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FD 32760 Sub 32

TROUTMAN SANDERS LLP

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July 9, 2003



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

RE: **Change of Counsel/Change of Address**

Dear Secretary Williams:

Effective **Monday, July 14, 2003**, William A. Mullins and David C. Reeves will join the law firm of:

Baker & Miller PLLC
915 Fifteenth Street, NW
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Washington, DC 20005-2318
TEL: (202) 637-9499
FAX: (202) 637-9394
wmullins@bakerandmiller.com
dreeves@bakerandmiller.com

ENTERED
Office of Proceedings
JUL 09 2003
Part of
Public Record

Please update the Board's records to substitute Baker & Miller PLLC as counsel of record for all proceedings included on the enclosed list, and to reflect that Troutman Sanders LLP will no longer be counsel of record for clients represented by Messrs. Mullins and Reeves as noted on the enclosed list of proceedings in which either or both have entered an appearance. However, with respect to Finance Docket No. 33388 and 33388 (Sub No. 91), Baker and Miller should be shown as counsel of record for Gateway Western Railway Company and Troutman Sanders LLP should remain as counsel of record for New York State Electric and Gas.

Copies of any STB notices, pleadings or other correspondence related to these proceedings after July 11, 2003 should be sent to the attention of Messrs. Mullins or Reeves at Baker & Miller PLLC (at the address listed above).

All known parties of record in the proceedings listed on the enclosure have been sent a copy of this change of counsel/change of address notification.

Sincerely yours,

William A. Mullins

and

David C. Reeves

Enclosure

**Change of Counsel/Change of Address Notification
for**

William A. Mullins and David C. Reeves

Effective Monday, July 14, 2003

**Baker & Miller PLLC
915 Fifteenth Street, NW
Suite 1000
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| Docket No. Ex Parte No. or Finance Docket No. | List of Proceedings Before the STB |
|--|---|
| Docket No. AB-468 (Sub-No. 5X) | Paducah & Louisville Railway, Inc. - Abandonment Exemption - In McCracken County, KY |
| F.D. No. 34342 | Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern Railway Company, And The Texas Mexican Railway Company |
| F.D. No. 34335 | Keokuk Junction Railway Company - Feeder Railroad Development Application - Line Of Toledo, Peoria & Western Railway Corporation Between La Harpe And Hollis, IL |
| F.D. No. 34178 | Dakota, Minnesota & Eastern Railroad Corporation And Cedar American Rail Holdings, Inc. - Control - Iowa, Chicago & Eastern Railroad Company |
| F.D. No. 34177 | Iowa, Chicago & Eastern Railroad Company - Acquisition And Operation Exemption - Lines Of I&M Rail Link, LLC |
| F.D. No. 34015 | Waterloo Railway Company - Acquisition Exemption - Bangor and Aroostook Railroad Company and Van Buren Bridge Company |
| F.D. No. 34014 | Canadian National Railway Company - Trackage Rights Exemption - Bangor and Aroostook Railroad Company and Van Buren Bridge Company |
| F.D. No. 33740 and F.D. No. 33740 (Sub-No. 1) | The Burlington Northern and Santa Fe Railway Company - Petition For Declaration Or Prescription Of Crossing, Trackage Or Joint Use Rights and For Determination Of Compensation and Other Terms |
| F.D. No. 33388 | CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation |
| F.D. No. 33388 (Sub-No. 91) | CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation (General Oversight) |
| F.D. No. 32760 | Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company |
| F.D. No. 32760 (Sub-No. 21) | Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company - Oversight |
| F.D. No. 32760 (Sub-Nos. 26 - 32) | Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company |

STB FD 32760 (Sub 32) 11-24-98 D 192392

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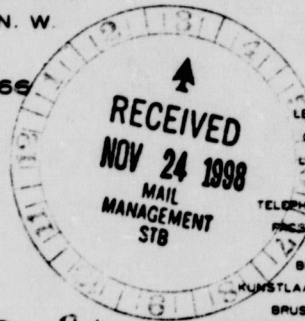
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November 24, 1998



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BY HAND

Hon. Vernon A. Williams

Secretary

Surface Transportation Board

Room 700

1925 K Street, N.W.

Washington, D.C. 20423-0001

Office of the Secretary

NOV 25 1998

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Public Record

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

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

Dear Secretary Williams:

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

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

I.

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

○ Including related sub-dockets.

Hon. Vernon A. Williams
November 24, 1998
Page 2

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

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

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

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

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

Hon. Vernon A. Williams
November 24, 1998
Page 3

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

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

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

Hon. Vernon A. Williams
November 24, 1998
Page 4

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

II.

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

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

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

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

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

Hon. Vernon A. Williams
November 24, 1998
Page 5

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

- KCS/Tex Mex admit that the mix of shipments and routes measured for the pre-merger periods of 1995 and 1996 differ from the mix of shipments and routes measured for the post-merger periods of 1997 and 1998. KCS/Tex Mex admit that the five shippers who provided data to SPI have differing abilities to provide historical information and thus that "participation for 1995 and 1996 is less extensive than for 1997 and 1998." (P. 15.) In fact, the data for 1995 pertain to shipments by only two shippers; the 1996 data are for four shippers; the 1997 data are for five shippers; and KCS/Tex Mex now admit that additional shipments and routes were added at the end of 1997. (P. 15.) As a result, the SPI charts compare a small set of shipments in 1995 with a larger set of shipments from different origins to different destinations in 1996 with a still larger set of shipments from different origins to different destinations in 1997 and still a larger set of shipments in 1998.
- KCS/Tex Mex also acknowledge that the SPI charts include shipments from points not on the Texas Gulf Coast, a fact they did not voluntarily disclose to the Board or other public officials when they presented these charts. They include, for example, shipments from an Iowa origin that represents 7% of the total production capacity reflected in the data. (P. 15.) Significantly, KCS/Tex Mex also acknowledge that these Iowa shipments were not included in the SPI data for pre-merger years, but were added only after December 1997, again skewing the data unpredictably. (*Id.*) KCS/Tex Mex argue that it is reasonable to look at shipments that originate outside the Gulf Coast area, but it certainly is not reasonable to (a) include those shipments only in the post-merger half of the comparison, or (b) claim that the resulting charts reflect the quality of UP service in Texas.
- KCS/Tex Mex acknowledge that they presented to the Board charts labelled "UP Only" even though the transit times are not "UP only" data. The transit times are origin-to-destination transit times over all railroads for whatever traffic mix was being measured at a particular moment. In other words, delays could have occurred anywhere in the United States on any railroad. KCS/Tex Mex counsel, on the basis of no data or other information, assert that all delays must have occurred on UP and that delays on "on the lines of other carriers . . . were of short duration." (*Id.* at 17.) The Board has no reason to believe this self-serving assertion, which ignores events such as a major hurricane that wiped out CSX

Hon. Vernon A. Williams
November 24, 1998
Page 6

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

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

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

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

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

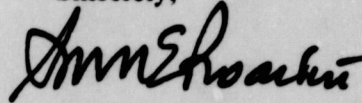
Undeterred by the fact that the SPI charts are unreliable, misleading and mislabelled, KCS/Tex Mex nevertheless urge the Board to use them. KCS/Tex Mex baldly assert, based on the charts, that UP "service levels today are grossly inferior compared to pre-merger levels." (P. 17.) Particularly as applied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

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

Hon. Vernon A. Williams
November 24, 1998
Page 7

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Arvid E. Roach II". The signature is fluid and cursive, with the first name "Arvid" being more prominent.

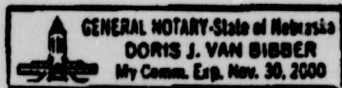
Arvid E. Roach II

cc: All Parties of Record

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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



Richard B. Peterson
RICHARD B. PETERSON

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

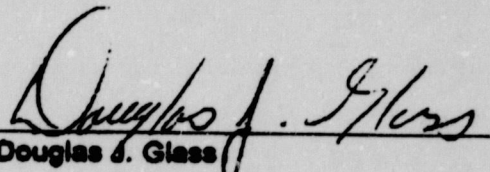
Doris J. Van Bibber
Notary Public

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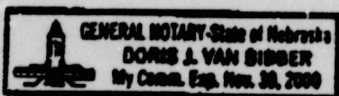
VERIFICATION

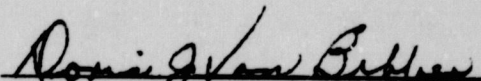
STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS) ss.

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


Douglas J. Glass

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




Notary Public

My Commission Expires:

Nov. 30, 2000

STB FD 32760 (Sub 32) 11-24-98 D 192384

TROUTMAN SANDERS LLP

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ENTERED
Office of the Secretary

William A. Mullins NOV 24 1998

Part of
Public Record

November 24, 1998

HAND DELIVERY:

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

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

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

Dear Secretary Willliams:

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

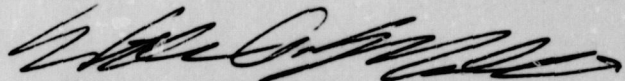
Please date and time stamp one copy of the Petition enclosed herewith for return to our offices. Included with this filing is a 3.5-inch Word Perfect, Version 5.1 diskette with the text of the pleading.

ENTERED
Office of the Secretary

NOV 24 1998

Part of
Public Record

Sincerely,



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

cc: Parties of Record

* and embraced sub-dockets

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

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



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

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

NOTICE OF INTENT TO PARTICIPATE IN ORAL ARGUMENT

**THE CHEMICAL MANUFACTURERS
ASSOCIATION**

**THE SOCIETY OF THE PLASTICS INDUSTRY,
INC.**

THE RAILROAD COMMISSION OF TEXAS

THE TEXAS CHEMICAL COUNCIL

THE TEXAS MEXICAN RAILWAY COMPANY

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

November 24, 1998

(* and embraced sub-dockets)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

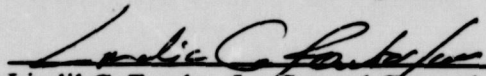
**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
— CONTROL AND MERGER —
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER
AND RIO GRANDE WESTERN RAILROAD COMPANY**

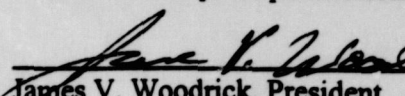
HOUSTON/GULF COAST OVERSIGHT PROCEEDING

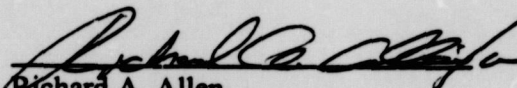
NOTICE OF INTENT TO PARTICIPATE IN ORAL ARGUMENT

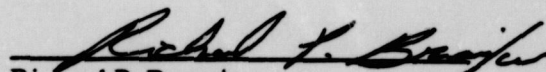
Pursuant to Decision No. 7 in Finance Docket No. 32760 (Sub-No. 26), STB served November 23, 1998, the Consensus Parties hereby give notice of their intent to participate in the oral argument scheduled for December 15, 1998 in this proceeding. On the day of the oral argument, the Consensus Parties will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

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

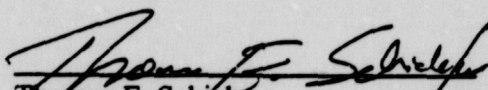

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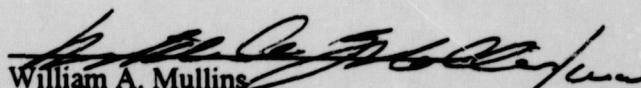

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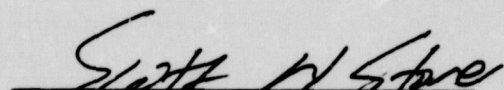

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ATTORNEYS FOR THE TEXAS MEXICAN
RAILWAY COMPANY

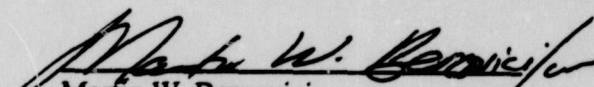

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ATTORNEYS FOR THE SOCIETY OF PLASTICS
INDUSTRY, INC.

CERTIFICATE OF SERVICE

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

A handwritten signature in dark ink, appearing to read 'William A. Mullins', is written over the printed name.

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

STB FD 32760 (Sub 32) 11-20-98 D 192326

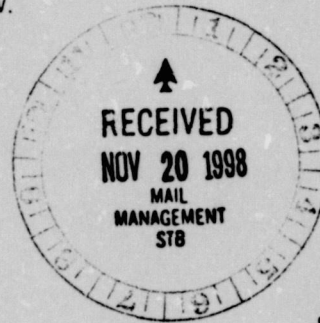
MAYER, BROWN & PLATT

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WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES

DIRECT DIAL (202) 778-0642
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MAIN TELEPHONE
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November 20, 1998

VIA HAND DELIVERY

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

-192324
-192325
-192326

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

Dear Secretary Williams:

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

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

ENTERED
Office of the Secretary

NOV 20 1998

Part of
Public Record

CHICAGO BERLIN CHARLOTTE COLOGNE HOUSTON LONDON LOS ANGELES NEW YORK WASHINGTON

INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS

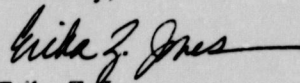
INDEPENDENT PARIS CORRESPONDENT: LAMBERT ARMENIADES & LEE

MAYER, BROWN & PLATT

The Honorable Vernon A. Williams
November 20, 1998
Page 2

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Erika Z. Jones", followed by a horizontal line.

Erika Z. Jones

Attachments

cc: All Parties of Record (with attachments)

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

October 16, 1998

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

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

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

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

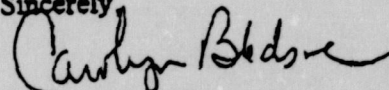
I believe that BNSF's request for trackage rights over the San Antonio - Laredo are designed to ensure that competition at this critical Mexican gateway does not continue to be adversely impacted by UP's south Texas congestion and service problems specifically on the UP's Alcoa to Corpus Christi route.

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

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

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

Sincerely,



Carolyn Bledsoe
ACM, Inc.



November 2, 1998

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

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

Dear Mr. Williams:

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

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

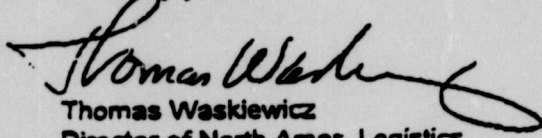
I believe that the BNSF's request for trackage rights over the San Antonio - Laredo line are designed to insure that competition at this critical Mexican gateway does not continue to be adversely impacted by UP's south Texas congestion and service problems specifically on the UP's Algoa to Corpus Christi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

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

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

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

Sincerely yours,


Thomas Waskiewicz
Director of North Amer. Logistics

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



October 14, 1998

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

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

Dear Secretary Williams:

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kee Soo Pakh", is written over a horizontal line.

Kee Soo Pakh
President

HYUNDAI INTERMODAL, INC.

Farmrail



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

October 16, 1998

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

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

Dear Mr. Williams:

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

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

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

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

The Honorable Vernon A. Williams

October 16, 1998

Page 2

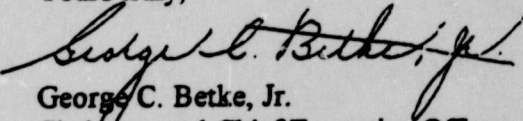
network. Its adverse impact on the velocity of movement is devastating to an industry that is both intensely competitive and capital-intensive. Those bottlenecks must be relieved.

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

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

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

Yours truly,



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

October 16, 1998
DJ-699/98

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

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

Dear Secretary Williams:

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

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

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

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

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



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

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

Sincerely,



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

INTERNATIONAL PAPER

November 14, 1998

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

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

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

Dear Secretary Williams:

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

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

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

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

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

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

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

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

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

Hon. Vernon A. Williams
November 14, 1998
Page Three

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

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

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

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

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

A. Correct Structural Deficiencies in BNSF's Rights

1. Grant permanent bi-directional trackage rights.

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

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

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

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

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

2. Harlingen-Brownsville

- Grant BNSF temporary trackage rights over both the UP and SP routes between Harlingen and Brownsville until new bypass trackage is completed north of Brownsville, permitting curtailment of the SP route
- Allow Brownsville & Rio Grande International Railroad (BRGI) to act as BNSF's agent in providing service, Harlingen-Brownsville-Matamoros

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

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

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

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

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

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

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

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

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

- UP's service crisis affected BNSF's ability to provide viable competition, as expected by the STB (BNSF to replace SP competition to UP), at the new customers BNSF gained access to as a result of the UP/SP merger, i.e. International Paper mills at Camden and Pine Bluff, AR. BNSF cannot provide vigorous competition in an environment of unpredictable and unreliable UP service.
- The STB should ensure that the competitive problems induced by the UP service crisis do not recur, by making clearly targeted structural changes in the UP/SP merger conditions.
- BNSF cannot provide a competitive replacement for SP post-merger if BNSF is unable to use, at a minimum, the same routes used by SP to reach "2-to-1" customers and markets.
- Operating problems, as occurred with UP along the Gulf Coast and unanticipated at the time the UP/SP merger was approved, are amenable to operating solutions.
- Operating solutions can provide near-term service relief without waiting for long-term infrastructure investments to come on line.
- BNSF's proposed structural realignments would shift traffic away from Houston and to less congested routes, freeing up Houston-area rail infrastructure to handle Houston originating and terminating business.
- Expanded neutral switching and dispatching would improve competitive service and reduce the potential for UP favoritism of its traffic versus BNSF's or TexMex' traffic moving over trackage rights or in haulage and reciprocal switch service.
- New overhead trackage rights via UP between San Antonio and Laredo would ensure meaningful competition for shippers at the Laredo gateway.
- BNSF is not here requesting access to any additional customers.

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

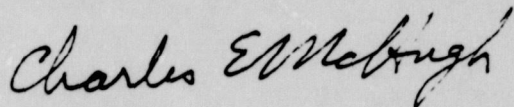
Hon. Vernon A. Williams
November 14, 1998
Page Seven

1. Expanding rail capacity and investment by all the existing rail carriers;
2. Providing neutral and fair dispatch of all rail traffic;
3. Ensuring that all shippers can be served by the rail carriers currently operating in the area; and,
4. Preserving competitiveness by ensuring that adequate rail service alternatives exist in the future.

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

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

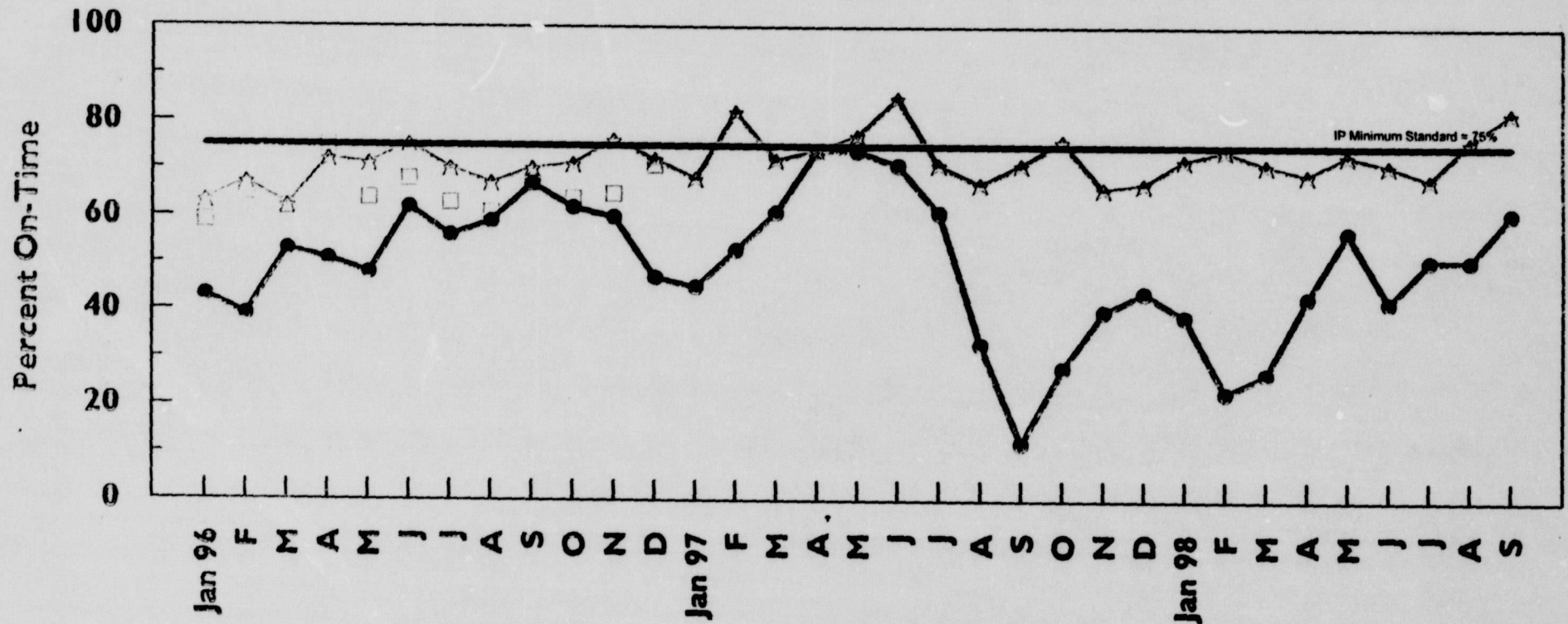
I, Charles E. McHugh, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of the International Paper Company, executed on November 14, 1998.



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

Rail On-Time Transit Performance *

1996- 1998



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

*Data supplied by railroads

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

23-October-1998

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

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

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

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

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

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

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

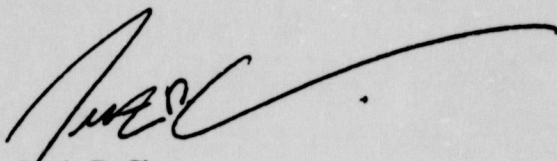
23-October-1998

Page 2

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

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

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



Justin R. Chan
Fiber Procurement & Logistics
Kimfibers



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

October 21, 1998

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

Dear Secretary Williams:

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

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

Cordially,

Forrest L. Becht
President & General Manager

VERIFIED STATEMENT
OF
LOUISIANA & DELTA RAILROAD, INC.

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

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

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

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

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

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

FLR

Forrest L. Becht
President & General Manager



Minnesota Corn Processors, Inc.

October 26, 1998

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

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

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

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

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

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

Sincerely,

Gary E. Smith
Transportation Manager

The Rice Company

1624 Santa Clara Street, Suite 230
Roseville, California 95661
U.S.A.

Telephone (916) 784-7745
Telex 6730750 BLC LW
Fax (916) 784-7681



WHITE RICE • BROWN RICE • AROUND RICE

November 3, 1998

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

Dear Honorable Vernon A. Williams:

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

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

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

Sincerely,

Vicki Manzoli
Operations Manager

STB FD 32760 (Sub 32) 10-21-98 D 191771

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES

DIRECT DIAL (202) 778-0642

ejones@mayerbrown.com



October 21, 1998

VIA HAND DELIVERY

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

ENTERED
Office of the Secretary

OCT 22 1998

Part of
Public Record

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

Dear Secretary Williams:

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

Page 1, footnote 1:

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

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

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

Page 15, line 7:

Change "to ensure" to "so".

Page 32, line 4:

Change "could" to "to".

MAYER, BROWN & PLATT

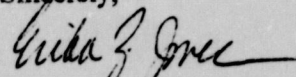
October 21, 1998

Page 2

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

Delete "this".

Sincerely,



Erika Z. Jones

Attachment

cc: All Parties of Record (with encl.)

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

-- CONTROL AND MERGER --

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

[Houston/Gulf Coast Oversight]

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

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

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

STB FD 32760 (Sub 32) 10-16-98 D 191674

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2850
FACSIMILE: 202-274-2817

INTERNET: william.mullins@troutmansanders.com



William A. Mullins

October 16, 1998

HAND DELIVERY

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

ENTERED
Office of the Secretary

OCT 19 1998

Part of
Public Record

Handwritten "D" and "32" next to the stamp.

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

191655 191659 191670 191671 191672 191673 191674

Dear Secretary Williams:

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

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

Sincerely,

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

cc: Parties of Record
Honorable Stephen J. Grossman

STB FD 32760 (Sub 32) 10-16-98 D 191654

FOR COMPLETE TEXT OF THIS FILING SEE FD-32760 SUB 26 FILING #191652

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES
DIRECT DIAL (202) 778-0642
ejones@mayerbrown.com



MAIN TELEPHONE
202-463-2000
MAIN FAX
202-861-0473

October 16, 1998

VIA HAND DELIVERY

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

RECEIVED
Office of the Secretary

OCT 19 1998

Part of
Public Record

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

Dear Secretary Williams:

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

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

Sincerely,

Erika Z. Jones/cjs
Erika Z. Jones

Enclosures

cc: All Parties of Record

FOR COMPLETE TEXT OF THIS FILING SEE FD-32760 SUB 26 FILING #191652

STB FD 32760 (Sub 32) 10-16-98 D 191629



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

COPY

October 15, 1998

The Honorable Vernon Williams
Case Control Unit

Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001



32

RE:

STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.
HOUSTON/GULF COAST OVERSIGHT

191623
191624
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191629

Dear Secretary Williams:

Enclosed is the statement of the Greater Houston Partnership presenting its rebuttal comments relating to statements by the Union Pacific Railroad dated September 18, 1998 opposing all condition applications filed in this proceeding requesting additional conditions to the merger of the Union Pacific and Southern Pacific.

An original and 25 copies are enclosed, together with a 3.5 inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Roger H. Hord
713-844-3625

STB Finance
Office of the Secretary

OCT 16 1998

Part of
Public Record

October 15, 1998

The Honorable Vernon Williams
Case Control Unit
Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001



RE:

STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.

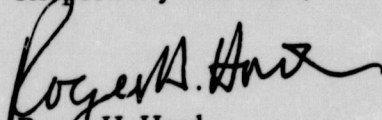
HOUSTON/GULF COAST OVERSIGHT

Dear Secretary Williams:

Enclosed is the statement of the Greater Houston Partnership presenting its rebuttal comments relating to statements by the Union Pacific Railroad dated September 18, 1998 opposing all condition applications filed in this proceeding requesting additional conditions to the merger of the Union Pacific and Southern Pacific.

An original and 25 copies are enclosed, together with a 3.5 inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,


Roger H. Hord
713-844-3625

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



**STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.**

HOUSTON/GULF COAST OVERSIGHT

**REBUTTAL COMMENTS OF
THE GREATER HOUSTON PARTNERSHIP
ON
COMMENTS OF UNION PACIFIC RAILROAD**

This statement presents the comments of the Greater Houston Partnership (GHP) regarding statements by the Union Pacific Railroad dated September 18, 1998 opposing all condition applications filed in this proceeding requesting additional conditions to the merger of the Union Pacific and Southern Pacific. Because the GHP recommendations were among those accepted for consideration by the Surface Transportation Board (STB), the GHP is filing these rebuttal comments.

The Greater Houston Partnership

The Greater Houston Partnership is Houston's principal business organization and is dedicated to building prosperity in the Houston region. The Partnership has 2,400 members from virtually every industry sector throughout the eight-county Houston region. The Partnership's Board of Directors is composed of 112 corporate CEO's of organizations in the Houston region.

Partnership members employ almost 600,000 people, which is one out of every three employees in the region.

GHP Maintains Position

The GHP maintains the view stated in our July 8, 1998 filing that we "must seek incremental changes in rail service to help secure a competitive Port and industrial sector." With this filing we reconfirm our principles and recommendations contained in that filing.

We believe rail service and rail competition for shippers served by one railroad in a community served by three or more carriers is superior to service and competition afforded a captive shipper in a community served by only two railroads where one of those railroads has an 80% market share. We note the apparent similarities in Houston's request for additional rail competition and issues in Conrail merger in the New York-New Jersey area. In this case, the STB applied lessons learned in the Houston-Gulf Coast merger of UP-SP by assuring shippers of competition from two rail carriers where before the merger, only one carrier existed. We believe the STB should revisit the Houston decision via this case to seek equitable means of injecting what is missing in the original merger formula, greater competition for shippers served by a single carrier. If the Union Pacific truly believes, as it states in UP-1 on page 155, that competition in this market would be so devastating that they would rather consider the "least drastic means" by divesting itself of the entire franchise, it reveals the extent of the dilemma we face in Houston in seeking additional competition and improved service.

The GHP restates the following recommendations:

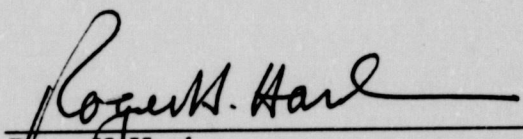
- 1) The STB should provide a mechanism for all railroads serving Houston to buy trackage rights and access rights at an equitable price to the following areas to provide greater competition for Houston area shippers:

- a) The trackage currently owned by the Port of Houston and operated by the Port Terminal Railroad Association (PRTA);
 - b) The trackage historically owned by the Houston Belt and Terminal RR prior to its dissolution; and
 - c) Additional trackage as determined by the governing body of the neutral switch and shippers as allowed by financial considerations.
- 2) Operation of a neutral dispatching, switching, and car movement system should be undertaken by a single third party. The operator should be the reconstituted PTRAs as described below serving as the governing authority over the trackage accumulated as recommended above.
 - 3) The Union Pacific should be encouraged to reach an agreement with other long haul carriers to arrange the sale or lease of abandoned trackage and underutilized rights of way and switching yards which might allow shippers and the Port of Houston additional rail system competitiveness, capacity, flexibility and geographic access. The STB should mediate the negotiations of the parties involved.
 - 4) The STB should order the reconstituted PTRAs to develop a regional master plan of added facilities and operations needed to provide system capacity in excess of demand for the foreseeable future.
 - 5) The Port of Houston, owner of the PTRAs, and all long haul railroads serving Houston should be full and equal voting members of the PTRAs Board.
 - 6) The STB should provide a mechanism for the railroad [which had] temporary rights to buy permanent rights at an equitable price from the owning railroad if an investigation indicates actual or expected improvement in performance and competitiveness in the Houston-Gulf Coast freight rail system.

These recommendations are contained in the GHP Board of Directors' resolution on *Competition in Houston Freight Rail Service*. The GHP Board's resolution emphasizes that Houston's rail system performance must be "in the top tier of United States cities," which means that service and rates must be truly competitive in order for Houston's port and its local industries to compete effectively in domestic and international markets. The GHP Board stated a preference that the private sector rectify noncompetitive situations through equitable compensation, but it realizes that federal statutes and regulations constitute a fundamental roadblock in some cases and should be modified.

CERTIFICATE OF SERVICE

I, Roger H. Hord, certify that, on this 15th day of October, 1998, caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26-32).



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September 17, 1998

Honorable Vernon Williams
Case Control Unit

Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



Re:

STB FINANCE DOCKET NO. 32760 (SUB-NOS. 26-32)
UNION PACIFIC CORPORATION, et. al.
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, et. al.

HOUSTON/GULF COAST OVERSIGHT

191200
191201
191202
191203
191204
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191206

Dear Secretary Williams:

Enclosed is the statement of the Port of Houston Authority presenting its comments relating to the requests for new conditions on the UP/SP merger that were accepted for consideration by the Board.

An original and 25 copies are enclosed, together with a 3.5-inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Richard J. Schiefelbein
817-236-6841

ENTERED
Office of the Secretary

SEP 18 1998

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB FINANCE DOCKET NO. 32760 (SUB-NOS. 26-32)
UNION PACIFIC CORPORATION, *et. al.*
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, *et. al.***



HOUSTON/GULF COAST OVERSIGHT

**COMMENTS OF
THE PORT OF HOUSTON AUTHORITY
ON
REQUESTS FOR ADDITIONAL CONDITIONS
TO THE UNION PACIFIC/SOUTHERN PACIFIC MERGER**

The purpose of this statement is to present the comments of the Port of Houston Authority (Port Authority) regarding those requests for additional conditions to the merger of the Union Pacific and Southern Pacific railroads which were accepted by the Board in Decision No. 6 in this proceeding.

The Port of Houston Authority

The Port of Houston Authority is an autonomous governmental entity which owns the public facilities along the 50-mile Houston Ship Channel and is the Channel's official sponsor. The Port of Houston Authority owns 43 general cargo wharves, owns and operates the Barbours Cut Container Terminal, the Container Terminal at Galveston, and Houston Public Grain Elevator No. 2, which are available for public use. It also owns a bulk materials handling plant,

a bagging and loading facility, a refrigerated facility, two liquid cargo wharves, and other facilities which are leased to private operators. The Port of Houston complex also includes numerous privately-owned terminals. The Port Authority also operates the Malcolm Baldrige Foreign Trade Zone.

The Port Authority's facilities handle approximately 15 percent of the approximately 150 million tons of cargo moving through the Port of Houston. The Port of Houston ranks first in the United States in total foreign water-borne commerce handled and second in total tonnage. It is the seventh busiest port in the world. Last year, the Port of Houston handled over 6,400 ships, 50,000 barges and 935,000 TEU's (twenty-foot equivalent container units).

The Port of Houston is home to a \$15 billion petrochemical complex, the largest in the nation. The Port generates approximately 196,000 jobs and \$5.5 billion in economic activity annually.

Summary

The Port Authority supports certain of the requests for additional conditions made in the Consensus Plan and in the Burlington Northern Santa Fe (BNSF) filing. The following listing summarizes those requests and the portions of each which the Port Authority supports. Details of the Port Authority's reasons for supporting each request are presented in the following sections of this statement:

- That the Board should make permanent the provisions of Emergency Service Order No. 1518 that: (a) temporarily suspended the restriction the Tex Mex's trackage rights could be used only for shipments having a prior or subsequent movement on Tex Mex; and (b)

temporarily granted Tex Mex trackage rights over UP's "Algoa route" between Placedo, TX and Algoa, TX and over BNSF from Algoa to Alvin, TX and to T&NO Junction, TX.

- That the Port Terminal Railroad Association (PTRA), or its successor organization if PTRA is dissolved, should provide neutral switching over the trackage formerly operated by the Houston Belt & Terminal Railroad (HB&T).
- That the neutral switching area in and around Houston be expanded to include shippers located on UP's line between the junction with PTRA immediately north of Bridge 5A to Morgan's Point on the south side of the Houston Ship Channel, including Harrisburg, Manchester, Sinco, Pasadena, Deer Park, Strang, La Porte, and Morgan's Point, with PTRA, or its successor, designated as the neutral switching operator. The Port Authority specifically does not support or endorse any change to the rail service provided to shippers located on the Bayport Loop or on UP's line at or south of Strang Yard.
- That neutral dispatching be performed by PTRA, or its successor, on the trackage formerly operated by HB&T and on the UP line between Bridge 5A and Morgan's Point described above in addition to the lines currently operated by PTRA.
- That Tex Mex be acknowledged as a full voting member of PTRA and that the Port Authority's voting status on the PTRA Board be restored.
- That a yard adequate to satisfy Tex Mex's switching needs in Houston be made available to Tex Mex at a reasonable price or lease rate.
- That the KCS/Tex Mex proposal to construct an additional track between Houston and Beaumont, increasing rail capacity in that corridor and adding an additional carrier to the Houston market, be authorized by the Board.

- That the UP's Clinton Branch be controlled and operated by the PTRRA, or its successor.

Emergency Service Order Provisions

Emergency Service Order No. 1518 temporarily suspended the restriction that the Tex Mex's trackage rights to Houston and Beaumont could be used only for shipments having a prior or subsequent movement on Tex Mex.

Suspending that restriction has provided an additional competitive choice to shippers located on the trackage operated by PTRRA and on the trackage formerly operated by HB&T. In addition to UP and BNSF, shippers have been able to choose Tex Mex as their line-haul carrier for shipments to Beaumont and beyond. This has increased Houston-area shippers' routing choices and has made additional capacity available in the form of Kansas City Southern's lines for movements beyond Beaumont.

If the restriction on Tex Mex's trackage rights is reinstated, the additional capacity provided by KCS beyond Beaumont will not be available to shippers because neither UP nor BNSF will short-haul themselves by handing over traffic to KCS at Beaumont. Thus, both the competitive choices available to Houston-area shippers and the rail infrastructure available to handle Houston-area shipments will be reduced if the restriction on Tex Mex's trackage rights is reinstated.

The Port Authority supports making the temporary suspension of Tex Mex's trackage rights restriction permanent.

Emergency Service Order No. 1518 also granted Tex Mex temporary trackage rights over UP's "Algoa route" and over BNSF from Algoa into Houston. These rights have facilitated

directional running by UP, BNSF, and Tex Mex between Houston and Placedo, TX, improving the flow of trains into and out of the Houston terminal and contributing to the reduction in rail congestion in Houston. Operating northbound on the Algoa route and southbound on the Flatonia, TX to Placedo route has benefited shippers in Houston. The Port Authority supports making these overhead trackage rights permanent.

Neutral Switching on HB&T by PTRA

For at least 20 years, plans were developed to combine the operations of HB&T and PTRA. Both railroads performed a similar "belt railroad/neutral switching function" in geographic areas directly adjacent to one another.

For many recent years, Southern Pacific's objections kept the combination from being implemented. Southern Pacific was a member of PTRA, but was not an owner of HB&T. With the consummation of the UP/SP Merger, SP's concerns were no longer an issue because UP was both a member of PTRA and an owner of HB&T.

However, instead of finally seeing the combination become a reality, HB&T was dissolved by UP and BNSF, its owners. Today, UP and BNSF each switch a portion of the former HB&T on a reciprocal switching basis and must exchange cars routed over the other railroad. Cars must also be switched by each railroad to Tex Mex on those shipments routed over Tex Mex. This is precisely the function PTRA performs for UP, BNSF, and Tex Mex. Having UP and BNSF make interchange runs between their respective yards just a few miles from PTRA's North Yard, where PTRA assembles cuts of cars destined for each railroad seems to make little sense.

PTRA could perform the same function with no duplication in interchange deliveries to the railroads. It appears that this change alone would reduce the number of interchange movements competing to use the congested trackage along the East Belt and the West Belt lines.

The Port Authority supports having PTRA, or its successor organization, should PTRA ever be dissolved, provide neutral switching services on the trackage formerly operated by HB&T.

Expansion of Neutral Switching Area

The Consensus Plan calls for an expansion of the neutral switching provided by PTRA over various lines in the Houston/Gulf Coast area. The BNSF filing calls for PTRA operation of the Clinton Branch. The Port Authority supports the expansion of PTRA's neutral switching over some, but not all of the lines requested by the Consensus Plan and supports PTRA operation of the Clinton Branch.

In particular, the Port Authority supports expansion of area in which PTRA, or its successor if PTRA is ever dissolved, would provide neutral switching to include: (1) shippers located on UP's line between the junction with PTRA immediately north of Bridge 5A to Morgan's Point on the south side of the Houston Ship Channel, including Harrisburg, Manchester, Sinco, Pasadena, Deer Park, Strang, La Porte, and Morgan's Point, and (2) UP's Clinton Branch. This expanded area of neutral switching is in addition to the trackage currently operated by PTRA and the trackage formerly operated by HB&T.

In November 1995, the Port Authority and UP and SP entered into an agreement in which the Port Authority agreed to support the then-proposed UP/SP Merger and UP and SP agreed, among other provisions, to permit the Port Authority to build its own track on SP rights-of-way

between Deer Park Junction and Barbours Cut and between Strang and the Port Authority's planned terminal at Bayport. Regarding the latter line, the Port Authority agreed:

that any attempt by PHA [Port Authority] to establish rail service to others springing from New Track 2 [Strang to Bayport] shall void all other rights granted herein including the right to operate over the right-of-way of Primary Applicants [UP and SP] and any operating rights which may be granted to PTRRA or PHA by subsequent agreements whose purpose is to implement this letter agreement.

As a result, the Port Authority does not support or endorse any change to the rail service provided to shippers located on the Bayport Loop or on UP's line at or south of Strang Yard.

The following paragraphs discuss expansion of PTRRA neutral switching operations on the line from Bridge 5A to Morgan's Point; the Clinton Branch is discussed in a separate section below.

The industrial complex located along the Houston Ship Channel is one of the primary economic engines for the Houston region. The Port of Houston and the economic activity associated with the Port generate over \$5.5 billion of economic activity annually and generate over 196,000 jobs.

Assuring that this economic engine runs as efficiently as possible is important to the Houston economy. The operational delays inherent in having two railroads operate over the same trackage can be reduced by having one of those railroads perform the work in the area. Reducing the delays in operations along the south side of the Houston Ship Channel will translate into better service for the area's rail shippers, making them more competitive in their

marketplaces and preserving or expanding the level of economic activity in the Houston area. Neutral switching will also offer competitive transportation choices to those shippers which do not have a choice of line-haul carrier today.

Neutral Dispatching Performed by PTRA

The Port Authority supports neutral dispatching of the trackage recommended for neutral switching.

Neutral dispatching is so important to the efficient operation of the Houston terminal area that the Port Authority supports neutral dispatching on this trackage whether or not neutral switching is implemented as recommended above.

In addition, the Port Authority strongly believes that the neutral dispatching function for this territory should be performed by PTRA, not by a joint operation of the line-haul railroads.

In the Houston terminal area, there is extensive joint trackage over which both UP and PTRA operate. All of this jointly-operated trackage is dispatched by the joint dispatching center in Spring, regardless of track ownership; the non-signalled segments (Deer Park Junction to Barbours Cut and the HL&P Lead) are under the control of the UP yardmaster at Strang Yard.

Although UP and BNSF are both members of PTRA, the dispatching that is performed by the joint dispatcher often delays PTRA movements. It was reported to the Port Authority that a PTRA train was delayed for 16 hours in a move from Manchester to North Yard, a distance of about 5 miles, while other trains in the area were given dispatching preference; this route is over Port Authority-owned tracks except for a short segment at Bridge 5A.

The Port Authority believes that joint dispatching of the Houston terminal by PTRA is the best way to assure non-preferential dispatching of trains. Despite the fact that PTRA handled

247,000 loaded cars between the plants along the Ship Channel and the line-haul railroads in 1997, PTRRA is not a participant in the joint dispatching center at Spring, TX, and does not even have an observer at the joint dispatching center.

By its charter, PTRRA is a neutral entity; employees of PTRRA are more likely to make non-preferential dispatching decisions than are employees of one of the line haul carriers, even if the line-haul employee is supervised by a joint employee of the line-haul railroads. Having the dispatcher report to a joint employee reasonably assures that the dispatcher will not give preference to one line-haul carrier over the other, but it does not assure that the switching carrier's movements will be dispatched without disadvantage relative to the line-haul railroads' trains.

The Port Authority believes that only by having the dispatching performed by PTRRA, or its successor organization in the event PTRRA is ever dissolved, will dispatching in the Houston area be performed on a non-preferential basis. It is not necessary for the joint dispatching center at Spring to be controlled by PTRRA, but only the dispatching territory known as STO-2, which controls the area in which PTRRA operates.

Tex Mex Membership in PTRRA; Port Authority Voting Status Restored

PTRRA is an unincorporated association formed by a 1924 agreement between the Port Authority and the railroads operating in Houston. In that agreement, the Port Authority made its railroad property available and the railroads agreed to operate that property in a neutral, non-preferential manner to serve industries located along the Houston Ship Channel. For the first 50 years of the agreement, the Port Commissioners, who are unpaid appointees, also served as PTRRA Board members. During this period, the Port Authority made all capital improvements

and the Port Authority had the same number of votes as there were railroad members of PTR A, assuring a balance between the public and private interests served by PTR A.

In 1974, the Board was split into a Board of Investment and a Board of Operation, with the Port Authority maintaining a role on the Board of Investment, but not being involved in the day-to-day railroad operating decisions of the PTR A.

In 1984, the parties reached an agreement under which the railroads would make future capital improvements on PTR A and the basis of the railroads' payment for use of the Port Authority's property was changed from an interest rental basis to a flat monthly fee; the Board of Investment was abolished and the Port Authority was made a non-voting member of the surviving Board of Operation.

Because of its non-voting status, the Port Authority has not been able to provide the needed balance between the public and private interests served by the Port Authority's railroad assets. Restoring the Port Authority's vote on the PTR A Board would assure that the public interest would be effectively served by the operations conducted on the publicly-owned rail infrastructure adjacent to the Houston Ship Channel.

The 1924 PTR A agreement also clearly states that all railroads entering the City of Houston are members of PTR A. Tex Mex gained access to Houston under the terms of Decision No. 44 in this proceeding; Tex Mex should be a member of PTR A.

Tex Mex Yard in Houston

In Decision No. 44 in this proceeding, the Board granted the rights requested by Tex Mex in the Sub-No.14 Terminal Trackage Rights filing by Tex Mex. In the Sub-No.14 application, Tex Mex had requested access to HB&T's New South Yard. With the dissolution of HB&T, it is

no longer operationally feasible for Tex Mex to have access to New South Yard, as BNSF utilizes that yard to support its switching operations in Houston related to the trackage rights lines granted to it in Decision No. 44.

The Port Authority supports Tex Mex's request that a yard be made available to it in Houston, at a reasonable price or lease rate, to facilitate its operations in Houston and on its trackage rights to Beaumont and to Robstown, TX.

Additional Track between Houston and Beaumont

The Port Authority supports the proposal to construct an additional track between Houston and Beaumont, thereby increasing rail capacity in that corridor and adding an additional competitive railroad to the Houston market. The congestion which Houston has suffered in the last year has demonstrated that additional rail capacity in the Houston area would be beneficial to those industries which depend on the railroads to handle their outbound products and their inbound production materials.

In addition, the Port Authority continues to support greater competition in the Houston rail market. The industries which comprise the economic strength of Houston depend in large measure on the railroads to move their products to market. With greater competition in rail transportation, these industries are less likely to be at a competitive disadvantage in their more distant markets. The Port Authority believes that additional rail competition would be beneficial to the Houston industrial community and to the economy of the Houston area.

For these reasons, the Port Authority supports the proposed increase in rail infrastructure and the addition of another line-haul railroad to the Houston market.

PTRA Operation of the Clinton Branch

The Port Authority has two facilities located on the Clinton Branch and served by UP. The first is Houston Public Grain Elevator No. 2 (Elevator). The Elevator, which is owned and operated by the Port Authority, has a capacity of 6 million bushels and its throughput is expected to exceed 40 million bushels in 1998. The second facility is Woodhouse Terminal (Woodhouse). Located adjacent to the Elevator, Woodhouse is owned by the Port Authority and is leased to a firm which operates the terminal, handling cargoes through the Woodhouse warehouses and loading and unloading ships.

Together, the Elevator and Woodhouse occupy 91 acres on the north side of the Houston Ship Channel. The complex has 1,200 feet of wharf on the Ship Channel and a 1,200-foot x 250-foot boat slip equipped to handle roll-on/roll-off cargoes in addition to break bulk cargoes. The combined facility also has 14 tracks for receiving railroad cars, each approximately 2,600 feet long.

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

No Change in Competitive Access

Changing the operating responsibility for the Clinton Branch to PTRA will not change the current competitive access to shippers on the branch. The shippers located along the Clinton

Branch, with the exception of UP's own automobile unloading facility, already are open to reciprocal switch, and thus have access to railroads other than UP. Tariff ICC SP 9500-D, issued by Southern Pacific Transportation Company on September 11, 1996 lists in Item 5090 the industries on the Clinton Branch (listed under station name Galena Park - 35070) which are open to reciprocal switch. These include American Plant Food Company, Arrow Terminal Company, Delta Steel Incorporated, Exxon Energy Chemical, GATX Terminal, Holnam Incorporated, City of Houston, Houston Public Grain Elevator No. 2, Stevedoring Service of America (at that time the lessee and operator of Woodhouse Terminal), Texaco Lubricants Company, and United States Gypsum Company.

Service to the Elevator

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

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

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

from receiving grain shipments consigned to it, despite the Port Authority's requests that UP remove the cars from its tracks.

Service to Woodhouse Terminal

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

To resolve these delays, the Port Authority developed with the railroads an informal routing in which the cars for Woodhouse were delivered to PTR A, which switched them and placed them at a crossover switch connecting with the Clinton Branch. The UP switch crew then pulled the cars from the PTR A and delivered them to Woodhouse. In effect, this route substituted PTR A switching and transfer to the Clinton Branch for UP switching at Englewood and UP transfer to the Clinton Branch. The results were effective, with cars placed at the crossover the day after arrival in Houston and being delivered by UP either later that day or on the next day.

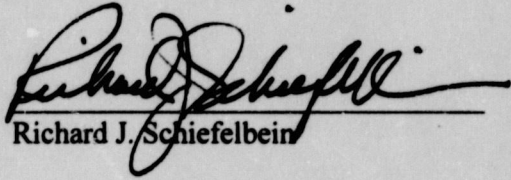
This example demonstrates the efficiency of using PTR A's North Yard, which is adjacent to the Clinton Branch, to handle traffic for the Clinton Branch rather than using UP's Englewood Yard, which is more distant.

The Port of Houston Authority supports the Consensus Plan's and BNSF's request that operation of the Clinton Branch be performed by PTR A. As described above, PTR A operation

of the Clinton Branch could improve service to shippers located on the branch without changing the existing competitive access for shippers located on the branch.

CERTIFICATE OF SERVICE

I, Richard J. Schiefelbein, certify that , on this 17th day of September , 1998, I caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26).



Richard J. Schiefelbein

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STB FD 32760 (Sub 32) 9-18-98 D 191199



GREATER HOUSTON PARTNERSHIP

Chamber of Commerce • Economic Development • World Trade

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SEP 18 1998

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Public Record

September 17, 1998

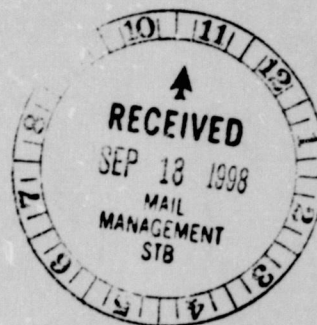
Honorable Vernon Williams
Case Control Unit

Attn: STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001

Re:

STB FINANCE DOCKET NO. 32760 (SUB-NOS. 25-32)
UNION PACIFIC CORPORATION, *et. al.*
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, *et. al.*

HOUSTON/GULF COAST OVERSIGHT



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Dear Secretary Williams:

Enclosed is the statement of the Port of Houston Authority presenting its comments relating to the requests for new conditions on the UP/SP merger that were accepted for consideration by the Board.

An original and 25 copies are enclosed, together with a 3.5-inch computer disk containing a copy of the statement in WordPerfect format.

Respectfully submitted,

Roger H. Hord
713 844-3625

1 9/11/93

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB Finance Docket No. 32760 (Sub-Nos. 26-32)
Union Pacific Corporation, et. al.
-- Control and Merger --
Southern Pacific Rail Corporation, et. al.**

HOUSTON/GULF COAST OVERSIGHT



**ENTERED
Office of the Secretary**

SEP 18 1998

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

This statement presents the comments of the Greater Houston Partnership (GHP) regarding those requests for additional conditions to the merger of the Union Pacific and Southern Pacific railroads which were accepted by the Board in Decision No. 6 in this proceeding. Because the GHP recommendations were among those accepted for consideration by the Board, the GHP intends to file rebuttal evidence and argument on October 16 in addition to the comments presented here related to requests made by other parties.

The Greater Houston Partnership

The Greater Houston Partnership is Houston's principal business organization and is dedicated to building prosperity in the Houston region. The Partnership has 2,400 members from virtually every industry sector throughout the eight-county Houston region. The Partnership's Board of Directors is composed of 112 corporate CEO's of organizations in the Houston region.

Partnership members employ almost 600,000 people, which is one out of every three employees in the region.

The GHP considers the following requests made in the Consensus Plan proposal to be largely similar to our own requests filed in this proceeding:

- That the Board should make permanent the provisions of Emergency Service Order No. 1518 that: (a) temporarily suspended the restriction the Tex Mex's trackage rights could be used only for shipments having a prior or subsequent movement on Tex Mex; and (b) temporarily granted Tex Mex trackage rights over UP's "Algoa route" between Placedo, TX and Algoa, TX and over BNSF from Algoa to Alvin, TX and to T&NO Junction, TX. The GHP supports making these rights permanent if data indicate improvement or if improvement can be expected.
- That the Port Terminal Railroad Association (PTRA), or its successor organization if the PTRA is dissolved, should provide neutral switching over the trackage formerly operated by the Houston Belt & Terminal Railroad (HB&T). The GHP supports the PTRA, or its successor organization, as the provider of neutral switching over the former HB&T and in an additional area determined to be financially feasible.
- That Tex Mex be acknowledged as a full voting member of PTRA and that the Port Authority's voting status on the PTRA Board be restored. The GHP supports for full PTRA Board membership the Port of Houston and all long haul railroads serving Houston.
- That a yard adequate to satisfy Tex Mex's switching needs in Houston be made available to Tex Mex at a reasonable price or lease rate; and that the KCS proposal to construct an additional track between Houston and Beaumont, increasing rail capacity in that corridor and adding an additional carrier to the Houston market, be authorized by the Board. The GHP supports a process mediated by the STB involving the Union Pacific and other long haul railroads which

would facilitate an agreement to sell or lease abandoned trackage and underutilized rights of way and switching yards for the purpose of adding rail system competitiveness, capacity, flexibility and geographic access.

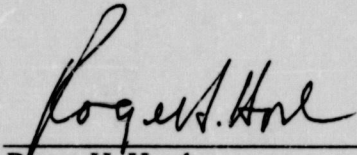
The conditions described above, which have been requested in the Consensus Plan, are similar to the GHP Board of Directors' resolution on *Competition in Houston Freight Rail Service*. The GHP Board's resolution emphasizes that Houston's rail system performance must be "in the top tier of United States cities," which means that service and rates must be truly competitive in order for Houston's port and its local industries to compete effectively in domestic and international markets. The GHP Board prefers that the private sector rectify noncompetitive situations through equitable compensation, but it realizes that federal statutes and regulations constitute a fundamental roadblock in some cases and should be modified.

Many Houston shippers have expressed concerns related to this year's service difficulties and the growing difficulty in obtaining competitive service and rates. Their concern is for the level of rail service needed for a competitive Gulf Coast economy and the degree of rail industry competition needed to achieve that goal. Railroad consolidation in Houston has resulted in six Class 1 railroads being reduced to two, with an 80 percent market share dominance by one railroad. These issues are adversely affecting local shippers and the Houston economy. Unless some corrective action is taken, over the long term the cost of operating in a large portion of the Houston area may well become competitively disadvantageous.

September 17, 1998

CERTIFICATE OF SERVICE

I, Roger H. Hord, certify that, on this 17th day of September, 1998, I caused a copy of the attached document to be served by first-class main, postage prepaid, on all parties of record in Finance Docket No. 32760 (Sub-No. 26).

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

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713 844-3625

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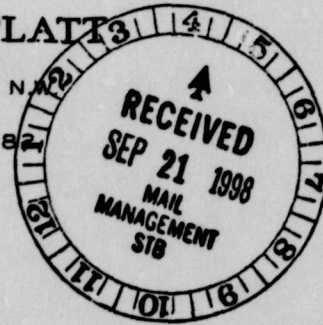
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STB FD 32760 (Sub 32) 9-21-98 D 191252

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ERIKA Z. JONES
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ejones@mayerbrown.com

ENTERED
Office of the Secretary

SEP 22 1998

**Part of
Public Record**

September 21, 1998

VIA HAND DELIVERY

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

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

Dear Secretary Williams:

Enclosed please find the original verification for Ernest L. Hord whose verified statement was filed on September 18, 1998, as part of The Burlington Northern and Santa Fe Railway Company's Comments, Evidence and Arguments on Requests for New Remedial Conditions in Additional Oversight Proceeding (BNSF-9).

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

Sincerely,

Erika Z. Jones


Enclosure

VERIFICATION

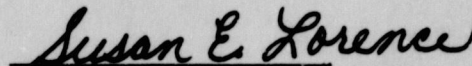
THE STATE OF TEXAS)

COUNTY OF TARRANT)

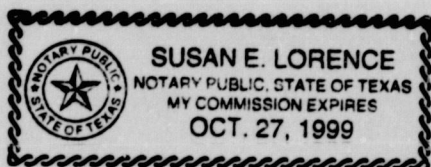
Ernest L. Hord, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.


Ernest L. Hord

Subscribed and sworn before me on this 17th day of Sept., 1998.


Notary Public

My Commission expires: 10/27/99



STB FD 32760 (Sub 32) 8-27-98 D 190808

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Office of the Secretary

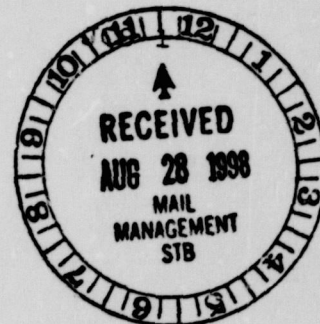
AUG 28 1998

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Public Record

Before the

SURFACE TRANSPORTATION BOARD

ORIGINAL



Finance Docket No. 32760 (Sub-No. 26)^{1/}

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--SOUTHERN
PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION
COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP.,
AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
[HOUSTON/GULF COAST OVERSIGHT]

NOTICE OF INTENT TO PARTICIPATE

Joseph C. Szabo,^{2/} for and on behalf of United Transporta-
tion Union-Illinois Legislative Board, gives notice of intent to
participate. 63 Fed. Reg. 42482-86. (August 7, 1998).

Gordon P. MacDougall
GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

August 28, 1998

Attorney for Joseph C. Szabo

^{1/}Embraces also Finance Docket No. 32760 (Sub-Nos. 27 thru 32).

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

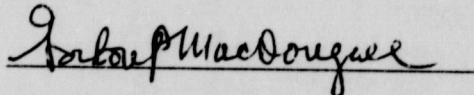
.

CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the foregoing upon the following in accordance with the decision served August 4, 1998 by first class mail postage-prepaid:

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Stephen Grossman, ALJ
Federal Energy Regulatory Comm.
888 First St., N.E.-#11F
Washington DC 20426



GORDON P. MacDOUGALL

Dated at
Washington DC
August 28, 1998

STB FD-32760 (SUB32) 8-19-98 D ID-190599

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CAROL MCCOY TOTH
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MARTHA E. HARRAPSE
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DEVON W. HILL
DANIEL QUINTART
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*NOT ADMITTED IN D.C.
*RESIDENT BRUSSELS

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ENGINEER
RANDALL D. YOUNG

WRITER'S DIRECT ACCESS

August 19, 1998

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW, Room 700
Washington, DC 20423-0001

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

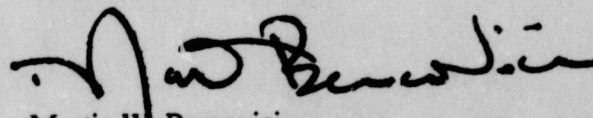
Dear Secretary Williams:

Pursuant to Decision No. 6 issued in the above-referenced matter, The Society of the Plastics Industry, Inc., hereby submits its Notice of Intent to Participate. Please include the undersigned on the service list in this proceeding, as follows:

Martin W. Bercovici
Keller and Heckman, LLP
1001 G Street, NW
Suite 500 West
Washington, DC 20001
Attorney for The Society of the Plastics Industry, Inc.

Copies of this letter are being served upon all parties on the service list to the Board's oversight proceeding.

Respectfully submitted,


Martin W. Bercovici
Attorney for The Society of the Plastics Industry, Inc.

(202) 434-4144
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RECEIVED
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STB FD-32760 (SUB32) 8-19-90 D ID-190586

190586
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August 19, 1998



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

Via Hand Delivery

D

Re: Finance Docket 32760 (Sub.-No. 32), *Union Pacific Corp., et al.*
-- *Control and Merger -- Southern Pacific Rail Corp., et al.*;
Finance Docket No. 32760 (Sub. - No. 32), *Capital*
Metropolitan Transportation Authority -- Request for
Conditions -- Interchange Rights

Dear Secretary Williams:

Pursuant to Decision No. 6 issued in the above-referenced docket, Capital Metropolitan Transportation Authority ("Capital Metro") hereby submits its notice of intent to participate. Please place the following representatives of Capital Metro on the official service list in this proceeding:

Albert B. Krachman, Esq.
Charles S. McNeish, Esq.
Bracewell & Patterson, L.L.P.
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Washington, DC 20006-1872

Copies of this letter are being served on all the representatives of all persons who have filed appearances in this proceeding, including UP's representatives.

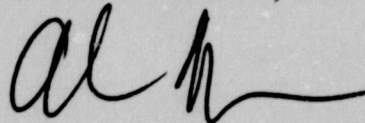
BRACEWELL & PATTERSON, L.L.P.

**A REGISTERED LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW**

The Honorable Vernon A. Williams
August 19, 1998
Page 2

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Albert B. Krachman', with a stylized flourish at the end.

Albert B. Krachman
Counsel to Capital Metropolitan
Transportation Authority

cc: Charles S. McNeish, Esq.
Bracewell & Patterson, L.L.P.

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Arlington, VA 22209

Lindil C. Fowler, Jr.
General Counsel
The Railroad Commission of Texas
1701 Congress Avenue
P.O. Box 12967
Austin, TX 78711-2967

Scott N. Stone
Patton, Boggs, L.L.P.
2550 M Street, N.W.
Washington, DC 20037

William A. McCurdy, Jr.
Logistics & Commerce Counsel
DuPont Legal
D-8098-1
1007 Market Street
Wilmington, DE 19898

George A. Aspatore
General Attorney
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241

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

Douglas R. Maxwell
General Counsel
CSX Transportation, Inc. J150
500 Water Street
Jacksonville, FL 32202

STB

FD-32760 (SUB32)

8-11-98

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ID-190471



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

August 10, 1998

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Office of the Secretary

AUG 11 1998

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Office of the Secretary
Case Control Unit

ATTN: STB Finance Docket No. 32760 (Sub-Nos. 27,28,29,30, 32, 32)
Surface Transportation Board
1925 K. Street N.W.
Washington, DC 20423-0001

Dear Secretary Williams:

RE:

STB Finance Docket 32760 (Sub-No. 27) - 190466
Texas Mexican Railway Company & Kansas City Southern Railway
-- Construction Exemption --
Rail Line between Rosenberg and Victoria, TX.

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 28)
Burlington Northern and Santa Fe Railway Company
-- Terminal Trackage Rights --
Texas Mexican Railway Company

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 29)
Burlington Northern and Santa Fe Railway Company
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 30)
Texas Mexican Railway Company, et al.
Request for Adoption of Consensus Plan

Notice of Intent to Participate

August 10, 1998
Page 2

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

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 32)
Capital Metropolitan Transportation Authority
-- Responsive Application --
Interchange Rights

Notice of Intent to Participate

The Greater Houston Partnership intends to participate in the above-captioned proceedings. Please include Roger H. Hord on the service list as a party of record representing the Greater Houston Partnership at the following address:

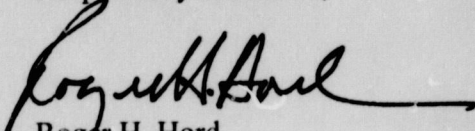
Roger H. Hord
Greater Houston Partnership
1200 Smith, 7th Floor
Houston, Texas 77002

Phone: 713.844.3625

Fax: 713.844.0225

An original and 25 copies of this filing are enclosed.

Respectfully submitted,


Roger H. Hord

cc: Arvid E. Roach II, Esq., Covington & Burling
Judge Stephen Grossman, Federal Energy Regulatory Commission
Richard Allen, Zuckert, Scoutt & Rasenberger, L.L.P.

STB

FD-32760 (SUB32)

8-11-98

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ID-190465

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

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William A. Mullins

1300 I STREET, N.W.

SUITE 500 EAST

WASHINGTON, D.C. 20005-3314

TELEPHONE: 202-274-2950

FACSIMILE: 202-274-2994

william.mullins@troutmansanders.com

August 11, 1998

VIA HAND DELIVERY

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

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

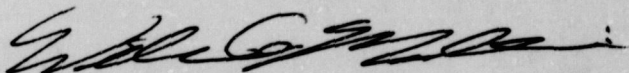
Dear Secretary Williams:

Pursuant to Decision No. 6 in the above-referenced docket, The Kansas City Southern Railway Company ("KCS") hereby submits its notice of intent to participate. Please place the following representatives of KCS on the official service list in this proceeding:

William A. Mullins
David C. Reeves
Sandra L. Brown
Ivor Heyman
Samantha J. Friedlander
Troutman Sanders, L.L.P.
1300 I Street, N.W., Suite 500 East
Washington, DC 20005-3314
Phone: (202) 274-2950
Fax: (202) 274-2994

Enclosed with this original are twenty-six additional copies. Please date and time stamp one copy for return to our office. Also included is a 3.5 inch diskette containing the text of this document.

Sincerely yours,



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

cc: Robert K. Dreiling
Richard A. Allen
Parties of Record

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FD-32760 (SUB32)

8-13-98

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ID-190513

PORT OF HOUSTON AUTHORITY

EXECUTIVE OFFICES: 111 EAST LOOP NORTH • HOUSTON, TEXAS 77029-4327
MAILING ADDRESS: P.O. BOX 2562 • HOUSTON, TEXAS 77252-2562
TELEPHONE: (713) 670-2400 • FAX: (713) 670-2429



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Office of the Secretary
Case Control Unit

ATTN: STB Finance Docket No. 32760 (Sub-Nos. 27, 28, 29, 30, 31, 32)
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Sub 32

Dear Secretary Williams:

RE:

STB Finance Docket 32760 (Sub-No. 27) - 190508
Texas Mexican Railway Company & Kansas City Southern Railway
-- Construction Exemption --
Rail Line between Rosenberg and Victoria, TX

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 28) - 190509
Burlington Northern and Santa Fe Railway Company
-- Terminal Trackage Rights --
Texas Mexican Railway Company

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 29) - 190510
Burlington Northern and Santa Fe Railway Company
Application for Additional Remedial Conditions Regarding Houston/Gulf Coast Area

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 30) -190511
Texas Mexican Railway Company, et al.
Request for Adoption of Consensus Plan

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 31) -190512
Houston & Gulf Coast Railroad
Application for Trackage Rights and Forced Line Sales

Notice of Intent to Participate

STB Finance Docket 32760 (Sub-No. 32) -190513
Capital Metropolitan Transportation Authority
-- Responsive Application --
Interchange Rights

Notice of Intent to Participate

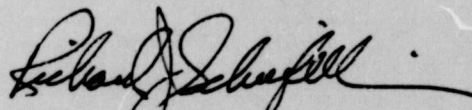
The Port of Houston Authority intends to participate in the above-captioned proceedings. Please include Richard J. Schiefelbein on the service list as a party of record representing the Port of Houston Authority, at the following address:

Richard J. Schiefelbein
Woodharbor Associates
7801 Woodharbor Drive
Fort Worth, Texas 76179-3047
Represents: Port of Houston Authority

Phone: 817-236-6841
Fax: 817-236-6842

An original and 20 copies of this filing are enclosed.

Respectfully submitted,


Richard J. Schiefelbein
For: Port of Houston Authority

STB FD-32760 (SUB32) 8-5-98 D ID-190396

LAW OFFICES

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE : (202) 298-8660
FACSIMILES: (202) 342-0683
(202) 342-1316



RICHARD A. ALLEN

August 4, 1998

VIA HAND DELIVERY

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

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

Dear Secretary Williams:

Sub 32

Pursuant to Decision No. 6 issued in the above-referenced docket, The Texas Mexican Railway Company ("Tex Mex") hereby submits its notice of intent to participate. Please place the following representatives of Tex Mex on the official service list in this proceeding:

Richard A. Allen
Scott M. Zimmerman
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W., Suite 600
Washington, DC 20006-3939

Copies of this letter are being served on all the representatives of all persons who have filed appearances in this proceeding, including UP's representatives.

Sincerely,

Richard A. Allen
Counsel to The Texas Mexican Railway
Company