STB FD 32760 4-1-96 D 62435

62435

Item No. ______________

Page Count 1

Apr #60

March 22, 1996

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

RECEIVED
APR 1 1996
MAIL MANAGEMENT
I.C.C.

Office of the Secretary
Surface Transportation Board
12th Street and Constitution Avenue NW
Washington, DC 20423

Dear Secretary:

The UP/SP merger is far more anti-competitive than the Santa Fe-Southern Pacific merger rejected in 1988. Please stop the decimation of our jobs so greedy owners can get richer. This merger is bad for our country. It should be rejected.

The railroads' application predicts there will be a net loss of 3,390 agreement and non-agreement jobs and the transfer of 2,952 workers. UP Employee Relations Director, Michael Hartman, claims that "Our experience in prior consolidations shows that adverse labor impacts are usually more modest than predicted".

President Scardelletti stresses that is not true. "In our experience, the loss of jobs, transfers and other hardships on workers is more than the railroads predict when they are trying to win government approval for their schemes." As an example, he cited the UP's takeover of C&NW which led (within a week of its approval) to the loss of 1,300 jobs.

If approved, the merger would mean closing Southern Pacific's historic headquarters in San Francisco.

If the merger is approved, the combined UP/SP will control 90 percent of rail traffic to Mexico and $3 billion in Texas petro-chemical traffic.

"If this merger goes through, one railroad giant will have control over much of the chemical, petroleum and plastics traffic off the Gulf Coast," warned Texas Democratic Congressman John Bryant.

A member of the House Judiciary Committee, Rep. Bryant said that the federal government is "being asked to sanction the creation in America of what surely is the largest private railroad monopoly in the history of the world."

Bryant called for the proposed merger to be held to the antitrust standards by which the Justice Department should judge mergers.

Sincerely,

Douglas Krekelberg

Douglas Krekelberg, Retired
410 N. French
Sioux Falls, SD 57103

ADVISE OF ALL

PROCEEDINGS

STB FD 32760 4-1-96 D 62433

62433

Item No.

Page Count 1

Agr #58

SENATOR DREW NIXON
DISTRICT 3

COMMITTEES:
State Affairs
Health and Human Services
Natural Resources
Subcommittee on Agriculture

The Senate of The State of Texas

DISTRICT OFFICE:
271 East Lamar
Suite A
Jasper, Texas 75951
(409) 384-9991

CAPITOL STATION:
P.O. Box 12068
Austin, Texas 78711
(512) 463-0103
TDD (512) 475-3758

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

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Office of the Secretary
APR 1 1996
3 Part of Public Record

March 27, 1996

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
12th Street and Constitution Avenue
Washington, D.C. 20423

RE: Finance Docket 32760

Dear Secretary Williams:

I am writing in regard to an application pending before you that seeks approval of a merger between the Union Pacific Railroad Company (UP) and Southern Pacific Lines (SP). I am concerned that the merger of these two lines will reduce rail competition in Texas. This lack of competition could negatively impact Texas businesses and our state's economy.

I urge the Board to carefully review the UP/SP merger proposal and to make a recommendation that ensures adequate rail competition in Texas.

Sincerely,

Drew Nixon

ADVISE OF ALL PROCEEDINGS

STB FD 32760 4-1-96 D. 62432

Item No. ______________

Page Count 1 __________

Apr #57 .

62432

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE BONNIE MARTINEZ
HOUSE DISTRICT 17

HELENA ADDRESS:
CAPITOL BUILDING
HELENA, MONTANA 59620-0400
PHONE: (406) 444-4800

HOME ADDRESS:
769 FALLOW LANE #110
BILLINGS, MONTANA 59102
PHONE: (406) 652-9676

A Montana Woman
STRONG
SOBER
SINCERE

March 23, 1996

Hon. Vernon A. Williams, Sectetary
Surface Transportation Board
Twelfth Street and Constitution Ave. N. W.
Room 1324
Washington D. C. 20423

Re; Finance Docket No.3227650 Union Pacific Corp./ Southern Pacific Rail Corp.
Control and Merger

Dear Mr. Williams;

I support the proposed merger of the Union Pacific Railroad and the Southern Pacific Lines for the following reason;

A merger would be good for Montana shippers, and workers.It is important that Union Pacific/Southern Pacific continue to compete comparable to Burlington Northern/Santa Fe, it would strengthen competition, create cost savings, increase investments and expand service, keeping rail transportation throughout the country.

For these reasons I support this merger and uge the Interstate Commerce Commission to approve the merger.

Sincerely,

Bonnie Martinez

Representative Bonnie Martinez

ADVISE OF ALL
PROCEEDINGS

STB FD 32760 4-1-96 D 62431

No. ____________
Page Count 2
Apr #56

CANYON COUNTY

HOME ADDRESS
P.O. BOX 44
CALDWELL, IDAHO 83606
HOME (208) 454-3373
BUSINESS (208) 459-4574

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

GREAT SEAL OF THE STATE OF IDAHO

MAJORITY LEADER
Idaho State Senate
CAPITOL BUILDING
P.O. BOX 83720
BOISE, IDAHO 83720-0081

62431

COMMITTEES
JUDICIARY AND RULES
COMMERCE & HUMAN RESOURCES
STATE AFFAIRS

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Office of the Secretary
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ADVISE OF AL[L] PROCEEDINGS

March 27, 1996

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Twelfth Street and Constitution Avenue, N.W.
Room 1324
Washington, DC 20423

Finance Docket No. 32760, Union Pacific Corp., et al -- Control & Merger -- Southern Pacific Rail Corp., et al.

Dear Mr. Williams:

I, David E. Kerrick, am the Majority Leader of the Senate, and represent Canyon County in the Idaho legislature.

I support the proposed merger of the Union Pacific Railroad and the Southern Pacific Lines. The merger of the UP and SP will enhance rail competition, strengthen the Idaho transportation system and help fulfill the potential for increased economic development within the State of Idaho.

In particular, this merger will provide faster, more direct and new single-line routes for many of the areas that trade by rail with Idaho. For example, eastern and northern Idaho will obtain much shorter single-line routes to many points in California and Oregon. In addition, there will be a new single-line route for the Eastport, Idaho gateway to Mexico and to SP-served points in California, Arizona and Texas, as well as new Colorado, New Mexico, Louisiana, and the Midwest. Both shippers and receivers in Idaho will benefit from this streamlining.

Also important is the fact that merger will enable UP to provide a ready supply of railcars, particularly the refrigerated equipment that Idaho shippers need. By making use of back haul opportunities and taking the best advantage of seasonal patterns, the UP could provide more reefer cars for Idaho potatoes, for example, without any corresponding increase in its fleet and the cost that would entail. In addition, more capital investment for expanded capacity would be possible with the additional cost savings from combining the operations of the two railroads.

A merged UP/SP will strengthen competition with the now-merged BN/Santa Fe and its new single-line routes. It is important to Idaho that UP/SP be permitted to compete by merging because of the benefits outlined above, and so that the UP will remain a financially strong match for BN/Santa Fe in Idaho.

For these reasons, the undersigned fully supports the merger and urges the Surface Transportation Board to approve the merger promptly.

Sincerely,

Senator David E. Kerrick

DEK:caj

cc: Charles Clark

Item No. 1

Page Count 1

Apr #54

62429

THE CHAMBER

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

March 28, 1996

The Honorable Vernon Williams
Surface Transportation Board
12th and Constitution
Washington, D.C. 20423

Dear Secretary Williams:

The Rosenberg/Richmond Area Chamber of Commerce opposes the proposed merger of the Union Pacific and Southern Pacific. The proposed merger would seriously impair our ability to attract job producing firms to the Houston area where our community is located.

Texas needs additional rail competition, not less. We urge the Board to disapprove the proposed merger.

Sincerely,

Rebecca Junker

Rebecca Junker
President

DOCKET 32760

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

CT:ah

ADVISE OF ALL PROCEEDINGS

ROSENBERG/RICHMOND AREA CHAMBER OF COMMERCE
4120 AVENUE H, ROSENBERG, TEXAS 77471 • (713) 342-5464

STB FD 32760 4-1-96 D 62428

Item No.
Page Count 1
Apr #53

FAX OR MAIL THIS LETTER TODAY

(The deadline for public comments is March 29.)

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street and Constitution Avenue
Washington, D.C. 20423
RE: Finance Docket 32760

FAX TO: (501) 734-4061

MAIL TO: P.O. Box 552
Brinkley, AR 72721

Arkansans For
Competitive Rail Service
James B. Sharp, Treasurer

ADVISE OF ALL PROCEEDINGS

ENTERED
Office of the Secretary
APR 1 1996
Part of Public Record

I believe that the UP/SP merger will reduce competition, and believe that an owning railroad is the best choice for Arkansas and for the U.S.

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APR 1 1996
MAIL MANAGEMENT
I.C.C.

Signature Irene Erickson

City Harry & Irene Erickson
1415 Purple Martin Drive
Springdale, AR 72764

62428

STB FD 32760 4-1-96 D 62426

ORIGINAL
62428

Item No. ______

Page Count 1

Apr #51

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

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APR 1 1996
MAIL MANAGEMENT I.C.C.

Before the United States Transportation Board

Finance Docket No. 32760

APPLICATION OF UNION PACIFIC RAILROAD ,ET AL.

NOTICE OF INTENT OF ALAMEDA HISTORIC COMPLEX TO PARTICIPATE IN PROCEEDINGS AND REQUEST CONDITIONS

" Alameda Historic Complex" is a Business in Alameda Calif. whose purpose is to Facilitate a Museum ,Tourist Facility in Alameda.

A.H.C. is requesting certain and general Trackage Rights and/or reciprocal switching trackage rights whithin California and other States on behalf of rail carriers unaffiliated with applicants and/or the Acquisition of certain rail spurs now mostly abandoned.

A.H.C. is also requesting that Union Pacific shall grant a Right of Way under their Rail Yards and Trackage in the Area of Oakland for the underground construction of a Large Tunnel which will carry Autos,Trucks and the probability of a Trolley or other Rail Vehicle A.H.C. requests that any Rail Tracks within the Described Tunnel shall have reasonable connections to the Union Pacifics Trackage in anticipation of future integrated operations between them and that reasonable rail Access be given to assist the Tunnel Construction.

A.H.C. requests that in Anticipation of increased road traffic and delays in travel in the Oakland area that Union Pacific be asked to Cooperate and participate in the construction of a (Truck,Bus) roadway which would utilize the Rail Shoulders of Urban Trackage.

As established in Decision # 11 New Responsive Applications and/or requests for Conditions have until March 29th 1996 to file and in ~~the spirit of Decision # 16 this Document is only a Summary of the~~ Total Application but is requested to be sufficient notification.

COMPLETE COPIES OF ALL DOCUMENTS ARE AVAILABLE TO ANY POR

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R.,1104.12,I certify that I have this day served copies of the foregoing "NOTICE OF INTENT OF A.H.C. TO PARTICIPATE IN PROCEEDINGS AND REQUEST CONDITIONS,upon all Parties Of Record in this proceeding by first class postage pre-paid U.S Mail, 3-25-96.

ADVISE OF ALL PROCEEDINGS

ALAMEDA HISTORIC COMPLEX
Gary McAfee (Proprietor)
2614 Bayview Dr.
Alameda Calif. 94501
(510) 522-5617

3-25-96 Signature: Gary McAfee

STB FD 32760 4-1-96 D 62427

Item No. ______ ______

62427

Page Count 1

'Apl #52

Filed March 26, 1996

53-96

By Edna M. Bowcutt
Clerk of the Board of Supervisors

RECEIVED APR 1 1996 MANAGEMENT I.C.C.

RESOLUTION

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TUOLUMNE

ADVISE OF ALL PROCEEDINGS

FD 32760

WHEREAS, the proposed merger of Union Pacific and Southern Pacific Railroads will yield substantial benefits for the state of California; and

WHEREAS, the Union Pacific-Southern Pacific merger would improve freight service and strengthen transportation competition through the Western United States; and

WHEREAS, the merged Union Pacific-Southern Pacific will also meet the competitive challenge of Burlington Northern-Sante Fe combination; and

WHEREAS, transportation customers will benefit from an agreement that would give Burlington Northern-Santa Fe access to various Union Pacific-Southern Pacific routes and points in California.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Tuolumne does hereby support the merger of the Union Pacific-Southern Pacific railroads merger.

ENTERED
Office of the Secretary
APR 2 1996
5 Part of Public Record

ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF TUOLUMNE ON March 26, 1996

AYES: 1st Dist.	Rotelli	NOES: Dist.	none
2nd Dist.	Rountree	Dist.	
3rd Dist.	Marks	ABSENT: Dist.	none
4th Dist.	DeBernardi	Dist.	
5th Dist.	Holman	ABSTAIN Dist.	none

Michael DeBernardi
CHAIRMAN OF THE BOARD OF SUPERVISORS

ATTEST: Edna M. Bowcutt
Clerk of the Board of Supervisors

No. 53-96

STB FD 32760 4-1-96 D 62424

Item No.________________

Page Count ____1____

Apr #49

62424

USE OF REPRESENTATIVES

STATE OF UTAH

REPRESENTATIVE DARLENE GUBLER
41ST DISTRICT
(SALT LAKE COUNTY)
2558 FLAMINGO DRIVE
SALT LAKE CITY, UTAH 84117
RES. 277-3268 / BUS. 957-4593
FAX 957-4704

STANDING COMMITTEES: EDUCATION; JUDICIARY
APPROPRIATIONS: COMMUNITY AND ECONOMIC DEVELOPMENT

RECEIVED
APR 1 1996
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I.C.C.

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

March 26, 1996

Vernon A. Williams, Secretary
Surface Transportation Board, Room 1324
Twelfth Street & Constitution Avenue N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corporation, et al
Control and Merger - Southern Pacific Rail Corp., et al

Dear Secretary Williams:

Please know of my support for the proposed merger of Union Pacific Railroad Company and Southern Pacific Transportation Company; I understand this proposal is pending before the Surface Transportation Board. I have been educated on the issue by constituents. They feel this proposal was carefully forged to be mutually beneficial to businesses and the State of Utah.

A Senate Concurrent Resolution (introduced during the 1996 Legislative session) peaked interest in this issue. The introduction of this resolution focused community and legislative interest in the meetings of Union Pacific, Southern Pacific and Burlington Northern and Santa Fe Railroads with the Western Shippers Coalition, individual shippers and the Governor's Task Force. These meetings addressed the need for the merger and competition issues. This dialogue continues. The success of the Senate Concurrent Resolution was reached without its passage.

We, in Utah, consider Union Pacific an integral part of our heritage. As we celebrate our state's centennial this year, the golden spike at Promontory Point has been recalled in many centennial festivities. Even though it preceded our statehood, we celebrate it as a significant milestone on that route. I feel a personal alliance with Union Pacific because of a strong partnership between Union Pacific and Salt Lake Community College where I serve as an administrator. They have served as a model partnership and we anticipate that partnership will be strengthened by this merger.

Southern Pacific will strengthen Union Pacific's position throughout the West. There is wisdom in two competitors joining to provide the healthy business climate in Utah with improved railroad services to Denver, the Gulf coast, Texas and the Bay area.

We anticipate many continued benefits from this merger. Among those benefits is less rail congestion in the Salt Lake Metropolitan area (my constituents) and improved mass transit possibilities. I trust we will receive your support for this critical issue.

ADVISE OF ALL PROCEEDINGS

Sincerely,

Darlene Gubler

STB FD 32760 4-1-96 D 62423

Item No.____________

Page Count 2

Apr #48

62423

CRUSHED LIMESTONE BASE • RAILROAD BALLAST • CHEMICAL STONE • LIMESTONE PRODUCTS

GULF COAST LIMESTONE, INC.

P.O. Box 66, Seabrook, Texas 77586

Office (713) 474-4124 Fax (713) 474-3829

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ADVISE OF ALL PROCEEDINGS

March 25, 1996

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

Mr. Vernon Williams
Surface Transportation Board
Room 3315
12th and Constitution, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760, Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al.

Dear Mr. Williams:

I have held the position of Vice President at Gulf Coast Limestone, Inc. for 10 years. G.C.L. is a major retailer of limestone and other road materials. Our products are used by general industry in a wide variety of projects. Currently, our company ships more than 10,000 carloads of material annually from central Texas to various destinations in Texas. We are always open to new marketing opporunities which may include Mexico.

Gulf Coast Limestone has a strong interest in competitive rail transportation between the United States and Mexico. The Laredo/ Nuevo Laredo gateway is the primary route for shipments between the two countries for the majority of international traffic. This gateway possesses the strongest infrastructure of customs brokers. It also provides the shortest routing between major Mexican industrial and population centers and the Midwest and Eastern United States.

Our company depends on competition to keep prices down and to spur improvements in products and services. For many years Union Pacific and Southern Pacific have competed for our traffic, resulting in substantial cost savings and a number of service innovations. TexMex has been Southern Pacific's partner in reaching Laredo in competition with Union Pacific, as Southern Pacific does not reach Laredo directly.

A merger of Union Pacific and Southern Pacific will seriously reduce, if not eliminate, competitive alternatives via the Laredo gateway. Although these railroads have recently agreed to give certain trackage rights to the new Burlington Northern Santa Fe Railroad, we do not believe the BNSF, as the only other major rail system remaining in the Western United States, will be an effective competitive replacement for an independent Southern Pacific on this important route.

I understand there is an alternative that will preserve effective competition. TexMex has indicated a willingness to connect with other carriers via trackage rights to provide efficient competitive routes. Trackage rights operating in such a way as to allow TexMex to be truly competitive are essential to maintain the competition at Laredo that would otherwise be lost in the merger. Thus I urge the Surface Transportation Board to correct this loss of competition by conditioning this merger with a grant to trackage rights via efficient routes between Corpus Christi and these connecting railroads.

Economical access to international trade routes should not be jeopardized when the future prosperity of both countries depends so strongly on international trade.

Yours truly,

R.R. Robinson

Robert R. Robinson

cc: The Texas Mexican Railway Company C/O Central Business Services

STB FD 32760 4-1-96 D 62422

62422

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Item No. ______

Page Count 1

Apr #47

The Honorable Vernon A. Williams
Secretary Surface Transportation Board
12th Street & Constitution Avenue
Washington,DC 20423

March 28, 1996

Dear Secretary Williams:

In reference to 'Finance Docket 32760', I believe the rail merger between the Union Pacific and Southern Pacific railroads could have a harmful effect on the economy and lives of many Texas communities and citizens. Texas needs the rail competition to ensure that Texas will continue to be in competition for industrial and business relocation, economic development, and the jobs that this competition brings to Texas.

Texas needs more than one owning railroad to ensure fair rates, quality service, and employment for railroad workers.

I urge you to do all that is possible to stop this merger.

Sincerely yours,

Ronnie Farrar

Ronnie Farrar
Rancher
Route 6 Box 295
Caldwell, Texas 77836

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

ADVISE OF ALL PROCEEDINGS

STB FD 32760 4-1-96 D 62421

Item No. ________

Page Count ·1

Apr #46

62421

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512/463-0526

CHARLES FINNELL
STATE REPRESENTATIVE

P.O. BOX 468
HOLLIDAY, TEXAS 76366
817/586-1245

ARCHER • BAYLOR • CLAY • COTTLE • FOARD • HARDEMAN • HASKELL
JACK • MONTAGUE • THROCKMORTON • WICHITA • WILBARGER • YOUNG

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Office of the Secretary
APR 1 1996
3 Part of Public Record

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MAIL MANAGEMENT
I.C.C.

March 27,1996

The Hon. Vernon A. Williams, Secretary
Surface Transportation Board
12th Street and Constitution Avenue
Washington, DC 20423

RE: Finance Docket # 32760

Dear Secretary Williams:

With regard to an application pending before you that seeks an approval of a merger between the Union Pacific Railroad Company (UP) and the Southern Pacific Lines (SP) I am most concerened that the merger of these two railroads will greatly reduce rail competition in the state of Texas, seriously impacting Texas business and our State's economic future.

The proposed merger would grant UP control over a reported 90% of rail traffic into and out of Mexico, 70% of the petrochemical shipments from the Gulf Coast of Texas, and 86% of the plastics storage capacity in the Texas/ Louisiana Gulf Region. UP acknowledges that the merger would greatly reduce rail competition and has proposed a trackage rights agreement with the Burlington Northern-Santa Fe (BNSF) as a proposed solution.

A trackage rights agreement, will not solve this problem. Owners of rail lines have incentives to invest in the track and to work with the local communities to attract economic development. Owners have control over the service they provide--its frequency, its reliability and its timeliness. You cannot say these things about railroads which operate on someone else's tracks and are subject to someone else's control.

Business in Texas does not need another merger. We nee another owning railroad to ensure effective rail competition. An owning railroad that is willing to provide quality service and investment is the best solution for shippers,communities and economic development officials. An owning railroad also offers a good opportunity to retain employment for railroad workers who would otherwise be displaced the this proposed merger.

With upmost concern I request the Board to carefully review the proposed merger of UP/SP and to recommend an owning railroad as the best means to ensure adequate rail competition in Texas.

ADVISE OF ALL PROCEEDINGS

Sincerely,

Charles Finnell

Charles Finnell

STB FD 32760 4-1-96 D 62420

62420

Item No.

Page Count 3
Apr #45

LIQUID SUGARS, INC.

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APR 1 1996
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MAIL
MANAGEMENT
I.C.C.

March 22, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corporation, et al. - Control and Merger-Southern Pacific Rail Corporation, et. al.

Dear Sir:

I am writing this letter to express our support for the BN/Santa Fe Agreement with the UP/SP.

My name is Warren Mooney and I am Executive Vice President of Liquid Sugars, Inc. I have been employed with this firm since its conception in 1962.

Liquid Sugars, Inc., is a distributor of sweeteners. We have 14 plants located West of the Mississippi, and we rely almost entirely on rail service for incoming products.

We ship cars of sugar and corn syrup via rail into our plants from suppliers East of the Rockies and in the Northern Tier states.

We feel that this Settlement Agreement would benefit our company by moving our traffic in a more expeditious manner.

We see the Settlement Agreement as being beneficial to the shipping public, and therefore favor and support this agreement.

Very truly yours,

Warren D. Mooney
Executive Vice President

ADVISE OF ALL
PROCEEDINGS

WDM/cc

1285 66th St. • P.O. Box 96 • Oakland, CA 94604-0096 • (510) 420-7100 • FAX (510) 420-7103

ATTACHMENT II

Suggested Verified Shipper Statement Format

Introduction	**Reason for Letter = Support for BN/Santa Fe Agreement with UP/SP**
Identification/Introduction (Individual)	**Name/Title/Years with Company/Years with Industry/Duties at Company**
Identification/Introduction (Company)	**Name/Address/ Description/Size/Market Range/Common Shipments (type and number)**
Mode of Transport Taken In Past and Future	**Routes/Strictly Rail vs. Rail & Intermodal, Motor, and Water Transit / Volume / Tracks & Company(s) Used in the Past and expected after merger**
Statement of General Support	**Writer as Company Representative States Positive Reception for Settlement Agreement**
Specific Benefit for Company	**Description of Manner in Which Settlement Agreement Will Specifically Benefit the Writer's Company**
Descriptive Story	**Example (using typical company product) of Improvement/Benefit Expected as a Direct Result of the BN/Santa Fe agreement with UP/SP**
Conclusion	**Conclusion/Restatement of Support**
Verification	**Last Page/Verification/Notarized**

The verified statement must be notarized (preferably notarized) or contain the following declaration:

If executed inside the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on this __ day of ______, 1996."

____

Shipper Signature

If executed outside the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this __ day of _____, 1996."

____
Shipper Signature

The verified statement of support should be addressed to and mailed directly to:

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th & Constitution Ave., N.W.
Washington, D.C. 20423

and should reference the merger proceeding as:

Finance Docket No. 32760, Union Pacific Corporation, et. al.--Control and Merger--Southern Pacific Rail Corporation, et. al.

A copy of the verified statement should be sent to:

Roberta R. Lund
Special Project Coordinator
Law & Government Affairs Department
3800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102-5384
817-333-5020 FAX
817-333-6101

STB FD 32760 4-1-96 D 62419

62419

Item No. ____

Page Count 1

Apr #44

RECEIVED
APR 1 1996
MAIL MANAGEMENT I.C.C.

March 25, 1996

Dear Sirs,

Please vote against the rail merger between the Union Pacific and the Southern Pacific. I believe it could have a harmful effect on our economy.

(Finance Docket 32760)

Thanks Again,

M. T. Blackmon

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

ADVISE OF ALL PROCEEDINGS

STB FD 32760 4-1-96 D 62418

Item No. ______________

Page Count 1

Apr #43

62418

FAX OR MAIL THIS LETTER TODAY

(The deadline for publiccomments is March 29.)

ADVISE OF ALL PROCEEDINGS

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street and Constitution Avenue
Washington, D.C. 20423
RE: Finance Docket 32760

FAX TO: (501) 734-4061

MAIL TO: P.O. Box 552
Brinkley, AR 72721

Arkansans For
Competitive Rail Service
James B. Sharp, Treasurer

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

ENTERED
Office of the Secretary
APR 1 1996
Part of Public Record

I believe that the UP/SP merger will reduce competition, and believe that an owning railroad is the best choice for Arkansas and for the U.S.

Signature Robert D Brooks 5112 Standridge

City No. Little Rock AR 72118

NSANS FOR COMPETITIVE RAIL SERVICE

Political adv. paid for by Arkansans For Competitive Rail Sevice, James B. Sharp, Treasurer, P.O. Box 552, Brinkley, AR 72721

STB FD 32760 4-1-96 D 62416

Item No.________________

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Apr #41

62416

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UTAH STATE SENATE

319 STATE CAPITOL • SALT LAKE CITY, UTAH 84114
(801) 538-1035 • FAX (801) 538-1414

SENATOR
LEONARD M. BLACKHAM

MAJORITY WHIP

TWENTY-EIGHTH DISTRICT
BEAVER, GARFIELD, JUAB, MILLARD, PIUTE,
SANPETE, SEVIER, WAYNE COUNTIES

P.O. BOX 255
MORONI, UTAH 84646
O-(801) 436-8125
H-(801) 436-8489

EXECUTIVE APPROPRIATIONS COMMITTEE
LEGISLATIVE MANAGEMENT COMMITTEE
APPROPRIATIONS SUBCOMMITTEE
Business, Labor, Agriculture and Environmental Quality
STANDING COMMITTEES
Energy, Natural Resources and Agriculture
Revenue and Taxation
Rules

March 20, 1996

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

Vernon A. Williams, Secretary
Surface Transportation Board
Room 1324 Twelfth Street & Constitution Avenue NW
Washington, D. C. 20423

RE: Finance Docket No. 32760, Union Pacific Corporation, et al - Control and Merger - Southern Pacific Rail Corp., et al

Dear Secretary Williams:

As Majority Whip of the Utah State Senate, I want to express my opinion on the proposed merger of Union Pacific Railroad Company and Southern Pacific Transportation Company which is presently pending before the Surface Transportation Board.

Union Pacific has had a long and rich history intertwined with the state of Utah since completion of the first transcontinental railroad commemorated by the driving of the Golden Spike in 1869 at Promontory Point, Utah. Southern Pacific, which now includes the Denver and Rio Grande Western Railroad Company, has also provided rail services in the state of Utah. Both railroads have competed vigorously for rail traffic to and from the state of Utah.

The recent merger of the Burlington Northern and Santa Fe Railroads ("BNSF") has raised serious concerns regarding Southern Pacific's continuing economic viability as a competitive rail line. SP's Chairman, Phil Anschutz, has stated that SP cannot survive financially in the wake of the BNSF merger. The UP/SP merger will create a competitor that is fully equal with the BNSF.

Although the merger of Union Pacific and Southern Pacific will remove Southern Pacific as a rail competitor within the state of Utah, Union Pacific has taken significant steps to eliminate the potential loss of rail competition for Utah shippers. Union Pacific has entered into a track agreement with the BNSF to ensure that shippers currently served by two railroads will still have access to two strong class one railroads. The Union Pacific and Southern Pacific have also entered an agreement granting Utah Railway Company the right to operate over an expanded service area to preserve rail competition for Utah's coal industry and to help assure the long term viability of the Utah Railway.

If BNSF does not become an active player in the Utah market, action would be required to bring

ADVISE OF ALL PROCEEDINGS

competition back into the market place. In the other regulated industries, means to create competition are being imposed by law and may be necessary in the railroad sector if competition commitments are not kept.

The legislature is concerned that we maintain a healthy transportation system for Utah companies. A viable and competitive rail system is an important element to our future success.

A coalition of western shippers raised concerns that the BNSF may not intend to commit the resources and effort necessary to compete for Utah rail transportation to the same extent that Southern Pacific competed and arranged for introduction of a proposed official Senate Concurrent Resolution (SCR5) during the 1996 Legislature to make those concerns known. Officials of Union Pacific, Southern Pacific and BNSF met repeatedly with the Western Shippers Coalition, as well as with individual shippers and the Governor's Task Force, to explain the need for the merger and to address competition issues. The Railroads are continuing that dialogue on a group and individual basis. As a result of those discussions, the Legislature withdrew support for SCR 5 and let the resolution die.

The UP/SP merger will assure that Utah shippers continue to have access to high quality rail service in the State. In light of these advantages to shippers within the state of Utah, and assuming BNSF competition will exist, I urge your support of the Union Pacific/Southern Pacific merger.

Sincerely,

Leonard M. Blackham

Leonard M. Blackham
Majority Whip
Utah State Senate

STB FD 32760 4-1-96 D 62414

62414

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Apr # 39

BEVERLY O'NEILL
MAYOR
CITY OF LONG BEACH

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

March 28, 1996

The Honorable Vernon A. Williams
Secretary, Interstate Commerce Commission
Twelfth Street & Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

Dear Secretary Williams:

This is to express my support for the proposed merger between the Union Pacific Railroad (UP) and the Southern Pacific Railroad (SP).

With President Clinton's recent $400 million pledge of support for the Alameda Corridor project --- which would create vital truck and train route linking the ports of Long Beach and Los Angeles to the Southern California and the rest of the country --- transportation access is key to sustaining our nation's competitive edge in the Pacific Rim. Today, roughly **half** of the cargo passing through the Ports of Long Beach and Los Angeles is moving to or from cities located **east** of the Rocky Mountains. That cargo is moving by train from the Long Beach and Los Angeles docks to consumers **throughout** the nation. Trains will play a critical role in the transcontinental flow of the cargo. **The merger between Union Pacific and Southern Pacific is a natural marriage of two great leaders in the rail industry which would streamline and strengthen the transportation system.**

Obvious benefits would include major cost savings from consolidations and use of the best systems of each railroad, improved efficiency and service, and more competitiveness in the railway market which is so vital to the nation's economy.

I urge your support of this very critical union.

Sincerely,

Beverly O'Neill

Beverly O'Neill
MAYOR

BO'N:nb

ADVISE OF ALL PROCEEDINGS

STB FD 32760 4-1-96 D 62412

Item No.______________

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Apr #37

62412

HER CATTLE CO.

Where farming and ranching has been a family tradition since 1844.

'Finance Docket'
'#32760'

March 25, 1996

Honorable Vernon A. Williams
Surface Transportation Board
12th Street & Constitution Avenue
Washington, DC 20423

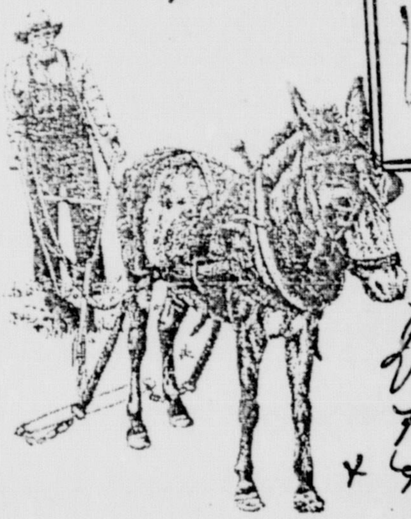
RECEIVED
APR 1 1996
MAIL MANAGEMENT I.C.C.

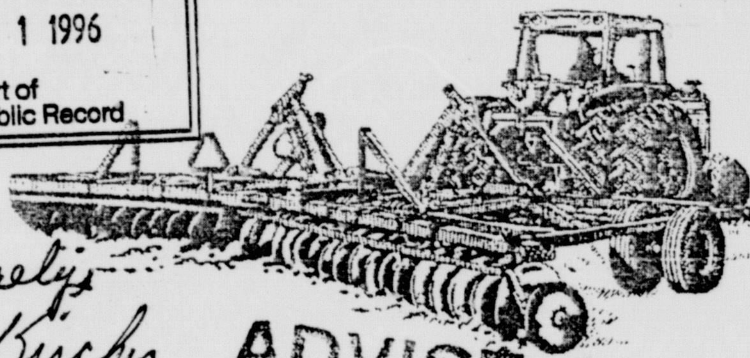
Dear Sir,

Beinging in agriculture for years and coming from an agricultural family of 152 years in Texas, I'm opposed to the merger of Union Pacific and Southern Pacific Railroads as proposed in the Finance Docket #32760.

I strongly urge you too oppose this merger because it will destory the competition and hurt the transpostation of agriculture products.

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record





Sincerely,

D. J. Kircher
Kircher Farms
& Kircher Cattle Co.

ADVISE OF ALL PROCEEDINGS

ROUTE 3 • BOX 152 (VIOLET)
ROBSTOWN, TEXAS 78380

OFFICE: (512) 387-2273
RANCH: (512) 564-3975

STB FD 32760 4-1-96 D 62411

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62411

INDEPENDENT CATTLEMEN'S ASSOCIATION
OF TEXAS, INC.

704 E. Wonsley, Suite 202 • Austin, Texas 78753
Phone: 512-836-1321 • FAX: 512-837-6913

March 26, 1996

Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, N. W.
Washington, D. C. 20423

Re: Finance Docket No. 32760, Union Pacific Corporation, et al.-- Control & Merger -- Southern Pacific Rail Corporation, et al.

Dear Secretary Williams:

In reference to the proposed merger of the Union Pacific and Southern Pacific railroads, I am writing to urge you to give careful consideration to the proposed merger's impact on the Texas agricultural industry.

Our members are always concerned when one person or company has the ability to control the flow of goods, especially agriculture goods.

We encourage you to fully study this issue and the impact it will have on the Texas economy. As more information develops, our Association will keep you informed as to our members views.

I, Charles Carter, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement on behalf of the Independent Cattlemen's Association of Texas. Executed on March 26, 1996.

Sincerely,

Charles Carter
Executive Director

CAC:sb

ADVISE OF ALL PROCEEDINGS

STB FD 32760 4-1-96 D 62410

Item No. ___ ___________

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Apr # 35

62410

State of Texas
House of Representatives

THE STATE OF TEXAS

RECEIVED APR 1 1996 MAIL MANAGEMENT I.C.C.

Committees:
County Affairs
Insurance

Member:
Tarrant County Delegation
Vice Chair/Secretary

Austin, Texas 78768-2910
512-463-0716
FAX 512 463-5896

District Office:
4732 E. Lancaster Ave.
Suite B
Fort Worth, Texas 76103
817-535-6087
FAX 817-535-0360

GLENN LEWIS

District 95 • Tarrant County

March 25, 1996

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
12th Street and Constitution Avenue
Washington, DC 20423

RE: Finance Docket 32760

Dear Secretary Williams:

I am writing in regard to an application pending before you that seeks approval of a merger between the Union Pacific Railroad Company (UP) and Southern Pacific Lines (SP). I am very concerned that the merger of these two railroads will significantly reduce rail competition in Texas, seriously impacting Texas businesses and our State's economy.

As proposed, the merger would grant UP control over a reported 90% of rail traffic into and out of Mexico, 70% of the petrochemical shipments from the Texas Gulf Coast, and 86% of the plastics storage capacity in the Texas/Louisiana Gulf Region. UP acknowledges that the merger would greatly reduce rail competition and has proposed a trackage rights agreement with Burlington Northern-Santa Fe (BNSF) as the solution.

A trackage rights agreement, however, simply does not solve the problem. Owners of rail lines have incentives to invest in the track and to work with local communities to attract economic development. Owners have control over the service they provide-its frequency, its reliability, its timeliness. None of these things can be said about railroads that operate on someone else's tracks, subject to someone else's control.

Texas needs another owning railroad, not another merger, to ensure effective rail competition. An owning railroad willing to provide quality service and investment is the best solution for shippers, communities and economic development officials. An owning railroad also offers the best opportunity to retain employment for railroad workers who would otherwise be displaced by the proposed merger.

For all of these reasons I urge the Board to carefully review the proposed UP/SP merger and to recommend an owning railroad as the only means to ensure adequate rail competition in Texas.

Sincerely,

Glenn O. Lewis

Glenn Lewis

ENTERED
Office of the Secretary

APR 1 1996

3 Part of
Public Record

cc: Carole Keeton Rylander, Chairman
Railroad Commission of Texas
1701 North Congress Avenue
P.O. Box 12967
Austin, Texas 78711-2967

ADVISE OF AL

PROCEEDING

STB FD 32760 4-1-96 D 62409

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Page Count 1.

Apt # 34

62409

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MAIL MANAGEMENT
I.C.C.

DERAIL THE UP/SP MERGER.

March 25, 1996.

DEAR MR. SECRETARY:

I urge the Surface Transportation Board to reject the merger of the Union Pacific and Southern Pacific Railroads. It is for more anti-competitive than the Santa Fe-Southern Pacific merger rejected in 1988. A hundred years ago , America cracked down on Railroads that ripped off families , small businesses and consumers. Please don't bring those monopolies back again!

As a worker whose job is threatened by this merger, I can tell you thousands of communities, consumers, and shippers will be abused by corporate giants once rail competition is destroyed. Don't decimate jobs so that greedy owners can get richer. This merger is bad for our country. It should be rejected.

Phil Darity

Phil Darity

7220 Abilene Dr.
Sachse, Tx. 75048.

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

ADVISE OF ALL PROCEEDINGS

STB FD 32760 4-1-96 D 62403

Item No.______________

Page Count 2

Apr #28

62403

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Office of the Secretary
APR 1 1996
3 Part of Public Record

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March 25, 1996

Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission
Twelfth St. and Constitution N.W.

RE: Finance Docket 32760 - Union Pacific merger with Southern Pacific

Dear Sir,

In 1974 I retired as Regional Vice President, Dallas, The Missouri Pacific - Texas Pacific rail system. Since then, as you know, the MP-TP system has merged with the Union Pacific. To my knowledge this merger has been good for all concerned.

I write you now to urge approval of the merger proposed in the above docket. The Commission has of course been actively involved in the explosive increase in rail mergers in recent years, culminating so far in the recently approved merger of Sante Fe with Burlington Northern, and the Southern Pacific - Union Pacific merger proposed in #32760, creating super regional rail systems.

The success of such highly integrated, centralized operations is attributable in part to the aggressive application of some of the prodigious capabilities of modern telecommunications, but primarily the rail merger phenomenon has been driven by the need to find ways to reduce cost of operation. It has been concluded that this can be achieved only by improving efficiency of operation, and this can be achieved only by improved, optimum utilization of resources, both material and human, resulting ultimately in a stable structure of charges for service which will be profitable for the carrier and at the same time realistic and acceptable to shippers and receivers of freight and ultimately beneficial for the public.

EFFICIENCY, then, has become the key concept for the successful operation of rail carriers, and of other forms of freight transportation as well.

The two rail systems in this proceeding now jointly serve many important communities and industries. Obviously the inevitable result of merger will be eventual elimination of redundant trackage and other material facilities, and the eventual elimination of surplus, unnecessary personnel.

The elimination of material facilities will be of no particular concern to the communities involved and based on my personal observation of the Union Pacific's policy and practice in previous situations, I am confident the elimination of surplus personnel will be achieved in a thoughtful, non-drastic, socially responsible manner - thru voluntary relocation, voluntary early retirement, voluntary "buy outs" and attrition, with result that neither the involved communities nor individual employees will be hurt significantly.

As to the prospective loss of competition between these two carriers, I think it should be understood that in a situation where charges for service are identical and regulated, the concept of multiple service to assure competition is essentially an extravagant luxury that cannot be sustained indefinitely in an increasingly competitive world economy.

It should also be understood that railroad versus railroad competition is by no means as important in the distribution of the nation's freight tonnage as competition versus rail carriers and other forms of transportation - highway, pipeline, barge and air (mail). Essentially, few if any communities or industries are solely dependant on rail transportation. Communities that now have vital need for rail transportation now served by Union Pacific or Southern Pacific will continue to have service as long as the need for it exists.

ADVISE OF ALL PROCEEDINGS

In a great many instances where industries are now served by both UP and SP, one of them tends to serve only in a "stand-by", "acc-in-the-hole" basis, resulting in a basically wasteful use of the material and human resources of the secondary carrier.

If it makes sense that every community have service by two or more rail carriers, whose charges for service are identical and regulated, then it also would make sense for every community to have two or more systems for the delivery of natural gas or heating oil, and two or more available sources of electric power. This would of course require the expenditure of huge sums of money in either case - which cost would in one way or another be paid by the consumer, as the consumer is now paying for the unnecessary cost of multiple, duplicate, redundant rail service all over the country - all in the name of competition.

John C. Selover,

John C Selover

640 Beechwood Dr.
Tyler, TX. 75701
903-592-4847

Texas Governor George Bush

Texas Attorney General Dan Morales

Honorable Carol Keeton Rylander, Chair Person
Texas Railroad Commission
P.O. Drawer 12967
Austin, TX. 78711-2967

Mrs. Rylander - I know of the commendable work you have done to streamline the R.R. Commission, making it more efficient and effective. I hope this same philosophy will apply in your consideration of this matter.

Ms. Marilyn Covey
% Tyler Morning Telegraph
P.O. Box 2030
Tyler, TX. 75701

Union Pacific Railroad
1005 Congress Ave., Suite 800
Austin, TX. 78701

Mr. Ron Burns, CEO, Union Pacific Railroad
1416 Dodge St.
Omaha, NE. 68179

STB FD 32760 4-1-96 D. 62402

Item No.______________

Page Count 2
Apr #27

62402

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APR 1 1996
MAIL MANAGEMENT
I.C.C.

Pacific™
Steel & Recycling

Corporate Office
1401 3rd Street N.W.
P.O. Box 1549
Great Falls, Montana 59403
(406) 727-6222
MT 1-800-332-9930
FAX: (406) 453-4269

March 27, 1996

ENTERED
Office of the Secretary
APR 1 1996
3 Part of Public Record

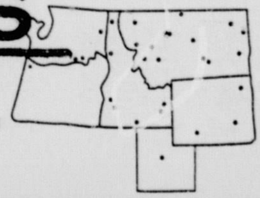
The Honorable Vernon A. Williams
Secretary Surface Transportation Board
Case Control Branch
12th Street and Constitution Avenue N.W.
Washington DC 20423

Conditioned Statement of Support for the Proposed Merger of Union Pacific Railroad and Southern Pacific Transportation Company

Pacific Hide & Fur Depot dba Pacific Steel & Recycling has learned that an entity controlled by the majority shareholder of Montana Rail Link will be filing with the Surface Transportation Board an inconsistent or responsive application in which that entity will propose acquiring one of the Union Pacific or Southern Pacific routes between California and Kansas City (the "MRL Proposal"). In our opinion, without the MRL proposal or a comparable solution, the UP/SP proposal eliminates rail competition in the Central Corridor of the United States. The trackage rights UP/SP have agreed to grant to BNSF are unlikely to result in BNSF's providing meaningful competition in the Central Corridor. It will cost BNSF nothing if it elects not to use those rights. Competition can only be assured with an independent third party owner/operator acquiring one of the Union Pacific or Southern Pacific routes between California and Kansas City area. We, therefore, condition our support of the merger on sale of a Central Corridor route to an independent party that would provide competitive service in order to justify its investment in that rail line.

Pacific Hide & Fur Depot dba Pacific Steel & Recycling strongly supports the proposed acquisition of the Union Pacific line between Silver Bow, Montana, and Pocatello, Idaho, as a strategic element of the Central Corridor solution. The Silver Bow - Pocatello line ties together the present MRL system with the Central Corridor route at Ogden, Utah, providing important traffic to support the new Central Corridor system and affording the economic synergies of tying both systems together. The ("MRL Proposal") will provide routing options on both Union Pacific and Burlington Northern Santa Fe as well as direct routing via the new MRL proposed system.

ADVISE OF ALL PROCEEDINGS



Serving the Northwest for over 100 years.

Montana • Wyoming • Idaho • Oregon • Washington • Utah

Pacific Hide & Fur Depot dba Pacific Steel & Recycling, with headquarters in Great Falls, Montana, has been in existence in excess of 100 years. Our business consists of new steel sales, e.g. plate, sheet, beams, bars, etc., and recycling, both ferrous and non-ferrous metals, as well as fibers and animal hides.

We have 36 branch operations in six states. Our shipments consist of scrap iron in gondola cars. Our branches in Montana are served by either MRL or BNSF. All locations are served by only one railroad. Wyoming branches are served individually by either UP or BNSF. Our Washington branches are served by BNSF, with Spokane, Washington, being open to reciprocal switching and having access to UP. Also, we have access to both BNSF and UP at Lewiston, Idaho.

Shipments will originate at Boise, Nampa, Twin Falls, Burley, Pocatello and Idaho Falls, Idaho, as well as Mills (Casper) and Gillette, Wyoming.

Destinations of shipments will be:

Nucor, Plymouth, Utah - 40-45,000 Tons
CF&I, Pueblo, Colorado - 15-20,000 Tons
GST, Kansas City, Missouri - 12-15,000 Tons

Above tonnage is on an annual basis.

There are many benefits to the Union Pacific's proposed merger with Southern Pacific. The MRL proposal maintains the benefits of both the UP/SP merger including the proposed trackage rights agreement with Burlington Northern Santa Fe, and at the same time ensures true competition in the Central Corridor through sale of one of the routes to an independent operator.

Our company conditions its support of the UP/SP merger application on sale of a Central Corridor route as described in the MRL Proposal.

Sincerely,

George T. O'Dore

George O'Dore
Transportation Manager

cc: Mr. Fred Simpson
Montana Rail Link, Inc.
P O Box 8779
Missoula MT 59807

STB FD 32760 4-1-96 D 62400

62400

Item No. ____
Page Count 2
Ap #25

ADVISE OF A
PROCEEDING

26 MARCH 96

Dear Mr. Williams,

Greetings to you from a resident of the economic giant state of Texas, where free enterprise and competition lives on - so far - on the rail lines. Alas, rumor has it though that soon this could be a thing of the past. How ludicrous that the powers which are in the land up yonder with you all should perceive to entertain the most remote thought of a rail merger, [Finance Docket 32760], could be of any good. Now, granted a few - a very few - individuals would not only be undaunted by such a merger, but would inevitably gain financial stability - short-term. That being those with personell seniority with Southern Pacific stock holders being baught out if the merger takes place. But what of the thousands of other Texans awaiting employment to become stock holders and constituents of maintenance contractors and the like for the vast rail system that lies within the borders of this great state.

I'm a born and bred Texan, not an implant or tourist want-to-be, and to me, the likes of this merger fall in line with other great debate fiascos such as a gay political caucus or a dead-beat non-child-supporting parent hiding behind the cover of an Army CO due to protocol! A layman would surely file all of the above under "D" for "doodely-squat" as proof being in the pudding - some things are better left alone. If it don't fit, don't force it!

In closing this literary smorgasbord of crude wit, I totally oppose Finance Docket 32760, and bid you and all the ships at sea farewell.

Sincerely,
Jamie Murphy
P.O. Box 142
Dallardsville, TX 77332

P.S. Having past experience working with RR contractors, yes the merger would effect them too - for all the wrong reasons!

STB FD 32760 3-29-96 D 62290

62290 49

Item No.__________

Page Count 2

Mar # 787

ER, HAMILTON & SCHEE Z

ATTORNEYS AT LAW

PHILADELPHIA, PENNSYLVANIA
DETROIT, MICHIGAN
NEW YORK, NEW YORK
PITTSBURGH, PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

1300 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036-1685
(202) 828-1200
TELEX CABLE ADDRESS: 440653 (ITT)
FAX: (202) 828-1665

WILMINGTON, DELAWARE
BERWYN, PENNSYLVANIA
WESTMONT, NEW JERSEY
LONDON, ENGLAND
MOSCOW, RUSSIA

WRITER'S DIRECT NUMBER

(202) 828-1415

RECEIVED
MAR 29 1996
MAIL MANAGEMENT
I.C.C.

March 28, 1996

VIA HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20549

ENTERED
Office of the Secretary
MAR 29 1996
8 Part of Public Record

Re: Certificate of Service
Finance Docket No. 32760

Dear Mr. Williams:

In accordance with Decision No. 26 in the above-referenced docket, I enclose Geneva Steel Company's Certificate of Service which has been served by first class mail upon the persons who have been added as a party of record [POR].

Sincerely,

John Will Ongman

John Will Ongman

/rme

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served pursuant to Decision No. 26 of the Surface Transportation Board the following pleadings previously filed with the Board:

(1) Notice of Appearance (GS-1)

(2) Notice of Intent to Participate (GS-2)

Dated this 28th day of March, 1996

John Will Ongman

STB FD 32760 3-29-96 D 62282

62282 183

RECEIVED MAR 29 1996 I.C.C. BUILDING GUARD DESK

Route 2, Box 167
Logan, Oklahoma 73849
and
4500 S. 4 Mile Run Drive, #728
Arlington, Virginia 22204
March 29, 1996

ENTERED Office of the Secretary MAR 30 1996 4 Part of Public Record

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
12th and Constitution Avenue, N. W.
Washington, D. C. 20423

RE: Finance Docket No. 32760, *Union Pacific Corporation, et al -- Control and Merger -- Southern Pacific Rail Corporation, et al* and Docket No. AB-3 (Sub-No. 130) *and other dockets affecting abandonment in the Central Corridor*

Dear Mr. Williams:

There is a widespread and intense public outcry against the proposed merger of Union Pacific Corporation with Southern Pacific Rail Corporation and associated selective abandonment of segments of the rail. The new Surface Transportation Board has been given a mandate unprecedented in our times for reversing the ICC's long record of favoring the regulated interests over the public interest. The new Board is in a position to end the record of accommodating progressive concentration in this critical sector that has created a drag on the national economy and caused economic devastation to regions of the country which have not been adequately served for decades.

I speak from the viewpoint of a professional economist holding M.S. and Ph.D. degrees in economics. My experience includes serving as Director (acting) of the Office of Middle East and Central Asia, U.S. Department of the Treasury where for over 18 years I have conducted economic analysis and participated in policy formulation with regard to domestic and international energy issues and developments. I formerly designed and taught consumer affairs courses at the graduate and undergraduate levels at California Polytechnic State University, San Luis Obispo, and conducted economic research and policy analysis for the Office of Saver and Consumer Affairs of the Board of Governors of the Federal Reserve System in Washington, D.C.

I am responding to Docket No. 32760-UP-SP Merger and Docket No. AB-3 (Sub-No. 130) as an **owner of valuable agricultural land and as a producer of wheat and milo** in the vicinity of Eads and Chivington in Kiowa County, Colorado, and as heir to **similar valuable wheat and milo producing lands in Oklahoma.** I am, consequently, **a financially affected party.** I am further responding as **a private citizen** concerned with the adverse impacts of this proposed merger on industrial structure and performance and thereby on national economic activity, international trade and the balance of payments, regional economic development, the agriculture sector, and the general consumer interest as well as national security and defense, energy dependence, and environmental quality.

POSITION STATEMENT

The reduction of transportation services and anti-competitive consequences of the increased market concentration caused by the proposed Union Pacific-Southern Pacific merger and abandonment is harmful to the national economy and the national interest. It will cause me financial harm. **I oppose the proposed Union-Pacific merger and the abandonment of sections of existing rail. I support the efforts of the Mountain and Plains Communities and Shippers Coalition to secure another carrier to operate the rail line from St. Louis to Kansas City, Kansas City to Pueblo, and Pueblo to the West Coast. I further support the proposals for opening to competition the route south from Wichita Kansas to the Gulf with interconnection to the Central Corridor.**

Oklahoma, Texas, and Kansas wheat and other grain crops have been denied rail service for decades. The process followed the same pattern Union Pacific is undertaking now along the Central Corridor. Service was denied outright or became so bad that the only reliable way to get grain to markets was to haul it by truck -- 400-500 miles to the Port at Catoosa or 900 miles to the Gulf. Then after denying service or delivering on an unreliable basis, the railroads could make the case to the ICC that there was no demand for their services on those lines and the ICC acquiesced to abandonment and pulling the rail. Today, railroads that do operate across that part of the country decline significant participation in grain transport. We have no alternative other than to truck the grain 400 - 900 miles to market -- not because there was (or is) no demand for rail service, but because service was (and is) not delivered.

This comes at considerable economic cost. Rail is a far more energy efficient and less costly mode of transport than trucks. For example, trucks use 4 to 9 times as much fuel per ton mile as rail. In addition, truck freight requires enormous public expense in road and bridge construction and upkeep. This is a highly irrational national transport system, and it seems particularly abusive when one considers that the railroads were built with public land grants to support the construction and operation of the rail and the railroad companies are still reaping great amounts of income from those grants.

Not only has this coddling of monopolies to allow them to pick and serve only the most lucrative markets while reaping high monopoly returns from all markets been bad transportation policy, it has raised the delivery costs of everything in the US meaning a transfer of wealth from all consumers of any product that has used the services of the transport system to stockholders and officers of the railroad corporations or the trucking companies.

Furthermore, forcing transport of bulk commodities such as grain by truck creates an unnecessary and excessive burden on producers. For example, this winter when I needed to sell my 1995 milo crop, quotes for grain at the Gulf ran $6 - 7.00 per bushel, compared to $3.00 to $3.25 in central Oklahoma. Transport costs account for the difference in price. Cutting the price of transport to 1/5 the current rate would have raised the farm price of my crop by as much as $2.40/bushel or 80%. These high transport costs depress the local economy by discouraging economic activity and foreclosing production that, although efficient, may be rendered marginal or unprofitable by the high freight costs. It transfers money out of the local economy undermining the economic base. When we consider that this affects potentially 700 to 800 million bushels of wheat alone in Oklahoma, Kansas, and Texas without consideration for other farm crops and other goods, it translates into billions of dollars at stake.

The current policy is robbery on a grand scale. It deprives producers of a major proportion of the income from their output thereby discouraging economic activity and reducing the welfare of the society. This mitigates against economic development in the affected regions and creates a drag on the national economy. It prices our products out of the highly competitive foreign markets harming our balance of trade and payments position. It forces use of energy inefficient transportation making the nation more dependent on vulnerable oil imports and unnecessarily raising the level of greenhouse pollutants in the environment.

If this merger and abandonment are allowed to proceed as proposed, southwest Colorado wheat and other grain crops will become captive of a monopoly shipping arrangement which will force all grain trade through a monopsony grain dealer arrangement. UP has scheduled for abandonment and destruction the rail across southwestern Colorado which serves the cooperative and independent local elevators that compete with Cargill elevators on the line to be retained and upgraded. Since this proposed handling of the rail is the least economic of a number of alternatives including sale of the line to any one of a number of eager would-be owners, one can only conclude that monopoly control of shipping is the objective. (Please see filings by the Colorado Wheat Administrative Commission.)

Union Pacific does not want to serve the Central Corridor (former Missouri Pacific line). Shippers on the Missouri Pacific line received adequate, reliable, and prompt service until the line was purchased by Union Pacific. As soon as Union Pacific acquired the line, UP began deliberate denial and downgrading of service practically to the point of destroying local shipping on the line. UP says only 142 cars of local freight was shipped on the line last year; however, a recently completed study by the Colorado transportation department estimates the potential demand for 4,000 carloads of locally originated freight service per year on the line even in this period of recession. Some 17 million bushels of wheat alone without consideration for other grain crops produced in the area are potentially affected. Again, a large sum of money is at stake.

The line carries heavy through traffic -- at least 20 transcontinental trains daily. Lack of traffic and inadequacy of revenue are not the issue. The high degree of interest shown by other entrants who would like to buy the line attests to the market's assessment of the viability and profit potential of the line. There is no need for abandonment and certainly not for pulling the rail.

UP should not be allowed to foreclose entry by abandoning the Central Corridor line and pulling the rail. The Mountains and Plains Communities and Shippers Coalition have proposed a remedy which will improve the markets for Colorado producers and restore rail traffic as a viable option for Oklahoma, Kansas, and Texas producers. Requiring divestiture of the rail by UP and associates from St. Louis to the west coast and introducing a motivated carrier will afford Colorado wheat access to west coast export terminals and the growing Asian market.

UP has flatly and specifically denied Colorado elevatormen and wheat growers transportation to west coast export terminals. It will also offer a competitive alternative choice of shipping services to the Kansas City grain terminals and the Gulf export terminals. Furthermore interconnection of the Central Corridor with a link to the Gulf will open shorter shipping routes to the Gulf export market for both Colorado and Kansas wheat as well as reestablishing a rail option for Oklahoma and Texas producers.

A true Class 1 competitor is needed to create a true competitive market. Furthermore, the carrier needs to be in control of the full length of its shipping corridor to avoid being held hostage to the other dominant carriers. It requires full divestiture all the way to the west coast. UP has said and demonstrated dramatically and unequivocally that it does not want to serve the route. Neither should it be allowed to hold the route hostage by retaining control of the entry to the export terminals. Furthermore, UP must not be allowed to control or manipulate the selection process for a new carrier; an open, transparent, market process must be used to avoid a sweetheart arrangement with UP that will in a few years lead back to the same situation we are dealing with today.

Increasing concentration and reducing services provided and areas serviced is not the answer to an already irrational transport system. This newly redefined Board is in a position to establish a legacy of serving the public interest through dedication to increasing competition in the transportation sector. The public is asking the Board to do this and has offered a workable proposal for beginning the process of expanding transportation service rather than destroying it and of introducing new innovative operators to force efficiencies on the existing lethargic, monopolistic order. Competition will produce a healthier shipping industry that will seek to accommodate the transportation needs of our producers at economically efficient rates.

The result will be a significant expansion in the local economies receiving improved and increased levels of service and a positive contribution to the national economy and our international payments and trade balances as well. It will help revitalize the economically depressed communities along the Central Corridor thus generating additional demand for shipping services. It will protect the earnings of local producers maintaining the value of their land and other assets. It will improve the financial health and vitality of the agriculture sector. And consumers will receive a better deal.

I urge the Board to exercise the public mandate for restructuring of the rail industry by requiring the divestiture needed and facilitating the entry of new blood, a new attitude, and a new approach to business into the rail sector through a competitive market process.

Sincerely,

Dorothy M. Mercer

Dorothy M. Mercer, Ph. D.

VERIFICATION

DISTRICT OF COLUMBIA

I, Dorothy M. Mercer, declare that the foregoing statement is true and correct. Further I certify that I am authorized to file this statement executed on March 29, 1996.

Respectfully yours,

Dorothy M. Mercer

Signed: Dorothy M. Mercer, Ph. D.
March 29, 1996

STB FD 32760 3-29-96 D 62165

62165

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Mar #645

MAR 31 1996

4 Part of Public Record

William A. Pollard, D.D.S.

FAMILY DENTISTRY

2301 WASHINGTON AVENUE
CONWAY, ARKANSAS 72032

Telephone (501) 329-9060

ADVISE OF ALL PROCEEDINGS

RECEIVED MAR 29 1996 MAIL MANAGEMENT I.C.C.

ADVISE OF ALL PROCEEDINGS

March 26, 1996

ENTERED Office of the Secretary

MAR 31 1996

Part of Public Record

Hon. Vernon A. Williams, Secretary
Surface Transportation Board, Room 2215
1201 Constitution Avenue, NW
Washington, D.C. 20423-0001

RE: Finance Docket No. 32760

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The Union Pacific-Southern Pacific merger application now pending before the Surface Transportation Board should be denied, unless the STB authorization also contains absolute requirements for divestiture of "parallel" lines by Union Pacific. The merger proposal, as submitted by UP-SP, will destroy rail competition in much of Arkansas and Texas, to the detriment of shippers and the public. Union Pacific's proposal for granting trackage rights to BNSF is totally inadequate in preserving any semblance of true competition. A tenant carrier cannot effectively compete with an owner carrier; the owner carrier will always have recourse to favor their own transportation services, either through operating practices or financial policies.

Of primary concern is the SP (Cotton Belt) trackage extending from Chicago-St. Louis-Pine Bluff-Houston-El Paso. The public interest would be best served if this segment of trackage was acquired by an independent carrier, rather than being retained by Union Pacific. Union Pacific officials have publicly threatened to "walk away" from the merger if the UP is forced to sell the Cotton Belt portion of the Southern Pacific. Public posturing of this nature should not be allowed to influence the STB analysis of the merger.

A second area of concern involves the St. Louis-Kansas City (inactive) trackage owned by SP, the UP secondary mainline trackage between Herington, KS, and Pueblo, CO, and the SP-DRGW trackage extending from Pueblo to Dotsero, CO. These segments of mainline railroad are being proposed for downgrading and abandonment by UP. Purchase of these lines by other carriers and/or shortline operators would preserve rail service to many affected towns and would also allow the formation of a competitive route from St. Louis to Colorado.

If the UP-SP merger is to be approved, I would urge that several conditions should be imposed as non-negotiable requirements.

(1) UP should be required to divest itself of former SP (Cotton Belt) trackage between Chicago and Texas points.
(2) UP should be required to divest itself of St. Louis-Colorado secondary mainline trackage as outlined above; including trackage rights between Herington and Kansas City, and from Dotsero, Colorado to a BNSF connection.

Sincerely,

Wm A Pollard

William A. Pollard, D.D.S.

STB FD 32760 3-29-96 D 62162

Item No. 62162

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Mar #642

RECEIVED MAR 29 1996

March 24-96

Mr. Vernon Williams

Dear Sir

ADVISE OF ALL PROCEEDINGS

I you can see I am writing you in regard to the Rail Road merger. Please; please! Do all you can to keep it from going through. I have two Boys that is working at the shops as Carmen they probaly both have to move out of state they both are paying on homes here at Pine Bluff. It will put a hard ship on them to move. One has been there since 1963. the other boy in 68 they have worked hard. To have a job here. I am 76 and in bad health I have Arthritis bad and can hardly walk. I am a widow and depend on the boys to help me things Around the house that I cant do my self. I do not have the money to hire some one to do for me I am on. S.S. So you can see they need to stay in Pine Bluff. ark. If you Want to Know more. just call me. my Phone number. 1-501. 534 6589.

Thank you so much.

Elva Jean Spadoni
1115 East 6 th St.
Pine Bluff. ark. 71601

STB FD 32760 3-29-96 D 62251

62251

~~3~~ 3
2/3

Item No.

Page Count 14

BEFORE THE SURFACE TRANSPORTATION BOARD

Mar #-748

Union Pacific --
Control and Merger --) Finance Dkt. 32760
Southern Pacific)

COMMENTS AND CONDITIONS
on behalf of
RAILS TO TRAILS CONSERVANCY
in connection with
ABANDONMENT-RELATED ISSUES
including
MOTION FOR WAIVER OF CERTAIN SERVICE REQUIREMENTS

These comments are on behalf of Rails to Trails Conservancy, a nation-wide non-profit corporation dedicated to fostering the preservation of otherwise-to-be abandoned railroad corridors for possible future rail use ("railbanking"), and for other compatible public purposes, including interim use as trails. RTC has approximately 70,000 members, with members in every State affected by this merger proceeding.

I. Summary of Position

RTC at this time does not take a position on the merger per se. RTC is, however, concerned about the various merger-related abandonments identified by the merger partners, Union Pacific (UP) and Southern Pacific (SP). In order to mitigate adverse impacts flowing from the merger, appropriate conditions should be imposed to ensure that opportunities are maximized to preserve otherwise-to-be abandoned rail corridors for railbanking, interim trail use, and other compatible public uses pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). In addition, appropriate public interest, public use, environmental, and historic preservation conditions should be imposed.

In the absence of the conditions sought herein, STB approval of the merge would constitute a major federal action with significant adverse environmental impacts. STB under the circumstances would be barred from authorizing the merger until an environmental impact statement (EIS) is prepared, circulated for comment, finalized, and available for consideration by the agency before it acts upon the merger application. 42 U.S.C. § 4332. In the event the impacts of the merger-related abandonments are mitigated by the issuance of (i) Certificates or Notices of Interim Trail Use (CITU's in application abandonment proceedings or NITU's in exempt abandonment proceedings)[1] and (ii) conditions as provided herein, the potential adverse impacts would be so contained as to support the position that an EIS unnecessary.

Consistent with the above, RTC is currently prepared to support the merger in the event measures consistent with preserving otherwise-to-be abandoned corridors are adopted by STB or agreed upon by UP.

II. Railbanking

RTC realizes that continued freight rail service in general takes precedence over railbanking, interim trail use, and alternative public use of otherwise-to-be abandoned rail corridors. RTC of course does not object to continued freight rail service, or acquisition of rail corridors for that purpose,

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[1] See 49 C.F.R. § 1152.29.

where such service can be provided in an economically competitive and responsible manner. In light of merger-related economics, RTC believes that, for the most part, the bulk of the lines proposed for merger-related abandonment are not strong candidates for current freight rail service. Nonetheless, the corridors in question constitute important and historic rail lines which may be of vital importance as our Nation's population and economy continues to expand. In conjunction with the merger, UP and SP propose that approximately 600 miles worth of these traditional and unique rail corridors be abandoned. Railbanking and interim trail use will assist in preserving these corridors for the future at no cost to the railroads or their shippers. Furthermore, many of the corridors proposed for abandonment constitute excellent recreational resources in their own right (e.g., the "Tennessee Pass" line from Sage to Canon City) or can be important connections in a larger trail network netting together state-wide or nation-wide trail systems. RTC accordingly supports railbanking of as many of these corridors as possible, and in all instances where a qualified agency or public interest organization is prepared to assume managerial, legal and tax (if any) responsibilities.[2]

1. Specific lines. RTC files herewith "statements of

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[2] Railbanking is also compatible with proposals for use of portions of some of these lines (*e.g.*, the Tennessee Pass line through the Royal Gorge near Canon City, Colorado) for excursion rail purposes. RTC is prepared to work with parties interested in such joint use of the corridors consistent with overall preservational objectives.

willingness" invoking section 8(d) of the Trails Act, and requests the issuance of a Certificate of Interim Trail Use (CITU) or Notice of Interim Trail Use (NITU) as appropriate, with respect to the following lines:

<u>California</u>

AB-12 (Sub 184X), SP, Alturus to Wendel, 86.5 miles

<u>Colorado</u>

AB-12 (Sub 189X), SP, Sage to Leadville, 69.1 miles

AB-12 (Sub 188), SP, Malta to Canon City, 109.0 miles

AB-3 (Sub 130), UP, Towner to NA Junction, 122.4 miles

<u>Illinois</u>

AB-33 (Sub 96), UP, Barr to Girard, 38.4 miles

<u>Kansas</u>

AB-3 (Sub 131), UP, Hope to Bridgeport, 31.2 miles

In addition, RTC supports the issuance of Notices of Interim Trail Use pursuant to section 8(d) applications filed by, inter alia, Madison Transit with respect to the following two proceedings in Illinois:

AB-33 (Sub 98X), UP, Edwardsville to Madison, 15.0 miles

AB-33 (Sub 97X), UP, DeCamp to Edwardsville, 14.6 miles

2. <u>Special provision in CITU's and NITU's</u>. It is RTC's understanding that UP plans to continue service on many lines for which merger-related abandonment is sought for a year or more post-abandonment authorization. UP intends to continue service or use for this period in order to ensure an orderly reconfiguration of operations. Because operations are likely to

continue for a substantial period on many of these lines, it is prudent to issue the requested CITU's and NITU's not for the customary 180 days (subject, of course to extension) but instead for a two-year period. This period should be sufficient for UP to conclude its operations on the line, and to permit the completion of railbanking agreements without need to return to STB for extension orders.

3. Motion in connection with statements of willingness. RTC is serving 20 copies of the identified RTC "statements of willingness" upon STB, as well as serving the railroads, in conformity with regulations appearing at 49 C.F.R. § 1152.29. However, service of all these "statements" upon all parties to the merger proceeding is burdensome and almost certainly a matter of total irrelevance to almost all such parties. In order to avoid an unnecessary and unwarranted burden, RTC hereby specifically moves, pursuant to 49 C.F.R. § 1110.9, that 49 C.F.R. §1104.12 (service on all parties to the proceeding) be waived for purposes of the "statements of willingness," and instead that RTC be granted leave to file the "statements" with STB (a) with service at this time only on representatives of UP and SP so long as (b) RTC makes the statements available promptly to any other party to this proceeding requesting them.

III. Public Interest Conditions

A. Conditions Sought

The STB enjoys broad powers to impose conditions in merger proceedings to protect the public interest pursuant to statutes such as 49 U.S.C. § 11346 (1995), as well as traditional sources of conditioning power in abandonment proceedings such as 49 U.S.C. § 10906 (recodified to § 10905 by the ICC Termination Act). Railroad corridors are unique assets, which are virtually impossible to reassemble once lost.[3] While a benefit of the merger may be economies resulting from an ability to cease current operation of particular lines, and while such economies may constitute a public benefit, loss through abandonment of approximately 600 miles of difficult-to-assemble rail corridor, much of which has previously served as mainline rail corridor for major carriers, constitutes a grave threat to the public interest in preserving transportation corridors. Measures must be taken to ensure that these corridors are preserved wherever this may be possible without significant cost to the merging carriers. Consonant with this objective, and in order to protect the public interest, RTC requests that STB impose several conditions on all merger-related abandonments. None of the requested conditions pose significant costs on the merging carriers. Moreover, all the conditions may be helpful in preserving the corridors in question, and the benefits of the

[3] "[T]o assemble a right-of-way in our increasingly populous nation is no longer simple. A scarcity of fuel and the adverse consequences of too many motor vehicles suggest that society may someday have need either for railroads or for the rights-of-way over which they have been built. A[n] ... agency charged with designing part of our transportation policy does not overstep its authority when it prudently undertakes to minimize the destruction of available transportation corridors painstakingly created over several generations." Reed v. Meserve, 487 F.2d 646, 649-50 (1st Cir. 1973).

conditions easily outweigh any burdens attributable to them. In particular, RTC requests the issuance of the following conditions:

1. Preserve Surface Transportation Board (STB) jurisdiction to issue "railbanking" or other appropriate orders over all merger-related abandonments for a period of 180 days following the date UP actually ceases to use the line in question, and otherwise consummates any abandonment authority received from STB.

2. Bar UP from disposing or otherwise transferring (other than for public use) any real estate interests, bridges, culverts, or similar structures for a period of 180 days following the date UP actually ceases to use the line in question, and otherwise consummates any abandonment authority received from STB.

It is RTC's understanding that possible toxic contamination exists on or adjacent to the "Tennessee Pass" line in Colorado.[4] The presence of Superfund sites, or known toxic contamination, can be detrimental to all parties, including the railroad, in the context of abandonment proceedings.[5] Some baseline information on the corridor is vital to ensure that a timely railbanking arrangement can be reached, and to ensure that the

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4 In particular, it is RTC's understanding that there are three Superfund sites along or near the corridor: the California Gulch Superfund Site in Leadville, the Eagle Mine Superfund Site in Minturn, and the Smeltertown Superfund Site in Salida. It is further RTC's understanding that the merged railroad will own an interest in certain slag piles at Leadville which may contain toxic material, and some material from the slag piles may have been employed as ballast on the line.

5 To make a long story short, applicable Federal and State law renders current owners of contaminated property strictly liable. Prior owners may also be liable. Transfer of title may result in liability for prospective owners. The issue of possible liability, and it scope, can easily complicate arrangements to preserve a rail corridor, even though such conservation is highly desirable from an environmental point of view.

impasse which has bewildered the "Wallace Branch" in northern Idaho is avoided. In connection with the two proceedings relating to the "Tennessee Pass" line in Colorado -- AB-12 (Sub 189X) and AB-12 (Sub 188), RTC accordingly also requests the issuance of the following public interest condition:

> 3. Within 180 days of authorization of abandonment, UP shall complete and supply to the State of Colorado and RTC a report (by an independent third entity) commonly known as a Phase I environmental survey, which report shall identify all possible toxic contamination on the corridor based upon an on-site inspection, thorough canvass of all local, state and federal environmental agencies, and reasonable investigation of internal company records. The independent third entity shall be selected by UP from a list of qualified companies or individuals acceptable to the State of Colorado for purposes of conducting the survey in question.

B. <u>More Detailed Justification for Conditions Sought</u>

<u>Conditions 1 and 2.</u> The first public interest condition sought be RTC, a bar on disposal or transfer on real estate, bridges and related structures for 180 days from the date of actual post-abandonment cessation of use, is similar to public use conditions generally requested under 49 C.F.R. § 1152.28, with two exceptions. First, we seek an order running for 180 days from the date the railroad actually ceases all use of the corridor (including overhead or local use, or storage or work train use) or consummation, whichever is later. Ordinarily the 180 day period runs from the effective date of the abandonment authorization. The reason for the difference is that UP has indicated that the railroad is likely to operate for as much as a year or more over many of these corridors in order to ensure a smooth transition of service for customers of the merged

railroad. As a result, a condition running for only 180 days from the effective date of the abandonment authorization would be ineffective to preserve STB jurisdiction for the necessary period. The second difference from an ordinary public use condition is that we seek an order expressly retaining STB jurisdiction to issue railbanking or other appropriate orders. Ordinarily STB does not expressly retain jurisdiction. The reason for this request is that RTC is not filing a railbanking application for a number of the merger-related abandonments in this proceeding. Our investigations to date, however, have indicated that all of the lines may be suitable for railbanking if an interim trail manager steps forward. Prior to Fritsch v. ICC, 59 F.3d 248 (D.C. Cir. 1995), parties could rely on the position of this Board (or its predecessor) that issuance of a "public use condition" under 49 U.S.C. § 10906 (now recodified at § 10905) would preserve Board jurisdiction to act upon a late-filed railbanking request. After Fritsch, it would appear that to assure jurisdiction to so act, this Board must expressly retain such power. Such power should be retained until a minimum of 180 days after UP actually ceases any use of the corridor for the same reason identified above; namely, that UP evidently intends to operate over the corridors for a substantial time post-abandonment authorization, and this will likely delay the onset and progress of railbanking negotiations.

Condition 3. The Tennessee Pass line (Sage to Canon City in Colorado) would make a world-class recreational trail facility, as the northern portion is adjacent to the I-70 ski corridor, and the southern portion is adjacent to the Arkansas River and traverses the Royal Gorge at Canon City. Additionally, the line represents a unique transcontinental corridor, suitable for preservation for potential future use as a rail line should traffic in the next century warrant, even if uneconomic now. In short, this line, of all merger-related abandonment candidates, is a prime candidate for railbanking and interim trail use.

The Tennessee Pass line, however, is adjacent to several sites suspected of toxic contamination.[6] Additionally, the Pass has long been employed as a major transcontinental corridor, and wrecks and spills have occurred upon it, most recently this winter. In order to facilitate negotiations for preservation of the line, it not only would be helpful but also is likely essential to have a reasonably accurate information concerning the presence of toxic contamination on the Tennessee Pass corridor from Sage to Canon City. The first step in providing such information is to conduct a competent Phase I environmental survey, and to make a report on the results available. RTC understands that UP wishes to retain control over the Tennessee Pass line for possible operation for a year or more. Under these circumstances, and for safety reasons, it seems obvious that UP is the appropriate party to arrange for the Phase I survey. A competent Phase I survey, conducted by a firm or

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[6] _See_ note 4 _supra_.

qualified entity acceptable to the State of Colorado, conducted within 180 days of authorization of abandonment should provide the baseline information necessary for all interested parties to achieve a suitable railbanking/trail agreement with respect to the line.

Conversely, failure to provide for the survey would result in a situation analogous to that currently prevailing with respect to the Wallace Branch in Idaho, in which any progress not only on railbanking the line, but even on abandoning and salvaging it, has been stymied due to lack even of a Phase I survey.

RTC recognizes that, should the Phase I survey report indicate potential problems, further site-specific sampling may be necessary in order adequately to characterize such problems as exist, or to verify that in fact no problem exists. Additional relief may be necessary based upon the results of a Phase I survey.

IV. Environmental Issues

Under section 102(2)(C) of the National Environmental Policy Act (NEPA), each federal agency must "include in every recommendation or report on proposals for ... major Federal actions significantly affecting the quality of the human environment, a detailed statement ... on the environmental impact of the proposed action" and "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(i)&(iii). The "detailed statement" is commonly known as an "environmental impact statement" or "EIS." STB to date has evinced no plan to prepare an EIS, and instead is preparing an "environmental assessment" ("EA"). Insofar as is germane here, an EA is appropriate to assess environmental impacts where there is an assurance that there will be no significant environmental consequences by reason of the prospective agency action.[7] But loss of some 600 miles of important transportation corridors as proposed as part of this merger application would constitute a significant adverse environmental impact necessitating an EIS.[8] The only available method lawfully to avoid the EIS requirement would be to place appropriate conditions on all merger-related abandonment authority so as to ensure that the various corridors are preserved for railbanking/trail use purposes, at least in all cases where a qualified entity files a "statement of willingness." Only in this fashion would there be any reasonable assurance that the merger-related abandonments would not involve substantial environmental considerations.[9] The measures sought herein would also be compatible with preserving historic structures consistent with the National Historic

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[7] 40 C.F.R. §§ 1501.4 & 1508.9.

[8] This is a point RTC has already made in our letter to Elaine Kaiser (STB, Section of Environmental Analysis) dated 16 February 1996.

[9] Completion of a Phase I environmental survey in a fashion acceptable to the State as sought through Condition 3 as requested by RTC may also serve as part of a program to ensure that significant adverse environmental consequences by reason of toxic contamination do not occur in the event the Board authorizes abandonment of the Tennessee Pass line from Sage to Canon City in Colorado.

Preservation Act; 16 U.S.C. § 470f.

Subject to our objection that an EIS is required absent appropriate conditions to ensure that no adverse consequences arise by reason of the merger-related abandonments, RTC reserves the right to comment further on environmental and other issues when the Board presents its EA for the merger.

V. Conclusion

The Surface Transportation Board should issue CITU's or NITU's for all merger-related abandonments for which "statements of willingness" are filed. Furthermore, the Board should issue appropriate conditions to ensure that such lines are preserved for railbanking, interim trail, and other public purposes. Absent the preparation of an EIS, the Board must impose adequate conditions to ensure that no adverse environmental impacts flow from the merger-related abandonments. These conditions must be adequate to encourage and to permit the preservation of all otherwise-to-be abandoned lines for railbanking and trail purposes.

In addition to serving important railbanking ends, the line across the Tennessee Pass would make a world-class trail facility, highly complementary to the ski industry in central Colorado and the recreational opportunities afforded by the Arkansas River. Others of the lines proposed for abandonment would serve as important trail assets for local communities, or for statewide linkages. All these lines should be preserved where a qualified management entity steps forward. Such preservation ultimate will provide an economic stimulus to the local communities, as well as provide an important new recreational asset for local residents.

Respectfully submitted,

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
counsel for Rails to Trails Conservancy

Of counsel:
Andrea Ferster, Esq.
Simon S.-Eristoff, Esq.
Rails to Trails Conservancy
1400--16th St., N.W., #300
Washington, D.C. 20036
(202) 797-5427

Notice and Certificate of Service

All parties are hereby again notified that RTC has heretofore filed two documents in this proceeding: a letter dated 1 Dec. 1995 giving notice of an intent to participate (RTC-1), and a letter dated 16 Feb. 1996 to Elaine Kaiser of STB on environmental issues (RTC-2).

The undersigned hereby certifies that copies of RTC's "Comments and Conditions" (RTC-3), including this "Notice and Certificate of Service" were served by U.S. Mail, postage pre-paid, first class on or before 29 March 1996 upon all parties of record as provided in this Board's Decision No. 15, as modified by this Board's Decision No. 17. Copies of the various "statements of willingness" identified herein were served as indicated above on the representatives of the merging railroads identified in the Arvid Roach letter of March 19, 1996. Copies of the "statements of willingness" will be made available to any other party upon request. The various "statements" are identified as follows for purposes of ease of request:

RTC-4 -- AB-12 (Sub 188), Malta to Canon City, CO
RTC-5 -- AB-12 (Sub 189X), Sage to Malta, Malta to Leadville, CO
RTC-6 -- AB-12 (Sub 184X), Alturus to Wendel, CA
RTC-7 -- AB-3 (Sub 130), Towner to NA Junction, CO
RTC-8 -- AB-33 (Sub 96), Barr to Girard, ILL
RTC-9 -- AB-3 (Sub 131), Hope to Bridgeport, KS

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62243 134

Item No.______________

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Mar #723

KEL[illegible]

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TELEPHONE 32(2) 732 52 80
FACSIMILE 32(2) 732 53 92

WRITER'S DIRECT DIAL NUMBER

March 29, 1996 (202) 434-4179

RECEIVED
MAR 29 1996
MAIL MANAGEMENT
I.C.C.

Office of the Secretary
Case Control Branch
Attention: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corporation, et al - Control and Merger - Southern Pacific Rail Corporation, et al

Dear Mr. Secretary:

Enclosed herewith for filing in the above-captioned proceeding are the original and 20 copies of the Comments and Request for Conditions and Verified Statement On Behalf of North American Logistic Services, A Division of Mars, Incorporated.

Yours very truly,

Terrence D. Jones
Attorney for North American Logistic Services, A Division of Mars, Incorporated

ENTERED
Office of the Secretary
MAR 30 1996
Part of Public Record

"ORIGINAL"

UNREDACTED

NALS-1

BEFORE THE

SURFACE TRANSPORTATION BOARD

WASHINGTON, D.C.

RECEIVED
MAR 29 1996
MAIL
MANAGEMENT
I.C.C.

FINANCE DOCKET NO. 32760

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

COMMENTS AND REQUEST FOR CONDITIONS
AND VERIFIED STATEMENT ON BEHALF
OF NORTH AMERICAN LOGISTIC SERVICES,
A DIVISION OF MARS, INCORPORATED

ENTERED
Office of the Secretary
MAR 30 1996
Part of
Public Record

OF COUNSEL:

KELLER AND HECKMAN
1001 G STREET, N.W.
SUITE 500-WEST
WASHINGTON, D.C. 20001

March 29, 1996

TERRENCE D. JONES
LESLIE E. SILVERMAN
1001 G STREET. N.W.
SUITE 500-WEST
WASHINGTON, D.C. 20001
(202) 434-4179

ATTORNEYS FOR NORTH AMERICAN
LOGISTIC SERVICES, A DIVISION
OF MARS, INCORPORATED

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BEFORE THE

SURFACE TRANSPORTATION BOARD

WASHINGTON, D.C.

FINANCE DOCKET NO. 32760

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

COMMENTS AND REQUEST FOR CONDITIONS
AND VERIFIED STATEMENT ON BEHALF
OF NORTH AMERICAN LOGISTIC SERVICES,
A DIVISION OF MARS, INCORPORATED

COMES NOW, North American Logistic Services, a Division of Mars, Incorporated ("NALS"), and submits its Comments and Request for Conditions and accompanying Verified Statement of William R. Thompson in the above-captioned proceeding and, in support thereof, respectfully shows:

I.

STATEMENT OF FACTS

NALS is the logistics arm of the Mars, Incorporated ("Mars") corporate family. It is responsible for arranging for the transportation service received by the various Mars production units, including M&M/Mars, Uncle Ben's Inc., and Kal Kan Foods, Inc. ("Kal Kan"). Verified Statement of William R. Thompson, ¶ 2. (hereinafter referred to as "Thompson Statement"). NALS selects the carriers used to transport the units' traffic and pays the carriers' rates and charges. Id.

Kal Kan will soon complete construction of a dry pet food plant at Wunotoo, Nevada, about 30 miles east of Reno, which will begin operations on or about September 1, 1996. Id. at ¶ 3. When fully operational, it will produce 120,000 metric tonnes of dry pet food annually. Id. This pet food will be shipped by motor carriers to Kal Kan distribution centers and customers in the western United States. Id. at ¶ 5. While motor carriage will be used for the movement outbound from the plant of pet food products, the plant is dependent upon line-haul rail service for the inbound transportation of the grain and animal by-products used in the manufacture of pet food. Id. at ¶ 6. If motor carriage were used for the entire movement of grain from its distant midwestern origins to the plant, the transportation cost would be approximately $11,000,000 more annually than the cost of using rail service. Id at ¶ 7. Utilization of such truck service would so increase the plant's costs that it would not be able to compete in the marketplace, and other sources for the plant's raw materials would have to be found. Id.

The plant is at present a closed point on the main line of the Southern Pacific Transportation Company ("SPT"). The SPT is the only railroad that is able to serve the plant directly, and it owns and operates the only tracks leading into and from the plant. Id. at ¶¶ 3 and 8. NALS has entered into a transportation contract with the SPT for the inbound transportation of grain products and animal by-products from the interchange points of Denver, Colorado, Ogden, Utah, and Kansas City, Missouri. Id at 4. Inbound grain for the plant originating at origins on the Union Pacific Railroad Company ("UP") will move via a UP/SPT routing through Ogden. Id. at ¶ 9. NALS is currently concluding negotiations with the UP for a transportation contract for its portion of the movement. Id. at ¶ 4. Grain originating at origins served by the Burlington Northern Railroad Company ("BN") will compete with the UP grain and will move with the SPT through Denver. Id. at ¶ 13.

Although the SPT is the only railroad that can serve the plant, the UP can serve Reno, a point 30 miles to the west, from which the raw materials used by the Kal Kan plant in the manufacture of pet food can be trucked to the plant. Id. at ¶

10. Grain via the UP can move into Reno in grain hopper cars, where it can be loaded onto motor vehicles for the short trip to the plant. When the Wunotoo plant site was selected, a key factor in that decision was the UP's ability to serve Reno and thereby provide a competitive rail/motor alternative to the SPT service. Id. at ¶ 11. The plant would not have been located such a great distance from its raw material sources -- thereby requiring that rail service for such raw materials be used -- if competition for such service in the form of the UP/motor service from Reno did not exist. Id. NALS's utilization of just such a rail/motor service for the movement of bulk commodities inbound to an M&M/Mars plant in Hackettstown, NJ -- a plant that also receives direct rail service -- proved to it that a rail/motor service could provide a competitive option to an all-rail service. Id.

In negotiating its current contract with the SPT, NALS relied upon the availability of that competitive option and believes that it was a factor in the reasonable rates on inbound traffic it was able to secure from the SPT. Id. at ¶ 12. The merger will destroy this option. When NALS's contract with the SPT expires, the competitive pressure previously exerted on the SPT by this alternative will no longer exist. Id. at 15.

In addition, the availability of the joint BN/SPT service through Denver from BN grain origins provides a competitive option to the UP routing from elevators served by that carrier. Id. at ¶ 13. If this merger is approved without the conditions NALS seeks to protect the plant's inbound traffic, it is very likely that, once NALS's existing contracts expire, the merged UP/SPT will not continue to participate with the BN in a joint rate which would allow the BN to compete with the UP/SPT single-line move to the plant. Id. at ¶ 17.

The proposed merger, if approved by the Board, would reduce NALS's rail options for inbound traffic to the plant from two rail carriers (the SPT and the joint UP/motor service) to just one (the UP/SPT merged entity). Competition between rail carriers at the Kal Kan plant would be eliminated. In addition, competition at the origin points of the plant's grain traffic would disappear because no incentive would exist for UP/SPT to continue to participate in the joint BN/SPT movement of grain through Denver.

The UP/SPT's agreement of September 25, 1995 with the BN and the Atchison, Topeka and Santa Fe Railroad Company ("BNSF"), as amended November 18, 1995 ("the BNSF Agreement") provides, in Section 8(i), that: "It is the intent of the parties that this Agreement result in the preservation of service by two competing railroad companies for all customers listed on Exhibit A to this Agreement presently served by both UP and SP and no other railroad (2-to-1 customers)". Railroad Merger Application, UP/SP-23, Vol. 1, Verified Statement of John H. Rebensdorf, p. 352. However, Kal Kan's Wunotoo plant -- although it is a "2-to-1 customer" -- is not mentioned in Appendix A or anywhere else in the BNSF Agreement as a point for which competing rail service will be preserved after the merger. While Reno is listed in Appendix A, the rights granted to the BNSF at that location will not permit it to provide the rail/motor service required to serve the Kal Kan plant.

In an effort to resolve this matter without having to participate in this proceeding, NALS sought from the UP assurances that -- as a "2-to-1" location -- competition at the plant would be preserved after the merger. Id. at ¶¶ 19 and 20. UP responded by asserting that "the facts do not justify providing additional competitive access to the Wunotoo plant." Id at ¶ 21.

II.

THE CONDITIONS REQUESTED

To preserve the competing rail service which the new Kal Kan plant now has available to it, and for the reasons more fully presented hereinafter, NALS requests that, in any grant of this merger, the Board impose conditions which require the merged UP/SPT entity to grant trackage rights to the BNSF allowing that carrier to serve the Kal Kan plant. Specifically, NALS requests that the Board, pursuant to its authority under 49 U.S.C. § 11344(c), impose the following conditions:

Condition No. 1. The merged carrier should be required to grant the BNSF trackage rights over the existing SPT line serving the plant, along with all necessary "stop-off" and switching rights to provide such service or, in the alternative:

Condition No. 2. The merged carrier should be required to grant the BNSF trackage rights over the present UP line at Reno, Nevada and, if the Kal Kan plant is included within the Reno switching district, the BNSF should be granted reciprocal switching rights into the plant.

III.

ARGUMENT IN SUPPORT OF CONDITIONS

A. Application of the General Merger Standard Requires Imposition of the Sought Conditions

In determining whether or not to approve a control transaction involving two Class I railroads, the Board must decide whether the proposed consolidation is consistent with the public interest. 49 U.S.C. § 11344(c). Missouri-Kansas-Texas R. Co. v. United States, 632 F.2d 392, 395 (5th Cir. 1980), cert. denied, 451 U.S. 1017 (1981); see also Penn Central Merger Cases, 389 U.S. 486, 498-499 (1968). Included in this public interest analysis must be a consideration by the Board of at least the following five factors: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region. 49 U.S.C. § 11344(b)(1). Control transactions are not favored if the controlling carrier "does not assume full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand" or if such transactions "substantially reduce the transport alternatives available to shippers . . ." 49 C.F.R. § 1180.1(a).

In addition to these explicit statutory considerations, the Board is also required by the Supreme Court's decision in McLean Trucking Co. v. United States, 321 U.S. 67 (1944) to weigh the policies embodied in the antitrust laws disfavoring diminution in competition resulting from a proposed rail merger.[1/] See 49 C.F.R. § 1180.1(c)(2). As the Supreme Court has observed, the

[1/] Under 49 U.S.C. 11341(a), transactions approved by the Board are exempt from the antitrust laws, and all other laws, as necessary to effect the transactions. Northern Lines Merger Cases, 396 U.S. 491, 504 (1970).

antitrust laws give "understandable content to the broad statutory concept of 'the public interest.'" FMC v. Aktiebolaget Svenska Amerika Linien, 390 U.S. 238, 244 (1968). See also, Bowman Transportation v. Arkansas-Best Freight, 419 U.S. 281, 298 (1974); Port of Portland v. United States, 408 U.S. 811, 841 (1972); Northern Lines Merger Cases, supra, 396 U.S. at 514; Denver & R.G.W. R. Co. v. United States, 387 U.S. 485 (1967).

The Board's railroad acquisition procedures, contained in 49 C.F.R. § § 1180.0-1180.9, set forth the numerous elements of the public interest that the Board is to consider in evaluating specific merger proposals by performing a balancing test weighing "the potential benefits to applicants and the public against the potential harm to the public." Id. at § 1180.1(c).[2] The rules specifically note that:

> If two carriers serving the same market consolidate, the result would be the elimination of the competition between the two. . . . [A] lessening of competition

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[2] The Board is also guided by the rail transportation policy, 49 U.S.C. § 10101a, added by the Staggers Rail Act of 1980. See Norfolk Southern Corp. --Control--Norfolk & W. Ry Co., 366 I.C.C. 171, 190 (1982). The 15 elements of that policy set forth in Section 10101a, taken as a whole, emphasize reliance on competitive forces to modernize railroad actions and to promote efficiency. H.R. Rep. No. 96-1430, 96th Cong., 2d Sess. 88 (1980), reprinted in 1980 U.S.C.C.A.N. 4110, 4119. Element 5 provides that it is the policy of the United States to "foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers". Element 13 prohibits "predatory pricing and practices, to avoid undue concentrations of market power." 49 U.S.C. § 10101a (5) and (13).

> resulting from the elimination of a competitor may be contrary to the public interest.

Id. at § 1180.1(c)(2)(i). Moreover, the Board's predecessor, the Interstate Commerce Commission ("ICC"), emphasized that "the effect of a transaction on competition is a critical factor in our consideration of the public interest. . . ." Santa Fe Southern Pacific Corp. -- Control -- SPT Co., 2 I.C.C. 2d 709, 726 (1986) (Emphasis added).

Under 49 U.S.C.§ 11344(c), the Board has "broad authority to impose conditions on" its grants in railroad control cases in order to ameliorate the competitive harm caused by the merger and to insure that the public interest is protected. Indeed, that authority is unqualified. 49 C.F.R. § 1180.1(d)(1). See also, Milwaukee Reorganization--Acquisition by GTC, 2 I.C.C. 2d 161, 263-264 (1984).

When it is shown that the proposed transaction will have a direct effect on competition, by eliminating competitive alternatives to the public, conditions will be imposed to eliminate the harm threatened by the transaction, assuming such conditions are of greater benefit to the public than they are detrimental to the transaction. See Union Pacific Corp., - Control - Missouri Pacific Corporation, 366 I.C.C. 462, 562, 484 (1982) (UP/MP). (The "overriding concern" in deciding whether to impose conditions is the public interest.) Conditions will also be imposed if the merger will result in a harm to "essential services". Lamoille Valley R. Co. v. I.C.C., 71 F.2d 295, 309 (D.C. Cir.1983). Imposition of this condition addresses the statutory requirement that in rail merger proceedings the Board consider the "adequacy of transportation to the public". Id.; 49 U.S.C. § 11344(b)(1)(A).

Adherence to these principles requires the imposition of the conditions NALS here seeks. Rail competition at the Kal Kan plant will be destroyed by this merger, and applicants have turned a deaf ear -- both in the BNSF Agreement and in direct discussions -- to NALS's efforts to preserve it. Only by imposing the conditions NALS here seeks -- which are directly related to the proposed merger itself -- can the Board insure that such competition is maintained and hold the applicants to their promise that shippers now served only by the UP and SPT will not be harmed by this transaction.

B. The Conditions are Required to Preserve the Competition That Now Exists Between the SPT and UP For the Plant's Inbound Traffic

The proposed merger will eliminate a competitor on inbound traffic to the Kal Kan plant. As the merger between SP and UP now is structured, when NALS's contract with the SPT expires, the plant will not have the option of using the UP/motor routing through Reno as a competitive alternative. The negotiating leverage that the possibility of using that option has, and would have meant in future negotiations with the SPT, will irretrievably be lost. Consequently, after the merger, the Kal Kan plant will be captive to the SPT for all of its inbound transportation needs. At present, the UP/motor option is available to it.

The existence of the UP/motor option is an actual competitive alternative which serves as a constraint upon the SPT's market power. It is thus well-settled that a joint rail/motor operation can provide a competitive alternative to an all-rail service. In Rio Grande Industries, Inc., et. al -- Control -- Southern Pacific Transportation Company, 4 I.C.C. 2d. 834 (1988), the UP/Missouri-Pacific Railroad Company ("UP/MP") had argued that its rail/motor "reload" operations -- pursuant to which shippers up to 150 miles distant were served by truck -- did not allow it to exert a competitive presence in markets also served exclusively by the SPT. Id. at 922.

The ICC disagreed. While rail/truck operations are not identical to direct rail service in all respects, "[t]rucks can extend the competitive reach of rail operations . . ." Id. at 923. Indeed, the UP/MP's own testimony -- submitted by a witness who is also one of applicants' principal witnesses in this case --had conceded that in situations where a commodity can be reloaded and an appropriate reload site is available on a close-enough railroad, then rail-truck handling can offer a shipper an alternative to excessive rates or poor service by the railroad with exclusive access to that shipper. Id. (Citing the testimony of UP/MP witness Richard B. Peterson).

This decision -- which concluded that a rail/motor service 150 miles from a shipper was a competitive option -- a fortiori requires the same conclusion here, where Reno is only 30 miles distant from the plant.[3]

Other decisions, involving so-called "build-out" options, confirm as well that the fact that a shipper is currently served by only a single rail carrier does not automatically mean that the shipper is captive to that carrier. If a second rail carrier operates nearby, that carrier can be just as effective a competitor as if it actually did serve the shipper directly. Union Pacific Corp.-Control-Missouri-Kansas-Texas Railroad Co., 4 I.C.C. 2d 409, 476-77 (1988). See also, BNSF, supra, pp. 68 and 98.

These decisions apply with equal -- if not greater -- force to a situation where the option consists of a delivery by motor carrier from a nearby rail station. A "build-out", which involves the construction of a new rail line could in certain

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[3] And in its decision last year in BN -- Control and Merger -- Santa Fe Pacific Corp., Finance Dkt. No. 32549, (BNSF) the ICC again noted that the short haul for the motor portion of a rail/motor movement "provides an indication of the effectiveness" of that movement as a competitive option. P. 55 (Aug. 16, 1995)

instances pose less of a competitive threat to the directly serving rail carrier than a rail/motor option -- particularly one with a short motor carrier segment.

This ability of a rail/motor routing to act as a competitive restraint on all-rail service is borne out by NALS's own experience. The Hackettstown, NJ plant of M&M/Mars is served directly by rail, yet NALS also uses rail service to a location about 20 miles from the plant, from which inbound bulk raw materials are trucked to the plant. Thompson Statement, ¶ 11. Not only has such a rail/motor service proved to be operationally and economically feasible in meeting the plant's raw material needs, it has acted as a restraint on the rates of those rail carriers able to serve the plant directly.

The SPT has responded to the UP/motor presence at Reno by negotiating reasonable contract rates and terms with NALS for the plant's inbound transportation. Thompson Statement, ¶ 12. In their testimony in this proceeding as well, the applicants acknowledge the ability of rail/truck service to provide competition to all-rail service, and that such competition is the kind that should be preserved after the merger. In his Verified Statement, Mr. Richard B. Peterson, Senior Director - Interline Marketing of UP, testified that in identifying those facilities that are served today by the UP and SPT and no other railroad:

> "We have also carefully considered whether there might be any shippers who have a truck-rail transloading option today because UP and SP are independent railroads, but would have no such option after the merger. We have been able to identify no such shippers; as best we can determine, in all instances where UP or SP have the potential of moving traffic through a transload, BN/Santa Fe will continue to furnish a transloading option after the merger". Railroad Merger Application, UP/SP-23, Vol. 2, P. 164, n.79. (Emphasis added.)

Indeed, Mr. Peterson testified at his deposition that "applicants scoured the map" but could not find any situation where a shipper's ability to utilize a truck transload it now has to the UP or SPT would be precluded by the merger. Deposition of Richard B. Peterson, February 5, 1996, p.88.

Mr. Peterson also confirmed at his deposition that it was applicants' intention that ". . . where there currently are trucking options from points on one railroad over to the other, that those will all be preserved as a result of the [BNSF Agreement]". Deposition of Richard Peterson, February 6, 1996, p. 278. Mr. Peterson added that "all transloading options will be preserved" and that all "2-to-1" locations not shown on Exhibit A to the Settlement Agreement which are "identified subsequent to this time . . . are available for transloading." Id. at 279. That the competitive relief of the BNSF Agreement is not limited to existing shippers, but can include new shippers, such as Kal Kan's Wunotoo plant, is further confirmed by Mr. Peterson at page 222 of his deposition, where he testifies that, under the BNSF Agreement "... BN/Santa Fe can put in . . . bulk transload facilities at any one of those points and serve a shipper . . . that may appear that hasn't existed in the past".

Mr. Peterson obviously overlooked the Kal Kan plant in searching for shippers who "would have no [rail/truck] option after the merger". Nevertheless, his testimony makes it clear that the plant is among the class of shippers for whom the applicants have agreed that competition should be preserved.

Mr. Richard J. Barber, an independent consultant retained by applicants, agreed with Mr. Peterson. He testified that where the UP serves a facility directly and service is available by truck from the facility to a line of the SP, that this is viewed as service by two railroads. Since the merger would produce a "2-to-1" situation, the applicants would agree that, under the BNSF Agreement, the "SP would be replaced by BN/Santa Fe". Deposition of Richard J. Barber, January 24, 1996, p. 71. Mr. Barber explained that such treatment would insure that there were "no reductions in competition" as a result of the merger. Id.

Although the BNSF Agreement does not give the BNSF the right to serve the Wunotoo plant -- despite its status as a "2-to-1" location -- or to provide service at Reno for the plant's traffic, it does treat other locations with a rail-truck option as 2-to-1 points. Id. at 69-72. Thus, the BNSF Agreement preserves independent rail competition for soda ash originating at Green River, Wyoming by making the truck reload terminal facilities in Utah that are presently operated by SP available to BN/Santa Fe. Id. at 72; Barber Testimony, Railroad Merger Application, Vol. 2, p. 495.

Under currently existing competitive conditions, therefore, applicants themselves concede that Kal Kan's inbound traffic is subject to potential competition. Although its plant currently is served exclusively by the SPT, the fact that a feasible rail/motor option exists via Reno, only 30 miles away, exerts competitive pressure on the SPT -- under the ICC's decisions and by the applicants' own admission -- and has thus far prevented the SPT from exercising market power as a monopoly destination carrier at the plant.

However, despite applicant's stated intention to preserve competition at all "2-to-1" locations, the BNSF Agreement does not even mention Wunotoo nor does it allow the BNSF to serve Reno for the plant's traffic. The "2-to-1" situation which will occur at Wunotoo if this merger is granted must be remedied by the Board by imposing a condition on such grant requiring the merged carrier to grant the BNSF trackage rights to serve the Kal Kan plant.

C. The Conditions Sought By NALS Must Be Imposed to Protect the Competition From Grain-Producing Origins That Now Exists

BN and the UP provide rail service from competing midwestern origins for the grain to be utilized by the plant. Both connect with the SPT -- the UP at Ogden, the BN at Denver -- to serve the plant. The BN's ability to serve competing grain origins as the nation's largest grain-carrying railroad has, as noted, provided leverage for NALS in its negotiations with the UP for contract rates for its leg of the movement.

If this merger is approved, however, when the NALS/UP contract expires, the merged UP/SPT cannot be expected to continue to participate with the BN for the grain movement at a competitive level because it will be able to provide a single-line rail service from the UP's origins direct to the Kal Kan plant. The merged UP/SPT would, thus, have no incentive to continue to participate in the move with the BN.

The ICC has recognized as recently as its decision in BN/SF that the competitive harm resulting from a merger can occur from a loss of geographic competition between railroads. BNSF, at p.55. While the instant situation is not the classic one where each of the two merging carriers exclusively serves a different competing origin point, the result will be the same since the UP/SPT is a necessary participant in the BN move. By making that movement non-competitive, the UP/SPT would be able to foreclose the present origin competition just as surely as if the UP and SPT now were able to each serve the competing origins.

With the BN service available to it, if the UP/SPT's rates are too high, NALS can order grain for the plant from the elevators served by the BN. The prospect of losing its segment of the movement to the BN will, presumably, act as a restraint on UP's pricing. After the merger, the UP will be able to provide a single-line service to the plant from UP elevators and participate in the joint-line movement from the BN elevators. It will be in UP's economic interest to encourage utilization of a routing in which it retains all of the revenue as opposed to one in which it must share that revenue with the BN. It will be indifferent to any loss of revenue from the BN/SPT routing, because that revenue would be shifted to its single-line routing which would provide the only source for the plant's grain.

D. The Conditions Requested Herein Are Reasonable And Will Address Problems Directly Created By the Merger

The Kal Kan plant now has available to it the services of the SPT and UP and no other railroad. After the merger, it will have available the services of only the merged UP/SPT. The conditions which NALS here seeks are thus intended to remedy a loss of competitive rail service which will be caused directly by the merger. They do not go beyond the merger's effects. The conditions are not being sought to ameliorate outstanding problems which were not created by the merger nor would they require applicants to protect carriers against circumstances not caused by the merger. See e.g., UP/MP, supra, 366 I.C.C. at 564.

Granting the BNSF trackage rights over the SPT line and direct access to the Kal Kan plant is required because the plant, under the criteria established by applicants themselves, is a "2-to-1" location. Applicants have thus acknowledged in their testimony spread on the public record throughout this case, that a shipper's ability to truck its products to or from a UP or SPT line makes that shipper a "2-to-1" location if its facility is also directly served by the SPT or UP. These admissions are consistent with the ICC's decision in Rio Grande, supra, which held that a joint rail/motor movement -- with a motor leg of up to 150 miles -- served as a competitive option to another carrier's all-rail service, and with NALS's own experience at the M&M/Mars facility in Hackettstown, NJ.

This merger will create the largest railroad in North America. Applicants realize that they are vulnerable to claims that the loss of competition which will result from a control transaction of such gargantuan proportions requires that it be denied. To de-fuse such claims, they have promised to insure that all locations now served by the UP and SPT will continue to be served by two railroads after the merger. Yet the disparity between the applicants' public promises and their cynical treatment of NALS -- a "2-to-1" shipper -- requires the Board to take action in this case to require the applicants to abide by their promises. But even without those promises, the statutes the Board administers require that rail competition lost by this merger be preserved. The conditions NALS here seeks would preserve that competition for the Kal Kan plant.

IV.

CONCLUSION

WHEREFORE, for the foregoing reasons, NALS requests that the Board impose the following conditions on any grant of this merger application:

Condition No. 1. The merged carrier should be required to grant the BNSF trackage rights over the existing SPT line serving the plant, along with all necessary "stop-off" and switching rights to provide such service or, in the alternative:

Condition No. 2. The merged carrier should be required to grant the BNSF trackage rights over the present UP line at Reno, Nevada and, if the Kal Kan plant is included within the Reno switching district, the BNSF should be granted reciprocal switching rights into the plant.

Respectfully submitted,

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March 29, 1996

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

VERIFIED STATEMENT OF WILLIAM R. THOMPSON

1. My name is William R. Thompson. I am Group Transportation Manager of North American Logistic Services, a Division of Mars, Incorporated ("NALS"). My business address is 800 High Street, Post Office Box 731, Hackettstown, New Jersey 07840-0731.

2. I have been employed by NALS since its formation as a Division of Mars, Incorporated ("Mars") in 1989. Prior thereto, I was employed since 1982 in various logistics positions with Mars. NALS is responsible for arranging for the transportation service received by the production units of the Mars corporate family, including M&M/Mars, Uncle Ben's, Inc., and Kal Kan Foods, Inc. ("Kal Kan"). NALS selects the carriers used to transport the units' traffic and pays the carriers' rates and charges. NALS enters into transportation contracts with rail and motor carriers when contract carriage is used to serve the Mars units.

3. Kal Kan is a manufacturer of dry and canned pet food. It will shortly complete construction of a dry pet food manufacturing facility at Wunotoo, Nevada. Wunotoo is about 30 miles east of Reno, Nevada and is located on the main line of the Southern Pacific Transportation Company ("SPT") at Milepost A-258.26. The switch into the plant cuts directly off the SPT's main line. The Kal Kan plant is scheduled to begin manufacturing operations on or about September 1, 1996 and, when fully operational, will produce 120,000 tonnes of dry pet food annually. NALS will arrange both the out-bound transportation of the plant's finished pet food products, as well as the movement in-bound to the plant of the raw materials used in the manufacturing process.

4. NALS has entered into a five-year transportation contract with the SPT for the transportation of the plant's inbound traffic, to become effective when the plant begins operations. It is currently negotiating a contract with the Union Pacific Railroad Company ("UP") containing rates on grain from UP origins to its interchange with the SPT at Ogden, Utah. It expects those negotiations to conclude shortly.

5. The plant's products will be shipped by motor carriage from Wunotoo to Kal Kan distribution centers and customers located at points in the western United States generally within 500 to 600 miles of the plant. Unlike other Kal Kan plants --

such as its Matoon, IL facility which is located in the "grain belt" near the sources of its raw materials -- the Wunotoo site was selected because of its proximity to Kal Kan's customers.

6. The principal ingredients used in the manufacture of pet foods are grains, including wheat and corn, and animal by-products. These products originate at midwestern points many hundreds of miles from Wunotoo and, due to the nature of such materials and their distant origin points, the plant is dependent upon rail service for their transportation. Indeed, the choice to locate the plant near the destinations of its finished goods rather than the origins of its raw materials means that Kal Kan and NALS made the considered decision that rail service would be used to bring in those raw materials. And it is this merger's effect on the plant's inbound rail transportation which raises significant concerns for NALS.

7. The plant's production requirements cannot be met by utilizing motor carrier service for the entire movement from the origins of its raw materials. The plant is projected to receive between 1,000 and 1,500 rail cars of raw materials annually. Grain products will move inbound in covered hopper cars. If motor carriage were required to be employed to transport that traffic from its origins to the plant, it would result in estimated increased annual inbound transportation costs of more than $11,000,000, based upon a comparison between existing motor

carrier rates, on the one hand, and, on the other, the rates contained in the NALS/SPT contract and the rates NALS is currently negotiating with the UP. The additional costs resulting from the use of truck transportation for the plant's inbound traffic would place the plant in a non-competitive position in the marketplace, and would force it to seek grain from other origins.

8. Only one rail carrier -- the SPT -- serves the Wunotoo plant. The SPT owns the only rail tracks leading in and out of the plant. Pursuant to its contract with NALS, the SPT will transport grain to the plant from interchange points at Denver, Colorado; Kansas City, Missouri; and Ogden, Utah. Animal by-products will move primarily from the Denver and Ogden interchanges.

9. The SPT is not able to originate traffic in the major grain-producing regions of Iowa, Nebraska, Kansas, Idaho, Montana, Wyoming, and North and South Dakota. That traffic originates at grain elevators on the lines of the UP and the Burlington Northern Railroad Company ("BN"). As noted, UP-originated grain will move through Ogden, Utah, from which it will move via the SPT to the Wunotoo plant.

10. NALS currently has a competitive alternative to the UP/SPT service for the movement of raw materials to the Kal Kan

plant in the form of a joint UP/motor movement through Reno, Nevada. The UP is able to provide a direct single-line service from midwestern grain origins to that point, where the grain then can be transferred to motor carrier equipment for the 30 mile trip to the Kal Kan plant.

11. When the Wunotoo plant site was selected about two years ago, a key factor in that decision was the UP's ability to serve Reno as a competitive alternative to the SPT service, which otherwise made the plant captive to the SPT. The decision to locate the plant at great distances from the sources of its raw materials would not have been made if the plant were captive to one railroad. It was our business judgment that there had to be competition for such traffic. That competition exists in the form of the UP/motor routing through Reno. Moreover, we were convinced that such option was operationally and economically feasible based upon NALS's utilization of rail/truck service at other Mars production facilities. For example, the M&M/Mars confectionery plant in Hackettstown, NJ is served by rail and receives inbound rail shipments of raw materials. As a competitive option to this all-rail service, NALS also chooses to use a rail/truck movement for inbound bulk materials for the plant from a rail-head about 20 miles away. The use of this option has maintained inbound rail rates at Hackettstown at competitive levels.

12. The availability of the joint UP/motor alternative to the SPT was made known to the SPT and relied upon by NALS in its contract rate negotiations with that carrier. The ability of the plant to be served in this fashion through Reno provides competition between the UP and SPT for the transportation of the plant's in-bound traffic, and I believe that this option was a factor in NALS's ability to secure contract rates from the SPT at reasonable levels for such traffic.

13. A source of competition at the origin points of the grain used by the plant is provided by the BN, which serves grain elevators in the States of Iowa, Nebraska, Montana, Wyoming, North Dakota, and South Dakota which cannot be reached by the UP. This BN-originated grain will be routed through Denver, where it will then move over the SPT to Wunotoo. The ability of the plant to secure grain from BN origins in competition with the UP grain elevators was viewed as an important consideration in the planning for the plant, and the contract which NALS has negotiated with the SPT includes rates on grain from Denver originated on the BN.

14. A memorandum prepared by the SPT for a meeting with NALS on March 22, 1994, shortly before the Wunotoo site was selected for the plant, acknowledges that the SPT's marketing program into Nevada "utilize[s] the BN's vast origination base as a source of supply for yellow corn". Although the SPT

participates into Nevada with the UP on corn traffic through the Kansas City and Ogden gateways, "because of the UP's limited equipment supply" the SPT has concentrated its activities with the UP into Central California. A copy of this memorandum is attached hereto as Appendix A.

15. The proposed UP/SPT merger would destroy the competitive transportation options the plant now has, and upon which our decision was based to build the plant at its current site. Thus, the plant is at present a "2-to-1 customer" as defined by the applicants, since it can be served both by the SPT and the UP, via a joint rail/motor routing, and no other railroad. The merger will eliminate the competitive option the plant now has in the form of the UP/motor service through Reno. When the NALS/SPT contract expires in five years, that option will have been lost and the Kal Kan plant will be captive to the UP/SPT for its inbound transportation needs.

16. The merger will also cause the plant to lose the benefits of the competition it now enjoys at the origins of its in-bound grain traffic. The plant's ability to secure grain at BN origins has acted as a constraint on the UP's rates from its origins which are now being negotiated. The availability of the BN service also means that, during the peak season, the plant will not be dependent solely upon the UP and SPT's car supply. The availability of the covered hopper cars operated by the BN --

the nation's largest grain-carrying railroad -- is critical to the plant's ability to receive the grain it needs to manufacture pet food.

17. Once the merger takes place and when its contracts with the SPT and UP expire, NALS is very concerned that a merged UP/SPT will no longer have any incentive to continue to participate in the joint movement with the BN at a rate level which will allow that joint movement to compete with the single-line service the UP/SPT will be able to provide direct to Wunotoo from its elevators. It is not realistic to expect the BN/SPT movement to remain a viable option for the plant once this merger is consummated.

18. The UP/SPT's agreement of September 25, 1995 with the BN and the Atchison, Topeka and Santa Fe Railroad Company ("BNSF"), as amended November 18, 1995 ("the BNSF Agreement"), was intended to preserve service after the merger by two competing railroad companies for those customers now served by both the UP and SPT and no other railroad. Although the Kal Kan plant at Wunotoo is now served both by the SPT and UP, no provision is made in the BNSF Agreement for preserving this competition after the merger. Likewise, although Reno is a point now served by both the UP and SPT, the Agreement does not open Reno up to the BNSF service. In listing in Exhibit A the local points which the BNSF will be allowed to serve under the

grant of "Western Trackage Rights," Reno is named, but with a parenthetical limiting such service to "(intermodal and automotive only -- BNSF must establish its own automotive facility.)" Since the grain the Kal Kan plant is able to receive via Reno will not be in intermodal service but will move in rail hopper cars, from which the grain will be transferred to motor vehicles, the BNSF is not only not granted the right to serve the Kal Kan plant directly but it is also denied the ability to provide service at Reno for the plant's traffic.

19. The BNSF Agreement's failure to remedy the loss of competitive rail service which the plant will suffer because of the merger is confirmed by the appendix to the letter of Mr. Thomas R. Gehl of the UP to NALS, dated December 15, 1995, a copy of which is attached hereto as Appendix B. Mr. Gehl there states that Reno will remain an SP closed point and that, under the BNSF Agreement, "BNSF does not acquire the right to establish a rail transload utilizing trackage rights to handle business to/from this facility."

20. NALS thereafter made a further attempt to resolve with the UP, short of participation in this proceeding, the issue of the loss of competition the Kal Kan plant will suffer because of this merger. In a letter of February 16, 1996 to Mr. Ronald J. Burns, President and Chief Executive Officer of the UP, NALS pointed out that the plant is a "2-to-1" location now served both

by the SPT and UP, that the BNSF Agreement does not provide for the preservation of service at the plant by two railroads after the merger, and thus requested that -- to remedy the loss of competitive rail service -- the UP grant the BNSF access to the plant. A copy of NALS's letter is enclosed as Appendix C.

21. In a letter dated February 29, 1996, Mr. Drew Collier of the UP summarily rejected the NALS request. Characterizing that request as a "legal argument", Mr. Collier stated that "we believe that the facts do not justify providing additional competitive access to the Wunotoo plant." Mr. Collier's letter is attached as Appendix D.

22. To prevent the loss of the competitive rail options upon which NALS and Kal Kan relied in selecting the Wunotoo site for the plant, NALS requests that, in any grant of this application, the Board impose the conditions requested by NALS.

VERIFICATION

STATE OF NEW JERSEY)
) ss
COUNTY OF WARREN)

William R. Thompson, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

William R Thompson

William R. Thompson

Subscribed and sworn to before me this 25th day of March, 1996.

Geraldine M. Weiss

Notary Public

GERALDINE M. WEISS
I.D. #2007404
My Commission Expires Feb. 20, 1997

My commission expires:

NORTH AMERICAN LOGISTIC SERVICES
SOUTHERN PACIFIC COMPANY
SIGHT SELECTION MEETING
MARCH 22, 1994

Grain Sourcing Options For SP Served Facility.

Corn: SP relies heavily on the BN to supply most all yellow corn demand in Arizona and Southern California. The BN, the largest rail originator of feed grains in the U.S., has a fleet of over 27,000 covered hoppers assuring an ample supply of equipment even during the most critical times. The BN COT program allows shippers and receivers to secure equipment even in the most demanding shipping periods.

Current SP marketing programs into Utah and Nevada also utilize the BN's vast origination base as a source of supply for yellow corn. Along with the Arizona market, the intermountain market draws heavily from Nebraska and Western Iowa corn producing areas.

It should be noted that the SP participates into both Arizona and Nevada in conjunction with the UP over either Kansas City or Ogden gateways. Because of the UP's limited equipment supply we have concentrated our activities with the UP into central California.

It is the position of the BN to market via tariff publication. Currently the BN does not participate in contract rates on whole grains either direct or jointline.

Wheat: SP has an adequate to surplus supply of wheat. Originating points on the SSW include stations in KS., OK. and TX., which would support an Arizona location. Wheat Origination from DRGW stations in Colorado and SP points in Utah would provide an adequate supply of cost competitive Soft White Wheat for a Nevada facility.

The SP participates with both Canadian carriers, CN and CP, on marketing programs to bring in Canadian feed wheat into most Western markets. With the passage of NAFTA, Canada has become a major supplier of feed wheat and barley to the Western U.S.

It should noted that both the Arizona and Utah areas can and are somewhat self sufficient in the production of feed wheat. This would not be the case in the Reno/Sparks area.

Currently, all wheat rates into these markets are in tariff format.

Routes:

Corn to Arizona
BN/ Kansas City/SSW-SP
BN/ Dalhart/SSW-SP
UP/ Kansas City/SSW/SP

Corn to Utah/Nevada
BN/ Denver/DRGW-SP
UP/ Ogden/SP (Nevada Only)

Wheat to Arizona
SSW/SP Direct

Wheat to Utah/Nevada
DRGW-SP Direct

Suppliers:

Corn
- Cargill
- Continental Grain
- Peavey Grain, Division of Conagra
- Scoular Grain
- Various Cooperative Associations

Wheat
- Collingwood Grain, Division of ADM
- Bunge Grain
- Union Equity, Division of Farmland
- Continental Grain
- Cargill
- Conagra
- McNabb Grain
- Various Cooperative Associations

APPENDIX B

UNION PACIFIC RAILROAD COMPANY

THOMAS R. GEHL
ASSISTANT VICE PRESIDENT
FOOD & FOOD PRODUCTS

1416 DODGE STREET
OMAHA, NEBRASKA 68179
402-271-4874

December 15, 1995

Mr. Jim DeVoe
North American Logistic Services
P.O. Box 731
800 High Street
Hackettstown, NJ 07840

Dear Jim:

This refers to our ongoing conversations subsequent to the meeting we held in Kansas City on November 14, 1995. In that meeting, you outlined numerous issues for discussion, and requested resolution on various switching requirements at several points throughout the country.

Union Pacific appreciates the opportunity to provide transportation services to North American Logistic Services. We have evaluated the issues raised in the November 14 meeting, and would like to comment on each below.

NALS has requested that Union Pacific take an active participation in the evaluation of a pocket intermodal terminal in Waco, TX. You indicated that this request was for Union Pacific to provide its expertise in working with the City of Waco in the evaluation of this project, and that no further commitments or financial assistance are required from the railroad at this time. As we indicated, we are interested in further pursuing this study, and are pleased to offer our assistance in its evaluation. Our primary point of contact will be Ken Lueckenhoff, Regional Industrial Development Manager. Ken is located in Houston, TX. Additionally, our Marketing & Sales Department will be involved as required.

The attached exhibit outlines our current thinking on your request for expanded switching status at all Mars locations. We would be happy to discuss any of these particular issues further with you following your review.

NALS has also requested that Union Pacific reenergize its focus on developing joint opportunities to utilize Union Pacific's refrigerated equipment transportation capabilities. As you are undoubtedly aware, there have been numerous attempts to facilitate an active working partnership between our companies utilizing the railroad's network of cars. To a large extent, this effort has been unsuccessful for a variety of reasons. Union Pacific continues to desire to find successful opportunities for NALS to utilize our refrigerated equipment. As such, it will be our intention to move forward with you on this project as we move into 1996, sharing the objective of creating a refrigerated logistics option which is beneficial to both parties.

Finally, I would like to advise you of an organizational change that is being made in the Marketing & Sales department at Union Pacific Railroad. In an effort to provide more responsive handling of our customers' requirements, several structural changes are being made within the Marketing & Sales organization. Handling of food related products will now be merged into our new Agricultural Products Group which will be headed by Drew Collier. Under Drew's organization, he will have full responsibility for the movement of all grain and food products. Drew's organization will include individuals who will be ready to assist in the development of these projects. Further details on this change will be available soon. As a result of this organizational change, Mike Kelly will now assume responsibility for the railroad's industrial products movements, which includes lumber, paper, metals, minerals, and consumer products, and I will be moving into the Automotive group.

Thank you again for the opportunity to meet with you in November in Kansas City. Please give me a call at (402)271-4974 if you would like to discuss these items further. We look forward to moving positively in a direction which more closely aligns the needs and capabilities of our two companies.

Sincerely,

Tom

att.

cc: Ron Paul
Mike Kelly
Steve Nielsen

MARS, INC. SWITCHING STATUS

[illegible]	[illegible]
Vernon, CA - LAJ Open	Inbound product is handled through Pacific Cold Storage. This facility is served by the LAJ Railroad and is open to reciprocal switch.
Aspen Distribution - Utah. UP local point.	This facility is currently a Union Pacific local point. We are agreeable to discussing joint line routing in BNSF equipment into this facility.
Melrose Park, IL. Melrose Distribution Company is a closed point in the CNW. It is, however, currently open for confectionery business moving to/from stations east of the Mississippi River in connection with line haul traffic via CR, CSXT, GTW, IC, NS.	Union Pacific is willing to open this facility (Melrose Distribution Company) for confectionery business only if Union Pacific and NALS are unable to reach agreement on a refrigerated boxcar program that includes this location.
Foster Farms, Modesto, CA. SP closed.	This facility will remain an SP closed point.
Dairymans - Tulare, CA. SP closed.	This facility will remain an SP closed point.
Uncle Ben's - Houston, TX. SP open.	This facility is currently SP open. BNSF currently has access to this facility.
M&M/Mars - Waco, TX. UP open.	Under the BNSF arrangement with Union Pacific, BNSF will gain access to this facility as it is open to reciprocal switching.
TDC - Waco, TX. UP open.	Under the BNSF arrangement with Union Pacific, BNSF will gain access to this facility as it is open to reciprocal switching.
Reno, NV. SP closed.	This facility will remain an SP closed point. Under the BNSF agreement with Union Pacific, BNSF does not acquire the right to establish a rail transload utilizing trackage rights to handle business to/from this facility.

APPENDIX C

NALS

NORTH AMERICAN LOGISTIC SERVICES

a division of Mars, Incorporated

800 High Street, P.O. Box 731, Hackettstown, NJ 07840-0731

Telephone: 908-852-8699 / Fax: 908-852-6518

16 February 1996

VIA FEDERAL EXPRESS

Mr. Ronald J. Burns
President and Chief Executive Officer
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Re: Union Pacific/Southern Pacific Merger

Dear Mr. Burns:

North American Logistic Services, a division of Mars, Incorporated ("NALS"), is responsible for arranging for the transportation service received by the production units of the Mars corporate family, including M&M/Mars, Uncle Ben's, Inc., and Kal Kan Foods, Inc. Several of the origin and destination points for the traffic of these units are at present served both by the Union Pacific Railroad Company ("UP") and its proposed merger partner, the Southern Pacific Rail Corporation ("SP"). Since the merger will eliminate the SP's separate corporate existence, it potentially could have a serious adverse impact on the rail service now available to NALS at those points.

NALS is a participant in the Finance Docket No. 32760 proceeding at the Surface Transportation Board ("the Board") involving the UP/SP merger. To assist it in deciding what position it should take in that case in order to protect its interests and the interests of the other Mars Units, this letter seeks confirmation from you that NALS will be in no worse position at its UP/SP locations -- as far as the availability of competing rail service is concerned -- after the merger than it is at present.

1. Background. The UP/SP's agreement of September 25, 1995 with the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railroad Company ("BNSF"), as amended November 18, 1995 ("the Agreement"), provides, in Section 8(i), that: "It is the intent of the parties that this Agreement result in the preservation of service by two competing railroad companies for all customers listed on Exhibit A to this Agreement presently served by both UP and SP and no other railroad (2-to-1 customers)". We understand that the UP/SP has requested that the trackage and purchase rights given to BNSF in the Agreement be imposed as conditions in any grant of the merger application by the Board. We are not aware of any other agreements by the UP/SP which are intended to preserve competing rail service upon a grant of the application.

Since NALS is a "2-to-1 customer" as defined by the Agreement at several UP and SP locations, on November 14, 1995 NALS and UP representatives met in Kansas City, MO to discuss the merger's impact on NALS and to insure the "preservation of service by two competing railroads" at its locations where the UP and SP are now able to serve it. Subsequent to that meeting, Mr. Thomas R. Gehl, then UP's Assistant Vice President, Food & Food Products, responded by letter to Mr. Jim DeVoe of NALS and outlined UP's "current thinking" on NALS' request for the maintenance of competitive rail service. A copy of Mr. Gehl's letter of December 15, 1995 is enclosed.

We understand that Mr. Gehl has been assigned to new duties in UP's Automotive Group. Accordingly, we are responding to his December 15 letter directly to you, and seeking clarification of several points therein.

In addition, and in order to expedite such clarification, I am taking the liberty of enclosing a proposed agreement between NALS and UP which addresses the issues I will discuss herein.

2. The NALS Locations Now Served by the UP and SP. The UP/SP locations of particular concern to NALS are the following, which are also among those discussed by Mr. Gehl in the attachment to his letter.

a. The Kal Kan Foods, Inc. Plant at Wunotoo, NV. This point is described in Mr. Gehl's letter as "Reno, NV. SP closed". He adds that this facility will remain an SP closed point, and that, under the Agreement, BNSF "does not acquire the right to establish a rail transload utilizing trackage rights to handle business to/from this facility."

The Kal Kan plant -- which will begin production in several months -- is located on the SP's line at Wunotoo, NV, about 30 miles from Reno. The switch into the plant cuts directly off the SP line. The plant is totally dependent upon rail service for the inbound transportation of grain and animal by-products used in the manufacture of pet food. The plant's production requirements cannot be met by utilizing motor carriage to transport such products from their distant Midwestern origins.

While the UP is not able to serve the plant, it does provide service at Reno. One of the competitive options to the SP service -- and one of the reasons the Wunotoo site was selected -- is the ability of the plant to have grain moved from the Midwest by UP to Reno and then moved the final 30 miles to the plant by truck. The grain will be moved in rail covered hopper cars to Reno, where it will be re-loaded into motor carrier equipment. Trailer-on-flatcar service will not be used. If the UP/SP merger is consummated, this competitive alternative will be lost. The Wunotoo plant is thus a "2-to-1" customer now served both by the SP and UP, with the latter able to provide a joint rail/motor movement to the plant via Reno.

In addition, the merger will cause this plant to lose the benefits of geographic competition which it now enjoys. The decision to build the Kal Kan plant at this site was based on several projections concerning the origins of the raw materials it will use. One of these assumptions was that the plant would be supplied grain from both BN and UP grain elevators in the Midwest. For example, the plant will receive grain via the UP/SP originating at UP elevators and moving through Ogden, UT. The plant will also receive grain from BN elevators in the Midwest, pursuant to a joint movement via the BN/SP through Denver. The BN-sourced grain will compete with the UP-sourced grain. If the UP/SP merger is approved, however, it is not realistic to expect that the UP will continue to participate in the joint movement with the BN from the BN elevators at a level which will allow that movement to compete with the single-line service the UP will be able to provide direct to Wunotoo from its elevators.

What this all means for the Kal Kan plant is that, unless remedial measures are taken, the plant will lose the competitive transportation options upon which Kal Kan and NALS relied in selecting this site and constructing the plant. It will lose the rail/motor option to the SP service which it now has available to it, as well as the ability to purchase grain at BN elevators. We believe that these adverse effects can be prevented if the UP will agree to take the following actions if its merger with the SP is consummated.

First, the plant could be opened up to BNSF service by granting that carrier trackage rights over the present SP line serving the plant. This would be the most direct method of remedying the "two railroads to one" situation which otherwise will occur at the plant because of the merger.

Second, the BNSF could be granted trackage rights over the UP line at Reno and, if the Kal Kan plant is included within the Reno switching district, BNSF could be granted reciprocal switching rights into the plant. Grain moving to Reno via the BNSF could also be transported in motor carrier service to the plant. These actions by the UP would preserve the existing competitive alternative to the SP service.

The BN/ATSF Agreement does not grant the BNSF either of these operating rights. In listing in Exhibit A the local points which the BNSF will be allowed to serve under the grant of "Western Trackage Rights", Reno, NV is named, but with a parenthetical limiting such service to "(intermodal and automotive only --BNSF must establish its own automotive facility)". If by "intermodal service" the Agreement means a TOFC/COFC "piggy-back" intermodal service, then the BNSF is not granted the right in the Agreement to provide service at Reno for the plant's traffic. As noted, when the plant begins receiving grain from Reno via the UP, it will move into Reno in rail hopper cars. TOFC service will not be used. That it is the Agreement's intent to grant BNSF access at Reno for TOFC intermodal service is seen from Section 1.e), p. 3, which gives the BNSF, for Reno area intermodal traffic, access to "SP's intermodal ramp at Sparks with UP/SP providing intermodal terminal services to BNSF for normal and customary charges."

The Agreement's failure to remedy the loss of competitive rail service which the plant will suffer because of the merger is confirmed by the appendix to Mr. Gehl's December 15 letter, in which, as noted, he states that Reno will remain an SP closed point and that, under the Agreement, "BNSF does not acquire the right to establish a rail transload utilizing trackage rights to handle business to/from this facility." We thus request confirmation from you that after the merger, the BNSF will be given access to this plant by the two methods we have proposed.

When this plant site was selected on the SP, it was presented to that railroad as a potential multi-use location, and not solely as a pet food plant. The plant site is 100 acres in size, and is able to accommodate other production facilities of the Mars units, including those for confectionery and rice products. Any rights granted to BNSF to preserve rail competition at this location, therefore, should not be restricted to those commodities used in the manufacture of pet food.

We are aware that the competitive service we have proposed for this location requires the assent of the BNSF. We are prepared -- once we receive your affirmative response -- to work with the UP and BNSF to implement the UP's decision.

b. Uncle Ben's Plant at Houston, Tex. According to Mr. Gehl's letter, this plant "is currently SP open. BNSF currently has access to this facility". The line serving this plant is owned by the SP, and as Mr. Gehl states, is open to other railroads, including the BNSF. The UP also owns track into Houston and is able to provide a competitive service to this facility.

The Uncle Ben's plant does not appear to be a "2-to-1 customer" protected by the Agreement since it is now served by not only the UP and SP, but also by BNSF. NALS, accordingly, requires UP's independent commitment that the Uncle Ben's plant will remain open, as it is now, to the BNSF and other railroads. We are not asking that additional railroads be allowed to serve this facility; we are simply seeking a commitment that the status quo will be maintained. Like the Wunotoo, NV site, this facility is capable of being expanded to include the production of commodities by the other Mars Units. Access to this facility should continue to include all commodities, and not just rice products. The service provided at the plant should continue to consist of one switch a day, five days a week.

c. The M&M/Mars Plant at Waco, TX. and The NALS' Texas Distribution Center at Waco, TX.

These two facilities at Waco are served both by the UP and the SP. As Mr. Gehl states in his letter, both points are "UP open" and, under the Agreement, BNSF will gain access to each facility since they are "2-to-1" locations as defined therein.

We would appreciate UP's confirmation of the current open status of both facilities and that the Agreement will allow the BNSF to serve both facilities through trackage rights and either direct access or reciprocal switching after completion of the merger. We would also appreciate UP's agreement that the BNSF will be provided access on at least the same basis as exists today, which is one switch a day, six days a week, at both facilities. Access to this facility should include all commodities.

In addition, as reflected in the third paragraph of Mr. Gehl's letter, NALS has concluded that there is a significant need for improved intermodal service at Waco. The nearest intermodal facilities are in Dallas/Forth Worth, more than 100 miles away. Intermodal traffic destined to Waco thus comes in by rail to Dallas, and is then trucked to Waco.

NALS is working with the Waco Chamber of Commerce and local and state government authorities to determine the feasibility of building a satellite intermodal facility in Waco. We are requesting that the UP commit to its active participation with NALS in a study to assess the economic benefits of such a facility.

d. The Kal Kan Plant at Vernon, CA. This plant is at present a closed UP location, although it can be served by the UP, SP, and the BNSF. (Mr. Gehl's statement that this facility is served by the LAJ Railroad and is open to reciprocal switching is incorrect; he is referring to the nearby Pacific Cold Storage facility, not the Kal Kan plant).

The inability of this plant to receive competitive rail service has prevented it from using any rail service at all, inbound or outbound. While there are bulk grain products that could be moved by rail into the plant, rail service is not able to be used for such commodities because they do not originate at points the UP can serve. Thus, UP's refusal to open this plant to reciprocal switching to other rail carriers has not provided traffic for the UP; it has instead forced the plant to forgo rail service completely and to use motor carrier service for all of its inbound and outbound traffic. We therefore require that this facility be open to reciprocal switching.

As Mr. Gehl notes, Pacific Cold Storage is now open to reciprocal switching, as are all of the other plants in the vicinity of the Kal Kan facility. It is very important to us that this facility likewise be opened up to reciprocal switching to other railroads so that it can utilize rail service for its traffic. No one -- least of all the UP -- is benefiting from the present situation.

e. The NALS Distribution Centers at Melrose Park (Chicago), IL and Aspen Distribution, Salt Lake City, UT.

Melrose Park is a closed point on the UP (formerly CNW), but is open to confectionery traffic to and from eastern stations. Aspen is currently a UP local point.

These locations are major NALS distribution centers that ship and receive, among other commodities, large volumes of confectionery products manufactured by the M&M/Mars Division of Mars, Incorporated. Those confectionery products must move in rail box cars that will protect them from heat and cold. UP, while maintaining the current closed status of these locations, has in the past failed to provide these facilities with the refrigerated equipment they require. This failure -- coupled with NALS' inability to use other rail carriers to and from all points served by these locations -- has greatly hampered NALS' distribution efforts via carload transportation.

Mr. Gehl acknowledges in his letter the "numerous attempts" by the UP and NALS to develop a refrigerated car program for NALS' traffic. He promises to "move forward" with NALS on this project in 1996, "sharing the objective of creating a refrigerated logistics option which is beneficial to both parties".

We wish to take Mr. Gehl up on his promise. If the UP will agree to commit at Salt Lake City and Melrose Park the number of refrigerated cars that NALS requires, then we would be content with the status quo at those locations. If UP cannot make such commitment, however, then it is not fair for it to continue to maintain the locations' current closed status.

To meet its current needs, NALS requires that UP assign to it -- by April 30, 1996 -- 30 refrigerated rail cars, meeting our quality specifications, at competitive rate levels, for the movement of NALS' commodities from non-UP served factories of the Mars Units to UP-served NALS distribution centers. We believe this request is reasonable, and will be justified by the amount of confectionery traffic that NALS will tender to the UP. Alternatively, if UP is unable to furnish these cars, then we request that UP open both Melrose Park and Salt Lake City fully to BNSF single-line service.

* * *

I appreciate very much the opportunity to raise these important concerns with you. With your resolution and clarification of these issues, NALS believes that it can work closely with the combined UP/SP after the merger to the mutual benefit of both companies.

Nevertheless, in view of the merger's potential adverse impact on the transportation service NALS currently receives, it is imperative that the issues raised in this letter be resolved promptly. In the absence of such resolution, we will be forced to protect the interests of NALS and the other Mars Units by taking an active role at the Board in opposing this merger, or in asking that the Board only grant the merger upon the imposition of the conditions discussed herein. Needless to say, I believe that it is to both parties' benefit to resolve these issues now, rather than have a government agency resolve them for us.

To implement our understanding I am, as noted, enclosing a proposed agreement in which NALS, in exchange for UP'S assent to the points raised herein, agrees not to oppose the merger nor to seek conditions on any grant thereof. While I realize that specific implementing contracts may be required once the merger is approved, the enclosed agreement will provide NALS with the assurance it needs now as to the post-merger rail service that will be available to it.

As you know, the Board is proceeding on an expedited schedule in the merger proceeding; comments and opposition evidence is due by March 29, 1996. Your response to this letter by February 29, 1996 would, accordingly, be appreciated.

With kindest personal regards,

Very truly yours,

Donald R. Klock

Donald R. Klock
Vice President

Enclosures

cc: Mr. Drew Collier
Vice President, Marketing
Union Pacific Railroad

Terry Jones, Esq.
Keller & Heckman

Jim DeVoe - NALS
Ron Paul - NALS
Ron Reed - NALS
Bill Thompson - NALS

UNION PACIFIC RAILROAD COMPANY

DREW R. COLLIER
VICE PRESIDENT & GENERAL MANAGER
AGRICULTURAL PRODUCTS

1416 DODGE STREET
OMAHA, NEBRASKA 68179-0001
(402) 271-2321
FAX (402) 271-6016

February 29, 1996

Mr. Donald R. Klock
Vice President
North American Logistic Services
P. O. Box 731
Hackettstown, NJ 07840-0731

Dear Mr. Klock:

We have now had a chance to consider the concerns raised in your letter of February 16 to Ron Burns. I will lay out Union Pacific's views on each of those points. Before doing so, however, I want to emphasize that we are convinced the UP/SP merger offers substantial benefits for Mars (NALS).

At those facilities served by Southern Pacific, the merger will offer the long term assurance of efficient and reliable rail transportation service. By combining the UP and SP systems, it should add much needed capacity for handling increasing volumes of traffic as well as enable the new company to make much better use of the combined equipment fleets of the two carriers. Moreover, it should open new markets for customers of UP and SP. Without the merger, rail competition will be weakened. SP will find it difficult, if not impossible, to compete with BNSF and even UP will be severely disadvantaged given the extensive reach of the BNSF system and the resources available to that new carrier. We think it makes sense and is in your interest to support the merger. With that background, I will address the specific points raised in your letter:

- **Kal Kan Foods at Wunotoo, NV** - I am not sure that it is productive to get involved in what is essentially a legal argument. We simply do not agree that the competitive alternative you referred to, i.e., trucking grain from Reno to Wunotoo was ever a viable proposal. Your letter suggests there were actually some concrete plans between UP and NALS to move grain to Reno in hoppers and then on to Wunotoo via truck. We have no recollection of such a proposal and, in fact, have always focused on a joint line program with the SP. Moreover, the remedy you suggest, granting BN/Santa Fe trackage rights to Wunotoo or opening it to reciprocal switch would go beyond the competitive alternative you suggest existed. However, as I said at the outset, this is essentially a legal argument and we believe that the facts do not justify providing additional competitive access to the Wunotoo plant.

- **Uncle Ben's Plant at Houston, TX** - The status quo will be maintained at the Uncle Ben's plant. In fact, your situation at Houston should improve. As you know, the current SP reciprocal switch charge is $495.00 per car. We have committed in the merger Application (see Richard B. Peterson's verified statement at page 71) to reduce the reciprocal switch charge. Accordingly, BNSF should enjoy improved access to this facility by virtue of a reduced switch charge.

- **Facilities at Waco, TX** - Our agreement with BNSF requires that access be granted to all customers who were served by UP and SP and no other railroad. It is our understanding that your facilities at Waco are served by both UP and SP and no other railroad. Accordingly, they would be open to BNSF service. Our agreement with BNSF contains no restrictions on the commodities that may be handled and, accordingly, access to this facility will include all commodities.

  With regard to intermodal service at Waco, on February 7 six Union Pacific representatives met here in Omaha with the Waco City Manager, the Chamber of Commerce's Senior Vice President of Economic Development and two representatives from M&M Mars, including Ron Paul, to discuss the city's interest in having an intermodal ramp constructed in Waco. The City has agreed to undertake a marketing survey to determine whether there is sufficient freight along with the Mars business in Waco to support an intermodal facility and the level of train service required to make it economically feasible. Curtis Cleveland of the Waco Chamber is working with Ben Shelton of Union Pacific on developing the necessary information.

- **Kal Kan Plant at Vernon, CA** - We are puzzled by the statement that bulk grain products could move into this plant by rail but do not because the origins are on locations not served by UP. We are always ready to work with another carrier to meet a customer's needs, particularly where the other carrier serves an origin not reached by Union Pacific. However, we do not see any competitive rational for opening a closed UP location.

- **Facilities at Melrose Park, IL and Salt Lake City, UT** - We believe that the merger should greatly improve equipment utilization. Improved equipment utilization should also benefit our fleet of mechanical refrigerated cars. We remain committed to providing refrigerated rail cars to you where it makes economic sense and expect that will continue after the merger. However, we see no relationship between the merger and your need for refrigerated cars to handle business to and from Melrose Park and Salt Lake City. There is no competitive rational that we can understand that would justify opening these facilities to BNSF on the basis of concern about the availability of refrigerated cars.

In summary, we feel that the merger will have a very positive impact on transportation services for NALS. At Houston and Waco your competitive access has been preserved. In the other instances you cited, we believe you will enjoy better service, but we see no competition rational that would justify expanding competitive access. Please don't hesitate to give me a call if you would like to discuss any of these issues in greater detail.

Sincerely,

c: Ron Burns
Tony Cardinale

CERTIFICATE OF SERVICE

I hereby certify that I have on this date (1) served two copies of the foregoing document by hand delivery upon:

Arvid E. Roach, II
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D. C. 20044-7566

Paul A. Cunningham
Harkins, Cunningham
1300 19th St., N.W.
Washington, D. C. 20036

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske
Mayer, Brown & Platt
2000 Pennsylvania Ave., NW
Washington, D. C. 20006

and (2) served a copy of the foregoing document by first-class mail, postage prepaid, upon all remaining parties of record.

Terrence D. Jones

March 29, 1996
Washington, D. C.

STB FD 32760 3-29-96 D 62241

Item No. ________

Page Count 14

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CHARLES ...
Internatio...
BYRON A. ...
Assistant ...
ROGER ...
General ...

...nsportation union

14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-228-9400
FAX: 216-228-0937

LEGAL DEPARTMENT

CLINTON J. MILLER, III, General Counsel • KEVIN C. BRODAR, Associate General Counsel • ROBERT L. McCARTY, Associate General Counsel • DANIEL R. ELLIOTT, III, Assistant General Counsel • MICHAEL ... Assistant General Counsel

March 28, 1996

ENTERED
Office of the Secretary
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8 Part of Public Record

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MAR 29 1996
MAIL MANAGEMENT
I.C.C.

UPS Next Day Air

Vernon A. Williams, Secretary
Surface Transportation Board
Room 2215
12th Street & Constitution Ave., N.W.
Washington, D.C. 20423
(202) 939-3470

Re: Finance Docket No. 32760
UP/SP Merger

Dear Secretary Williams:

Please find enclosed the original and ten (10) copies of UTU's Notation of Conditions and Comments for filing in the above-captioned matter.

Very truly yours,

D. R. Elliott

Daniel R. Elliott, III
Assistant General Counsel

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

NOTATION OF CONDITIONS AND COMMENTS SUBMITTED ON BEHALF OF UNITED TRANSPORTATION UNION

Clinton J. Miller, III
General Counsel
Daniel R. Elliott, III
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107-4250
(216) 228-9400
FAX (216) 228-0937

Attorneys for
United Transportation Union

Dated: March 29, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
MAR 29 1996
MAIL MANAGEMENT
I.C.C.

FINANCE DOCKET NO. 32760

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

NOTATION OF CONDITIONS
AND COMMENTS

submitted on behalf of

UNITED TRANSPORTATION UNION

United Transportation Union ("UTU") pursuant to the procedural schedule adopted by the Surface Transportation Board ("STB" or "Board") in this proceeding, and the Board's regulations, hereby submits the following evidence and argument in support of UTU's comments on the Application.

I. INTRODUCTION AND SUMMARY

The UTU is the duly authorized representative for the purposes of the Railway Labor Act ("RLA") of various crafts or classes of employees employed by Applicants. The UTU and Applicants are parties to various agreements covering those employees. The UTU is headquartered at 14600 Detroit Avenue, Cleveland, Ohio 44107. While UTU is in support of the proposed merger as discussed herein, UTU respectfully requests the Board pursuant to its authority under 49 U.S.C. § 11324(c) of the Interstate Commerce Act to note that UTU's support of the merger is contingent upon the agreement of the Applicants to conditions that will help mitigate the impact of job loss on its members.

The Verified Statement of UTU International President Charles L. Little, which is attached hereto, details these conditions in the form of commitments in applying the New York Dock protective conditions, which is the basis for UTU's support of the proposed merger.

II. RELIEF REQUESTED

Pursuant to 49 U.S.C. § 11324(c), the Board's regulations at 49 C.F.R. part 1180, the procedural orders issued in this docket by the Board, and decisions of the Board in rail mergers, UTU notes the UP has voluntarily agreed with UTU to the conditions referred to hereinabove. (See attachments to Verified Statement of Charles L. Little attached hereto). Those conditions include:

(1) The automatic certification as adversely affected by the merger to the 1409 train service employees, the 85 UTU represented yardmasters, and the 17 UTU represented hostlers projected to be adversely affected in the Labor Impact Study and to all other train service employees and UTU represented yardmasters and hostlers identified in any Merger Notice served after Surface Transportation Board approval, and automatic certification to any engineers adversely affected by the merger who are working on properties where engineers are represented by the UTU. Moreover, UP will supply UTU with the names and TPA's of such employees as soon as possible upon implementation of the approved merger. UP has voluntarily agreed with the UTU to these conditions.

(2) In any Merger Notice served after Board approval, applicants will only seek those changes in existing collective bargaining agreements that are necessary to implement the approved transaction, meaning such changes that produce a public transportation benefit not based solely on savings achieved by agreement change(s). UP has also voluntarily agreed to this condition.

(3) In the event any differences between UP and UTU arise with regard to UP's application of the New York Dock conditions being inconsistent with the above-mentioned conditions (committed to by UP), UTU and UP personnel will meet within five (5) days of notice from the UTU International President or his designated representative and agree to expedited arbitration with a written agreement within ten (10) days after the initial meeting if the matter is not resolved, which will contain, among other things, the full description for neutral selection, timing of hearing, and time for issuance of Award(s). UP has voluntarily agreed with UTU to this condition.

(4) In the event UP uses a lease arrangement to complete the merger of the various SP properties into MP or UP, these New York Dock conditions would, nevertheless, be applicable. UP has also voluntarily agreed with UTU to this condition.

In view of UP's agreement to the above conditions, UTU agreed to support this merger.

III. COMMENTS IN SUPPORT OF THE MERGER

The UTU has as members more than 79,000 transportation industry workers. The UTU represents a significant percentage of the unionized work force of the Union Pacific and the Southern Pacific. UTU submits these comments in support of the proposed merger of UP and SP.

UTU is the largest labor organization in the rail industry. As such, its chief responsibility is to protect the economic interests of the UTU members, whose work makes possible the efficient functioning of the nation's transportation system. As the Board is aware, labor has been very concerned about, and very critical of, rail mergers because of the significant job loss that they entail. A recent newspaper article stated that no rail merger in the past 25 years has proceeded with major union support.

But UTU supports the proposed UP/SP merger, principally because UP has agreed to a number of conditions in applying the New York Dock conditions that will help mitigate the impact of job loss on our members.

IV. CONCLUSION

For all of these reasons, UTU strongly urges the Surface Transportation Board to approve speedily the UP/SP merger and note the above-mentioned conditions UP has agreed to.

Respectfully submitted,

D. R. Elliott

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FAX (216) 228-0937

CERTIFICATE OF SERVICE

I, Daniel R. Elliott, III, certify that, on this 29th day of March, 1996, I caused a copy of the foregoing Notation Of Conditions And Comments Submitted On Behalf Of United Transportation Union to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery, on all parties of record.

Daniel R. Elliott

Daniel R. Elliott, III

VERIFIED STATEMENT
OF
CHARLES L. LITTLE

My name is Charles L. Little. I am the International President of the United Transportation Union ("UTU"). I have approximately 40 years of service in the railroad industry and 24 years in the rail labor movement as a union officer.

The UTU has as members more than 79,000 transportation industry workers. The UTU represents a significant percentage of the unionized work force of the Union Pacific and the Southern Pacific. I am submitting this verified statement on behalf of myself and the UTU's respective membership in support of the proposed merger of UP and SP.

I have the honor to preside over the largest labor organization in the rail industry. As such, my chief responsibility is to protect the economic interests of the UTU members, whose work makes possible the efficient functioning of the nation's transportation system. As the Board is aware, labor has been very concerned about, and very critical of, rail mergers because of the significant job loss that they entail. A recent newspaper article stated that no rail merger in the past 25 years has proceeded with major union support.

But I support the proposed UP/SP merger, and I do so for two key reasons: First, UP has agreed to a number of conditions that will help mitigate the impact of job loss on our members. Second, I am convinced that the combination of SP and UP to form a strong competitor to BN/Santa Fe is in the best interest of rail labor in the future. UP's commitments, which relate to the application of the New York Dock labor protective provisions, are attached hereto.

The second reason that I support the merger is that, in the current circumstances of rail competition in the West, it is in the long-run best interest of rail labor that SP and UP combine to form a strong, efficient competitor to BN/Santa Fe. The Board will recall that in 1995 UTU strenuously opposed the BN/Santa Fe merger. As I anticipated, that combination has resulted in significant job loss. I believe that without a merger, UP alone would lose market share to BN/Santa Fe, resulting in further job loss at that railroad. This loss of employment would **likely** occur without any labor protection.

An independent SP likely would result in even more dire consequences for workers. The evidence submitted so far in this proceeding overwhelmingly demonstrates that SP is financially and competitively a very weak railroad. SP has failed to generate sufficient cash flow from rail operations to fund its operating expenses, capital expenditures and fixed charges in all but three years since the late 1970's, and it is still losing money. I know that SP has kept itself afloat over the last 13 years only by selling off huge amounts of real estate and investing the proceeds in rail operations. In fact in the last 13 years, SP generated close to $3 billion in cash asset sales while losing $2.4 billion in cash from rail operations.

I have first-hand experience with the consequences of SP's financial distress. In 1991, Congress acknowledged the severity of SP's problems by permitting SP to bargain with labor separately from the rest of the industry with respect to wages. As a result, most SP employees already have endured years of below-industry wages on account of SP's financial weakness.

If the UP/SP merger is not approved, the jobs of thousands of additional SP employees would be placed at risk. It is doubtful that SP would be able to compete in the future against UP and particularly against BN/Santa Fe. Rather, it is more likely that SP would be forced to discontinue operations on certain lines or even be broken up and sold off in pieces, with no labor protection for the many SP employees who would lose their jobs in this process.

Overall, it is my opinion that the job loss that UTU members will experience through the UP/SP merger would be much less than the job loss that would occur if UP and SP are left to stand alone against BN/Santa Fe.

For all of these reasons, I and the UTU membership strongly urge the Surface Transportation Board to approve speedily the UP/SP merger.

VERIFICATION

STATE OF OHIO)
) ss.
COUNTY OF CUYAHOGA)

I, Charles L. Little, being duly sworn, state that I have read the foregoing statement, that I know its contents, and that those contents are true as stated.

Charles L. Little
CHARLES L. LITTLE

SUBSCRIBED and sworn to before me this 28th day of March, 1996.

D. R. Elliott
Notary Public

DANIEL R. ELLIOTT, ATTORNEY AT LAW
Notary Public-State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

STB FD 32760 3-29-96 D 62238

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UP/SP-191

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' SUBMISSION OF VERIFIED STATEMENT CONCERNING SETTLEMENT AGREEMENT WITH UTAH RAILWAY COMPANY

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Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company

March 29, 1996

UP/SP-191

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' SUBMISSION OF VERIFIED STATEMENT
CONCERNING SETTLEMENT AGREEMENT WITH UTAH RAILWAY COMPANY

Applicants submit herewith the Verified Statement of Richard B. Peterson concerning Applicants' settlement with Utah Railway Company.

Respectfully submitted,

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(202) 662-5388

Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company

March 29, 1996

CERTIFICATE OF SERVICE

I, Karen W. Kramer, certify that, on this 29th day of March, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Karen W. Kramer

Karen W. Kramer

VERIFIED STATEMENT

OF

RICHARD B. PETERSON

My name is Richard B. Peterson. I am Senior Director-Interline Marketing of UP. My educational background and relevant work experience are set forth in my verified statement in Volume 2 of the merger application (UP/SP-23).

This statement is submitted in response to a letter dated March 5, 1996 from the Chief of the Section of Environmental Analysis ("SEA") of the Surface Transportation Board concerning possible environmental effects of executed settlement agreements. The letter states: "[Applicants] may file a Verified Statement [rather than a Preliminary Draft Environmental Assessment ("PDEA")] for a settlement agreement if the agreement involves no substantive operational changes and no abandonment or construction projects. If after reviewing the operating plans for each settlement agreement, you determine that a Verified Statement is appropriate, you must certify that the agreement meets the exemption criteria under 49 CFR 1105.6(c)(2). Each Verified Statement must include supporting operating data."

This statement discusses the settlement agreement that Applicants executed with Utah Railway Company, which was entered into on January 17, 1996 and submitted to the Board on February 2, 1996. <u>See</u> UP/SP-74.

As explained below, the agreement with Utah Railway does not involve substantive operational changes or rail line abandonments or construction projects. Applicants hereby certify that the agreement meets the exemption criteria under 49 C.F.R. § 1105.6(c)(2).

In general, the settlement provides Utah Railway with trackage rights for overhead traffic between Utah Railway Junction, Utah, and Grand Junction, Colorado. It also permits, subject to the terms of the agreement, Utah Railway to serve the Savage Coal Terminal coal loading facility near Price, Utah, and to have access to a coal mine near Castle Gate, Utah.

The settlement agreement does not provide for or require any rail line abandonments or construction projects, and none is planned as a result of the agreement.

The agreement also is not expected to result in any substantive operational changes or any increases (or decreases) in traffic on the UP/SP line segments affected by the agreement. The traffic that Utah Railway would be in a position to handle over the trackage rights between Utah Railway Junction and Grand Junction would, in all likelihood, otherwise be carried on the same lines by UP/SP's or BN/Santa Fe's trains. Also, any coal freight that Utah Railway might carry to or from the coal loading points referred to above would otherwise be carried on the same lines by UP/SP's trains. The total rail volume of traffic over the line between Utah Railway Junction and Grand Junction, or to and from the coal loading points referred to above, will not be affected materially, if at all, by the agreement.

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Richard B. Peterson, being duly sworn, state that I have read the foregoing statement, that I know its contents, and that those contents are true as stated.

Richard B. Peterson

RICHARD B. PETERSON

SUBSCRIBED AND SWORN TO before me this 27th day of March, 1996.

Doris J Van Bibber

NOTARY PUBLIC

My Commission Expires: Nov. 30, 1996

GENERAL NOTARY-State of Nebraska
DORIS J. VAN BIBBER
My Comm. Exp. Nov. 30, 1996

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...KINS & SUTTER

...RSHIP INCLUDING PROFESSIONAL CORPORATIONS)

888 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006 (202) 835-8000
FACSIMILE (202) 835-8136

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602
DALLAS OFFICE 3700 BANK ONE CENTER 1717 MAIN STREET 75201

RECEIVED MAR 29 1996 MAIL MANAGEMENT I.C.C.

ALICIA M. SERFATY
(202) 835-8049

March 29, 1996

BY HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Room 1324
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: *Union Pacific Corp. et al. -- Control & Merger --*
Southern Pacific Rail Corp., et al., Finance Docket No. 32760

Dear Mr. Williams:

Enclosed please find an original and 20 copies of the Comments Of The Southern California Regional Rail Authority ("SCRRA") (SCRR-4) for filing in the above-referenced action. Also enclosed is a 3.5 inch disk containing the text of this pleading in WordPerfect 5.1 format.

Please date-stamp the extra copy provided and return it with our messenger. Thank you.

Sincerely,

Alicia M. Serfaty

Alicia M. Serfaty

AMS/llb
Enclosures
cc: All Parties of Record

ENTERED
Office of the Secretary
MAR 30 1996
4 Part of Public Record

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SCRR-4

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

Union Pacific Corporation, Union Pacific Railroad Company
and Missouri Pacific Railroad Company

-- Control and Merger --

Southern Pacific Rail Corporation, Southern Pacific
Transportation Company, St. Louis Southwestern
Railway Company, SPCSL Corp. and the Denver and Rio Grande
Western Railroad Company

COMMENTS OF THE SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

Southern California Regional Rail Authority ("SCRRA"), by its undersigned counsel, hereby submits its comments on the proposed merger application filed by the Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company ("UP") and the Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company (the "SP") (collectively referred to herein as the "Applicants") in this docket on November 30, 1995.

SCRRA is a joint powers authority comprised of five member county agencies, the Los Angeles County Metropolitan Transportation Authority, the Orange County Transportation Authority, the Riverside County Transportation Commission, San Bernardino Associated Governments and the Ventura County Transportation Commission. It is a public body wholly separate from its member agencies and is charged with responsibility for planning, design and construction, and then administering the operation of regional passenger lines serving the five counties. The transportation service administered by SCRRA in Southern California is known as "Metrolink." To facilitate the start up of passenger service in the early 1990s, SCRRA's member agencies acquired property or rights to use property from the SP, UP and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe").[1] These carriers and SCRRA (or rather its member agencies) operate jointly over specific lines in Southern California, with written agreements with each carrier governing the operations and priorities of the freight and passenger service over each of those lines. The proposed merger between UP and SP will affect the freight traffic which moves over lines where UP or SP jointly operate with SCRRA's member agencies.

SCRRA has taken the opportunity to serve discovery upon the Applicants to determine whether the proposed merger transaction will have an adverse impact upon the commuter operations administered by SCRRA on the lines jointly used by it and either the UP and SP. Applicants have been forthcoming in providing, to the extent possible, details on their operations post-merger. However, because Applicant have stated that their plans are not definite at the moment or because they have not conducted sufficient studies to provide precise details about certain of their operations

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[1] In August, 1995, Santa Fe and the Burlington Northern Railroad Company and its related entities were given authority from the Interstate Commerce Commission to merge. *See Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549 (Decision No. 38, served August 23, 1995). The merger of the parent companies of these two rail carriers took place in the fall of 1995.

after the merger,[2] SCRRA does not at this time have sufficient information to conclude that its operations will not be adversely impacted by the merger. SCRRA continues to be concerned about the location of the proposed Inland Empire Terminal that will be constructed by Applicants in the LA Basin, about the number and frequency of freight trains, especially during rush hour periods, along certain of its most heavily traveled routes and about potential changes in dispatching territories that might adversely affect SCRRA's ability to provide efficient and reliable commuter service in Southern California. Because of these concerns, SCRRA will not make any specific objections to the merger proceeding at this time, but will reserve the right to return to the Board at a later date and reopen the merger proceeding to request conditions or other appropriate relief if and when SCRRA determines that impact of the merger transaction is adversely impacting the provision of commuter service in Southern California.

Dated: March 29, 1996

Respectfully submitted,

Charles A. Spitulnik
Alicia M. Serfaty

HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for Southern California
Regional Rail Authority

---

[2] *See Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Corporation et al.*, Finance Docket No. 32760, Applicants Responses to SCRRA's First Set of Interrogatories (UP/SP-56), dated January 15, 1996, at 7-8 (responses to Interrogatory Nos. 6 and 7).

P46373-1

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 1996, a copy of the foregoing Comments Of The Southern California Regional Rail Authority (SCRR-4) was served by first-class U.S. mail, postage prepaid upon all parties of record in this proceeding.

I further certify that two copies of the aforementioned pleading were served by Federal Express, unless otherwise indicated, upon the following:

Erika Z. Jones (By Hand)
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SPP-10

REDACTED - FILED ON THE PUBLIC RECORD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

REQUEST FOR CONDITIONS
AND
COMMENTS

submitted on behalf of

SIERRA PACIFIC POWER COMPANY
AND
IDAHO POWER COMPANY

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March 29, 1996

REDACTED - FILED ON THE PUBLIC RECORD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

REQUEST FOR CONDITIONS AND COMMENTS

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SIERRA PACIFIC POWER COMPANY
AND
IDAHO POWER COMPANY

Section I

SUMMARY OF EVIDENCE AND ARGUMENT

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March 29, 1996

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VIA HAND DELIVERY

Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Sierra Pacific Power Company and Idaho Power Company - Request for Conditions and Comments
Finance Docket No. 32760

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and twenty copies of the highly confidential version of SPP-10, Request for Conditions and Comments by Sierra Pacific Power Company and Idaho Power Company. Also enclosed are twenty copies of the redacted version of SPP-10 and one 3.5" computer disc containing a copy of the highly confidential version of SPP-10 in Word Perfect 5.1 format.

Sincerely,

Richard A. Allen

Richard A. Allen

Attorney for Sierra Pacific Power Company and Idaho Power Company

Enclosures

REDACTED - FILED ON THE PUBLIC RECORD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
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-- CONTROL AND MERGER --

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COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

REQUEST FOR CONDITIONS AND COMMENTS

submitted on behalf of

SIERRA PACIFIC POWER COMPANY
AND
IDAHO POWER COMPANY

Presentation of Evidence and Argument

Sierra Pacific Power Company and Idaho Power Company (collectively referred to as "Sierra Pacific") jointly own, on a fifty-fifty basis, North Valmy Station, which is an electric generating plant located in north central Nevada. The proposed merger of the Union Pacific Railroad Company ("UP") and the Southern Pacific Rail Corporation ("SP") (collectively referred to as the "Applicants") will have a significant adverse effect on rail competition to Sierra Pacific's North Valmy Station.

Accordingly, Sierra Pacific respectfully requests the Surface Transportation Board (the "Board"), pursuant to its authority under 49 U.S.C. § 11344(c) of the Interstate Commerce Act[1] to impose conditions on the merger to preserve competition to Sierra Pacific's North Valmy Station. The requested conditions, and the reasons for such conditions are described in detail in this submittal.

I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

A. Outline of Submittal

Sierra Pacific's Request for Conditions and Comments is divided into two sections:

(1) Section I, entitled "Summary of Evidence and Argument," generally summarizes: the facts relating to transportation of coal to Sierra Pacific's North Valmy Station; the legal standards applicable to the Board's consideration of the proposed merger; the elimination of rail competition this merger will cause North

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[1] The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the "Act"), enacted December 29, 1995 and effective January 1, 1996, abolished the Interstate Commerce Commission ("ICC") and transferred certain functions and proceedings to the newly created Surface Transportation Board ("Board"). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of the Act shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. Sierra Pacific's Request for Conditions and Comments relates to a proceeding that was pending with the ICC prior to January 1, 1996 and to functions that are subject to the Board's jurisdiction pursuant to Sections 11323 through 11325 of the Act. Sierra Pacific's Request for Conditions and Comments, therefore, are submitted pursuant to the law as it was in effect prior to the Act, and citations are to the former sections of the statute and regulations, unless otherwise indicated.

Valmy Station; and the reasons why the Board must condition the merger to preserve competition.

(2) Section II, entitled "Evidence and Argument," contains:

(a) The Verified Statement of Jeffery W. Hill, Director of Fuel Management and Operations Support, Sierra Pacific Power Company, Reno, Nevada. Mr. Hill's statement details the facts relating to the movement of coal to North Valmy Station, including relevant aspects of the history of that movement; the competitive rail options currently available to North Valmy Station; the elimination of rail competition that will result as a consequence of this merger; and the relief in the form of trackage rights to a rail carrier that is necessary to preserve competition.

(b) The Verified Statement of Thomas D. Crowley, President, L.E. Peabody and Associates, Alexandria, Virginia. Mr. Crowley's statement describes the existing rail and coal supply competition to North Valmy Station; sets forth the relevant history of negotiations to obtain competitive rates to the plant; analyzes the impact the proposed merger will have on competitive transportation to North Valmy Station; analyzes the Settlement Agreements the Applicants have with Burlington Northern/Santa Fe ("BNSF") and Utah Railway; details the condition that the Board must impose to preserve competition; and determines the proper calculation of trackage rights compensation that the Board should order.

Sierra Pacific is filing at the Board both a redacted and non-redacted version of its submittal. The non-redacted version contains information that has been designated as "Confidential" or "Highly Confidential" by Sierra Pacific or other parties and is being submitted under seal.

B. <u>Relief Requested</u>

In order to preserve the rail competition for transporting coal to North Valmy Station that this merger threatens to eliminate, Sierra Pacific respectfully requests the Board to impose the following conditions on any approval of the merger:

(1) The Board should require the merged carrier to provide another rail carrier, to be selected by Sierra Pacific, with trackage rights enabling that carrier to transport coal to North Valmy Station in single-line service from all mines in Colorado and Utah now served by SP.

(2) The Board should require the merged carrier to provide such trackage rights for compensation no greater than 1.48 mills per gross ton-mile for the movement of coal from all mines in Colorado and Utah now served by SP to North Valmy Station, adjusted quarterly beginning in the first quarter of 1996 based on changes in the Rail Cost Adjustment Factor adjusted for productivity ("RCAF-A") from and after that time.

III. STATEMENT OF FACTS

A. <u>Description of Sierra Pacific's North Valmy Station and Coal Supply for North Valmy Station</u>

Sierra Pacific owns and operates North Valmy Station, which an electric generating plant located between Winnemucca and

Battle Mountain, Nevada. Verified Statement of Jeffery W. Hill (hereinafter, "Hill V.S."), p. 3. North Valmy Station serves between 50,000 and 75,000 customers throughout northern Nevada and northeastern California, and is a generating resource for Idaho Power customers in southern Idaho, eastern Oregon, and northeastern Nevada. Id.

The plant has a generating capacity of 530 megawatts that is divided evenly between two units. Id. Unit I came on line in 1981 and Unit II became operational in 1985. Id. Low-sulphur, high BTU coal, for which North Valmy Station's two units were specifically designed to accommodate, is the primary fuel burned at the plant. Id.

North Valmy Station is located between, and with access to, two competing railroads, UP and SP. The plant's strategic location has provided both leverage in securing reasonable rail rates and flexibility in procuring long-term coal supplies. Indeed, because of its location, North Valmy Station has ready access to a number of high BTU, low-sulfur coal mines in the Uinta Basin, which is in Colorado and Utah. Most of these mines are located within 500 miles of North Valmy Station; a handful more are within 750 miles. Id. at 5.

North Valmy Station also has ready access to coal from mines the Hanna Basin and the adjacent Green River - Ham's Fork area ("Hanna Basin") in southern Wyoming. Hanna Basin coal has a BTU and higher sulfur content than most Uinta Basin coal, it is within the design parameters of North Valmy Station's boilers. Id. at 5. Like the mines in the Uinta Basin, Hanna Basin coal is between 500 and 750 miles to North Valmy Station. Verified Statement of Thomas D. Crowley (hereinafter "Crowley V.S."), p. 12. The next closest coal sources to North Valmy Station are mines in New Mexico currently served by BNSF, which are approximately 1,500 rail miles from the plant, and Powder River Basin ("PRB") mines served by BNSF and UP, which are approximately 1,400 miles from North Valmy Station. Id. at 38. Notwithstanding the distance disadvantage, the coal from these sources is incompatible with North Valmy Station's boilers. Hill V.S., p. 13.

B. <u>Rail Rate Negotiations for Transportation of Coal from SUFCO Mine to North Valmy Station</u>

C. <u>Rail Rate Negotiations for Transportation of Coal from Black Butte Mine to North Valmy Station</u>

D. <u>The Effect of the Proposed Merger Between UP and SP on North Valmy Station</u>

The proposed merger between UP and SP would combine the two railroads that have provided competitive rail service to North Valmy Station in the past and, were it not for the merger, would continue to offer the same competitive leverage to the plant in the future when the North Valmy Station's coal contracts expire, or are otherwise terminated. Hill V.S., p. 11; Crowley V.S., p. 1.

III. THE INTERSTATE COMMERCE ACT REQUIRES THE BOARD TO IDENTIFY POTENTIALLY HARMFUL COMPETITIVE EFFECTS OF A PROPOSED MERGER IN SPECIFIC CASES AND TO ELIMINATE THOSE EFFECTS WITH CONDITIONS WHEREVER POSSIBLE

Under the Interstate Commerce Act ("the Statute"), a merger of two rail carriers may be carried out only with the approval and authorization of the Board. 49 U.S.C. § 11343(a). Both the legislative history of the Statute and the decisions of the former Interstate Commerce Commission's ("ICC" or "the Commission") demonstrate that, in considering a proposed merger, the Board must carefully and broadly examine the potential adverse effects on competition among rail carriers. Moreover, where a proposed merger results or may result in harmful competitive effects, the Board must impose conditions on the merger to preserve competition, as long as the conditions are narrowly tailored to remedy the harmful effects and will produce public benefits outweighing any harm to the merger.

A. Statutory Standard

Section 11344 of the Statute requires the Board to consider, in a proceeding involving the merger or control of two or more Class I railroads, the following five factors:

> (A) the effect of the proposed transaction on the adequacy of transportation to the public;
> (B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;
> (C) the total fixed charges that result from the proposed transaction;
> (D) the interest of carrier employees affected by the proposed transaction;
> (E) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

49 U.S.C. § 11344(b)(1).

The Statute directs the Board to "approve and authorize a transaction . . . when it finds the transaction consistent with the public interest." 49 U.S.C. § 11344(c). The same section also provides that "[t]he Board may impose conditions governing the transaction, including . . . requiring the granting of trackage rights and access to other facilities." Id.

Section 11344(b)(1)(E) was added to the Interstate Commerce Act by the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1931 (Oct. 14, 1980). The legislative history of subparagraph E indicates that Congress intended the Board to place greater importance on competitive forces when considering a major rail merger than it had prior to the Staggers Act. Indeed, the section originated as a floor amendment in the House of Representatives and was introduced by its sponsor as follows:

> I am offering an amendment . . . to specifically direct the Interstate Commerce Commission to consider the question of rail competition whenever making a determination of a railroad merger transaction.

126 Cong. Rec. H8604 (daily ed. September 9, 1980)(remarks of Representative Panetta). In interpreting subparagraph E, the Commission has refused to "limit [its] consideration of competition to rail carriers alone, but [will] examine the total transportation market. Burlington Northern Inc. and Burlington Northern Railroad Company - Control and Merger - Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, Decided August 16, 1995, p. 52 [hereinafter BN/SF].

In evaluating the competitive effects of a proposed merger, the Board is also guided by the National Transportation Policy, 49 U.S.C. § 10101a. The policy reflects Congress's intent that the Board work to preserve competition in the administration of its regulatory powers.[2] Indeed, in the BN/SF case, the ICC

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[2] The rail transportation policy provides in relevant part:

> In regulating the railroad industry, it is the policy of the United States Government --
>
> (1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail; . . .
> (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other mods, to meet the needs of the public; . . .

(continued...)

stated that the "elements of that policy . . . taken as a whole, emphasize reliance on competitive forces, not government regulation, to modernize railroad actions and to promote efficiency." Id.

B. The Board Must Identify Potentially Harmful Competitive Effects and Eliminate Those Effects With Conditions Wherever Possible

The Board's general policy statement on major rail mergers states that:

> [i]n determining whether a transaction is in the public interest, the Commission performs a balancing test. It weighs the potential benefits to applicants and the public against the potential harm to the public. The Commission will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation that would result in less potential harm to the public.

49 C.F.R. § 1180.1(c).

ICC case law indicates that the Board will impose protective conditions on a proposed merger in markets where effective competition is lessened. The Commission in the past consistently emphasized the need to protect the public from any harmful effects on competition resulting from a proposed rail consolidation. See BN/SF at 54 ("We recognize, of course, that the consolidation of two carriers serving the same market might [be] contrary to the public interest.") In the BN/SF merger [pro]ceeding, the ICC recognized that "[p]otential harm from a

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(...continued)

> (12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power and to prohibit unlawful discrimination; . . . . 49 U.S.C. § 10101.

proposed consolidation may occur from a reduction in competition" and that "[i]t is the harm that is causally related to the merger that we attempt to ameliorate with conditions." BN/SF, at 55. In an earlier case the Commission noted that:

> [o]ur analysis of the potential harm from a proposed consolidation focuses on . . . any reduction in either intra- or intermodal competition which would likely result from the consolidation . . . .

Union Pacific Corporation, Pacific Rail System, Inc. and Union Pacific Railroad Company-Control-Missouri Pacific Corporation and Missouri Pacific Railroad Company, 366 I.C.C. 462, 484, 486 (1982) [hereinafter UP/MPC]. In Santa Fe Southern Pacific Corporation-Control-Southern Pacific Transportation Company, 2 I.C.C. 2d 709, 726 (1986) [hereinafter SF/SP], the Commission emphasized that "the effect of a transaction on competition is a critical factor in our consideration of the public interest. . ."

The case law is clear that, in considering a proposed merger, the Board must examine specific instances where a lessening or reduction in competition is alleged to take place, and that the Board must broadly consider all types of restrictions on competition, including the lessening of source competition and the loss of potential future competition. With respect to the latter, the Commission has recognized that it is not only appropriate to impose conditions that preserve existing competition, but that in appropriate cases, it must also impose conditions that ensure potential or future competition. For example, in the BN/SF proceeding, the Commission imposed a condition to maintain a utility's prospective competitive build-out option. BN/SF, at 98.

Under the Statute, the Board's power to condition a proposed merger in order to preserve competition is unqualified. 49 U.S.C. § 11344(c). Indeed, the Commission itself stated that "[s]ection 11344 gives us broad authority to impose conditions governing railroad consolidations." BN/SF at 55. Generally, there are two different sets of circumstances where the Board will consider imposing conditions on a proposed merger: "[1] to protect the interests of a competing carrier from merger impacts or [2] to protect the public from anticompetitive consequences." UP/MPC, 366 I.C.C. at 562.

The first circumstance arises when the merger potentially or actually will result in the loss of essential rail services, by making it difficult or impossible for a competing rail carrier to survive or continue to provide the same level of service. The second set of circumstances, which is pertinent here, arises when the proposed merger will directly effect competition by eliminating competitive alternatives available to the public. In this case, the Board does not require a showing of harm to essential services before it will impose conditions. Rather,

> [t]he essential services standard is tied to the showing an individual carrier must make in order to justify our imposition of conditions to protect that particular carrier. Conditions which are necessary to protect the public from anticompetitive consequences will not be limited by the essential services criteria listed in [49 C.F.R. § 1180.1].

Railroad Consolidation Procedures, 363 I.C.C. 241, 789 (1980)(emphasis in original). The ICC will impose conditions on a merger if such conditions, in fact, will remedy anticompetitive effects, be operationally feasible, and provide greater benefit to the public than harm to the transaction. BN/SF at 56; see also UP/MPC, 366 I.C.C. at 564. In UP/MPC, the Commission recognized that the Interstate Commerce Act, as amended by the Staggers Act of 1980,

> actually increased the need to identify carefully any anticompetitive effects and to balance those effects against the benefits of a transaction . . . . The new policy favoring increased reliance on competition to regulate activities will govern the environment in which the new system will operate. The ability of the railroads to take various actions free of regulatory restraints will make it easier to exert or abuse market power gained as a result of consolidation. For these reasons we must take even greater care to identify harmful competitive effects and to mitigate those effects where possible.

UP/MPC, 366 I.C.C. at 502. See also SF/SP, 2 I.C.C. 2d at 727.

In light of these principles, the evidence presented in Sierra Pacific's Request for Conditions shows that the merger of UP/SP will eliminate competition for the transportation of coal to North Valmy Station, and that the conditions requested by Sierra Pacific are necessary and operationally feasible and narrowly tailored to preserve that competition.

[illegible]. UNLESS PROPERLY CONDITIONED, THE PROPOSED MERGER WILL ELIMINATE COMPETITION THAT PRESENTLY EXISTS BETWEEN UP AND SP FOR THE TRANSPORTATION OF COAL TO NORTH VALMY STATION

A. The Proposed Merger will Eliminate Critical Rail Competition for the Transportation of Coal to North Valmy Station

If the Board approves the merger of UP and SP without imposing conditions, critical rail competition to North Valmy Station will be eliminated. Crowley V.S., p. 5, Hill V.S. p. 11. The plant was strategically located to reap the benefit of service from competing railroads. Indeed, rail service is the only reliable, cost effective method of moving North Valmy Station's coal supply. Hill V.S., p. 11. Long shipping distances render transportation by truck economically unfeasible. Id. Similarly, barge and slurry pipeline options are not an alternative due to lack of water in the arid region surrounding North Valmy Station. Id.

Rail competition was important to North Valmy Station when it negotiated its coal contracts with SUFCO and Black Butte mines and its current transportation contract with UP. When those contracts expire or are otherwise terminated, and Sierra Pacific returns to the market, rail competition will again be critical to Valmy both in securing reasonable coal prices and reasonable rail rates. The proposed merger will eliminate the competitive rail service options that North Valmy Station would otherwise have unless the Board imposes protective conditions to preserve those options.

B. The Applicants' Settlement Agreement with BNSF Will Not Preserve the Rail Competition Available to North Valmy Station

As part of its Application, UP/SP submitted a Settlement Agreement with BNSF, which grants BNSF access to a number of locations currently served by UP and SP. The Agreement with

BNSF, however, will not preserve the rail competition available to North Valmy Station. Although the Agreement allows BNSF to serve North Valmy Station via trackage rights, the Agreement does not grant BNSF access to the mines in the Uinta Basin now served by SP. Crowley V.S., pp. 20-39. Furthermore, the possibility of BNSF's providing interline service with the Utah Railway under the Agreement is not a meaningful competitive option for North Valmy Station because, without access to the SP mines, BNSF and Utah Railway can only transport coal to North Valmy Station from the few mines directly served by the Utah Railway and can only provide that service via a two-line haul.

BNSF coal origins are too far away from North Valmy Station to allow BNSF to provide competitive single-line service to North Valmy Station. The closest BNSF origin mines in the Raton, San Juan, and PRB Basins are two to three times further away from the plant than Valmy's current coal sources in the Uinta and Hanna Basins. Id. at 38. Moreover, the quality of most BNSF origin coal is incompatible with North Valmy Station boilers because the heating value of the coal is considerably less than coal from the Uinta and Hanna Basins. Hill V.S., p. 13.

The BNSF Agreement does not remedy the competition that will be lost to North Valmy Station for three additional reasons: (1) there is limited traffic available to BNSF over the Central Corridor; (2) BNSF does not have the infrastructure in place to operate successfully over the Central Corridor; and (3) the compensation BNSF will have to pay UP/SP to operate over the

Central Corridor will place it at a serious economic disadvantage.

Witness Crowley's analysis of the Settlement Agreement reveals that the traffic over the Central Corridor available to BNSF would not be at a high enough level to support a viable operation by BNSF. Crowley V.S., p. 22. In calculating the amount of traffic that could or would be diverted to BNSF over the Central Corridor, Witness Crowley used UP/SP data as presented in the Applicants' Verified Statement of Richard B. Peterson.

First, Witness Crowley identified the "2-1" points where UP/SP controlled both the origin and destination and concluded that BNSF would capture none of this traffic. Id. at 23. He next identified the "2-1" points where UP/SP controlled one end of the movement (e.g., origin) and BNSF controlled the other (e.g., destination), and concluded that BNSF would capture 90 percent of this traffic if it operated over the Central Corridor. Id. Finally, he combined the traffic BNSF probably would obtain from UP/SP, as described above, with the traffic that BNSF likely would divert over the Central Corridor and with the traffic from short line railroads. His conclusion is that BNSF traffic will be less than one loaded train per day. Id. at 25. Without a more substantial traffic base, BNSF is unlikely to serve the Central Corridor and, consequently, Sierra Pacific's North Valmy Station will be captive to UP/SP when Sierra Pacific's coal contracts expire.

The second deficiency of the Agreement is that UP/SP and BNSF have failed to consider the infrastructure that will be necessary for BNSF to serve North Valmy Station. Id. As the tenant carrier, BNSF already is at a disadvantage to the landlord carrier, UP/SP, because of UP/SP's ability to manipulate and control operations over the trackage rights line. Moreover, BNSF has failed to address the numerous operations logistics that would be required to serve North Valmy Station. These include, among others, power assignment, locomotive maintenance, fueling facility requirements, and crew assignments. Id. at 27. Remedying these deficiencies would require BNSF to make substantial investments in order to support the very limited traffic volume available to it over the Central Corridor.

Finally, the compensation that BNSF is required to pay a merged UP/SP under the Settlement Agreement for serving North Valmy Station does not reflect the costs UP/SP would incur if it, instead of BNSF, transported coal to the plant. Rather, 3.0 mills per gross ton-mile compensation level under the Agreement suggests an economic rent to landlord UP/SP, which would raise the floor for establishing rates. Id. at 28. Compensation to a merged UP/SP for providing service to North Valmy Station should be limited to reimbursing UP/SP's costs, including a return on investment based on current cost of capital for the assets consumed by traffic. Id. at 29. Witness Crowley has determined this amount to be not more than 1.48 mills per gross ton-mile, adjusted quarterly beginning in the first quarter of 1996 based on changes in the RCAF-A, from and after that time. Id. at 29-33. The rate under the Settlement Agreement overcompensates UP/SP for the use of its lines to North Valmy Station and establishes a rate floor.

Based on BNSF's significant limitations under the Settlement Agreement, it is unlikely that BNSF will be an effective competitor for North Valmy Station.

C. The Applicants' Settlement Agreement with Utah Railway Will Not Preserve the Rail Competition Available to North Valmy Station

Since filing its merger Application, UP/SP signed an agreement with Utah Railway that will be effective only if the Board approves the merger. The Utah Railway Agreement grants Utah Railway overhead trackage rights on SP's line between Utah Railway Junction, UT and Grand Junction, CO. In addition, Utah Railway has been granted access under the agreement to additional mines on SP. Under the Agreement, BNSF could interchange with Utah Railway and transport coal to North Valmy Station. The Utah Railway Agreement, however, does not preserve competition to North Valmy Station. Crowley V.S., p. 43. Specifically the Utah Railway Agreement is limited in three respects: (1) as stated above, BNSF is not a competitive substitute for North Valmy Station because it does not have access to the SP mines in Colorado and Utah, there is limited traffic available to it over the Central Corridor, BNSF lacks existing infrastructure, and the rate of compensation to UP/SP BNSF would be required to pay is too high; (2) Sierra Pacific's present access to 25 mines would be reduced to only 5 if the merger is approved without the requested conditions; and (3) a Utah Railway/BNSF two-line haul would not be competitive with a single-line UP/SP haul to North Valmy Station. Id.

The Utah Railway Agreement is rendered meaningless because BNSF, as previously discussed, will not be a viable, effective competitor for North Valmy Station. Without BNSF, the Utah Railway can interchange only with UP/SP. In that respect, the Utah Railway Agreement offers no competitive relief and places North Valmy Station at the mercy of UP/SP. Id. at 45.

The Utah Railway Agreement is also deficient because there are only a handful of mines on the Utah Railway. North Valmy Station currently enjoys access to 25 mines in the Uinta and Hanna Basins. Id. If the Board approves the merger and considers BNSF a viable competitive rail alternative for North Valmy Station, Sierra Pacific's access to the 25 mines will be reduced to 5 mines not under the exclusive control of UP/SP. Id. at 45. Such a drastic reduction in the number of available mines is devastating to North Valmy Station's long-term ability to transport competitive coal to the plant.

Finally, a significant limitation of the Utah Railway Agreement lies in the fact that two rail carriers' cost and profit expectations must be considered in setting rates to North Valmy Station. It is unlikely that a BNSF/Utah Railway two-line haul will be able to compete with a UP/SP single-line haul. Indeed, Witness Crowley determined that the combination of Utah

Railway and BNSF transporting coal to North Valmy Station would pretty much guarantee a rate increase for Sierra Pacific. Id. at 46.

D. The Conditions Requested by Sierra Pacific Will Preserve Competition in the Transportation of Coal to North Valmy Station

Sierra Pacific requests that the Board require the merged carrier to provide another rail carrier with trackage rights enabling that carrier to transport coal to North Valmy Station in single-line service from all SP mines in Colorado and Utah at a rate of not more than 1.48 mills per gross ton-mile, adjusted quarterly beginning in the first quarter of 1996 based on changes in the RCAF-A. The conditions requested by Sierra Pacific will preserve competition for North Valmy Station.

Prior to the proposed merger, North Valmy Station had access to two competing rail carriers that could transport low sulphur, high BTU coal from the Uinta and Hanna Basins in single-line service to the plant. If the merger is approved without conditions, North Valmy Station will lose the critical rail competition it has relied on to obtain reasonable rates for its coal supply and rail transportation. If the requested conditions are granted, North Valmy Station will retain the single-line competition it presently enjoys. Witness Crowley has analyzed the proposed condition, and has determined that the request is operationally feasible and that it will preserve North Valmy Station's existing competitive options. Id. at 48.

E. The Proposed Conditions Will Produce Substantial Public Benefits and Will Not Impair the Benefits of the Merger to the Applicants

North Valmy Station's proposed conditions will produce substantial public benefits outweighing any detrimental effect on the merging carriers. If the Board fails to impose the protective conditions requested by North Valmy Station, the Board will place the merged UPSP in a "market dominant" position, in which direct rate regulation is Valmy's only alternative. If, however, the Board imposes the requested conditions, it will ensure the continued role of competitive market forces.

The conditions sought by Sierra Pacific are limited and narrowly tailored to remedy the competitive harm that the merger will cause North Valmy Station. The conditions would only enable a railroad other than the Applicants to move coal to the plant from mines presently served by SP. They would not authorize such other railroad to move coal from the mines to other destinations, and therefore they would not enhance the competitive service to the mines in ways unrelated to effects of the merger. Moreover, the requested conditions will not impair the benefits of the merger to the Applicants. They will simply ensure that the Applicants will be subject to the same competitive restraints on the rates and service they provide to North Valmy Station after the merger as UP and SP are subject to today. UP and SP should not be permitted to monopolize coal transportation to North Valmy Station. By granting the conditions, the Board will ensure that an important competitive restraint will continue to keep Applicants' rates and services to North Valmy Station reasonable.

V. CONCLUSION

Sierra Pacific respectfully requests that the Board impose the following condition on the merger of UP and SP:

(1) The merged carrier should provide another rail carrier, to be selected by Sierra Pacific, with trackage rights enabling that carrier to transport coal to North Valmy Station in single-line service from all mines in Colorado and Utah now served by SP.

(2) The merged carrier should provide such trackage rights at a compensation level no greater than 1.48 mills per gross ton-mile for the movement of coal from all mines in Colorado and Utah now served by SP to North Valmy Station, adjusted quarterly beginning in the first quarter of 1996 based on changes in the RCAF-A from and after that time.

Respectfully submitted,

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Attorneys for Sierra Pacific Power Company and Idaho Power Company

March 29, 1996

REDACTED - FILED ON THE PUBLIC RECORD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

REQUEST FOR CONDITIONS
AND
COMMENTS

submitted on behalf of

SIERRA PACIFIC POWER COMPANY
AND
IDAHO POWER COMPANY

Section II

EVIDENCE AND ARGUMENT

REDACTED - FILED ON THE PUBLIC RECORD

VERIFIED STATEMENT

OF

JEFFERY W. HILL

My name is Jeffery W. Hill. I am the Director of Fuel Management and Operations Support for the Sierra Pacific Power Company in Reno, Nevada ("Sierra Pacific"). I have held this position since July 1994. I am directly responsible for the activities related to the procurement of fuel for Sierra Pacific's generating system. Specifically, I am responsible for developing policy and direction for all coal, gas and oil procurement, managing the company's hydro and peaking generation and providing strategic direction for an engineering support group. I have prepared technical analyses and written testimony and have provided live testimony in regulatory proceedings in California and Nevada.

I graduated from Temple University in Philadelphia, Pennsylvania in 1978 with a Bachelor's degree in Business Administration. My primary emphasis was on Finance and Marketing. I have also completed numerous industry sponsored training classes in all facets of the industry.

I began my career as an Economic Analyst for L.E. Peabody and Associates in 1979, performing fuel transportation consulting work for the utility industry. I was involved in numerous cost of service studies for utilities entering into rail contracts during the early stages of deregulation. I participated in field studies, economic analyses and regulatory proceedings related to supplier pricing disputes.

From 1984 to 1989 I served as Contract Administrator for the City of Colorado Springs, Department of Utilities. My responsibilities included the administration of all fuel purchase and transportation contracts, participation in all fuel procurement negotiations, development of annual fuel supply budgets and active management of coal inventory at two power plants. A key area of responsibility involved coordination of annual coal supply solicitations and supervision of the economic evaluation team. The coal supply solicitations resulted in new contracts with producers in every major coal basin in the Western United States.

The purpose of my statement is to explain why the merger of the Union Pacific Railroad ("UP") and the Southern Pacific Rail Corporation ("SP") will reduce very substantially the rail competition presently available to Sierra Pacific's coal-fired electric generating facility at Valmy, Nevada and why the trackage rights that UP and SP propose to give to the Burlington Northern Santa Fe ("BNSF") are inadequate in several critical respects to preserve the competition that now exists between UP and SP with regard to Sierra Pacific. I will also describe the conditions sought by Sierra Pacific and the other owner of the North Valmy power plant, Idaho Power Company, and explain why we believe that the Surface Transportation Board ("the Board") should not approve the merger unless those conditions are imposed.

BACKGROUND OF THE NORTH VALMY STATION

Sierra Pacific and Idaho Power Company jointly own, on a fifty-fifty basis, North Valmy Station, which is an electric generating plant located in north central Nevada. Sierra Pacific, as the operator of North Valmy Station, manages the plant's day-to-day operations.

North Valmy Station has a generating capacity of 530 megawatts, which is divided evenly between two units. Construction of the plant commenced in September 1978 and was completed in May 1985 at a total construction cost of $550 million. Unit I came on line in December 1981 and Unit II came on line in May 1985.

North Valmy Station provides electricity to between 50,000 and 75,000 Sierra Pacific customers throughout northern Nevada and northeastern California, and serves as a generating resource for Idaho Power customers in southern Idaho, eastern Oregon and northeastern Nevada. The area served by the plant is one of the fastest growing areas in the United States. Between 1993 and 1994, for example, Nevada was the fastest growing state in the United States, increasing in population at a rate of 5.4 percent.[1] North Valmy Station enabled the electric generation from the region to move primarily from an oil and gas basis to coal.

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[1] Edwin Byerly and Kevin Deardorff, National and State Population Estimates: 1990 to 1994, Current Population Reports, P25-1127, vi (1995).

The two units at North Valmy Station were specifically designed to burn low-sulfur, high BTU coal, which is the primary fuel burned at the plant. When both units are operational, at full load, they burn in excess of 200 tons of coal per hour. Thus, at full load, the two-unit station can consume in excess of two million tons of coal per year. A workforce of 105 people operate and maintain both units - 24 hours a day, seven days a week, 365 days a year.

NORTH VALMY STATION'S COAL SUPPLY

The site of North Valmy Station was selected after an exhaustive three-year study. One of the important considerations in selecting the site was the fact that it is strategically located between, and with access to, the main line tracks of two competing railroads, UP and SP.[2] The availability of this competition has not only served to keep Valmy's rail rates reasonable but has also given it considerable flexibility in long range coal procurement.

Because of its location, North Valmy Station has ready access to numerous sources of high BTU, low-sulfur coal from the Uinta Basin, which is in Colorado and Utah. Uinta Basin coal is significantly higher in BTU content and lower in sulfur content than coal from any other region in the United States. North Valmy Station's boilers were designed specifically to burn coal

[2] When construction of the plant commenced in 1978, the tracks serving North Valmy Station were owned by SP and the Western Pacific Railroad ("WP"). WP merged with and became part of the UP system in 1980.

of this quality. As shown on the map attached to this statement as Exhibit A, there are currently 11 operational mines in the Uinta Basin within approximately 500 rail miles of North Valmy Station[3] and 4 more within 750 rail miles.[4] As illustrated on Exhibit A, 11 of these mines are served exclusively by SP. Three of these mines are served exclusively by the Utah Railway, whose line connects with SP at Utah Railway Junction and which has trackage rights over SP between Utah Railway Junction and Provo, Utah.[5]

North Valmy Station also has ready access to coal from mines in the Hanna Basin and the adjacent Green River - Ham's Fork area ("Hanna Basin") in southern Wyoming (see Exhibit A). These mines are served by UP and are within 580 to 760 rail miles from Valmy.[6] Hanna basin coal has a lower BTU and higher sulfur

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[3] Those mines within 500 rail miles of North Valmy Station include Belina No. 1 & 2, Skyline 1 & 3, Pinnacle & Aberdeen, Star Point, Crandall Canyon, SUFCO, Bear Canyon No. 1, Trail Mountain, Cottonwood, Deer Creek, and Soldier Canyon.

[4] Those mines within 750 rail miles of the plant include Roadside, Orchard Valley, Sanborn Creek, and West Elk.

[5] At present the three mines served exclusively by Utah Railway include Pinnacle & Aberdeen, Star Point, and Crandall Canyon. Under the recently announced settlement agreement between the Applicants and Utah Railway, if the UP/SP merger is approved, Utah Railway will also obtain access to Willow Creek, Trail Mountain, Cottonwood, and Deer Creek mines and will receive overhead trackage rights between Utah Railway Junction, UT and Grand Junction, CO.

[6] The UP served mines in the Hanna Basin include Pilot Butte, Jim Bridger, Leucite Hills, Black Butte, Medicine Bow, and Shoshone No. 1.

content than most Uinta Basin coal, but it is within the design parameters of North Valmy Station's boilers.

There are no closer sources of coal for North Valmy Station than the Uinta Basin and Hanna Basin mines shown on Exhibit A. The next closest sources would be mines in New Mexico currently served by BNSF, which are approximately 1,500 rail miles from Valmy, and various Powder River Basin ("PRB") mines served by BNSF and UP, which are approximately 1,400 miles from Valmy. As I will discuss later, coal from these sources is not a meaningful alternative for North Valmy Station because of both the distances involved and the nature of the coal.

1. **<u>Coal Supply and Transportation from the SUFCO Mine.</u>**

Before construction of North Valmy Station even commenced, Sierra Pacific sought proposals from and negotiated with a number of potential suppliers of coal. At that time most people believed that coal would become increasingly more scarce and expensive. Accordingly, lenders financing power projects usually required, and state and federal regulatory authorities strongly encouraged, coal-burning power companies to secure long-term coal supply commitments from coal companies.

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2. **Coal Supply and Transportation From the Black Butte Mine.**

North Valmy Unit II came on line in May 1985 and with it came the need to increase the plant's current coal supply. Sierra Pacific and Idaho Power considered and negotiated with several potential suppliers.

THE UP/SP MERGER WILL ELIMINATE CRITICAL RAIL COMPETITION TO NORTH VALMY STATION

The UP/SP merger will eliminate critical rail competition to North Valmy Station. As noted above, the plant was strategically located to reap the benefit of service from competing railroads. North Valmy Station is between three and six hundred miles from any viable coal supply source. Because of these long shipping distances, the only economically feasible method of transportation is by rail. Other coal transportation modes utilized elsewhere include barge, slurry pipeline and truck. Since North Valmy Station is located in a very arid area, barge and slurry options are not feasible due to lack of water. Trucking could be used in emergencies but because of the long distance between the mines and the plant, it is not an economically feasible alternative. Rail service is the only reliable, cost effective method of moving North Valmy Station's coal supply.

At present those contracts will require North Valmy Station to obtain most of its coal from those mines for the next few years. When those coal contracts expire or are otherwise terminated, however, rail competition will again be critical to the plant.

That competition will be critical in two respects. First, rail competition will enable North Valmy Station to secure reasonable <u>rail</u> rates. Second, and just as important, rail competition will allow North Valmy Station to obtain reasonable <u>coal</u> prices. The more sources of competitive supply a utility has available to it, the better able it will be to negotiate reasonable prices with its suppliers.

The proposed merger will eliminate the competitive rail service options that North Valmy Station would otherwise have unless the Board imposes protective conditions to preserve those options.

THE APPLICANT'S SETTLEMENT AGREEMENT WITH BNSF WILL NOT PRESERVE THE RAIL COMPETITION AVAILABLE TO NORTH VALMY STATION

The Applicants' Settlement Agreement with BNSF will not preserve the rail competition presently available to North Valmy Station because the agreement is deficient in several basic respects. First and foremost is that it does not give the BNSF access to mines in the Uinta Basin now served by SP.[12] Accordingly, the only way BNSF could serve North Valmy Station would be to (1) transport coal from the PRB; (2) deliver coal

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[12] In the Uinta Basin (UT), those mines include Deer Creek, Trail Mountain, Soldier Canyon, Bear Canyon No. 1, Skyline 1 & 3, Belina No. 1 & 2, and Cottonwood. In the Uinta Basin (CO), SP origin mines include, Orchard Valley, Sanborn Creek, Roadside, and West Elk.

from mines in the Uinta Basin in two-line service with UPSP, or (3) deliver coal from the few mines in the Uinta Basin served by Utah Railway in two-line service with Utah Railway. As I describe more fully below, none of these options offers a meaningful competitive replacement for SP.

1. **<u>Powder River Basin Coal Is Not a Competitive Substitute for Uinta Basin Coal for North Valmy Station.</u>**

Powder River Basin coal is not a competitive substitute for Uinta Basin coal for two reasons. First, the sheer distance of PRB coal from North Valmy Station makes it prohibitively costly and not economically feasible to transport it to the plant. The SUFCO mine at Sharp, Utah is 456 miles to North Valmy Station. Other mines in the Uinta Basin are located between 500 and 750 miles away. The closest PRB mines, however, are at least twice as far from Valmy, at distances between 1,600 and 1,800 miles.

The second reason PRB coal is not a competitive substitute for Uinta Basin coal is because the quality of PRB coal is incompatible with North Valmy Station's boilers, the modification of which would require millions of dollars. Indeed, the Applicants' coal witness, Richard G. Sharp, agrees that, because of the differences in quality, PRB coal is not usually interchangeable with Uinta Basin coal. In his Verified Statement he states: "Because most utility generating plants are designed to burn a single, consistent coal, and the [Uinta Basin] coal is quite different than the [PRB] coal, most coal users have opted for one or the other type."[13] Because of the relatively lower railhead cost of PRB coal, Sierra Pacific conducted an analysis of whether North Valmy Station could use PRB coal, but we concluded that numerous boiler design incompatibilities precluded such use.

Typically, PRB coal is lower in overall quality than North Valmy Station's existing supplies at SUFCO and Black Butte mines, including lower heating value, higher moisture, and a higher sulfur to heating value. Using PRB coal in addition to or in place of the plant's existing coal supply would raise issues regarding plant performance, efficiency, maintenance, emissions, reliability, availability and capacity. For example, the higher moisture content of typical PRB coal would affect boiler efficiency. Hotter primary air is required to dry the coal sufficiently for effective pulverization and optimum combustion, resulting in reduced boiler efficiency. Preliminary analyses indicate that using this higher moisture coal would result in a 1.5 to 2.0 percent decrease in boiler efficiency below that experienced with Black Butte coal, which is currently our highest moisture coal supply.

A coal's moisture content, as well as its grindability, plays an important role in effective pulverization. Maintaining an optimum fuel to air ratio, as well as a high level of pulverizer performance, is directly affected by moisture and

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[13] Verified Statement of Richard G. Sharp, Application, Volume II, p. 682.

grindability. This is essential for burner stability. It is also essential for reaching designed fineness levels, and for providing reliability in the mills. A reduction in grindability will increase primary air flow requirements in order to circulate more volume inside the pulverizer until it reaches the designed fineness level.

PRB coal has a lower heating value to sulfur content ratio, which leads to increased sulfur dioxide production. While absolute sulfur content is equivalent to some of our existing supplies, because of the lower heat content, emissions would increase. Increased emissions would be intolerable in today's environment.

The lower heating value would also require a larger volume to achieve the same output. Specific concerns with the larger volume include the logistics of handling a dissimilar coal supply, blending different coals, measuring the amounts of each coal burned and calculating the corresponding heating values. In addition, the reduction in heating value involved in burning PRB coal versus our existing supply in the Uinta Basin would require North Valmy Station to use all four mills for each unit (the plant is currently using three of the four mills on each unit). This would prevent routine maintenance on the mills and could contribute to reduced plant availability.

2. **BNSF's Two-Line Haul With UPSP Is Not a Competitive Substitute for Single Line Service to North Valmy Station**

As Mr. Crowley states in his Verified Statement, BNSF's two-line haul with UP/SP does not preserve competition to North Valmy

Station. Mr. Crowley bases his conclusions on the fact that there is limited traffic available to BNSF for movement over the Central Corridor to North Valmy Station, BNSF does not have an operating plan or the infrastructure in place to operate effectively in the Central Corridor, and the compensation that BNSF must pay UP/SP under the Settlement Agreement is too high to make BNSF an effective competitor.

3. **BNSF's Two-Line Haul With Utah Railway Is Not a Competitive Substitute for Single-Line Service to North Valmy Station**

BNSF's joint service with the Utah Railway does not preserve competition to North Valmy Station. According to Mr. Crowley, two-line service by BNSF and the Utah Railway is inferior to and not competitive with single-line service by UP/SP. Primarily, the significant deficiencies lie in the fact that BNSF cannot be an effective competitor in the Central Corridor, that the universe of mines with competitive rail access after the merger will have dwindled to merely 5 mines from a pre-merger number of 25, and that factoring in two railroad profits versus a single profit will pretty much guarantee a rate increase for North Valmy Station.

TO ENSURE THAT COMPETITION IS PRESERVED, THE BOARD MUST CONDITION THE MERGER ON THE APPLICANTS' ENABLING ANOTHER RAILROAD TO DELIVER COAL TO North Valmy Station IN SINGLE LINE SERVICE FROM ALL MINES NOW SERVED BY SP AND AT REASONABLE RATES.

For all the reasons discussed, Sierra Pacific and Idaho Power believe that the Board should not approve the UP/SP merger unless it conditions that approval on the Applicants' providing another railroad with the ability to provide single-line service to North Valmy Station from all of the mines in Colorado and Utah now served by SP. Only that condition would prevent a substantial reduction in the competition now available to the plant. Furthermore, it is essential that such other railroad not be required to pay more than 1.48 mills per gross ton mile for such rights.

There are several railroads capable of providing such service. BNSF, of course, is one. Utah Railway, Montana Rail Link, Wisconsin Central are others. If the Board agrees that the conditions requested for North Valmy Station are warranted, Sierra Pacific and Idaho Power believe it is neither necessary nor appropriate for the Board at this time to specify which railroad should provide the service. We believe that, consistent with the Interstate Commerce Commission's decisions in recent cases, the Board should impose the conditions requested and allow Sierra Pacific and Idaho Power to select the appropriate carrier and negotiate the precise terms of the service with that carrier and the Applicants, subject to recourse to the Board in the event the parties are unable to reach agreement.[14]

The conditions we seek are limited and narrowly tailored to remedy the competitive harm we have identified. They would only enable a railroad other than the Applicants to move coal to North Valmy Station from mines presently served by SP. They would not

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[14] The Board should understand that we do not object to the Applicants' Settlement Agreement with BNSF, which those parties are free to enter into in any event. Our point is that is does not go far enough to remedy the loss of competition that the merger will cause to North Valmy Station.

authorize such other railroad to move coal from those mines to other destinations, and therefore they would not enhance the competition service to those mines in ways unrelated to effects of the merger.

Nor will the conditions we seek in any way undermine the benefits of the merger to the Applicants. They will simply ensure that the Applicants will be subject to the same competitive restraints on the rates and service they provide to North Valmy Station after the merger as UP and SP are subject to today. If, after the merger, Applicants continue to offer better rates and service from UP origin mines than another railroad offers from SP origin mines, the trackage rights we request would go unused and would have no effect on UP's business. Granting those rights will not undermine whatever competitive advantages UP may have over SP and SP origin mines today; Applicants would have the same advantages over another railroad after the merger. Granting those rights simply ensures that the merger will not eliminate an important competitive restraint that has kept, and will continue to keep, Applicants' rates and services to North Valmy Station reasonable.

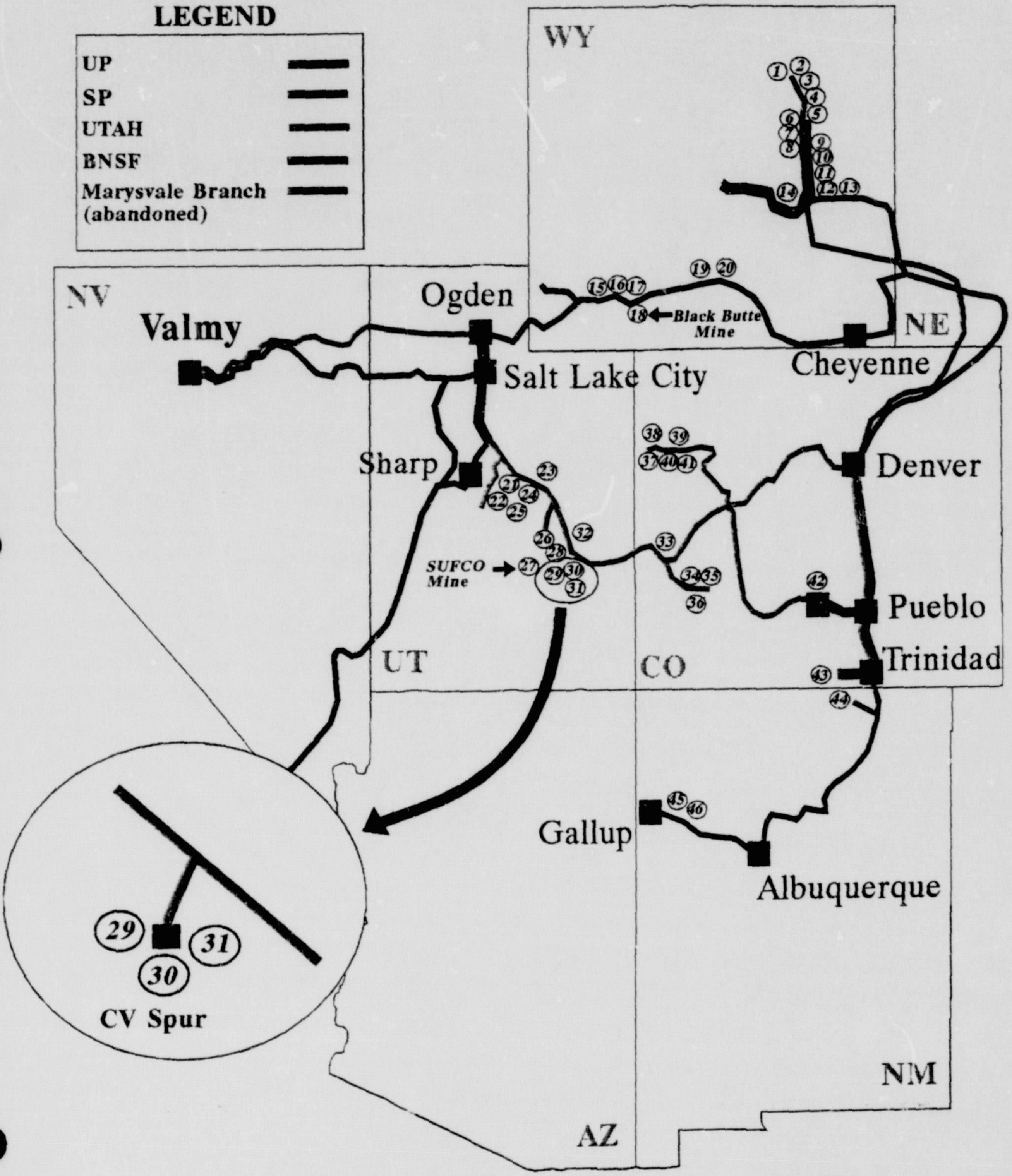
VERIFICATION

I, Jeffery W. Hill, under penalty of law, certify that I have read the foregoing statement, that I know its contents and those contents are true correct as stated. Executed on March 25, 1996.

Jeffery W. Hill

Jeffery W. Hill

Western UP, SP, UTAH, BNSF Mine Origins



Western UP, SP, UTAH, BNSF Mine Origins

Mine Number	Basin / Mine
	Powder River Basin (WY)
1	Buckskin
2	Rawhide
3	Dry Fork
4	Eagle Butte
5	Caballo
6	Belle Ayr
7	Caballo Rojo
8	Cordero
9	Coal Creek
10	Jacobs Ranch
11	Black Thunder
12	North Antelope
13	Rochelle
14	Antelope
	Green River (WY)
15	Pilot Butte
16	Jim Bridger
17	Leucite Hills
18	Black Butte
	Hanna (WY)
19	Medicine Bow
20	Shoshone No.1
	Uinta (UT)
21	Belina No. 1 & 2
22	Skyline 1 & 3
23	Willow Creek
24	Pinnacle & Aberdeen
25	Star Point
26	Crandall Canyon
27	SUFCO
28	Bear Canyon No. 1
29	Trail Mountain
30	Cottonwood
31	Deer Creek
32	Soldier Canyon

Mine Number	Basin / Mine
	Uinta (CO)
33	Roadside
34	Orchard Valley
35	Sanborn Creek
36	West Elk
	Green River (CO)
37	Colowyo
38	Eagle 5 & 6
39	Trapper
40	Seneca
41	Foidel Creek
	Raton (CO)
42	Southfield
43	Basin Resources
	San Juan (NM)
44	York Canyon
45	McKinley
46	Lee Ranch

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

--CONTROL AND MERGER--

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

Verified Statement
of
Thomas D. Crowley
President
L. E. Peabody & Associates, Inc.

REDACTED - FILED ON THE PUBLIC RECORD

On Behalf of
Sierra Pacific Power Company and Idaho Power Company

Dated March 29, 1996

TABLE OF CONTENTS

LIST OF EXHIBITS

I. INTRODUCTION

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L.E. Peabody & Associates, Inc. The firm's offices are located at 1321 Cameron Street, Alexandria, Virginia 22314. My qualifications and experience are attached to this verified statement as Appendix A.

If the UPC/SPRC[1] merger application is approved in its present form, Sierra Pacific Power Company and Idaho Power Company ("Sierra/Idaho") will lose all existing competitive rail alternatives to their North Valmy Generating Station ("Valmy"). Sierra/Idaho, therefore, are requesting the Surface Transportation Board ("STB") to condition its approval of the merger by requiring the merged UPC/SPRC to grant another rail carrier access by way of trackage rights to all presently served SP mines in Utah and Colorado, at a compensation rate not exceeding 1.48 mills per gross ton mile. Additionally, Sierra/Idaho are requesting the STB to follow the procedures it has used in the past when imposing a trackage rights condition, whereby the STB would grant the requested condition and allow Sierra/Idaho to negotiate a separate agreement with the rail carrier that provides the most competitive single-line access to Valmy.

Between 1981 and today, Sierra/Idaho, in moving coal to Valmy, has benefitted from the competition of the two railroads that serve Valmy, namely the Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Company ("SP").

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[1] Union Pacific Corporation ("UPC") Southern Pacific Rail Corporation ("SPRC").

I have been asked by Sierra/Idaho to review the Railroad Control and Merger Application filed by UPC and SPRC in Finance Docket No. 32760, and evaluate its impact on Sierra/Idaho's existing competitive options, as well as Sierra/Idaho's future ability to negotiate market transportation rates and conditions for moving coal to Valmy. In evaluating the proposed merger, I have considered Sierra/Idaho's prior rail transportation negotiations. I have also analyzed Sierra/Idaho's rail transportation options before and after the merger in order to determine if the competitive situation Sierra/Idaho presently enjoy will continue if the merger is approved without conditions.

My analysis is organized below under the following headings:

II. Background

III. Summary And Findings

IV. Existing Rail And Coal Supply Competition To Valmy

V. UP/SP's Agreements With Other Railroads Do Not Preserve Competition To Valmy

VI. Request For Conditions

II. BACKGROUND

Sierra/Idaho's North Valmy Station ("Valmy") is a two-unit, 530 megawatt, coal-fired generating station located between Winnemucca and Battle Mountain, Nevada. Valmy is served by two competing railroads, UP and SP. Valmy's location provides both origin and destination competition to the plant. With the option of purchasing coal from mines located either on UP or SP, plus the additional option of having either railroad deliver the coal to Valmy, Sierra/Idaho have promoted effective competition between both the coal suppliers and the railroads. Exhibit_(TDC-1) shows the geographic interrelationship between the coal basins and the alternative rail routes to Valmy, which has allowed the plant to capitalize on its strategic location. The coal fields and the rail lines depicted in the schematic constitute the entire economically feasible area from which Sierra/Idaho can purchase and transport coal to Valmy.

A. SIERRA/IDAHO'S COAL TRANSPORTATION TO VALMY

In June 1980, approximately one year before Valmy's Unit I was scheduled to begin operations, Sierra/Idaho commenced negotiations with two possible origin railroads, Denver & Rio Grande Western Railroad Company ("DRGW")[2] and UP, and two possible destination carriers, Western Pacific Railroad Company ("WP")[3] and SP, to secure competitive rail transportation to Valmy. Table 1 below summarizes the history of the negotiations and proposals that resulted in Sierra/Idaho obtaining a tariff rate from the combination of UP/WP

[2] DRGW is currently part of SP

[3] WP is currently part of UP

B. SIERRA/IDAHO'S COAL SUPPLY CONTRACTS

As I will demonstrate in the remainder of my verified statement, if approved without the conditions requested by Sierra/Idaho, the merger of the UP and SP will effectively eliminate Sierra/Idaho's ability to continue to obtain competitive transportation rates for the movement of coal to Valmy.

III. SUMMARY AND FINDINGS

The following summary and findings are derived from my analysis of the November 1995 Railroad Control and Merger Application filed by UP and SP. My summary and findings are supported by the analyses contained in the balance of my verified statement and accompanying exhibits.

Existing Conditions

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- Sierra/Idaho in the past have obtained transportation rates and services by utilizing the leverage of access to two rail carriers, UP and SP, in the origin coal fields and at Valmy.

- SP has access to sixteen (16) coal loadout facilities in the Uinta and Green River Basins that have similar coal quality and transportation characteristics as coal currently burned at Valmy.

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- In "head-to-head" situations, the UP and SP bid aggressively for coal business from the Uinta, Green River and Hanna Basins.

UP/SP Agreements With Other Railroads

- The UP/SP-BNSF Agreement does not replace the existing UP and SP competition to Valmy.
- There is limited traffic available to BNSF for movement across the central corridor.
- BNSF does not have an operating plan or the infrastructure in place to operate effectively in the central corridor.
- The economic rents that BNSF will have to pay UP/SP to operate over the central corridor will place them at an economic disadvantage.
- BNSF served origin coals fields are too far away from Valmy to be competitive.
- The UP/SP-UTAH Agreement is dependent upon BNSF and therefore is not an effective replacement of existing UP and SP competition to Valmy.
- The universe of mines available to Sierra/Idaho will shrink from the current 25 to only 5 if the merger is approved without the requested conditions.
- The combination of UTAH and BNSF as the competitive replacement will almost guarantee a rate increase for Sierra/Idaho rather than a rate decrease suggested by the 1994 transportation market.

Requested Conditions

- In order for Sierra/Idaho to maintain its pre-merger *status quo* at Valmy, trackage rights over the current SP lines should be granted to Sierra/Idaho as a condition of the merger.
- The trackage rights requested are applicable over SP lines between the existing coal loadout facilities and Valmy
- The trackage rights agreement requested would be an arms-length transaction, designed solely to ensure Sierra/Idaho's continued pre-merger competitive status. As such, compensation for the trackage rights should be limited to Sierra/Idaho's pro-rata volume share of return on investment and maintenance of the involved rail line.

- Specifically, the trackage rights compensation should equal 1.48 mills per gross ton-mile at 4Q95 levels, and should be adjusted quarterly beginning 1Q96 based on the change in the RCAF-A.

IV. EXISTING RAIL AND COAL SUPPLY COMPETITION TO VALMY

By definition, there is competition in rail transportation service to Valmy because Valmy represents a classic "Competitive Point".[4] Competition exists because both the UP and SP serve Valmy and both the UP and SP have access to coal loadouts that meet Valmy's coal specifications.

quality characteristics of the coal Sierra/Idaho purchased from each mine in 1994.

Sierra/Idaho ship coal from SUFCO Mine and Black Butte Mine via the UP to Salt Lake City enroute to Valmy. The distance from the SUFCO Mine in Utah to Valmy is 456 miles. The distance from the Black Butte Mine in southern Wyoming is 618 miles. A schematic of the rail routes to Valmy is presented in Exhibit_(TDC-2).

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[4] A "Competitive Point" is defined as "A point at which two or more transportation lines compete for the movement of traffic". (Joseph L. Cavinato, *Transportation Logistics Dictionary* (Washington, D.C.: The Traffic Service Corporation, 1982) 53).

In the Uinta and Green River Basins in Utah and Colorado, SP serves at least sixteen (16) mines with coal quality characteristics comparable to the coal quality characteristics of the SUFCO and Black Butte mines. The simple average quality characteristics of the mines in the Uinta and Green River Basins that are served by SP are summarized in Table 3 below.

Table 3
Quality Characteristics Of Mines Located
In Uinta and Green River Basins And Served By SP

Mine	Heat Content (Btu/Lb.)	Ash Content (%)	Sulfur Content (%)	Sulfur Dioxide Content (Btu/Lb.)
(1)	(2)	(3)	(4)	(5)
1. Uinta Basin - Utah (seven mines)	11,820	9.7%	0.5%	0.82
2. Uinta Basin - Colorado (four mines)	11,693	8.8%	0.5%	0.91
3. Green River Basin - Colorado (five mines)	10,543	8.0%	0.4%	0.81

Source Exhibit_(TDC-3)

By comparing the coal quality characteristics of the SUFCO and Black Butte mines as summarized in Table 2 above, to the coal quality characteristics of SP served coal mines in the Uinta and Green River Basins that are served by SP and summarized in Table 3 above, it is apparent that all of these coals are compatible, interchangeable and could be used to generate electricity at Valmy.

The rail distance from each of the sixteen (16) mines identified in Table 3 to Valmy is comparable to the rail distance via UP from SUFCO and Black Butte to Valmy, which is a further indication of the competitive conditions that exist for coal destined to Valmy. Table 4 below compares the rail line-haul miles from SUFCO and Black Butte to Valmy via UP to the rail line-haul miles from the SP mines located in the Uinta and Green River Basins.

Table 4
Comparison Of Rail Miles From
UP and SP Served Coal Origins To Valmy

Mine (1)	Rail Distance To Valmy (2)
UP Served	
1. SUFCO	456
2. Black Butte	618
SP Served	
1. Simple Average of 7 Uinta, Utah Mines	486
2. Simple Average of 4 Uinta, Colorado Mines	725
3. Simple Average of 5 Green River, Colorado Mines	899

Source: Exhibit _ (TDC-6).