacy which otherwise would cause Elgin to be unacceptable as a substitute for McNeil could be rectified by BNSF capital investment as provided for in the BNSF agreement. However, any such investment would have quickly failed the test of business prudence as the UP's service emergency soon amplified the involved risks and reduced the resultant profit potential. In consequence, the McNeil interchange is now the only reasonable means by which survival of service on the Giddings-

Llano line may be assured – a survival threatened clearly and directly by UP's service fiasco, but not anticipated in the crafting of the Board's orders.[16]

Third, the proposed condition will relieve UP of some of the pressure entailed in servicing Giddings - Llano, particularly that which would be moving "against the grain" or extremely circuitously on the directional-running line through McNeil. Where BNSF's service is likely to be more economical, such as Houston-bound traffic routed off UP and onto the Silsbee corridor, UP would avoid operating losses while earning a not-insignificant contribution to overhead via trackage rights charges. This traffic will be diverted to less-congested BNSF lines, causing a salutary effect on the largely Houston-oriented traffic that is characteristic of that generated on the Giddings-Llano line.

There is nothing disingenuous in this suggestion that the loss of traffic is a benefit to the UP. If the proposed condition is ineffective, then nothing has changed from what otherwise would have occurred: UP would maintain its monopoly position on the line; BNSF would make no additional contribution to UP overhead. If and when service on the line is permanently discontinued, and all traffic disappears, it will hardly be likely that BNSF's presence at McNeil would have accelerated this demise.

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[16] The new-found viability of the Giddings-Llano line was acknowledged by the Board just prior to approval of the UP/SP merger. (STB decision in F.D. 32885 (Sub-no. 1), decided April 16, 1996, granting LHRR exemption from prior approval under 49 U.S.C. 10902 to operate Giddings – Llano line). The Board held that the exemption would, *inter alia*, support National Transportation Policy as it will "preserve competition by ensuring that a sound rail system will continue to meet the needs of the public" and that [LHRR] "will provide service to shippers currently served by [predecessor] AUNW and reinstitute service over segments of the line over which service has already been discontinued by AUNW. Indeed, [LHRR] has demonstrated that the proposed transaction will likely improve service to shippers." *Central Of Tennessee Railway & Navigation Company Incorporated D/B/A The Longhorn Railway Company – Change Of Operator Exemption – The City Of Austin, TX*, decided April 16, 1996, p.3.

If the condition is effective, the long-term effects will be a strengthening of the customer base on the Giddings-Llano line, reflecting the restored rail service provided by two carriers. A rational expectation is that an existing shipper, presented with market opportunities previously foreclosed, will generate *incremental* traffic bound for BNSF points. There would be no compelling reason for it to abandon UP if UP is providing single-line service to its preexisting market base. (Figure 3 encapsulates the less-speculative elements of this discussion.) An upward-cycle could result as the desirability of locating on the line becomes evident.

FIGURE 3

PUBLIC HARMS ADDRESSED BY CMTA'S REQUESTED INTERCHANGE AT MCNEIL

RELIEVE PRESSURE ON REGIONAL RAIL SYSTEM TO EXTENT POSSIBLE TO REVIVE OPPORTUNITIES PROMISED BY RECONFIGURATION OF WESTERN RAILROADS

PROBLEM: DEMANDS ON UP RESOURCES AT EXTREME LEVELS; SHIFTING TO OTHER CARRIERS TRAFFIC LESS EFFECTIVELY HANDLED BY UP WOULD PROMOTE OVERALL ECONOMIC EFFICIENCY OF NETWORK.

SOLUTION: PROVIDE BNSF WITH ABILITY TO RELIEVE STRESS ON UP SYSTEM, PREFERABLY AT POINTS SUCH AS MCNEIL WHERE NOT ONLY ARE PUBLIC BENEFITS AT A MAXIMUM, BUT WHERE LOSS OF TRAFFIC DOES NOT REPRESENT A DISBENEFIT TO UP.

Thus, UP, (as well as shippers at large) would benefit from BNSF's improved participation in traffic on the Giddings-Llano line. In the short run, UP would be enabled to more freely allocate limited resources to those services most beneficial to itself. In the long run, UP could enjoy an enhanced traffic base otherwise bound for extinction. Under any circumstance, to our knowledge, UP has not complained to CMTA or anyone else that the McNeil interchange would unfairly provide BNSF access to its traffic. Far from it. UP in fact told the Board just the opposite: that Elgin was a superior connection to McNeil or Kerr, providing BNSF with superior opportunities to compete for Giddings-Longhorn traffic.[17]

Underscoring the limited financial downside risk faced by UP by the presence of less acutely constrained competition is that the principal traffic is heavy, bulk, low-rated commodities with low profit margins and poor long-haul economics.[18] There is little threat of UP being engaged in a price war on the Giddings-Llano line.[19]

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[17] For example: "Elgin offers a much better connection, and BN/Santa Fe will operate on the Elgin line daily with regular manifest train service, as compared to its service at Kerr, which will consist of unit trains for aggregates." *Rebuttal Verified Statement of R. Bradley King* (Vice President Transportation, UP) UP/SP-232; Applicants Rebuttal Vol. 3 April 29, 1996. pp.49 -50.

[Elgin is on BNSF trackage rights] "between Waco, Temple and Smithville" which, like "all of these Texas trackage rights segments tie efficiently into BN/Santa Fe's broad network to the west, north and east." *Verified Statement of Richard B. Peterson, Senior Director Interline Marketing UP* (UP/SP-23, Application Vol. 2, November 30, 1995.) p. 18.

In fact, Elgin was to have rail freight service provided by M-TEMEAG and M-EAGTEM through trains (Temple-Granger-Taylor-Elgin-Smithville-San Marcos- San Antonio, an important factor relied upon by CMTA in selecting the Elgin interchange over Giddings. (BNSF progress report and operating plan, filed with STB, October 1, 1996.)

[18] As noted in an analysis performed by RLBA for CMTA in 1996: "*Car supply is a problem which frequently challenges short line railroad managements, particularly when a carrier such as Longhorn is captive to just one equipment-supplying connecting carrier. The problem is likely to be exacerbated by the fact that all four of Longhorn's largest customers ship commodities (aggregates and recyclables) which are notoriously poor revenue generators and, therefore, offer equipment owners little incentive to supply cars if higher revenue generating loads are competing to use the same asset.*" the same study concluded that the most significant opportunities that BNSF would be likely to have as a second connecting carrier was to transport "aggregate traffic projected into the Houston market by Longhorn's on-line suppliers." The public benefits of improved BNSF

Failure of Interchange to Provide Benefits Intended

The STB, in finding that the Elgin interchange is adequate, reasoned that CMTA's choice of Elgin over Giddings "should be taken to represent CMTA's view that the existing interchange facilities at Elgin, combined with the use by BNSF of the UP siding, are adequate to meet the needs of a Longhorn/BNSF interchange."[20]

The Board also went on to note that CMTA, in choosing Elgin "was choosing the existing Elgin and not an idealized version thereof" and "the BNSF agreement(s)...provide BNSF the right to build any new facilities... it might need to facilitate an Elgin interchange. There appears to be no obstacle to the construction, at Elgin, of any new facilities that BNSF might deem necessary or desirable."[21]

It is clear, however, that CMTA not only did not get an "idealized version" it barely got an interchange at all. It certainly did not get an interchange of the extravagant value suggested by UP, as quoted above. Only through the near-heroic efforts of BNSF and LHRR has service been provided at all. Instead of three through trains weekly, BNSF provides a shuttle service, constrained by UP congestion on the Smithville route from use of its trackage rights. We understand that UP has required the reduction of even this stunted operation to at most two switches weekly.

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participation would thus be seen to be even clearer today than two years ago: car supply problems have starved Austin shippers and UP's Houston routes have been congealed with traffic it is unable to handle.

[19] A more realistic concern is that UP may determine that it is far more profitable for it to allow BNSF to handle large shares of traffic and further reduce the level of service that it is able or willing to provide. In consideration of this fact, the level of trackage rights charges as set out in the BNSF agreement may be inappropriately high as applied to Giddings-Llano traffic. It would be interesting, to say the least, if it turns out that BNSF's market share becomes proportional, rather than inversely proportional, to its rental costs.

[20] STB F.D. 32760, decision no. 69, decided March 7, 1997, p.7.)

[21] Ibid.

Interchange is limited to about a dozen cars - preventing the efficient movement of Marble Falls traffic that demands blocks of up to 60 cars. For this, BNSF gets to pay trackage rights charges on the gross ton-miles generated by the extra movements of empty trains.

Given these circumstances, it is obvious that BNSF or any other entity, which parted from its money to construct improved interchange facilities, would be highly imprudent. The Board's observation that there would be no "obstacle" to such construction did not anticipate the barriers which have since arisen.

Elgin's failure to fulfill the limited expectations placed upon it is, of course, only a minor element in the entire aggregate of injuries to which a remedy is sought. CMTA is not seeking compensation; it is only seeking a bandage with which to quench the bleeding.

Operational Feasibility of Conditions

UP's objections to interchange at McNeil have principally been based on "operational unfeasibility." Recently, in the context of private negotiations, CMTA has been informed:

> *"Union Pacific cannot agree to your request for an interchange between LHRR and BNSF at McNeil. Such an interchange would have serious adverse consequences for Union Pacific's operations. Not only are the facilities at McNeil inadequate to accommodate the interchange of traffic with both Union Pacific and BNSF, carrying out a BNSF- Longhorn interchange at McNeil would cause unacceptable interference with Union Pacific's mainline operations through McNeil and would also require BNSF to be granted new operating rights over Union Pacific's mainline trackage between Round Rock and McNeil, which is already overburdened with traffic."*[22]

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[22] Letter from Dennis J. Duffy, Sr. VP Customer Service Planning & Delivery, UP, to Gerald Robichaux, Interim General Manager CMTA, March 10, 1998.

This is little changed from the position initially presented by UP. However, it is instructive to note that UP's Bradley King had informed the Board that while "Interchange operations at or via McNeil would present serious problems" directional running would "alleviate congestion."[23] Directional running has since been instituted. The complexity of operations has presumably not diminished enough to permit a four to six mile switch move on a few occasions per week. We believe, however, that our observations made to the Board in our previous verified statement are as valid today as it was then:

> *"In what manner the granting of interchange access rights would produce intensified congestion at McNeil is difficult to ascertain. Granting of interchange access cannot increase traffic through McNeil - it's all there already... And while there may be substantial traffic passing through McNeil - ...- the contribution to congestion from Giddings-Llano traffic is virtually microscopic.*
>
> *Yet we are told that UP/SP operations will be disrupted not by any increment of traffic moving through McNeil, not by the volumes that originate and terminate on the Giddings-Llano line, but by that portion of the local traffic which would be diverted to BN/SF... At current traffic levels, assuming, say, 100 gross tons per carload, the total Giddings-Llano volume is 1.3 percent of the UP line's volume. If BN/SF were to somehow divert a generous 25 percent of the local traffic, this would affect the handling of but one-third of one percent of the traffic at McNeil.* "[24]

We might remind UP that it sought the Board's approval for BNSF to run over KCS tracks in the context of improving the efficacy of the operations contemplated in the BNSF agreement. The terminal trackage rights issues presented then bear more than a casual similarity to those inherent in the terminal trackage rights for BNSF requested by CMTA now. (The McNeil interchange is trackage comprehended by 49 U.S.C. 11103.)

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[23] King, Op cit.

[24] Banks and Shuman Rebuttal V.S., Op cit.

The Board ruled that it could, and would, construct conditions clearly in the public interest – specifically conditions supporting the intent of the BNSF agreement. The Board observed that operational problems at Shreveport could be worked out, as between carriers working in good faith. Nor would BNSF's presence at Shreveport create noticeable traffic increments, as it was merely substituting for the services of the SP.[25]

In ordering KCS to provide trackage rights to BNSF in the UP/SP merger decision, the STB application of a broad public interest standard was in support of objectives strikingly in parallel with that forwarded by CMTA - except that the trackage rights here would be extracted from the merged carrier itself, not a third party who happened to own coveted property. The Board found:

1. Owner of tracks not substantially impaired 'use by BNSF ...will not substantially impair KCS's ability to handle its own traffic. For the most part BNSF trains will be using capacity freed up by UP/SP" - as is the case in Austin

2. Use is practicable: "we realize that the terminal trackage rights we are approving will make operations at Shreveport slightly more complicated than they are now because three carriers will be operating over them than two, but this will simply 'require coordination of operations between the parties."

3. Grant is in the public interest: "use by BNSF...is in the public interest because it is essential to the merger conditions permitting BNSF to provide a competitive alternative..."

4. "We will apply the broad 'public interest ' standard [respecting grants of terminal trackage rights under 49 U.S.C. Section 11103] ...we believe that it is appropriate for us to retain the flexibility to use the terminal trackage rights provision to prevent carriers opposing a merger from blocking our ability to craft merger conditions clearly in the public interest" (STB decision 44, pp. 168 -169)

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[25] STB Finance Docket 3276D, Decision No. 44, p. 169.

We appreciate that UP may yet devise a creative solution that better satisfies all parties, although its efforts in this regard earlier in this proceeding - i.e., recommending Elgin as an interchange point - fell short of what was hoped for. We should think, however, that UP would be willing to underwrite the construction of those facilities which would be needed to avoid any truly disruptive consequences of the proposed conditions, as its difficulties are responsible for LHRR's or BNSF's inability to reconfigure Elgin. We are admittedly skeptical that the cost of any disruption would be so great as to warrant other than a modest extension of the sidings at McNeil. If control of dispatching at McNeil is inadequate to provide UP with the security it requires, perhaps it could offer to perform switching services itself, presumably at a cost below that which BNSF or LHRR could do it, as UP would be in a better position to plan moves on its own line.

Conclusions

CMTA and its operator, LHRR, have been on the verge of resuscitating a near-comatose orphan line. The service emergency in the southwest arising since the consummation of the merger approved by this Board has had the effect of stifling this progress, starving the line of equipment, degrading service, and stifling potential traffic growth of which we were so hopeful in our previous submission to this Board. In essence, we respectfully submit that:

The purpose of the Board's grant of conditions to CMTA has been thwarted by the yearlong operational miasma in the west. Granting of additional trackage and interchange rights would be the most minimally disruptive and least costly of any readily apparent alternative. McNeil will not be burdened with a single ton of freight above what it would have otherwise accommodated under a UP monopoly - except to the extent that the merger condition succeeds in promoting the economic efficiency of the local rail network and thereby induces growth. No divestiture of trackage or other invasive condition is being requested.

Any reasonable evaluation of the proposed conditions requested by CMTA under the standards that they be minimally disruptive to merger economics must produce net public benefits and not unduly impair the potential benefits of merger will show that, if anything, the requested conditions further the purpose of the merger by i) facilitating UP's ability to redirect resources to where in its judgment they are most efficiently deployed and ii) restoring some of the lost functionality of the BNSF trackage rights agreement in providing competitive service.

We will not make the bold claims, as did the merger applicants that this particular condition will improve equipment supply and enhance service reliability, although it may and certainly should, *ceteris paribus*. While the effects may be microscopic in the whole scheme of western rail transportation, it would provide opportunities for improved routing of equipment, both by directing Houston traffic over less congested lines by mitigating the incidental adverse effects of UP's directional running - which compels circuitous routing either of the empty or the loaded segment of most local movements.

The rapidity of the financial descent that LHRR could well be facing leads us to conclude that the immediate grant of the requested conditions is absolutely necessary to stem further, irreversible erosion of shipper confidence and rail business volumes tendered. As the Board's responsibilities would appear to include the retarding of the merger-induced erosion of short line services - the forestalling abandonment of the Giddings-Llano line would certainly seem to be an appropriate objective of a merger condition. [26] This is especially so where abandonment would be caused not by a lack of the inherent economic justification for continued operation but because survival of the line has been threatened by the shortcomings of its principal connecting carrier.

Finally, we ask, as we did in concluding our previous submission:

> *"[W]hat is the harm here, at Austin, in the preservation of competitive options? Applicants' propose that shippers need not be concerned with only two remaining major carriers in the west... As we go through these uncharted waters, wouldn't prudence dictate that options be preserved where possible, especially where the cost to preserve is so small? ... No one sees the future with crystalline vision. No one can assert with perfect conviction that the elimination of alternative rail access to Austin is wholly benign."* [27]

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[26] As acknowledged by Chairman Morgan, among the *raison d'être* for the Board's continuing existence is *"the Board's significant responsibility to oversee rail-restructuring matters that involve larger railroads but also have a critical impact on the growth and sustainability of smaller railroads." Senate Committee On Commerce, Science, And* Transportation Subcommittee On Surface Transportation And Merchant Marine, Testimony Of Linda J. Morgan Chairman, Surface Transportation Board On Reauthorization March 31, 1998.

[27] Banks and Shuman Rebuttal V.S., Op cit.

VERIFICATION

DISTRICT OF COLUMBIA)
) ss:
CITY OF WASHINGTON)

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

Robert L. Banks

Subscribed and sworn to
before me this 9th day
of July 1998.

Elizabeth Maurer
Notary Public, DC

My commission expires:

June 1, 2001

Verification

I, David J. Shuman, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

David J. Shuman

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

Elizabeth Maurer
Notary Public, DC

My commission expires:

June 1, 2001

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Attachment 1

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

Office of the Chairman

APR 16 1998

April 13, 1998

The Honorable Phil Gramm
United States Senate
2323 Bryan Street, #2150
Dallas, TX 75201
Attn: Robert Funk

Dear Senator Gramm:

Thank you for forwarding a copy of the letter you received involving negotiations between the Longhorn Railway Company (Longhorn) and the Union Pacific Railroad Company (UP). According to the letter, Longhorn has requested that UP allow Longhorn to interchange certain traffic with the Burlington Northern and Santa Fe Railway Company (BNSF) at McNeil, Texas, in addition to the Longhorn-BNSF interchange at Elgin, Texas. Longhorn also has sought from UP the right to traverse over a portion of UP's main line track at McNeil to deliver coal shipments interchanged with BNSF at Elgin.

We understand that UP has turned down Longhorn's request to interchange with BNSF at McNeil due to operational concerns. Longhorn and UP, however, are continuing to negotiate over operational issues affecting the two railroads. There is no formal proceeding pending before the Board involving this matter.

I hope that you find this information useful. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

UNION PACIFIC RAILROAD COMPANY

DENNIS J. DUFFY
SENIOR VICE PRESIDENT
CUSTOMER SERVICE PLANNING & DELIVERY

1416 DODGE STREET
OMAHA, NEBRASKA 68179

March 10, 1998

Mr. Gerald Robichaux
Interim General Manager
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, TX 78702

Dear Mr. Robichaux:

This will acknowledge your letter dated February 24, 1998, regarding Longhorn Railway Company's operation on the Giddings-Llano, Texas Line. We understand the concern expressed in your letter, and we are committed to doing the best we can to work with Longhorn Railway, as well as other railroads and shippers in Texas and the other states in which Union Pacific operates. Union Pacific is striving to improve service across its entire system, but there are no guarantees of service or car supply for Longhorn Railway's traffic or LHRR's customers.

As you may be aware, Union Pacific representatives met with Longhorn Railway's Mr. Donald Cheatham on February 25 here in Omaha to discuss issues of mutual importance. I understand that the meeting was productive, and that Mr. Cheatham and Union Pacific representatives agreed to study several possible options which, if implemented, could be of benefit to both Railroads. As you also may be aware, Union Pacific has taken several actions in the past to assist Longhorn Railway in its operations.

Union Pacific cannot agree to your request for an interchange between LHRR and BNSF at McNeil. Such an interchange would have serious adverse consequences for Union Pacific's operations. Not only are the facilities at McNeil inadequate to accommodate the interchange of traffic with both Union Pacific and BNSF, carrying out a BNSF-Longhorn interchange at McNeil would cause unacceptable interference with Union Pacific's mainline operations through McNeil and would also require BNSF to be granted new operating rights over Union Pacific's mainline trackage between Round Rock and McNeil, which is already overburdened with traffic.

In addition, in the UP/SP merger proceeding (Finance Docket No. 32760), the Surface Transportation Board repeatedly made clear that an interchange at McNeil was not among the options available to Capital Metro. Instead, the Board held that Longhorn was entitled to only one point of interchange with BNSF -- at either Elgin or Giddings -- and the Board concluded that interchange was to occur at Elgin based on Capital Metro's exercise of its choice among the available options.

We appreciate your input, and you may be assured that we will do our best to work with Longhorn Railway to the mutual benefit of our Railroads.

Very truly yours,

Dennis J. Duffy

[illegible]

** TOTAL PAGE.03 **

3

US OFFICE PRODUCTS

EXHIBIT 3

VERIFIED STATEMENT OF DONALD T. CHEATHAM

I. INTRODUCTION

My name is Donald Thomas Cheatham. I am Chairman, as well as operations General Manager of the Central of Tennessee Railway & Navigation Company Incorporated ("COT"), which is the certificated operator of a shortline railroad in Nashville, Tennessee, owned by the Cheatham County Rail Authority ("CCRA"), as well as, of a more regional railroad in Texas, the "Giddings-Llano Line," owned by the Austin, Texas Capital Metropolitan Transportation Authority ("CMTA"). ("COT" operates the Texas railroad under the legally assumed name of the Longhorn Railroad Company ("LHRR")). I am also General Counsel for that referenced railroad company. I am licensed to practice law in the District of Columbia and the Commonwealth of Virginia, and have been licensed as such since 1974. Generally, I have been in and around the railroad industry most of my life.

This Verified Statement concerns the Texas railroad referenced. LHRR intersects currently with the merged Union Pacific/Southern Pacific ("UP/SP") lines at Giddings, Elgin and McNeil, Texas, and has interchange rights with the Burlington Northern Santa Fe ("BNSF") only at Elgin, Texas.

LHRR urgently requests that the STB grant BNSF an additional 4.4 miles of trackage rights over the UP/SP Taylor to Austin mainline, previously the Missouri Pacific ("MOP"), so that BNSF can interchange with LHRR at McNeil, Texas, in addition to the

BNSF interchange at Elgin. We believe upon the experience of the last two years of our operation of the CMTA rail line, that BNSF's interchange with LHRR at McNeil is essential for the survival and viability of the freight operation of the Giddings to Llano railroad. We will here delineate specifically the reasons for our experienced conclusion.

COT, as LHRR, commenced operating the CMTA Texas railroad in May of 1996, before the UP/SP controlled transaction took effect that September. LHRR immediately increased the traffic dramatically on the rail line, from what the Austin Northwestern ("AUNW") had done for its final two years, or so, 1992 through 1994, from 200 to almost 600 revenue earning cars per month.

II. HISTORICAL CONFIGURATION

Prior to the UP/SP merger, the McNeil interchange was served by a minimum of two Class I railroads at various times. SP and UP both served Austin White Lime, a rail served industry, located at the McNeil interchange until 1985.

When LHRR assumed operations in May of 1996, the only portion of the railroad which was operative was the segment between Smoot (SPTC Mile Post ("SP") 109.1 and AUNW Mile Post ("AUNW") 52.1 and Fairland (SP 69.7 and AUNW 124.7), a distance of 72.6 miles. Today, due solely to LHRR's own efforts, the railroad is operative between McDade (SP77.5 and AUNW 20.5) and Llano, the western most end of the line (SP99.07 and AUNW 154.07), a distance of 133.57 miles.

Had LHRR been able to operate as planned, unaffected by the UP/SP service debacle, LHRR would have been able from its own operating revenues to open the remaining trackage between Giddings (SP 55.7 and AUNW 0) and McDade. This would mean a return to full service over the entire breadth of the Giddings to Llano line.

Unfortunately, due to adverse effects of the merger, traffic has fallen on the Giddings to Llano rail line, as with UP, to the previous AUNW levels, of around 200 to 250 revenue cars per month, LHRR interchanging with UP/SP. LHRR can not, nor could any rail freight operation for CMTA, remain long financially viable with the diminished levels of revenue earning traffic being dictated by the UP/SP, in their monopolistic control of railroad traffic and equipment in Texas.

The Surface Transportation Board ("STB"), as a condition of the UP/SP controlled transaction, awarded the CMTA the right to name either Elgin or Giddings as the BNSF two to one (2 to 1) interchange point with and for their freight railroad. CMTA opted on Elgin, over Giddings.

III. RECENT DEVELOPMENTS

Because of the UP/SP's service debacle in the Houston area, LHRR has suffered tremendously from lost opportunities, as well as in a large diminution of forecast and anticipated operating receipts, as have LHRR shippers. UP/SP's market power gained through the controlled transaction has been used to throttle any attempts by LHRR to grow its business with its existing shippers or by the addition of new shippers. Any attempts by LHRR to rectify its own problems caused by the UP/SP market dominance are threatened by UP/SP's self-imposed limitations upon most of the available equipment and all of the service directly under UP/SP control.

The UP/SP controlled transaction has led to unforseen and unforecast service problems along the entire UP/SP system, but most noticeably at and around Houston, Texas. Most of LHRR's traffic with UP/SP involves aggregate and rock products, most of which are headed to Houston, once they are so interchanged with UP/SP at McNeil. The only commodity interchanged between UP/SP and LHRR at Elgin is fertilizer inbound to the Elgin Warehouse. It is reminded also, the fertilizer is a product itself from the Houston chemical industry. The impact on the LHRR of service problems in the Houston area is simple: No Houston, no business.

At the same time, LHRR has paid maintenance and operating crews, as well as, purchased and maintained required equipment, suffering a tremendous loss just to be able to provide common carrier service to its shippers on reasonable demand, as the law clearly requires. Since Elgin's designation as the BNSF/LHRR interchange, the two railroads have established a good relationship, which has included joint marketing efforts on LHRR. To date, no such marketing representatives have appeared from the UP/SP on the Giddings to Llano line to assist LHRR in gaining any new business. In fact, UP/SP has repeatedly stated since August of 1997 that LHRR should not expect any increase in UP/SP provisions of service or equipment above AUNW levels at any time in the immediate future. Without the limited interchange LHRR has been able to conduct with the BNSF, LHRR may not have been able to survive the last twenty months of UP/SP's service failures.

Unfortunately, there have been major down sides, and there are some other unforeseen problems with the Elgin interchange which are now hampering any further growth in traffic between LHRR and BNSF. Because of the UP/SP service difficulties and the losses which LHRR has experienced, as a direct and proximate result of the UP/SP service failures and market dominance, LHRR shippers, as well as, LHRR, should be allowed to use the good services of BNSF as alternative at McNeil, as opposed to just Elgin, in order to attempt, if for no other reason, the recoupment of some lost opportunities to enhance revenue receipts referenced.

LHRR's ability to survive at this point with the current interchanges is directly linked to UP/SP's ability to provide service to and from Houston, Texas with LHRR. During this period UP/SP has failed to provide even a modicum of adequate service to and from Houston for LHRR's shippers. With BNSF at McNeil as opposed to Elgin, the direct competition between the two class ones will encourage, rather than discourage, an increase in LHRR carloads interchanged. The opportunity for two to one competition would be restored to a pre-merger condition.

The physical attributes of the Elgin and McNeil interchange were previously well described to the Board. Due to LHRR's losses resulting from UP/SP's market dominance since the merger, LHRR is not now, nor will LHRR in the immediate foreseeable future, be in a financial position to much improve the Elgin interchange, and other nearby railroad facilities sufficiently, where it would or could become the equivalent of the interchange facilities and potential service at Giddings, which is more similar to that of McNeil. (As stated above, although LHRR has reopened about 70 miles of track that were formerly discontinued, for financial reasons induced by the UP/SP service failures, LHRR will for the foreseeable future be unable to reopen the remainder of the line between McDade and Giddings.)

Because of UP/SP's treatment of LHRR and its shippers, if for no other reason, LHRR should be afforded the more workable interchange with BNSF at McNeil. LHRR traffic would increase just with this Class I Carrier reasonably, foreseeably to around 1,000 revenue cars a month. This would inure to the benefit of both the railroads and LHRR's economic viability, which is at the cornerstone of both the Interstate Commerce and ICC Termination Acts, stated and well enunciated public policy, as LHRR and the Giddings to Llano railroad are indeed intricate portions of the interstate railroad system.

Because of UP/SP's inabilities to overcome their own difficulties in service they themselves have sustained large losses, and will well into the future. UP/SP offers no panacea, nor substantial aid, at this point, to alleviate the revenue losses LHRR has suffered, and continues to suffer, as the result of UP/SP's past and continued refusal to provide equipment and service to LHRR and its shippers upon reasonable demand. LHRR and its shippers are being passed by in these economic good times, due solely to UP/SP's dismal failure to perform at all adequately the UP/SP's own common carrier duties and responsibilities. BNSF's ability to serve directly LHRR in an operationally superior interchange will in itself greatly alleviate the heavy dependence on a largely unable and unwilling UP/SP.

IV. CAR LEVELS ANTICIPATED

In the fall of 1996, LHRR indicated to UP/SP that it would be able to interchange on a ready basis somewhere between 750 to 1000 rail cars a month. UP/SP did not offer any objection to these projections made to them by LHRR and CMTA.

UP/SP agreed with LHRR upon a traffic level of revenue generating rail cars of 700 to 1000 car loads a month, in October of 1996, but was only able to actually interchange on average, between 200 to 300 cars a month because of the service difficulties occasioned by the merger and controlled transactions.

Since the controlled transaction, UP/SP promised to at least supply enough rail cars to reach the AUNW numbers, and they often have failed in that regard. UP/SP's service has rendered LHRR a "yo-yo." Some weeks there are 150 to 200 cars, other weeks there are 70, 60, 50 or even less cars, delivered by UP/SP to LHRR customers. There is no way that LHRR is able to plan its own provision of service to its own shippers due to this phenomenon.

V. TRAFFIC LEVELS

The minimum level of traffic LHRR needs to break even is somewhere between 750 and 800 revenue generating cars per month, assuming an average of LHRR's share of tariff revenue to LHRR of $300 per car, well within industry norms, for a 152 mile (+ or -) operational shortline or regional railroad. LHRR should be allowed the opportunity of reaching those levels any way legally, morally and ethically possible.

UP/SP's refusal to entertain alternative measures is due to their market dominance, which they appear willing to defend over even a connecting shortline's survival. Shortlines such as LHRR, it is reminded, are "feeder" lines to the majors. UP/SP should assist in alleviating difficulties, they themselves created, to ensure the survival of their connecting shortline railroads.

VI. SERVICE DECLINES

In mid February 1997, the UP/SP service levels plummeted. There has never been a recovery, even briefly, to pre-merger levels.

An example of the UP/SP service debacle is considered in the following painfully true narrative. In April, 1997, UP/SP asked LHRR to provide 30 gondolas to Delta from LHRR's own leased fleet. UP/SP had agreed to provide the equipment. UP/SP could not perform, but Delta had sold the movement, relying upon UP/SP's assurances of equipment and service for the move. LHRR allowed the substitution of its online fleet of rail cars to the extent of the 30 gondolas, which Delta loaded to perform their contract. Those LHRR (SIRX) cars went offline and did not come back for 90 days. LHRR earned $255 per car for the move, but paid and/or incurred over $1455 in lease payments per car during the same time period.

Since the UP/SP merger, LHRR interchanged with BNSF at Elgin 4 times in 2 weeks the same number of cars in that time as it did with UP/SP at McNeil, where UP/SP can interchange with LHRR everyday. The UP/SP McNeil interchange track holds 90 railcars, Elgin's holds only about 12.

The turnaround time to Houston and back, for example, with BNSF right now is about 9 or 10 days, and the UP/SP is taking on good occasions around 17 days per turnaround. This superior turn around time may in part be owing to BNSF's alternative routing for moving traffic destined for the Houston area. BNSF routes Giddings to Llano traffic around Houston proper by moving traffic from Temple through Somerville and east to Silsbee. UP/SP's poor service has caused LHRR to rely to the fullest possible extent on BNSF.

UP/SP has already cut the BNSF traffic from 3 to 2 times per week at Elgin, because UP/SP claims they are using the old Katy railroad through Elgin more than they had anticipated. LHRR is the only customer that BNSF comes down from Temple that way to serve at Elgin on the old Katy Line, now owned and operated by the UP/SP. BNSF comes down to Elgin and turns around and goes back to Temple, a round trip of some 150 miles.

The interchange with BNSF at McNeil would enable BNSF to serve Austin White Lime inbound coal. Austin White Lime is located at McNeil. Presently UP/SP will not permit LHRR even a hundred yard trackage rights to bring coal in -- through Elgin -- off of BNSF for Austin White Lime.

The Southern Pacific had rights to serve Austin White Lime, but when the City of Austin purchased the Giddings to Llano railroad from Southern Pacific, the City's operator, AUNW, failed to maintain the relevant track so as to make use of these rights. Austin White Lime thus changed its service over to the UP/SP. Now UP/SP refuses to acknowledge the rights that the AUNW had, but failed to exercise, and UP/SP thus prevents LHRR from serving Austin White Lime.

LHRR would give up the right to handle for Austin White Lime the small amount of coal that LHRR would have gotten through Elgin on the BNSF, if BNSF is allowed to come to LHRR at McNeil, and simultaneously allowed to deliver coal to Austin White Lime.

VII. ADVERSE IMPACTS

Since the controlled transaction, LHRR has lost its own fleet of 200 rail cars, because LHRR could not make lease payments on the referenced SIRX gondolas, due to their being parked on UP/SP without movement for protracted periods of time without LHRR generating any revenue from them, and because LHRR lost the benefit of anticipated receipts.

At the same time UP/SP's level of service diminished to a point where LHRR can not cover their expenses, mostly incurred waiting for the UP/SP to provide the service UP/SP ultimately never provides, nor provided. The cars lost to LHRR, which had been used in interline work while transloading aggregate to downtown Austin, further caused LHRR to experience diminished revenues from their lost use; they earned no money for LHRR when they remained so-parked on the UP/SP for the stated protracted periods of time. UP/SP is attempting to rectify this situation. Due to the service failures, LHRR has lost and become indebted for an aggregate total of $2 million that it did not anticipate losing or owing. Currently Longhorn owes about $900,000.

In fall of 1996 LHRR had leased thirty-five (35) gondolas from Southern Illinois Railcar Corporation (SIRX). LHRR made these arrangements to have another 100 to 65 new gondolas available with Longhorn's mark on them from Trinity Industries. LHRR made arrangements knowing that Union Pacific would complain about LHRR's requirements, and for UP/SP solely providing a large amount of the equipment. UP was allocating only about 250 cars to the total when AUNW was operating. That was box cars, as well as gondolas and open-top hoppers. When LHRR first began operations traffic briefly went up to as many as 795 revenue cars in one month interchanged with the UP.

After a year and a half of UP/SP's service failures, LHRR has lost customers. LHRR will never regain the service levels necessary for a breakeven operation, if LHRR cannot interchange with BNSF at McNeil. LHRR's traffic with the UP/SP is down about 50% compared to what was accomplished pre-merger approval, two years ago. LHRR is losing $80,000 a month, or more, and there is an overall 50% loss of traffic compared to the base line traffic at the time LHRR began operations. LHRR cannot, over the long term, continue to sustain these losses and remain in business. The relief requested is warranted by the circumstances created by the UP/SP controlled transaction.

But for the merger, LHRR would be at Giddings and would have done 30,000 revenue generating cars since commencing operations, instead of the 15,000 cars or so, which LHRR has handled since May of 1996. But for the controlled transaction LHRR also would have been able to implement its plans to pick up some other old customers, and bring some other new customers on line. Because of UP/SP's monopolization of equipment, as well as, their own special treatment of their own moves and customers, LHRR cannot bring on any new customers, or even increase business with existing shippers on the LHRR railroad.

In response to the claim that LHRR would be in this position anyway regardless of the merger, LHRR would state that at the time that it commenced operations, turnarounds to Houston were done in 7 to 10 days, which included saltwater shippers taking their time unloading commodities. Now it is approximately 17 to 25 days. There is also the directional slow going problem, due to UP/SP's insistence on implementing non-workable "plans" on their system, such as the so called "directional" moves on the MOP. When LHRR first began operations traffic briefly went up to as many as 795 revenue cars in one month interchanged with UP/SP.

There is actually a directional move problem, in that the MOP now only moves supposedly south to north and LHRR receives its equipment from Taylor on a north to south movement, so that any time that LHRR's can be interchanged by the UP/SP it is contrary to the traffic that UP/SP itself has established for the main line railroad over which LHRR's traffic from the UP/SP is supposed to come. LHRR went about five days without a switch in the month of April, and often received no or very few rail cars for its customers on any given day, for protracted periods of time, since the directional flow was supposedly uniformly instigated. On many other occasions nothing was picked up by UP/SP which was interchanged by LHRR for several days on end.

VIII. MCNEIL ADVANTAGES

An interchange in McNeil with BNSF would alleviate LHRR's problem because LHRR is going to start transloading aggregate products at McDade, a point between Elgin and Giddings which is eastward beyond Elgin. There are only two ways that LHRR can make up for the loss of traffic due to the UP/SP controlled transaction. One is initiating traffic on the shortline itself, such as LHRR creating on the railroad such transloading at

McDade. Pioneer is committing to such moves to McDade, and, should LHRR financially recover from merger-related problems and complete its reopening of the line to Giddings, Pioneer would commit to such moves to Giddings as well. Pioneer will commence these July of 1998. The other way to make up the loss is to increase the traffic with BNSF. If LHRR had not had BNSF and its own traffic, LHRR would now be out of business due to the UP/SP's controlled transaction.

LHRR has a shipper, Pioneer, ready to do three shipments a week to McDade, at least, through the end of the year. That is worth about $200,000 in revenues to LHRR ($350 a car on 45 cars a week through the end of the year). LHRR cannot do this if its main line is blocked with BNSF interchange cars, overflowing from the limited interchange facilities at Elgin onto the Giddings to Llano mainline.

The BNSF incremental traffic will be replacing the traffic the UP/SP has steered off. The only way LHRR can regain viability is to be able to interchange with BNSF at McNeil. One primary reason that McNeil works is that it is only 4.4 miles more from Kerr where BNSF already interchanges with the Georgetown Railroad ("GRR"). BNSF needs only 4.4 additional miles of trackage rights with the UP/SP. LHRR can interchange 90 cars at McNeil with BNSF, as LHRR regularly does with the UP/SP. BNSF could triple the traffic, because they are ready to sell 40 car blocks to LHRR shippers, which can only be handled effectively at McNeil.

So the only way LHRR can survive is with the interchange at McNeil by BNSF, largely because that's where BNSF can best provide LHRR with equipment and service that UP/SP will not regularly supply. This would continue the growth of the business and give LHRR the ability to do hazardous materials with BNSF, which traffic is itself preferable on rails. Hazardous material moves cannot be done regularly, nor safely at, to, or from Elgin.

LHRR is doing as much traffic with the limited availability of space involved as it can using Elgin. If the STB allows BNSF into McNeil, LHRR will do more with BNSF, and UP/SP will realize they are in a competitive business, as opposed to a market domineering monopoly. Competition between UP/SP and BNSF at McNeil would allow LHRR to more effectively demand more movements, and to more effectively demand more reasonable service from UP/SP.

IX. INTERCHANGING AT ELGIN

LHRR cannot remain viable with only the Elgin interchange for BNSF, because both the FRA and LHRR agree that the trackage is not in sync to handle certain kinds of hazardous commodities or heavier traffic, because the track conditions are very dangerous between Austin and Elgin. Rock shipments are one thing, but shipping hazardous materials over that track, as well as over the bridges between Austin and Elgin is another. The low service levels by LHRR at Elgin of these commodities has been well documented.

The problem with Elgin is that LHRR can only interchange, without getting on its main line, twelve cars at a time. While interchanging with BNSF, Longhorn does about 25 to 30 or even 40 cars at a time, blocking up the Giddings to Llano main line, which ilaffects such other LHRR operations towards Giddings, as the referenced McDade movement.

Switching at Elgin creates a very awkward situation. It is 30 miles to Giddings, which is the first place that there are two tracks or an available runaround track for LHRR, and it is 15 miles back to Manor, which is the only other place where there is a runaround track for LHRR to get around its own train. There is a major street that LHRR crosses in Elgin within twelve (12) car lengths of the UP/SP LHRR interchange at Elgin. There are a number of shipper locations who have an interest in LHRR operation east of Cedar Park. LHRR has been interchanging at Elgin for Capital Beverage, which is located in central Austin, for lumber companies in central Austin, and in Burnett, Texas.

Eighty five percent (85%) of LHRR's business is product between Fairland and Cedar Park to be interchanged at McNeil. All lumber is inbound, at a level of 25 to 30 cars a month, much of which comes in through Elgin on the BNSF. Approximately fifty-five percent (55%) of Longhorn's business is outbound rock or other products including chemical limestone, just as that produced by Huber, which ships bicarbonate soda. Delta is moving about 50 cars a month right now through Elgin. The only shipper east of Austin is Elgin warehouse at Elgin.

This means, that LHRR is moving railcars backwards, some 60 unnecessary miles round-trip in its interchange with BNSF at Elgin. A similar move, for example, of lumber from the McNeil interchange could consist of traveling 60 miles less to deliver the same commodity to the same shipper. The same is true of inbound beer and outbound rock.

X. IMPACT OF UP/SP MARKET DOMINANCE ON LHRR

LHRR's problems are rooted in UP/SP's market dominance, because UP has a monopoly over the equipment, and so UP/SP decides who receives the equipment. UP/SP monopolizes equipment and gives special treatment to their own moves and customers.

UP/SP has reduced the traffic on LHRR on their railroad because they could not get locomotives out. UP/SP has dedicated equipment, for example, as such is dedicated to coal traffic. Coal-dedicated locomotives cannot be taken off those trains to do anything else, even if there is a great need. This monopolization of equipment and other abuses of market power prevent LHRR from serving existing or bringing on new customers. BNSF can and has, however, committed equipment for LHRR customers.

LHRR is desirous of dealing with competing Class I railroads, as opposed to being dominated by one such railroad.

The foregoing is correct to the best of my knowledge, information, and belief.

DONALD T. CHEATHAM
Chairman and Operations General Manager

CENTRAL OF TENNESSEE RAILWAY &
NAVIGATION COMPANY
INCORPORATED

4

US OFFICE PRODUCTS

EXHIBIT 4

VERIFIED STATEMENT OF JOE RAMIREZ

1. My name is Joe Ramirez. Since January 26, 1998, I have been Interim Rail Development Officer for the Capital Metropolitan Transportation Authority ("Capital Metro"). From June of 1994 to January 26, 1998, I served as Capital Metro's Manager of Railroad Right-of-Way. In various capacities, I have worked for Capital Metro for approximately twelve years.

2. I have personal knowledge of current issues regarding the Giddings-Llano line, and am familiar with the history of the line, and Capital Metro's involvement with it. I have personal knowledge of the volume and nature of shipper traffic over the Giddings-Llano, including routing, operational, and related activities, and the line's general service and maintenance condition. My responsibilities at Capital Metro have caused me to become familiar with activities on the Giddings-Llano line dating back to the early 1980's.

3. I make this statement in support of Capital Metro's Request for Additional Condition, which I understand will be filed in the UP/SP merger oversight proceeding regarding the Houston, Texas and Gulf Coast region.

4. Capital Metro is located in Austin, Texas, and is a regional transit authority, a body corporate and political subdivision of the State of Texas.

5. The City of Austin purchased the Giddings-Llano from the Southern Pacific in 1986. Upon consummation of the sale, the Southern Pacific retained trackage rights and a fiber optics easement over eastern segments of the line. The Southern Pacific continued to fulfill the

common carrier obligation on the Giddings-Llano until such time as the City of Austin and Capital Metro (then manager of the line) retained an operator. The City of Austin and Capital Metro issued a request for proposals to conduct Giddings-Llano rail operations. Two parties responded; one eventually withdrew its proposal. The City and Capital Metro ultimately retained the remaining proposer -- the Austin & Northwestern Railroad ("AUNW") to fulfill the common carrier obligation on the line.

6. At the time AUNW began operations, both the Southern Pacific and Union Pacific railroads had connections with the Giddings-Llano at McNeil. The Southern Pacific served Giddings-Llano shippers by interchanging with their traffic at McNeil. Among these shippers was Austin White Lime, which ships outbound limestone products over the Giddings-Llano to the Houston area from McNeil, Texas.

7. Once AUNW commenced operations from the Southern Pacific in 1986, the Union Pacific became the only class I carrier to interchange Giddings-Llano traffic at McNeil. Prior to that time, the Giddings-Llano had two-carrier service at McNeil.

8. The AUNW's service as operator of the Giddings-Llano was rifled with failures: the AUNW simply disregarded some 100 yards of trackage rights that Southern Pacific enjoyed over Union Pacific track in order to serve Austin White Lime (the Union Pacific no longer acknowledges the availability of these trackage rights to the AUNW's successor -- Longhorn); in 1994, the AUNW discontinued service over the westernmost segment of the line, which extends from Scobee to Llano; in 1995, the AUNW discontinued operations over

the easternmost segment of the line, which extends from Smoot to Giddings; particularly toward the end of its tenure, AUNW subsequently scaled back maintenance and crews on the line, and conducted no betterment or marketing activities.

9. In early 1996, near the expiration of AUNW's ten-year term as operator, the City of Austin and Capital Metro issued a request for proposals for a Giddings-Llano operator. The City and Capital Metro received only two proposals in response; the AUNW did not submit a proposal.

10. The AUNW served as operator of the Giddings-Llano until May 3, 1996, at which time the Central of Tennessee Railway & Navigation Company, Inc. d/b/a Longhorn Railway Company ("Longhorn") assumed operations. (Capital Metro recently renewed Longhorn's contract as operator; its contract is effective through 2005.)

11. Longhorn has expressed to Capital Metro extreme concern regarding the viability of its operations on the line, unless it obtains some long-term relief from Union Pacific's service deficiencies and exercise of market dominance on the line. Longhorn has indicated to Capital Metro that it simply cannot continue to sustain losses similar to those it has incurred since consummation of the UP/SP merger.

12. Should Longhorn not obtain relief from the monetary losses it now incurs as a result of the UP/SP merger and UP/SP service deficiencies, Longhorn informs Capital Metro that it likely will not be able to continue to serve as operator of the line.

13. Should Longhorn fail, as did its predecessor AUNW, Capital Metro anticipates that it would be very difficult, if not impossible, to find a replacement operator. Given that Capital Metro selected the AUNW from a field of one, and Longhorn from a field of only two, a Longhorn failure following on the heals of the AUNW failure could prove impossible to overcome.

14. Moreover, even if Capital Metro were eventually able to retain a substitute operator, should Longhorn fail, the costs incurred in the interim would likely be extremely high. Capital Metro has no budget allocation for such eventuality. Some of the costs Capital Metro anticipates it would incur in that event include the costs of a new procurement, costs to obtain temporary substitute operator service (which likely would be at a premium and devoid of any line maintenance or other obligations that would require investment in the line), and personnel changes commensurate with these revised responsibilities. The situation could jeopardize pending and prospective grants and federal funds.

15. Assuming the worst case scenario, with Capital Metro unable to retain any replacement operator, even over the longer term, Capital Metro would have no choice but to seek to discontinue freight operations on the line. No doubt, this would lead to protests filed with the STB on behalf of shippers, and possible additional legal battles. Many of the shippers on the line currently rely on rail for 100% of their transportation needs, and possibly would have to close or relocate their businesses in the event rail service is no longer available on the Giddings-Llano. A domino effect would ensue, since the Austin Steam Train Association, which shares use of the line with Longhorn, would be impacted by an operator

failure as well.

16. Capital Metro already has contributed and committed substantial resources to improving the Giddings-Llano line. For fiscal year 1998 alone, Capital Metro has approved over $968,000 for signal and crossing protection improvements; $614,000 for street crossing improvements; and about $300,000 for track infrastructure. In addition, Capital Metro anticipates funding a $750,000 project to relocate the Giddings-Llano weigh scale from downtown Austin to McNeil. For fiscal year 1999, Capital Metro has committed $1 million for signal improvements and an additional $1 million for track infrastructure improvements. In addition, Llano County, with Capital Metro serving as project administrator, has obtained a federal grant in the amount of $2.4 million, which will be used during late 1999 and early 2000 to rehabilitate track over the approximately 27 miles of track between Llano and Kingsland.

17. The above budget items have been approved by the Capital Metro Board of Directors after careful study, which required significant time and resources.

18. Capital Metro takes its responsibilities as owner of the Giddings-Llano seriously, and is pleased to be able to contribute to the success of the line. In the shorter term (the next few years), however, Capital Metro is not in a position to dedicate additional, currently unallocated resources to improvements not already identified above. In particular, Capital Metro is not in a position to sustain the financial losses that likely would result, should Longhorn fail as operator on the line.

The foregoing is correct to the best of my knowledge, information, and belief.

JOE Z. RAMIREZ
Interim Rail Development Officer

CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY

5

US OFFICE PRODUCTS

EXHIBIT 5(a)

BFI Recycling

4712 Bolm Road ♦ Austin, Texas 78702
512-385-7600 Phone 512-385-7600 ♦ Fax 512-389-1301Fax 512-389-1301

6-18-98

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-00001

Dear Secretary Williams:

I am filing this letter in support of Capital Metro's request for remedial conditions in the Surface Transportation Board's merger oversight proceeding. Capital Metro is requesting interchange rights for BN/SF and Longhorn at McNeil.

BFI owns a recyclery here in Austin that ships commodities all over the world. In the commodity business shipping is essential. The selling price you have today may not be the selling price you get tomorrow. We ship on the average of 60 cars and 200 trucks per month. Most of the commodity being shipped on the trucks could be shipped out on rail cars, which is preferred by the customer, if they were available. I estimate we could ship between 80 to 100 cars per month if we knew we had a reliable source of rail cars. We must schedule our shipments in the beginning of each month to assure our having enough transportation for the volume we produce. Over the past two years we have been relying on the trucking industry more and more due to the railroad's inability to meet our transportation needs. For this reason I believe if we had access to BN/SF at McNeil it would allow our business an option for improved service.

The foregoing matters are true and complete to the best of my knowledge and belief.

Sincerely,

Rick J. Carpenter

Rick J. Carpenter
District Vice President

EXHIBIT 5(b)

PIONEER CONCRETE OF TEXAS, INC.

800 Gessner, Suite 1100
Houston, Texas 77024
713/468-6868
713/984-8163 Facsimile

June 16, 1998

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

RE: Support for Capital Metro's request for Board Consideration

Dear Secretary Williams:

As part of the Surface Transportation Board hearing on rail service in the Western United States, we request the Surface Transportation Board consider our views on this matter.

I file this letter in support of Capital Metro's request for remedial conditions in the Surface Transportation Board's merger oversight proceedings. Capital Metro is requesting interchange rights for BN/SF and Longhorn Railroads, at McNeil Junction.

Pioneer Concrete of Texas, Inc., supports all proposals that improve efficiencies, promotes and increases competition between railroads. No company should be trusted with the burden of fairness, without market competition.

I am fully authorized to make this statement on behalf of Pioneer Concrete of Texas, Inc.. We appreciate your non biased review and evaluation of the rail situation in Texas. Thank you for consideration of our position on this matter.

Sincerely,

Bill Debes
Rail Manager

EXHIBIT 5(c)

BALCONES RECYCLING
2416 EAST 6TH STREET
AUSTIN, TEXAS 78702
512. 472-6200 VOICE
512. 472-6203 FAX
http:if-it-tears.com

June 4, 1998

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

Dear Secretary Williams,

I am filing this letter in support of Capital metro's request for remedial conditions in the Surface Transportation Board's merger oversight proceeding. Capital Metro is requesting interchange rights for BN/SF and Longhorn at McNeil.

Balcones Recycling , Inc. is in the business of supplying mills with feedstock to manufacture new paper. We have existing contracts with mills in Mexico to ship product (approx. 30 rail cars per month from Austin). The lack of rail cars for the past six - eight months has created extreme difficulty in getting our material to the end user. Our mill contracts are long term in nature with increased volume requirements, therefore our company anticipates a greater need for rail service in the future. Anything that can be done to enhance rail service in Austin would be beneficial to our business. In fact, rail service is a necessity for our survival. The debacle with the Union Pacific speaks for itself. Balcones Recycling has suffered logistically and financially. The economic impact has been extreme because of increased transportation costs by truck (as rail cars have been unavailable) and the inability to transport material to the most price competitive markets. Balcones Recycling, Inc. operates facilities in Dallas and Little Rock as well, and ships approximately 70-80 rail cars per month.

Please, give us another option with the BN/SF in Austin. Longhorn railway has done an excellent job servicing our Austin facility during the very trying times of the last several months. If more specific information is needed, I will be more than happy to visit with anyone on this subject.

The foregoing matters are true and complete to the best of my knowledge and belief.

Sincerely,

Kerry R. Getter, CEO

CAPITOL
AGGREGATES, LTD.
DELTA OPERATION A DIVISION OF CAPITOL AGGREGATES, LTD.
P.O. BOX 33240, SAN ANTONIO, TEXAS 78265-3240, AREA CODE 210 655-3010

June 22, 1998

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

Dear Secretary Williams,

I am filing this letter in support of Capital Metro's request for remedial conditions in the Surface Transportation Board merger oversight proceeding. Capital Metro is requesting interchange rights for BN/SF and Longhorn at McNeil.

Capitol Aggregates is an aggregate producer with a quarry at Fairland, Texas. We provide crushed stone to the highway construction industry for seal coat, hot mix asphalt and micro surfacing. Our major market is the Houston, Texas area which we service by rail. Over the past year, we have experienced delays in both service and rail car supply on the Union Pacific. There appears to be some improvement, but it is still below previous levels. We have had, and are still having, the same problems as most of the shippers in this industry. By being able to interchange efficiently with the BNSF, it would open up new market areas to us that previously we could not reach. We currently ship to one customer on the BNSF, but the interchange at Elgin is not effective or efficient, and causes delays in receiving empties and getting loads to the interchange. Interchanging at McNeil would be an improvement in this movement and I feel would benefit our company.

The forgoing matters are true and complete to the best of my knowledge and belief.

Sincerely,

Michael W. Haas
Sales Representative

EXHIBIT 5(e)

COLD SPRING

Quarriers and fabricators of building stone and memorialization products.

TEXAS GRANITE DIVISION
P.O. Box 2540 - Highway 1431 West
Granite Shoals Texas 78654
800-247-2637 830-598-6570 Fax 830-598-6923

06/25/98

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

Dear Secretary Williams:

I am filing this letter in support of Capital Metro's request for remedial conditions in the Surface Transportation Board's merger oversight proceeding. Capital Metro is requesting interchange rights for BN/SF and Longhorn at McNeil.

Texas Granite is a quarrier and fabricator of stone products used throughout the world. We ship an average of approximately 250 tons of product per week from our Marble Falls, Texas location. Virtually none of this goes by rail. There is a variety of reasons for this, not the least of which is the lack of service we receive from the UP.

We believe that the proposed interchange with the BN/SF at McNeil would definitely provide our company better service.

The foregoing matters are true and complete to the best of my knowledge and belief.

Sincerely,

Kevin Matthews
Special Projects Manager

EXHIBIT 5(f)

ENGINEERED MINERALS

J.M. Huber Corporation
Engineered Minerals Division

90 Avenue N
P.O. Box 1060
Marble Falls, TX 78654 USA
210 693-3575
Fax 210 693-2315

JUNE 4, 1998

THE HONORABLE VERNON A. WILLIAMS
SECRETARY
SURFACE TRANSPORTATION BOARD
1925 K STREET, N.W.
WASHINGTON, D.C. 20423-0001

DEAR SECRETARY WILLIAMS:

I AM FILING THIS LETTER IN SUPPORT OF CAPITAL METRO'S REQUEST FOR REMEDIAL CONDITIONS IN THE SURFACE TRANSPORTATION BOARD'S MERGER OVERSIGHT PROCEEDING. CAPITAL METRO IS REQUESTING INTERCHANGE RIGHTS FOR BN/SF AND LONGHORN AT MC NEIL.

OUR PLANT SHIPS GROUND LIMESTONE IN COVERED HOPPER CARS FROM OUR MARBLE FALLS TEXAS LOCATION WHICH IS SERVED BY THE LONGHORN RAILROAD. ONE OF OUR MAIN RAIL CUSTOMERS IS SERVED BY THE BN/SF, WE CURRENTLY EXPERIENCE ROUTINE DELAYS WITH THE UP GETTING THE CARS FROM THE LONGHORN TO THE BN/SF. THE ADDITION OF INTERCHANGE CAPABILITIES AT MC NEIL WOULD BE A TREMENDOUS BENEFIT TO THE EXISTING BUSINESS AND WOULD IMPROVE THE POTENTIAL TO INCREASE THE BUSINESS.

THE FOREGOING MATTERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SINCERELY,

Kelly J. Osborne

KELLY J. OSBORNE
PLANT MANAGER

EXHIBIT 5(g)

June 9, 1998
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Secretary Williams:

I am filing this letter in support of Capital Metro's request for remedial conditions in the Surface Transportation Board's merger oversight proceeding. Capital Metro is requesting interchange rights for BN/SF and Longhorn at McNeil.

The name of our company is Guthrie Lumber Sales. Our company is a family owned and operated business that has existed here in Austin for over fifteen years. The owner of the company has been in this industry for 35 years. We feel that our company has played an integral part in the Austin housing market over the last fifteen years. We are a wholesale distribution business of commodity building materials.

The key to success in our industry is how well a company can manage the turns of their inventories. Our margins are very slim and therefore we are forced to maintain a low inventory and sell high volumes. So you can very easily see that the shipment of materials in a timely fashion is an essential element to our company's existence.

Other than some minor problems over the last 15 years we have not experienced any rail shipment problems of any significance until February 1997. As you are probably already aware of this just happens to coincide with the Union Pacific purchase of the Southern Pacific Railway. Prior to the purchase our average shipment time(the time that a carload of material is on the tracks before it arrives here in Austin), was 14 days. By May 1997 it had climb to 38 days and then by August it was 47 days. When you have as large a fluctuation as this it makes it very difficult to maintain a sellable inventory. Our company had commitments that it had to take care of and it cost our company. If you were to add up the total cost between excess interest, buying outside inventory, lost business,market devaluation and additional freight costs you might be astonished to find out that it cost us approximately $ 500,000.00 in 1997 alone.

We had cars that took over four months to get to us. This one car alone cost $50,000.00 and the market dropped on the car was a $10,000.00 loss. Plus we paid more money to outside source to cover our customer and we lost an additional $3,500.00. We also paid excess $2,000.00 in interest. So therefore this particular car was a $16,500.00 loss for our company. And when your shipping 500 cars a year this can add up very quickly.

I have been hearing for a solid year now how the Union Pacific would clean up all the problem areas and so forth. This has been nothing short the the worst rail disaster in our nations history causing close to 5 billion dollars of losses for companies in the U.S. in 1997. This merger has crippled our company all at he hands of the people who say they will increase the quality of service to their customers. They were able to convince the congress that it was all in the best interest of their combined customers for this merger to go through. I think that it is fairly apparent now that it was a bunch of hogwash. Our country is now down to 3 major rail carriers and this is a significant problem. The greatness of our country is based on our freedom, but our economic greatness is based on our freedom of competition. And were there is limited competition there is limited growth.

So I now will ask something of you. For our company to have a future in this industry we must have access to materials in a more timely order. And the only way we can be sure that this will take place is for the Surface Transportation Board to allow the Longhorn Railway to have interchange rights for the BN/SF at McNeil. This would definitely improve the service and assure us of a consistent flow of merchandise. It is time that someone step up and make a good decision regarding this matter because enough bad ones have already been made. I have personally written too Senator Kay Bailey Hutchison concerning this matter. In her response to me she stated that if there was anything that she could do to help this situation please let her know. Well the way it looks to me this is the only thing that can sustain our business.

The foregoing matters are true and complete to the best of my knowledge and belief.

Sincerely,

Jeffrey S. Bimell

EXHIBIT 5(h)

VERIFIED STATEMENT
OF GARY WALLER

1. My name is Gary Waller. My business address is 3700 Hulen Street, Fort Worth, TX 76107. For the past twenty-four years, I have been employed by Chemical Lime Company (hereafter "CLC") as Traffic Manager. In that capacity, I handle all phases of industrial and logistics management including my company's transportation needs. I appear here as a witness vigorously supporting the present petition of the Capital Metropolitan Transportation Authority (hereafter "Capital Metro")[1] before the Surface Transportation Board ("the Board") to establish dual interchanges between LHRR and the Burlington Northern and Santa Fe Railway ("BNSF") at Elgin and McNeil, TX. Should the Board decline to grant that relief, CLC supports Capital Metro in its request to relocate the LHRR/BNSF interchange from Elgin to McNeil, TX.

2. Headquartered in Fort Worth, TX, CLC is a privately held corporation engaged in the mining of limestone, the processing of limestone into lime and lime products, and the sale of lime and lime products for commercial and industrial uses. CLC presently owns and operates 14 rail served manufacturing plants and 8 terminal facilities at points in Alabama, Arizona, California, Colorado, Florida, Idaho, Missouri, New Mexico, Nevada, Oregon, Texas, Utah, and West Virginia as well as in British Columbia, Canada. Eleven of these facilities are served

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[1] As supported by the Longhorn Railroad Company (hereafter "LHRR").

directly by the Union Pacific Railroad ("UP")[2] or through a short line railroad connecting with UP.

3. As relevant here, CLC presently owns and operates a quarry and kiln located at Marble Falls, TX. CLC mines and processes dolomitic limestone into dolomitic quicklime at this facility, which is located at the extreme west end of a rail line ("The Line") owned by Capital Metro. CLC would be regarded as a "two-to-one shipper" but for the establishment of interchange rights between LHRR and BNSF at Elgin.

4. Since April, 1996, LHRR, a class III short line railroad and contract operator for Capital Metro, has provided all rail service over The Line.[3] The Line presently serves about __ customers including CLC. The Line physically connects with UP at McNeil, TX (near Austin) and also at Elgin, TX, and Giddings, TX, located on the eastern end of The Line. LHRR interchanges traffic with UP at McNeil and, starting about a year ago, with BNSF at Elgin (by means of BNSF trackage rights over UP). Although I do not claim to be an "expert" in railroad operations, I have visited each one of these locations and inspected the interchange facilities located there. The Elgin interchange is decidedly inferior to McNeil in four respects. First, McNeil has

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[2] Including its affiliate the Southern Pacific Railroad ("SP").

[3] The Line was originally owned and operated by the Southern Pacific Transportation Company and sold to the City of Austin in 1986. The City recently transferred its interest to Capital Metro. From 1986 to 1996, rail service over The Line was provided by the Austin & Northwestern Railroad, a class III short line railroad subsidiary of Rail-Tex.

the physical capacity to handle about 90 cars of interchange traffic versus 12 cars at Elgin. Second, UP serves McNeil daily whereas BNSF presently operates to Elgin only two days per week (for interchange with LHRR). Third, LHRR does not interchange with BNSF more frequently than twice per week at Elgin. Fourth, Elgin is significantly further than McNeil (by 40.8 miles), thereby increasing the operating expenses of a marginal short line railroad without any corresponding revenue increases.

5. CLC's Marble Falls quarry produces one commodity -- dolomitic quicklime. The fact that 90% of this traffic moves by rail highlights the importance of good rail service to our plant viability. The plant does not use rail for inbound fuel inasmuch as the plant burns natural gas to transform raw dolomitic limestone into dolomitic quicklime. In preparation for this statement, I have spoken with the manager of CLC's Marble Falls plant and have reviewed the railroad shipping records for that location. I am submitting with my statement under seal three highly confidential exhibits depicting all rail freight movements from the Marble Falls facility for calendar year 1997 and 1998 to date showing the number of carloads, the railroad markings and car number of the rail car used to transport the traffic, the name and destination of the consignee, and the railroad and routing used. All together, the Marble Falls facility shipped 537 car loads for 1997 and 398 car loads for 1998 to date. In 1997, 75% of all outbound loads were interchanged to the UP-SP at McNeil. For the year 1998 to date, 20% of all outbound loads

were interchanged to UP-SP at McNeil. The increased use of BNSF is due to two important factors. First, UP cannot move their equipment fast enough to ensure there will be sufficient empties for loading (i.e. the fleet is too small yet they will not add equipment to the fleet for congestion reasons). Second, the tremendous variation in UP transit times has not only created a scheduling nightmare for CLC and its customers as well as a time-consuming administrative and accounting problem to compile and present spotting information for reviewing unwarranted demurrage invoices. The increased use of BNSF should not be considered indicative of the suitability of Elgin as an interchange location.

6. Pre-merger, The Line connected with two class I railroads, UP at McNeil and Elgin and SP at Giddings. Until about 10 years ago, customers on The Line could chose between routings on UP (the former Missouri Pacific Line at McNeil), the Missouri-Kansas-Texas Railroad (now UP) at Elgin, and the Southern Pacific Railroad (SP) at Giddings. Gradually, as UP acquired each of these companies, our competitive options shrank from three to one (UP). In 1996, the Board conditioned its approval of the acquisition of control of the SP on a grant of competitive trackage rights to BNSF, theoretically preserving some of the competition formerly offered by SP. As a condition of UP's acquisition of control of SP, Capital Metro sought rights over UP to permit it to connect with BNSF at either McNeil or Kerr, just north of McNeil. While the Board denied that request,

it offered Capital Metro the choice of a BNSF connection at either Elgin or Giddings, which are 40.8 and 71.5 miles, respectively, further than McNeil from CLC's Marble Falls plant. Capital Metro selected Elgin as the interchange location. LHRR must traverse the City of Austin to reach both Giddings and Elgin but does not have to go through the City of Austin to serve McNeil.

7. The ensuing two years and the service problems experienced by the combined Union Pacific Railroad System have now given rail shippers a basis for petitioning the Board for modifications to the 1996 merger conditions. Looking back over this period, UP's service has been anything but good. Despite the limitations on BNSF's service explained immediately below, its service has been notably better than that of UP. However, the simple fact of the matter is that the service provided by BNSF today through the Elgin interchange could not nearly be the equal of the competition formerly provided by SP in south Texas prior to its consolidation with UP in 1996 or envisioned by the Board in the UP-SP control case.

8. Today, LHRR provides service on demand, but at a minimum of five times per week, over The Line from Llano/Marble Falls on the west and McNeil and provides service on demand, but at a minimum of three times per week (Tuesday, Thursday, and Saturday), east of McNeil to Elgin. While UP serves and interchanges traffic daily with LHRR at McNeil, BNSF presently operates to and interchanges traffic with LHRR at Elgin only

twice per week. Moreover, although BNSF holds rights to operate south of Elgin to Houston, it does not do so. It moves LHRR interchange traffic north to its own lines before moving it east or south to Houston. Also LHRR does not operate more frequently than twice per week east of Smoot (MP 52.1) in part because of the frequency limitations on BNSF's connecting service. In addition, LHRR lacks the locomotives and crews to run more frequently to Elgin and cannot justify adding additional equipment and personnel based on current business levels. By contrast, BNSF presently serves Kerr, TX, about two miles from McNeil, on a daily basis (for interchange with the Georgetown Railroad). Allowing BNSF to operate two miles south to McNeil to connect with LHRR would afford shippers on The Line such as CLC service on a minimum of five times per week basis. This service change would replicate the service that existed under the SP which served and interchanged traffic daily at Giddings and offered connections to Houston and other south Texas points. As explained in more detail in paragraph 10 below, greater use of BNSF on certain CLC traffic -- specifically traffic destined to North Star Steel's plant near Beaumont, TX -- would help resolve UP's Gulf Coast congestion problems by establishing a Houston "bypass route."

9. Frequency matters aside, the present interchange arrangements present other problems. As the Board is well aware, UP has serious car supply problems. Some shippers including CLC have been forced to acquire or lease their own cars to ensure

their needs are met. CLC has encountered difficulty reaching UP sales and marketing personnel for the purpose of resolving service issues. While the LHRR/UP McNeil interchange would appear to be a direct way to reach CLC's destinations, outbound cars picked up by UP's Taylor (TX) based local frequently sit at Taylor for 8-12 days before being transferred to a connecting train. By comparison, CLC has found BNSF's car supply and personnel most responsive to its needs. Although the LHRR/BNSF Elgin interchange results in up to four additional days of transit time than would be the case with a daily LHRR/BNSF McNeil interchange, present BNSF service through Elgin is more consistent than UP's daily service through McNeil.

10. By now, the Board is deeply immersed in the western railroad service problems relating to the UP-SP consolidation. It has initiated several different proceedings dealing with this issue including one -- Ex Parte No. 628 -- in which CLC has filed comments. There, CLC told the Board about several of its UP related rail service problems. CLC would like to repeat two stories that are relevant to its Marble Falls facility.

First, CLC presently ships dolomitic quicklime to North Star Steel near Beaumont, TX, using LHRR to an interchange with UP at McNeil, TX. Formerly that trip required a transit time of about 7 days. Due to UP's service problems in Houston, that haul now requires at least 15 days. That additional time has forced CLC to acquire (or lease) its own rail cars, make alternative arrangements to meet customer demand, and incur additional administrative and distribution costs as outlined in CLC's comments in Ex Parte No. 628. This situation has improved somewhat with the advent of the BNSF interchange at Elgin one year ago. CLC can now route this traffic around (north of) Houston on a BNSF/Kansas City Southern routing. This service alluded to in paragraph 8 entails the use of BNSF's former Santa Fe Railway Somerville-Silsbee line connecting in turn with another BNSF line into Beaumont and then to the KCS to serve the customer. This routing totally avoids the congested Gulf Coast area bypassing Houston to the north, avoiding UP-SP trackage completely, and making UP equipment available to meet customer needs. Permitting LHRR to interchange with BNSF at McNeil instead of Elgin would improve the service even more. The McNeil interchange would permit service frequency to double with a corresponding decrease in trip times and trip related delays. To the extent the Board makes use of BNSF more attractive by allowing the McNeil interchange, it helps resolve UP's Gulf Coast congestion problems by means of this imaginative, attractive BNSF-KCS routing option bypassing Houston completely.

As the second example, CLC currently moves traffic from Marble Falls, TX, to West Memphis, TN, using either BNSF direct (via Elgin) or UP direct to Memphis for interchange to BNSF for handling to West Memphis. The move from Memphis to West Memphis -- a ten minute trip by automobile -- can take 5 to 6 days by rail. And to make matters worse, UP further delayed CLC's traffic by improperly blocking cars to be interchanged to BNSF, resulting in misrouted cars (to Tulsa, OK, or Birmingham, AL). The solution is for CLC to route traffic via BNSF, a single line class I railroad haul. However, in order for this option to be really attractive, LHRR should be permitted to interchange traffic at McNeil thereby permitting greater frequency of service and the interchange of a larger number of cars.

11. It is my understanding that the service problems resulting from UP's control of SP have had a tremendous adverse impact on LHRR. UP's inability to furnish cars and provide connecting service to LHRR on a timely basis has undermined its ability to meet shippers' needs and severely threatened its economic well being. CLC is deeply concerned that a continuation of these service problems could force LHRR into bankruptcy making rail service on this line even more chaotic. Should LHRR be forced to terminate service, even a temporary cessation of rail service over the Marble Falls/LLano-Giddings line would have a devastating impact on CLC. As a minimum, our company would be forced to ship by truck at higher rates. Because the cost of transportation is included in the products we ship, any rate increase would eliminate CLC's profits. Even worse, we might be forced to close the Marble Falls plant until dependable rail service could be restored.

12. In conclusion, I wholeheartedly support the efforts of Capital Metro and LRC to move the LHRR/BNSF interchange from Elgin to McNeil, TX and respectfully ask the Board to grant the relief sought by this petition.

VERIFICATION

STATE OF Texas)
) ss: 466-62-0833
COUNTY OF Tarrant)

I, Gary Don Waller, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Gary Don Waller

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

Notary Public of Tarrant County, Texas

KITTY L. BOOKOUT
MY COMMISSION EXPIRES
December 21, 2000

Kitty L. Bookout

My Commission expires:
12/21/2000

**HIGHLY CONFIDENTIAL
ATTACHMENT
FILED UNDER SEAL**

6

US OFFICE PRODUCTS

LAMAR SMITH
21ST DISTRICT, TEXAS
JOHN W. LAMPMANN
CHIEF OF STAFF

2231 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4321
(202) 225-4236

EXHIBIT 6(a)

COMMITTEE ON THE BUDGET
COMMITTEE ON THE JUDICIARY
CHAIRMAN,
SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS
SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

Congress of the United States
House of Representatives

June 26, 1998

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

Dear Secretary Williams,

Constituents of mine who utilize the freight services of the Giddings-Llano Rail Line have shared with me that Capital Metro of Austin, Texas, is making application to your Board for a freight interchange at McNeil with the Burlington Northern/Santa Fe Rail Line.

Those constituents have advised me that such an interchange would greatly relieve rail congestion problems being experienced by businesses served by the Giddings-Llano Rail Line.

I ask that you give Capital Metro's application every fair and proper consideration.

Thank you for your attention to this important matter.

Sincerely,

Lamar Smith

Lamar Smith
Member of Congress

LS:os

PLEASE REPLY TO:

☐ 1100 N.E. LOOP 410
SUITE 640
SAN ANTONIO, TX 78209
(210) 821-5024

☐ 221 E. MAIN STREET
SUITE 318
ROUND ROCK, TX 78664
(512) 218-4221

☐ 1006 JUNCTION HIGHWAY
KERRVILLE, TX 78028
(830) 895-1414

☐ 33 EAST TWOHIG STREET
SUITE 302
SAN ANGELO, TX 76903
(915) 653-3971

☐ 4305 NORTH GARFIELD
SUITE 228B
MIDLAND, TX 79705
(915) 687-5232

PRINTED ON RECYCLED PAPER

LLOYD DOGGETT
10TH DISTRICT, TEXAS

COMMITTEE ON THE
BUDGET

COMMITTEE ON
RESOURCES

EXHIBIT 6(b)

WASHINGTON OFFICE:
126 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-4865

DISTRICT OFFICE:
763 FEDERAL BUILDING
AUSTIN, TX 78701
(512) 916-5921

e-mail:lloyd.doggett@mail.house.gov
http://www.house.gov/doggett/

Congress of the United States
House of Representatives

June 3, 1998

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

Dear Secretary Williams:

Capitol Metro, the local transit authority in my district in Austin, Texas, has applied to the Board for an expanded interchange on the Giddings-Llano rail line at McNeil. Capitol Metro owns this line and contracts with a short-line operator, Longhorn, to manage its day-to-day operations. The Giddings-Llano rail line provides a vital transportation link for many businesses in my district and I write in support of that application.

As you are aware, Texas shippers are suffering significant harm as a result of the current UP-SP difficulties. However, those using the Giddings-Llano line have few alternatives to using UP-SP cars and, as a result, often face significant delays in moving their cargo.

An expanded interchange at McNeil would allow for freight access to the BN/SF line, creating greater competition and increased efficiency for these businesses. In addition, such improvements would play an important role in improving the economic viability of the short line operator managing this line.

I urge to Board to act favorably on this application.

Sincerely,

Lloyd Doggett

Lloyd Doggett

LD:dtw

PRINTED ON RECYCLED PAPER

EXHIBIT 6(c)

THE STATE OF TEXAS

Sherri Greenberg

Texas House of Representatives

P.O. Box 2910
Austin, Tx, 78768-2910
Room E1.420, Capitol Extension
512-463-0700

Committees:
Appropriations
Economic Development

June 15, 1998

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

Dear Secretary Williams:

Please accept this letter in support of Capital Metro's application for an interchange at McNeil for the Giddings-Llano Rail Line. In the interest of serving constituents who use the Giddings-Llano rail line for business, I am offering my support of Capital Metro's application.

It has come to my attention that difficulties with service by the UP/SP are affecting these businesses, and I believe that the interchange at McNeil will bring relief to these circumstances.

I understand that the opening of the interchange at McNeil to BN/SF will significantly enhance service on the Giddings-Llano rail line.

For the reasons stated above I support Capital Metro's application for freight service interchange rights with the BN/SF at McNeil.

Thank you for your consideration.

Sincerely,

Sherri Greenberg

Sherri Greenberg
State Representative

EXHIBIT 6(d)

TEXAS HOUSE OF REPRESENTATIVES

STATE CAPITOL, ROOM E2.602
1400 CONGRESS AVENUE
AUSTIN, TEXAS 78701

POST OFFICE BOX 2910
AUSTIN, TEXAS 78768-2910

(512) 463-0552 TELEPHONE
(512) 463-5896 FACSIMILE
GLEN.MAXEY@HOUSE.STATE.TX.US

GLEN MAXEY
FIFTY-FIRST DISTRICT
TRAVIS COUNTY

June 5, 1998

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

Dear Secretary Williams:

Capital Metro has applied for freight service interchange rights with the BN/SF at McNeil and this letter is written in support of that application.

Currently, the circumstances in the area in question are having a negative impact on shippers and other businesses. There have been difficulties with the service by the UP/SP. I believe an interchange at McNeil for freight access to the BN/SF would greatly improve the ability of these businesses to access more cars, thereby improving efficiency and ensuring success for these businesses.

Moreover, the opening of the interchange at McNeil to BN/SF and moving products on the BN/SF will significantly enhance service on the Giddings - Llano rail line and would help alleviate congestion in Texas in general, particularly in the Houston area.

For the reasons stated, I am in support of Capital Metro's application for freight service interchange rights with the BN/SF at McNeil.

Thank you for your consideration

Sincerely,

Glen Maxey

Glen Maxey
State Representative

EXHIBIT 6(e)

The State of Texas
House of Representatives
Austin

ELLIOTT NAISHTAT
STATE REPRESENTATIVE
DISTRICT 49

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0668

June 5, 1998

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

Dear Secretary Williams:

I am writing to you in support of Capital Metropolitan Transit Authority's (Capital Metro) application for an interchange at McNeil for the Giddings-Llano rail line. My support is offered in the interest of serving my constituents who use the Giddings-Llano rail line for business.

Difficulties in service with the Union Pacific/Southern Pacific are creating congestion and other problems for shippers along these lines. An interchange at McNeil for freight access to the Burlington North/Santa Fe would greatly improve the ability of these businesses to access more cars. Additionally, the opening of the interchange at McNeil to Burlington North/Santa Fe will significantly enhance service on the Giddings-Llano rail line by allowing shippers to move their product more quickly.

Capital Metro has offered a responsive application that will help solve these problems and ensure a smooth flow of commerce along rail lines in central Texas. I urge you to consider Capital Metro's filing and the importance of efficient rail transportation to our region's future economic growth.

Thank you for your consideration. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Elliott Naishtat

Elliott Naishtat

EN/bd

COMMITTEES: HUMAN SERVICES, VICE CHAIR; JUVENILE JUSTICE & FAMILY ISSUES

EXHIBIT 6(f)

State of Texas
House of Representatives

ROBERT TURNER
STATE REPRESENTATIVE
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0644
(512) 463-7637 FAX

P.O. Box 879
211 West Pecan
Coleman, Texas 76834
(915) 625-3596
(915) 625-3747 FAX

June 30, 1998

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

Dear Secretary Williams:

This letter is written on behalf and in support of Capitol Metro's application for a freight interchange at McNeil with Burlington Northern/Santa Fe. Capital Metro, the local transit authority in Austin, Texas, has in place a contract with Longhorn Rail Company as their manager for freight operations.

In view of the current difficulties Texas businesses are having in shipping and receiving goods, because of the poor performance of Union Pacific/Southern Pacific, the approval of this application in an expeditious manner is of extreme importance. An interchange at McNeil for freight access to the BN/SF would greatly improve the ability of these businesses to access more cars and provide efficient service which is important to the success of these businesses. The very survival of many businesses, as well as that of the rail freight operator is at stake.

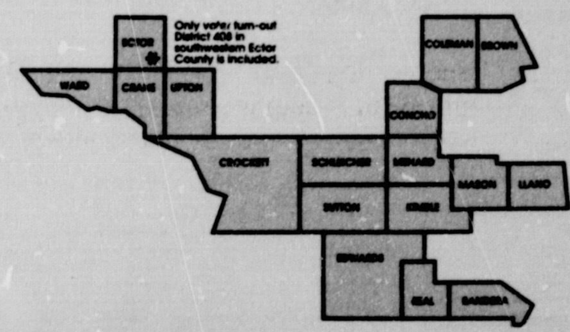
If the requested interchange at McNeil is approved, allowing freight access to the Burlington Northern/Santa Fe line at McNeil, will significantly enhance service on the Giddings-Llano rail line and help alleviate congestion in Texas and especially the Houston area by moving product on the BN/SF. Llano County, which is in the far western end of this line, is in my state legislative district. I therefore have a great interest in the prompt approval of Capitol Metro's application.

It is without reservation that I ask that the Surface Transportation Board act favorable on the application being made by Capitol Metro for a freight interchange at McNeil with BN/SF.

Sincerely,

Bob Turner

Bob Turner



DISTRICT 73

EXHIBIT 6(g)

KIRK WATSON
MAYOR

OFFICE OF THE MAYOR

P.O.BOX 1088
AUSTIN, TEXAS 78767
512 499-2250
FAX 512 499-2337
kirk.watson@ci.austin.tx.us

July 6, 1998

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

Dear Secretary Williams:

I am in support of Capital Metro's application to have interchange rights with BN/SF at McNeil on the Giddings - Llano rail line.

The congestion problems in the Houston area have made it very difficult for shippers on the Giddings - Llano line to receive and send cars in a timely manner from UP/SP. This circumstance has harmed the shippers' businesses and reduced their use of the railroad as a method of shipping.

Opening the McNeil interchange to BN/SF would increase competition and the accessibility of cars to the businesses which use the Giddings / Llano rail line.

For all these reasons, I support Capital Metro's application for freight service interchange rights with BN/SF at McNeil.

Sincerely yours,

Kirk Watson
Mayor

EXHIBIT 6(h)

MIKE HEILIGENSTEIN
County Commissioner
Precinct 1, Williamson County

211 COMMERCE COVE #7
ROUND ROCK, TEXAS 78664
(512) 248-3238
(512) 248-3243 FAX
email: ccstein@swbell.net

June 1, 1998

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

RE: Capital Metro's Application for an Interchange at McNeil

Dear Secretary Williams:

The Giddings-Llano rail line is in serious need for assistance. The difficulties with service by the UP/SP is affecting the businesses in the area who use this line and I would like to help bring relief to their problems. An interchange at McNeil for freight access to the BN/SF would greatly improve the ability of businesses to access more cars and provide more efficient service. I support the opportunity to significantly enhance service on the Giddings-Llano rail line and to help alleviate congestion in Texas by moving product on the BN/SF. I also support strengthening the economic viability of the operator who is at serious risk of economic failure if he can not improve service very soon.

I am also concerned about the safety of my constituents. The congestion at the McNeil interchange is often causing many freight cars to stop and block a high traffic corridor. The congestion obstructs emergency vehicles from answering distress calls. This is a serious problem that can be resolved by a new interchange at McNeil for the Giddings-Llano rail line.

For all of the above reasons, I support Capital Metro's application for freight service interchange rights with the BN/SF at McNeil.

Sincerely,

Mike Heiligenstein

Mike Heiligenstein
Williamson County Commissioner, Precinct 1

cc: Williamson County Judge Doerfler

EXHIBIT 6(i)

KAREN SONLEITNER

TRAVIS COUNTY COMMISSIONER
PRECINCT TWO

June 3, 1998

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

Dear Secretary Williams:

This letter is in reference to the pending application by Capital Metro, the Metropolitan Transit Authority that serves Austin, Texas and parts of Travis and Williamson Counties, for an interchange at the McNeil crossing for the Giddings-Llano Rail Line.

I am sure you will get other correspondence on this file, focusing on the impact this is having on surface transportation. Without the interchange, we risk the continued traffic dangers associated with the mixing of rail lines and automobiles and trucks. You will hear many convincing anecdotes about the congestion the current situation is causing, especially during rush hour, forcing traffic to sit idle, at a time when Austin is on the verge of reaching non-attainment status on air quality.

But what I would like to bring to your attention is the impact this is having on shippers. I know you are well aware of the cries for assistance related to the service delivery difficulties involving UP/SP. Like you, we are looking for answers that could give relief to businesses along those critical routes . An interchange at McNeil for freight access to the BN/SF would greatly improve the ability of these businesses to access more cars. More efficient service will translate into success for these businesses.

I support the opportunity to significantly enhance service on the Giddings-Llano rail line and to help alleviate congestion in Texas and especially the Houston area by moving product on the BN/SF. I also support strengthening the economic viability of the operator, who is at serious risk of economic failure if he cannot improve service very soon.

For all of the above reasons, I support Capital Metro's application for freight service interchange rights with the BN/SF at McNeil.

Thank you for your attention in this matter.

Sincerely,

Karen Sonleitner

Karen Sonleitner
Travis County Commissioner--Precinct Two

STB FD 32760 (Sub 32) 9-29-98 A 191396

LAW OFFICES
ZUCKERT, SCOUTT & RASENBERGER, L.L.P.
888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE: (202) 298-8660
FACSIMILES: (202) 342-0683
(202) 342-1316

SCOTT M. ZIMMERMAN

DIRECT DIAL (202) 973-7929

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September 29, 1998

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BY HAND

ENTERED
Office of the Secretary

SEP 30 1998

Part of
Public Record

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

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

Dear Secretary Williams:

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

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

Sincerely,

Scott M. Zimmerman

Enclosures

ORIGINAL

ENTERED
Office of the Secretary

SEP 30 1998

Part of
Public Record

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TM-19

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

HOUSTON/GULF COAST OVERSIGHT

ERRATA TO THE CONSENSUS PLAN

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

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

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

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

ERRATA

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

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

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

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

Respectfully submitted,

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

Attorneys for the Texas Mexican Railway Company

Dated: September 29, 1998

CERTIFICATE OF SERVICE

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

Erika Z. Jones
Adrian L. Steel, Jr.
Kathryn A Kusske
Kelley E. O'Brien
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Arvid E. Roach II
J. Michael Hemmer
David L. Meyer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

and by first class mail upon all other parties of record in the Houston/Gulf Coast Oversight proceeding, Finance Docket No. 32760 (Sub-No. 26 *et al.*).

Scott M. Zimmerman
Attorney for the Texas Mexican Railway Company

Base Case
Balance Sheet
(Revised)

Exhibit No. JJP-3
July 8, 1998

The Texas Mexican Railway Company

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

Exhibit No. JJP-4
July 8, 1998

Base Case Income Statement (Revised)

The Texas Mexican Railway Company

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

Base Case ·
Sources and Applications of Funds
(Revised)

Exhibit No. JJP-5
July 8, 1998

The Texas Mexican Railway Company

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

Exhibit No. JJP-6
July 8, 1998

Consensus Plan
Balance Sheet
(Revised)

The Texas Mexican Railway Company

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

Exhibit No. JJP-7
July 8, 1998

Consensus Plan
Income Statement
(Revised)

The Texas Mexican Railway Company

	Description	Adjusted Base Period Amount (000s)	Adjustment Amount (000s)	Year 1 After Change in Operations (000s)	Adjustment Amount (000s)	Year 2 After Change in Operations (000s)	Adjustment Amount (000s)	Year 3 After Change in Operations (000s)	Adjustment Amount (000s)	Normal Year After Change in Operations (000s)
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
	Operating Revenues:									
1	Freight	$ 27,139	$ 8,302	$ 35,441	$ 41,508	$ 76,948	$ 5,534	$ 82,483	$ -	$ 82,483
2	Switching	830	254	1,084	1,270	2,354	169	2,524	-	2,524
3	Demurrage	824	252	1,077	1,261	2,337	168	2,505	-	2,505
4	Incidental	904	276	1,180	1,382	2,563	184	2,747	-	2,747
5	Uncollectible Accounts	(719)	(201)	(921)	(1,006)	(1,926)	(134)	(2,060)	-	(2,060)
6	Total Operating Revenues	28,978	8,883	37,861	44,415	82,277	5,922	88,199	-	88,199
	Operating Expenses:									
7	Maintenance of Way & Structures	2,294	384	2,678	491	3,169	-	3,169	-	3,169
8	Maintenance of Equipment	2,651	931	3,581	4,654	8,235	621	8,856	-	8,856
9	Transportation	13,397	5,204	18,601	25,460	44,061	3,347	47,407	(3,075)	44,332
10	General & Administrative	3,731	129	3,861	809	4,670	129	4,799	-	4,799
11	Depreciation Expense	1,799	1,973	3,772	1,973	5,744	-	5,744	-	5,744
12	Loss (Gain) On Sale of Fixed Assets	-	-	-	-	-	-	-	-	-
13	Total Operating Expenses	$ 23,872	$ 8,621	$ 32,493	$ 33,386	$ 65,879	$ 4,096	$ 69,975	$ (3,075)	$ 66,900
14	**Income (Loss) From Operations**	**$ 5,107**	**$ 262**	**$ 5,369**	**$ 11,029**	**$ 16,398**	**$ 1,826**	**$ 18,223**	**$ 3,075**	**$ 21,298**
15	Other Income & Expense Net	$ (242)	$ (10,176)	$ (10,419)	$ 249	$ (10,170)	$ 267	$ (9,902)	$ 195	$ (9,707)
16	Income (Loss) before Income Taxes	4,864	(9,914)	(5,050)	11,278	6,228	2,093	8,321	3,270	11,591
17	Income Tax Rate	34%		34%		34%		34%		34%
18	Income Taxes	1,654	(3,371)	(1,717)	3,834	2,117	712	2,829	1,112	3,941
19	**Net Income (Loss)**	**$ 3,210**	**$ (6,543)**	**$ (3,333)**	**$ 7,443**	**$ 4,110**	**$ 1,381**	**$ 5,492**	**$ 2,158**	**$ 7,650**

Consensus Plan
Sources and Applications of Funds
(Revised)

Exhibit No. JJP-8
July 8, 1998

The Texas Mexican Railway Company

Description	Base Period Adjusted (000s)	Year 1 After Change in Operations (000s)	Year 2 After Change in Operations (000s)	Year 3 After Change in Operations (000s)	Normal Year After Change in Operations (000s)
	(a)	(b)	(c)	(d)	(e)
From Operating Activities:					
1 Net Income (Loss)	3,210	(3,333)	4,110	5,492	7,650
2 Depreciation	1,799	3,772	5,744	5,744	5,744
3 Deferred Income Taxes	620	-	-	-	-
4 Equity Earnings - Partnership Investment	(477)	-	-	-	-
5 Dividend Distribution - Partnership Investment	556	-	-	-	-
6 Change in current assets - (Increase) or Decrease	(1,067)	(155)	(775)	(103)	-
7 Change in current liabilities - Increase or (Decrease)	533	(2,761)	6,716	1,087	830
8 Change in amounts due to/from parent and other related parties Increase or (Decrease)	498	2,000	(1,000)	(1,000)	-
9 Net Cash Provided by Operating Activities	$ 5,672	$ (477)	$ 14,795	$ 11,220	$ 14,224
From Investing Activities:					
10 Purchases of Equipment & Improvements, net of gain or loss on disposition of fixed assets	$ (15,654)	$ (129,462)	$ -	$ -	$ -
11 Proceeds from sale of investments	1,224	-	-	-	-
12 Investment in Long Term Assets	(1,099)	-	-	-	-
13 Net Cash Used by Investing Activities	$ (15,529)	$ (129,462)	$ -	$ -	$ -
From Financing Activities:					
14 Long Term Debt Borrowings	11,524	128,221	(1,342)	(1,450)	(1,475)
15 Net Cash Provided by Financing Activities	$ 11,524	$ 128,221	$ (1,342)	$ (1,450)	$ (1,475)
16 Increase (Decrease) in Cash & Cash Equivalents	$ 1,668	$ (1,719)	$ 13,454	$ 9,770	$ 12,749
17 Cash & Cash Equivalents at Beginning of Year	403	2,071	352	13,807	23,576
18 Cash & Cash Equivalents at End of Year	**$ 2,071**	**$ 352**	**$ 13,807**	**$ 23,576**	**$ 36,325**