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The UP/SP Merger: An Assessment of the Impacts on the State of Texas

(abridged)

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Texas Railroad Commission

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Summary of Findings

The following summarizes the findings of the principal investigators regarding the potential impacts of the proposed Union Pacific/Southern Pacific merger on the state of Texas. The findings of the component analyses are categorized as either positive, neutral or negative. This is followed by an overall characterization of the merger's impacts.

Positive Impacts

Intermodal transportation: The proposed merger is likely to have a positive impact on the service provided to trailer-on-flat-car (TOFC) and container-on-flat-car (COFC) shippers through improved routes. These improvements will be particularly effective for shipments between Houston or Dallas/Fort Worth and southern California. Since intermodal services are highly competitive with truck transportation, it is unlikely that market consolidation would result in rate increases.

Capital spending in Texas: The capital expenditures proposed in the merger application include upgrading tracks in Texas. It is estimated that these expenditures will total \$201.2 million producing one-time economic benefits approaching \$493 million and creating 7,700 direct and indirect temporary jobs.

Southern Pacific viability: The Southern Pacific railroad is in poor financial condition. Its ability to continue to access operating capital by selling off non-operating assets is very much in question. Without the proposed merger or infusion of capital from some other source, the carrier's ability to serve its market is likely to decline.

Safety: Rail safety is tied to a company's financial health. To the extent the Southern Pacific will have improved access to capital, the carrier will be able to improve maintenance and hasten upgrades of tracks, equipment and rolling stock. In addition, to the extent that the merger may lead to track abandonments now and in the future, the merger would reduce collisions with motor vehicles by virtue of a decline in the number of crossings.

Neutral Impacts

Coal/Electric utilities: Overall, the merger is not expected to have a great impact on the transportation of coal to Texas' electricity generating plants. The one notable exception is the generating plant located at Coleta Creek. This plant's long-sought rate relief will be negated by the proposed merger. Therefore, specific measures are included in the recommendations for this facility.

Impacts on employment: Our analysis of the merger's employment impacts suggests that in addition to the 708 job losses in Texas projected by the merger applicants, 583 indirect jobs will be eliminated state-wide. However, a recent agreement with the Southern Pacific's largest operating union provides substantial severance benefits to cushion any layoffs.

Negative Impacts

Chemicals and plastics industries: Rail transportation is vital to the well-being of this industry. The proposed merger will create substantial market concentration in rail services to petro-chemical plants. In some industry subsectors, the merged railroads will control more than 70 percent of the market share. The merger applicants have suggested that this market concentration is negated by the availability of other transportation modes and the possibility of shifting production to other facilities. We reject these claims. Barge transportation is only viable for shipments moving to or near water ports. Moreover, industry trends have shown that shipments are becoming smaller, not larger as would be required for efficient barge transportation. Trucks are also not a viable option because of additional wear on the already-stressed highway infrastructure and the greater probability of hazardous material incidents. Lastly, shifting production away from Texas facilities, with attendant job losses, should not be encouraged. It is likely that rail transportation rates will increase as a result of the proposed merger making Texas products less-competitive.

Mexico: The merged railroads will control about 90 percent of all traffic moving to and from Mexico. This level of market concentration cannot be good for promoting trade and the use of rail transportation as an alternative to truck transportation. We also believe that given current traffic patterns, the merger may increase the dominance of Laredo as the premier Texas/Mexican gateway. We suggest that steps be taken to promote the development of other gateways. This may be especially important when consideration is given to the makeup of the proposed concessions in Mexico's rail-privatization effort.

Rural rail transportation: Even though the submitted merger application calls for very little rail abandonment, the history of other rail mergers suggest that this merger will likely lead to future abandonments because of the level of parallel routes. Further, it is unclear how service to rural communities will be affected by the proposed directional operations from Houston and San Antonio to St. Louis. Moreover, if the directional operations are abandoned at any time in the future, it seems unlikely that the expense of maintaining both the existing Union Pacific and Southern Pacific routes could be justified.

Industrial development: Given that the merger will lower the number of rail competitors from which a potential industrial development could choose, Texas is likely to be less attractive for those industries that depend on rail transportation services. This impact will be particularly hard on lesser-developed areas of the state. The possibility of future rail abandonments will only exacerbate problems for rural industrial development.

Competition: We do not believe that workable competition is maintained in markets that move from three competitors to two. History has shown that competitor behavior is unpredictable in a duopoly. In addition, we do not find the proposed agreement between the Union Pacific/Southern Pacific and the Burlington Northern/Santa Fe adequate for guaranteeing competition for those shippers moving from two rail competitors to one.

Conclusions/Recommendations

On balance, we believe the proposed merger of the Union Pacific and Southern Pacific railroads is likely to have a negative impact on the state of Texas, its communities, and shippers. We therefore recommend that the Railroad Commission support the proposed merger only if there are significant track divestitures along the carriers' parallel routes. We further suggest that proposed and future rail abandonments be allowed only when all tracks and facilities necessary to access existing rail junctions are included. In addition, the Commission should consider the proposal for neutral terminal switching railroads in the state's industrial centers as an adjunct to the recommended divestitures.

The tracks identified for divestiture generally are as follows:

- Southern Pacific - Houston to St. Louis;
- Southern Pacific - Lewisville, AR, to Corsicana, TX;
- Southern Pacific - Dallas and Fort Worth to Houston;
- Southern Pacific - Houston to New Orleans;
- Southern Pacific - Houston to Eagle Pass;
- Southern Pacific - Hearne to Placedo.

Section 1: Introduction

1.1 Rail transportation in Texas

Texas is currently served by three Class I¹ railroads: the Union Pacific, Southern Pacific and Burlington Northern/Santa Fe.² In addition to Class I carriers, Texas is served by 45 smaller carriers who are classified as either switching and terminal companies or local railroads. Texas ranks first in the nation in total miles of rail track and second in total railroad employees.

Chemicals account for almost one-third of the total rail tonnage originated in Texas. Coal is the highest-volume commodity terminating in Texas. Farm products originating in Texas account for less than 10 percent of the originating rail tonnage. However, the volume of farm products terminating in Texas is four times higher than originations. This suggests the close ties between Texas Gulf ports and the nation's grain belt.

1.2 The proposed merger

The Union Pacific railroad has applied to the Surface Transportation Board (STB) of the United States Department of Transportation, formerly the Interstate Commerce Commission,³ for approval to merge the operations of their two railroads.⁴ The basic

¹ Class I refers to railroads with \$250 million or more annual revenue for three consecutive years, Class II railroads are \$20 to less than \$250 million, and Class III railroads earn less than \$20 million in annual revenues (1994 criteria).

² The Kansas City Southern railroad has trackage rights that allow it to transport export grain from Beaumont to the Port of Houston and serves Dallas to Shreveport.

³ The Interstate Commerce Commission was consolidated into the Department of Transportation effective January 1, 1996.

rationale is that the merger allows the Union Pacific to fill in its existing route structure and eliminate circuitous routes in order to more effectively compete with the recently merged Burlington Northern/Santa Fe. However, the merger is considered to be largely parallel in that the Union Pacific and Southern Pacific currently serve many of the same markets. Industrial facilities that are currently served both the Union Pacific and Southern Pacific would lose access to competitive rail service. In the broader sense, the United States west of the Mississippi River will go from being served by three major rail carriers to two.

To address the potential anti-competitive results of the loss of access to more than one rail carrier, the merging railroads have signed an agreement with the Burlington Northern/Santa Fe railroad.⁵ The agreement calls a series of contracts, to be completed by early June 1996, that purportedly will address the competition-reducing effects of the proposed merger.⁶

The STB will consider the impact of the merger on competition and the public good. In response to the merger application the STB can choose among four major alternatives:

1. Approve the entire merger and the agreement;
2. Reject the entire merger;
3. Approve the merger, but require the divestiture of portions of SP to other than BN/SF;

⁴ The merger application is contained in Docket No. 32760 submitted to the Interstate Commerce Commission on November 30, 1995.

⁵ This agreement, signed on September 25, 1995 and updated on November 18, 1995, is referred to as "the agreement" or "BNSF-1" throughout this report.

⁶ BNSF-1 is considered in several of the following sections. The most thorough review is included in Section 11 - Competition.

4. Approve the merger, but impose conditions which would effectively ameliorate the anti-competitive aspects of the merger.

1.3 *The report*

In the pages that follow, we have addressed a number of issues that together give an indication of how the proposed merger will affect Texas businesses and citizens. Among the issues considered are the merger's impacts on coal and chemical/plastics transportation, the use of rail-truck intermodal transportation, transportation to and from Mexico, the impacts on rural rail service, rail and public safety issues, and the overall impact of the merger on industrial development prospects in Texas. In addition, we evaluate the survivability of the comparatively weak Southern Pacific in the event the merger is disallowed. The report concludes with a recommendation for consideration by the Railroad Commissioners.⁷

Where the evidence is inconclusive and the credible opinion of experts remains divided, we have attempted to suggest positions that minimize potential risks to Texas businesses and citizens. This is not an indictment of the integrity of those who differ with our views, but rather it is an acknowledgment that the potential impacts of this merger, be they advantageous or deleterious, will affect Texas and its citizens for many decades to come.

⁷ The conclusions and recommendations in this analysis reflect the opinions of the principal investigators.

***Section 2: Summary Report on the
Public Hearing Testimony before the Railroad Commission of Texas
January 9-11, 1996***

Regarding Union Pacific Corporation's proposed acquisition of the Southern Pacific Transportation Co., public hearing testimony was held before the Railroad Commission of Texas on January 9-11, 1996. These hearings took place in three Texas cities: Fort Worth, Corpus Christi and Houston, in order to discuss concerns regarding the proposed UP/SP merger.

In total, 139 presentations were given by various representatives of interested parties over the three days. Forty-four percent of the speakers relayed total support for the merger, 27 percent expressed concerns, 23 percent were in total opposition and the remaining 6 percent expressed no position. Percentages were similar among the three individual cities with no more than a 5 percent variance in any endorsement category.

Twelve railroad companies or rail districts were represented in the public hearings including the UP and SP, their endorsements/objections are as follows:

Table 2.1
Railroad Corporations and Positions

Railroad Corporation	Position	Comments
Burlington Northern/Santa Fe	Neutral	Support BN/SF settlement agreement. Offered to supply commission with additional info.
Kansas City Southern	Opposition	UP/SP will dominate petroleum shipping and Mexican Gateways
Texas and Mexican Railway	Opposition	UP/SP will have 90% of traffic to and from Mexico
Southern Orient	Opposition	Merger reduces rail competition, supports Texas Rail Link
Houston & Gulf Coast	Support	Questions connectibility with railroads other than UP & BNSF
Consolidated Rail	Opposition	Reduced competition, Conrail wants to invest heavily to compete in TX
Skyeagle	Concerns	Questions impact on Tex-Mex RR, Skyeagle's only connection
South TX Rural Rail District	Concerns	Concerned about merger impact on Alamo-Goliad rail project
Angelina & Neches River	Supports	SP is sole connection
Brownsville & Rio Grande	Supports	Wants assurance of fulfillment of SP's contract on Port of Brownsville's \$30 million rail relocation project

Table 2.2
State Legislators Positions and Testimonies

State Representative	City/District	Position	Comments
Christine Hernandez	San Antonio/124	Concerns	Concerned about competition and effect on highways
Hugo Berlanga	Corpus Christi/34	Opposition	Reduced competition, shipping rate increases for coal
Sen. Frank Madla	San Antonio	Concerns	Monopoly threat destructive to agri., petrochemicals and manufactured goods
Bill Carter	Fort Worth/91	Supports	Improved efficiency and competition
Carolyn Park	Bedford/92	Supports	Benefits to area and increased competition w/BNSF
Bob Hunter	Austin/71	Supports	Lower costs to shippers and better service
John R. Cook	Eberbridge/60	Concerns	Preservation of competition essential for growth
Kent Grusendorf	Arlington/94	Supports	Beneficial to area, merger is a property rights issue
Robert Junell	San Angelo/72	Opposition	Merger is anti-competitive, BNSF trackage rights not sufficient for future growth, UP/SP will dominate petro and Mexican traffic
Stephen E. Ogden	College Station/14	Concerns	Concerned that Bryan/College Station line will be abandoned post-merger
Tom Ramsay	Mt. Vernon/2	Opposition	Concerned about abandonment and short line access
Beverly Wooley	Houston/136	Opposition	Fears monopoly power, wants preservation of rail choices for shippers
Garnet F. Coleman	Houston/147	Opposition	Fears monopoly power, job loss, increased consumer costs
U.S. Rep. Gene Green	na/29th	Concerns	Fears limited access to rail service, job loss and impact on Port of Houston
Gerard Torres	Jacinto City/143	Concerns	Potential job loss, anti-competitiveness, impact of military shipments through gulf
U.S. Rep. Jim Chapman	na/1st	Concerns	Monopoly concerns, economic health of E. Texas, Vulnerability of rural areas
Ken Yarbrough	Houston/138	Opposition	Job loss and impact on rural areas
Patricia Gray	Galveston/23	Concerns	Impact on Texas City, Galveston ports, Mexican gateway access
Robert M. Saunders	Austin/28	Concerns	Job loss in Smithville, accessibility for rice and coal shippers in Colorado Co.
Talmadge Heflin	Houston/149	Supports	Unless merger won't withstand anti-trust scrutiny

Shippers and unions in Texas and Mexico are concerned with issues about poor trackage rights and service quality, increased shipping rates, job losses and anti-competitiveness in the marketplace. Shippers and unions that submitted testimony that oppose the merger include:

Table 2.3
Opposing Organizations Positions and Testimonies

State	Shipper or Union	Comments
Texas	Transportation Communications Union	Employment for small shippers
	American Maize	Anti-competitive impacts on freight rates and grain rail service
	Barr Iron and Metal	Fear impact on Tex- Mex Railway service to small businesses
	Denver Railway Car	Oppose unless third party open access given on redundant lines
	Brotherhood Locomotive Engineers	None
	E.P.I.C.	Oppose due to UP's post UP/CNW merger service
	Texas Farm Bureau	Oppose due to reduced competition which causes higher transport costs. Bad for agriculture in general
	Texas Agriculture Coop. Council	Oppose due to reduced rail competition, Merger will negatively impact agriculture overall
	City of Laredo	Need assurance that competitive options will be exercised
	Enterprise Products	No competition at Mt. Belieu

Shippers that support the merger for reasons of better accessibility and efficiency, increased competition and growth opportunity into Mexican markets include:

Table 2.4
Supporting Shippers Positions and Testimonies

Country	Shipper	Comments
Mexico	Ferranti Packard de Mexico	Better more efficient routes
	Gimerpo, S.A. de C.V.	Improved service, direct lines
	Smurfit Carton y Papel de Mexico	Eliminates switching charges, improved equipment utilization
	Grupo Mexico	Faster, more reliable service
	Deacero, S.A. de C.V.	Reduced transit delays at border
	Productoro de Papel	More efficient routes, service and rates
U.S	Reynolds Metal	Supports, wants BNSF competition
	Southern Clay Products	Improved service and facilities
	Arizona Grain	Improved competition
	Ray West Warehouses	Supports, if no harm to Tex-Mex railway
	Commercial Metals	Supports, fears trackage rights will not lead to competition
	NCH	Benefits local business with single line service, reduced traffic
	Chaparral Steel	Better access to customers via single line service
	American Swing	Supports due to UP's increased financial strength, benefiting shippers
	El Dorado Chemical	Improved service on SP, new business opportunities
	Rexene	Increased rail traffic through Odessa, West Texas
	Wil-Gro Fertilizer	New business opportunities
	Pioneer Chlor Alkali	Improved service by SP
	Exxon Chemical	Better alternative to splitting SP, still have strong rail competition
	Coors Brewing	Improved service

Many organizations expressed moderate to grave concerns about the potential impacts of the proposed merger. Their comments are included in Table 2.5.

Table 2.5
Organizations Expressing Concerns

Organization	Comments
Global Grain Co.	Concerned about post-merger effects on S. Tx grain producers and Tex- Railroad
Corpus Christi Grain Co.	Concerned about S. Tx. grain shippers and effects on Tex- Mex RR access to Houston
Farrell Cooper Mining Co.	Supports Tex- Mex link to Houston- Beaumont
Gulf Compress	Wants assurance that Tex- Mex obtains trackage rights to link with KCS
Harlingen Chamber of Commerce	Competition concerns, Need another Class I Railroad in Valley
Greater Corpus Christi Business Alliance	Wants third Class I Railroad to service Corpus Christi and South Tx., Assurance of BNSF competition
Wright Materials	Fears harm to Tex- Mex Railroad
Central and Southwest	Competition concerns for Tx. and West Coal, needs alternative coal delivery options
Brownsville Navigation	Feels BNSF must have direct access to Brownsville, Fears high switching charges between Laredo & Brownsville from lack of competition
Frank Bailey Grain Co.	Supports survival of Tex- Mex RR and another Class I RR access to Corpus Christi and Laredo
International Trade and Transport	Importance of long- term importance of competitive access between Tx. and Mexico
Fina Oil and Chemical	Wants competitive Gulf petrochemical access, feels trackage rights not a viable solution
Brazos County	Fears post- merger abandonment in Brazos Co.
TMM- Mexico	Afraid rail rates and goods prices increase due to lack of competition in Tx. and Mexico
Shell Chemical	Competition concerns, UP/SP combined haul 70% of Shell's chemicals
Vista Chemical	Fears fewer railroads lead to higher rates, poorer service and less access to legitimate chemical transport
Huntsman Corporation	Merger will increase rates, cause poor service. Feels trackage rights not viable alternative
Society of the Plastics Industry	Fears lack of competition for plastics transport. UP/SP haul 70% of US polyethylene and 60% polypropylene
Dow Chemical	Feels merger creates competitive disadvantages, need third Class I Railroad access
City of Smithville	Expected loss of 61 jobs in Smithville with indirect loss of \$11.1 million/ year

Section 3: Rail Transportation of Coal for Texas Electric Utilities¹

3.1 Background

Texas depends on coal for a substantial portion of its power supply.² In 1994, roughly 95 million tons of coal were delivered in Texas, making it the leading coal consuming state in the country. See Table 3.1. Over 95 percent of the coal was used to fire the generators of the state's electric utilities. All told, the electric utilities paid \$1.6 billion for the coal, or about 34 percent of their total fuel bill. On average, the cost of coal was \$1.31 per MMBtu, significantly lower than the \$2.15 per MMBtu paid for natural gas.

Utilities in Texas burn two types of coal: lignite and Western. Because of its low Btu content -- only about 6,000 Btu per pound -- all nine lignite-fired plants in Texas are located near the mine mouth. These plants accounted for about 45 percent of the state's coal-fired generation in 1994. Western coal originates from either the mountain state deposits in Colorado and New Mexico or the Powder River Basin (PRB) deposits of Wyoming and Montana.

Table 3.2 lists the 14 generating stations serving Texas that are either currently fired by Western coal or are in the process of being modified to burn Western coal. The total Texas-owned capacity of the plants is nearly 12,400 MW and represents 19 percent of the generating capacity of the state's utility-owned generating capacity. Because of the

¹ This section was prepared by Dr. William Avera and Dr. Charles Smaistrila.

² An excellent analysis of the issues related to transporting coal to Texas electric utilities appears in Stan Kaplan, "Rail Transportation of Coal to Texas," Public Utility Commission of Texas Working Paper No. 85-5 (1985).

low fuel cost and operating characteristics of the coal plants, the utilities relied on them to produce 42 percent of their power in 1994.

Ideally, the Western coal-fired plants would have been located at a junction of two or more railroads that could deliver the coal to it. Unfortunately, railroad siting considerations more often than not must give way to other operational factors such as the availability of water and the constraints of the bulk power transmission system. As a result, few coal-fired generating plants across the country are served by more than one railroad. In this regard, the experience of Texas utilities is consistent with those elsewhere: of the 10 railroad served power plants listed in Table 3.3, only four have access to two or more competing railroads.

As a result, the cost of transporting PRB coal to Texas can be several times the price of the coal at the mine mouth. Table 3.3 lists the 10 plants serving Texas that receive coal by rail and sets forth estimates of the cost of coal and rail transportation for each plant in 1993.³ Although fuel and rail transportation contracts are normally kept confidential, estimated rates are available from industry analysts.⁴ According to the data in Table 3.3, PRB coal was delivered to the plants for prices ranging between \$19.91 and \$36.81 per ton. Of the total amount paid for PRB coal, anywhere from \$12.89 to \$20.40 was paid for transporting it to the plant. In other words, out of a one-year fuel bill totaling nearly \$1.2 billion, the railroads claimed over \$800,000, or 59 percent. Needless

³ The data do not include spot purchases of coal.

⁴ Except where noted otherwise, the rail rates quoted in this study were obtained from Coal Transportation Report, a widely used industry publication. Recent rail rate estimates are not available from CTR for GSU's Nelson plant or for SWEPCO's Flint Creek and Welsh plants. For this report, the given estimated rail rates for these three plants were calculated from the publicly reported delivered cost of coal, assuming that the coal was purchased at the weighted-average FOB mine contract price reported in CTR for other Texas utilities in 1993.

to say, the high cost of transporting the PRB coal relative to its mine mouth cost has produced contentious proceedings in fuel cost reviews at the Texas PUC.

3.3 *Texas Coal-Fired Plants Potentially Affected by the UP/SP Merger*

Central and South West Corp. (CSW). -- Three CSW subsidiaries operate in Texas, Central Power and Light (CPL), Southwestern Electric Power (SWEPCO), and West Texas Utilities (WTU). They operate four Western coal-fired plants. CPL's Coletto Creek generating station, located near Victoria, is the only plant that is directly affected by the proposed merger.

Unlike the other Western coal-fired plants in Texas, Coletto Creek was designed to burn primarily Colorado coal.⁵ The Coletto Creek plant received 1.8 million tons of coal in 1994, almost all of which was from Colowyo Coal Co. in Colorado, which is the plant's only contract coal supplier. The high delivered cost of coal for the plant reflects both the higher cost of Colorado mountain coal and the highest cost of rail transportation to any plant in Texas. In 1993, the estimated rate for the 1,377-mile haul was about \$27 per ton, or 19.5 mills/ton-mile. Part of the high rail rate can be explained by the more expensive route the coal must take over the Rocky Mountains.

Denver & Rio Grande Western Railroad originates the coal from the Colowyo mine. BN/SF serves as a bridge carrier between Colorado and Fort Worth, where the move is handed off to the SP for delivery. SP is the only railroad currently serving the plant.

⁵ Coletto Creek has also imported South American coal through the port in Corpus Christi. In 1994, the plant received nearly 152,000 tons of Colombian coal at an average delivered cost of \$35.51 per ton, or 148.9 cents per MMBtu.

CPL has recently taken several steps to take advantage of the lower prices for PRB coal and to obtain access to competitive sources of fuel for the Coletto Creek plant. One, the company has invested \$17 million in a fuel blending facility that enables the plant to burn the lower grade PRB coal in combination with the Colorado coal. The plant will begin burning the blended coal this year. CPL hoped to obtain competitive benefits by creating the option to burn either mountain coal or PRB coal. And the leverage would work against both the coal mines and the railroads because the company could contract with UP, in addition to BN/SF and SP, to move the PRB coal.

Unfortunately, CPL's leverage against the railroads is limited by SP's control of the 15 miles of track that separates the plant and a UP interchange point in Victoria. Unable to obtain a short-haul rate from SP for tonnage delivered by the UP, CPL filed an application with the ICC (now STB) to obtain a short-haul tariff. The STB's jurisdiction to grant such a rate depends on a finding that SP has market dominance over shipments to Coletto Creek. CPL's petition, which has been pending for about two years, is the company's only realistic hope of having competing carriers delivering to Coletto Creek.⁶

The prospect of the UP/SP merger largely nullifies the advantages derivable from both the fuel blending facility and the short-haul tariff. The UP/SP would control originating access to Colorado coal at both the origination and destination. Moreover, UP/SP would not be inclined to bid aggressively to move PRB coal, for its bids on moves from the PRB would compete with its movements of Colorado coal -- for which it

⁶ Even though the plant is only 15 miles from the UP, a build out would be problematic because of environmental considerations.

apparently commands a premium rate. Without effective competition, CPL can expect to continue to pay a premium for fuel delivered to Coletto Creek.

The trackage rights agreement between UP/SP and BN/SF does not relieve CPL's problem. BN/SF would obtain overhead trackage rights over the existing UP line running from Houston to South Texas that passes within 17 miles of Coletto Creek. Without a right to stop at the interchange point in Victoria, the proximity of BN/SF trains is of no help to CPL.

A strong argument can be made under the circumstances that granting such an interchange to BN/SF at Victoria is necessary to keep CPL whole. CPL is currently has at least the potential to eventually obtain access to a competing railroad, either by virtue of the STB case or a build out. The merger -- as it is currently structured -- would foreclose that option for the foreseeable future. Making Victoria an interchange for BN/SF would thus maintain the status quo. Finally, there is much at stake for the South Texas ratepayers of CPL: if rail competition for hauling PRB coal to Coletto Creek simply brought down the rail rate to the average amount charged for PRB coal -- \$11.76 per ton -- the cost of transporting its 1994 tonnage would have been nearly \$88 million less.

City Public Service of San Antonio (CPS). -- CPS generates about half of its electricity at two PRB coal-fired plants, Deely and Spruce, located near Elmendorf. CPS received about 4.6 million tons of coal for these plants in 1994.

The coal is delivered by the UP in a direct haul over SP tracks into the plants under a contract that extends to 2005. The estimated rate in 1993 for the 1,575 miles from the PRB was about \$15 per ton, or 10 mills/ton-mile. Since the merger would

eliminate competition between UP and SP for delivery to the plants, the railroads have agreed to grant trackage rights to BN/SF.

The trackage rights agreement does not, however, completely ameliorate CPS's concerns, and the utility is in discussions with UP to determine exactly what its situation would be if the merger were approved. CPS was initially concerned because Elmendorf does not expressly appear in the trackage rights that would be granted to BN/SF. However, UP has stated that the trackage rights will be amended to expressly provide for service to Elmendorf. As a remaining concern, CPS does not have assurance that the rate for using the trackage rights will in fact be adjusted to reflect expected declining costs of service.

Table 3.1

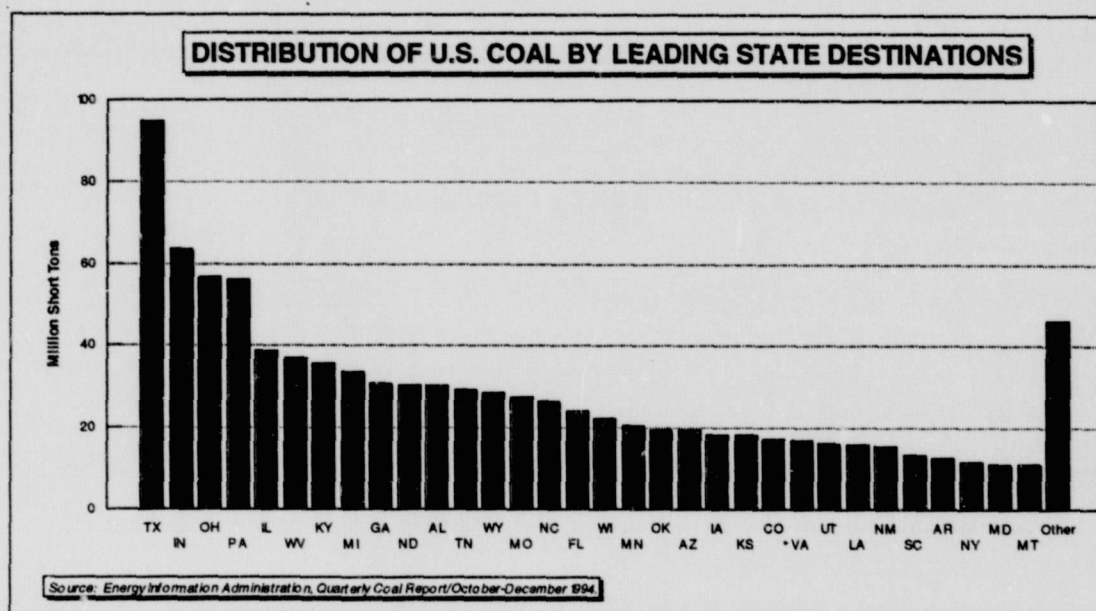


Table 3.2
Western Coal-Fired Plants Serving Texas

Operating Utility	Plant	County	Net Summer Capacity (MW)	Year of Initial Operation	Texas Joint Owners	Texas- Owned Capacity (MW)	Coal Grade	Origin	1994 Receipts (1,000 tons)	1994 Ave. Delivered Cost/ton	Delivering Railroad	Competing Railroad
Arizona Public Service	Four Corners	San Juan, NM	743	1969	EPEC:	104	Bit	New Mex.	8,409	\$20.74	-	-
Cajun Electric Power Co-op	Big Cajun II	Pointe Coupee, LA	540	1983	GSU:	227	Sub	PRB	5,795	25.97	-	-
Central Power and Light	Coleto Creek**	Goliad	604	1980	-	604	Bit	Colorado	1,818	42.35	SP	-
							Sub	PRB	-	-	UP	-
City Public Service	Deely/Spruce	Bexar	1,330	1977	-	1,330	Sub	PRB	4,606	18.98	UP	SP; BNSF*
Gulf States Utilities	Nelson	Calcasieu, LA	550	1982	GSU:	325	Sub	PRB	2,260	27.22	KCS	BNSF; UP; SP
					SRMPA:	110						
					SRGT:	55						
Houston Lighting & Power	Parish	Fort Bend	2,560	1977	-	2,560	Sub	PRB	10,483	31.27	BN/SF	-
Lower Colorado River Auth.	Fayette	Fayette	1,585	1979	LCRA:	1,000	Sub	PRB	6,341	21.42	UP	SP; BN/SF*
					COA:	585						
Southwestern Electric Power	Flint Creek	Benton, AR	480	1978	SWEPCO:	240	Sub	PRB	1,682	26.14	KCS	-
	Welsh	Titus	1,584	1977	-	1,584	Sub	PRB	5,164	30.64	BN/SF	-
Southwestern Public Service	Harrington	Potter	1,096	1976	-	1,096	Sub	PRB	4,409	26.79	BN/SF	SP
	Tolk	Lamb	1,080	1982	-	1,080	Sub	PRB	3,950	34.64	BN/SF	-
Texas Mun. Power Agency	Gibbons Creek**	Grimes	405	1982	-	405	Lig	-	-	-	-	-
							Sub	PRB	-	-	BNSF	UP; SP
Texas Utilities Electric	Monticello**	Titus	575	1974	-	575	Lig	-	-	-	-	-
							Sub	PRB	-	-	-	KCS; BN/SF
West Texas Utilities	Oklunion	Wilbarger	665	1986	WTU:	364	Sub	PRB	3,038	23.90	BN/SF	-
					PUB:	68						
					CPL:	52						
Total or Ave.			13,797			12,364			57,955	\$25.42		

* Carrier will compete for traffic pursuant to the UP/SP and BN/SF settlement.

**Utility has modified or is considering modifying the plant to burn PRB subbituminous coal.

Sources: Public Utility Commission of Texas, "Electric Generating Unit Inventory" (1994); Electric Reliability Council of Texas, Form OE-411 (1995); Southwestern Power Pool, Form OE-411 (1994).

Table 3.3
Rail Costs for Western Coal-Fired Texas Plants
1993

Operating Utility	Plant	Delivering Railroad	Receipts (1,000 tons)	Ave. Deliv. Cost/ton	Delivered Cost of Coal	Est. FOB Mine Price	Implied Rail Rate	Transportation Cost	Transportation Cost/Total Cost
Central Power and Light	Coletto Creek	SP	1,208	\$46.66	\$56,365,280	\$19.76	\$26.90	\$32,495,200	58%
City Public Service	Deely/Spruce	UP	5,141	19.91	102,361,456	4.71	15.20	78,143,200	76%
Gulf States Utilities	Nelson*	KCS	2,336	29.60	69,145,600	12.06	17.54	40,974,476	59%
Houston Lighting & Power	Parish	BN/SF	9,653	35.25	340,318,039	14.85	20.40	196,925,280	58%
Lower Colorado River Auth.	Fayette	UP	5,635	21.81	122,884,290	5.56	16.25	91,568,750	75%
Southwestern Electric Power	Flint Creek*	KCS	1,926	24.95	48,053,700	12.06	12.89	24,826,994	52%
	Welsh*	BN/SF	4,490	30.12	135,238,800	12.06	18.06	81,091,392	60%
Southwestern Public Service	Harrington	BN/SF	4,461	27.74	123,748,140	13.04	14.70	65,576,700	53%
	Tolk	BN/SF	3,847	36.81	141,608,070	19.16	17.65	67,899,550	48%
West Texas Utilities	Oklaunion	BN/SF	1,880	29.34	55,159,200	15.49	13.85	26,038,000	47%
Total or Ave.			40,577	29.45	\$1,194,882,575	\$12.06	\$17.39	\$705,539,542	59%

*FOB mine price is estimated as the average of reported FOB mine prices for Texas plants.
Source: Coal Transportation Report (Aug. 8, 1994).

					Receipts	FOB Mine Price
City Public Service	49	20.16	983,808	4.96	1,208	19.76
	34	20.16	689,472	4.96	1,055.3	6.88
	3,821	20.21	77,220,389	5.01	6,085.8	15.43
	1,237	18.97	23,467,787	3.77	2,512.1	16.81
Houston Lighting & Power					3,761.0	6.98
	1,055	27.28	28,788,584	6.88	33.0	2.82
	6,086	35.83	218,054,214	15.43	1,841.0	2.70
	2,512	37.21	93,475,241	16.81	48.8	4.96
LCRA					34.2	4.96
	3,761	23.23	87,368,030	6.98	3,820.9	5.01
	33	19.07	629,310	2.82	1,237.1	3.77
	1,841	18.95	34,886,950	2.7	4,461.0	13.04
					3,847.0	19.16
					1,880.0	15.49
			PRB Weighted Ave Rail Rate:	11.76	Weighted Ave.	12.06

Section 4: Merger Impacts on Chemical and Plastics Industries

4.1 Introduction

In this section we review the potential impacts of the Union Pacific/Southern Pacific merger on Texas' chemical and plastics industries. We consider the potential impacts on rail shipping rates as well as the effectiveness of alternative shipping modes to provide cross-modal competition. Although there are differences in their shipping characteristics, we have grouped chemical and plastics shipments together because these industries are primarily located along the Gulf Coast.

4.2 The Chemical and Plastics Industry in Texas - an Overview

As noted in Table 4.1 below, a large percentage of total United States chemical and plastics production in certain industrial classification codes occurs in Texas. Of particular note is in sector 2821 -- Plastics Materials and Resins -- where almost one-third of total shipment-value originates in Texas. Even more impressive is the state's dominance in industrial organic chemicals with 45 percent of total U.S. production. In a broader sense, the Louisiana and Texas Gulf Coast region combine to represent 40.6 percent for plastics, and 59.3 percent for industrial organic chemicals, of total U.S. output. (See Table 4.1.)

The primary reason that the Gulf Coast developed a high concentration of chemical and plastics producers was proximity to petroleum resources in the post-World War II industrial boom. Another important reason at that time was the presence of significant rail transportation infrastructure. Today, the rail infrastructure of tracks, yards

and terminals owned by three major rail carriers insures that the area continues to attract new investment in plastics and chemical manufacturing facilities.

Table 4.1
Value of Shipments

SIC Code	Description	U.S. Value Of Shipments (000)	Texas: Value of Shipments (000)	% of U.S. Total	Texas & Louisiana: Value of Shipments (000)	% of U.S. Total
2821	Plastics Materials and Resins	31,303,900	9,861,900	31.5	12,694,500	40.6
2819	Industrial Inorganic Chemicals	18,169,100	1,348,500	7.4	2,273,400	12.5
2869	Industrial Organic Chemicals	54,254,200	24,476,800	45.1	32,155,900	59.3
2879	Agricultural Chemicals	9,151,400	1,157,000	12.6	2,051,050 ¹	22.4
2899	Chemical Preparation	9,965,800	1,149,300	11.5	1,296,700	13.0

Source: *Census of Manufacturers, 1992.*

4.3 *Transportation of Plastics and Chemicals*

4.3.1 *Chemicals*

According to statements submitted by the merger applicants,² of the total chemical products shipped in the United States, nearly half (48 percent) utilize truck transportation while rail and barge transportation each represent about 23 percent of total tonnage. Modal choice for these shipments is dominated by the shipper's proximity to destination

¹ The Census of Manufactures masks Louisiana's shipments data for this SIC. Figures in this table are estimates by the Center for Economic Development and Research.

² Volume 2 (redacted) of the merger application.

with almost half of the chemical tonnage moving less than 200 miles.³ Rail and barge transportation are used for longer hauls with rail shipments averaging about 1000 miles in 1993. Barge transportation of chemicals originating in Texas is destined to inland water ports in Illinois, Indiana, Ohio, Kentucky and West Virginia.

In 1994, the Union Pacific railroad transported 30.2 percent of all chemical carloads in the United States, up from 28.2 percent the previous year. (See Table 4.2 below.) Combined with the Southern Pacific, the proposed merged railroad will control 41.6 percent of the chemical carload market, more than twice the market share of the next highest competitor, CSX Transportation, with 20.1 percent of the market. The market dominance of the proposed merged railroads is even more pronounced when only the western carriers are considered. Using 1994 data, the Burlington Northern/Santa Fe transported only 13.3 percent of the chemical carload market while the Illinois Central and Kansas City Southern attained only 5.5 percent and 3.9 percent of the market share, respectively.

The chemical market is intensely price competitive. Furthermore, chemical products are undifferentiated (generic) goods with no appreciable brand identity. Therefore, transportation cost and service are critical factors in the success of any given plant.

³ The close proximity of shipment destination is the result of an intentional site location strategy by many of the end users of these chemicals.

Table 4.2
U.S. Chemical Carloads Originated

Railroad	# Carloads 1994	Market Share 1994	Market Share 1993
Union Pacific (inc. CNW)	469,870	30.2 %	28.2%
CSX Transportation	312,289	20.1	19.4
Southern Pacific	176,632	11.4	12.8
Norfolk Southern	123,678	8.0	8.3
Burlington Northern	104,573	6.7	7.7
Santa Fe	101,800	6.6	7.6
Illinois Central	85,885	5.5	5.5
Conrail	84,815	5.5	5.5
Kansas City Southern	59,838	3.9	3.0

Source: *Chemical Week*, Feb. 1 1995.

4.3.2 *Plastics*

Transportation is the second largest cost factor in the production and marketing of plastic resins, representing 20 percent of delivered costs.⁴ About 80 percent of the plastics resins produced are shipped via rail transportation in covered hopper cars. It is estimated that Gulf Coast corridor plants ship 300,000 carloads per year.⁵ Since plastics resins producers and consumers are geographically dispersed, most shipping distances are greater than 1000 miles.

One of the unusual logistics features of plastics resins is that primary storage of the finished good is in rail cars.⁶ The need for dedicated railcars has led to shippers owning large fleets of covered hopper cars. The "plastics fleet" is estimated at 40,000 covered hopper cars with a value of about \$2.6 billion. Obviously, plastics resins shippers have

⁴ Presentation by Al Bowles, Society of Plastics Industry, at the Houston Transportation Club February 6, 1996.

⁵ Al Bowles.

⁶ Plastic resins production is characterized by large single-product runs.

much at stake in the quality and price of rail transportation services. However, rail companies have also invested heavily in providing facilities for plastics shippers.

Rail carriers have invested millions of dollars in rail yards that serve as storage facilities for resin-filled cover hopper cars waiting for sale. Though the investment for land and trackage related to the storage facilities has likely been long-recovered, we nonetheless believe these valuable resources serve as motivators for railroads to maintain and grow their market share. No rail company could come close to the combined Union Pacific and Southern Pacific with combined market shares of 71 percent for Gulf Coast polyethylene and 81 percent of Gulf Coast polypropylene -- a dominant market position.⁷

4.4 Merger impacts on plastics and chemical shippers

4.4.1 Service impacts

The proposed merger of the Union Pacific and Southern Pacific railroads could possibly lead to improved service in some of the distribution corridors used to access vital markets for these industries. As specified in the Intermodal section of this report, shorter routes, with attendant transit time improvements, will be available to current Union Pacific customers in the Gulf Coast to California routes. This could enhance Gulf Coast shippers' competitive positions for sales in Southern California through the Pacific Northwest.⁸

The merger filing also purports to show that access to markets in the northeastern United States will improve through the proposed directional routing scheme for the

⁷ Gulf Coast polyethylene and polypropylene shipments total about 38 billion pounds of product in 1994 according to Bowles.

⁸ Testimony presented on behalf of the merger suggests that transit times will be reduced by a matter of days.

Houston to St. Louis corridor with connections to the eastern rail carriers. However, given that many rail experts have expressed doubt about the operational viability of the directional routing proposal, we do not feel the service benefits related to directional routing can be accounted as certain.

Any routings that currently require an interchange between the Union Pacific and Southern Pacific should, over time, experience improved transit times as the rail systems are merged. Expanded single-line service will lower the incidence of mis-bills and yard switching delays.

Safety is a critical service element in the transportation of certain chemicals. With access to capital, it is expected that safety issues concerning the Southern Pacific will be greatly alleviated as infrastructure improvements are accomplished by the merged railroads.⁹

A final service benefit that will likely attend the merger of the Union Pacific and Southern Pacific is faster return time for shipper-owned rail cars. Since both plastics and chemical shippers have substantial investments in rolling stock we see this as a service as well as a financial benefit of the merger.¹⁰

4.4.2 Rate impacts

Documents filed by the Union Pacific insist that the merger will not result in higher shipping rates for plastics and chemical producers. The documents identify several reasons that rates will remain competitive. First, proponents assert that source

⁹ This issue is further addressed in the "Safety" section of this report.

¹⁰ Estimates of the financial benefit of faster equipment return times is beyond the scope of this analysis. However, it should be considered as a potentially positive effect of the merger.

competition will provide incentive for rates to remain comparable to those prior to the proposed merger.¹¹ Second, customer leverage is cited because many customers enter into relatively long transportation contracts that cover many shipping locations and several commodities. Third, principals of the merging railroads insist that if rail rates become too high, shippers will switch to alternative transportation modes such as truck or barge transportation. Finally, the proposed agreement with the Burlington Northern/Santa Fe railroad will provide competitive access to another rail carrier for any customer that is currently served by the Union Pacific and Southern Pacific.

Source competition is an uncertain guarantee of competition at best. Production facilities are constrained by production capacities. Furthermore, production facilities in these industries often represent capital investments of more than \$1 billion -- they must produce to generate revenues, and transportation rate increases will be passed along to consumers through higher prices. In addition, to the extent that the proposed merger encompasses rail service to a large portion of the total production capacity in chemicals and plastics, there is a relatively good chance that a single company may face the same carrier choices at multiple facilities.

As noted above, the merged Union Pacific/Southern Pacific will start with substantial market shares for United States chemical carload originations. This market concentration is even more pronounced for certain chemicals and plastics produced in the Texas-Louisiana Gulf Coast corridor. For example, the combined Union Pacific/Southern Pacific represents 71 percent of the Gulf Coast market share for polyethylene carloads, 80

¹¹ Source competition refers to a producer with multiple facilities shifting production away from plants with increasing freight rates.

percent of polypropylene with lesser, though still dominant, market shares for vinyl chloride, chlorine and carbon black. This level of market concentration suggests that some chemical manufacturers will not have an effective rail carrier choice even if production is shifted from one plant to another. Alternatively, if this threat of shifting production sites is real, we must consider the potential negative impact of the merger on Texas jobs in these high-wage industries.

These same concerns also apply to the suggestion that shippers possess inordinate market power because of multi-year, multi-location shipping contracts. Since a large portion of national production of certain chemicals and plastics is concentrated in the Gulf Coast region, and that is also where the merged railroads will have their greatest concentration of market share, shippers could find themselves effectively captive to one railroad. However, if the largest shippers possess this market power, then it is likely that they will receive lower freight rates. Unfortunately, this would also suggest that smaller producers will bear the brunt of rate increases that will tend to diminish Texas' attractiveness for future site development by small, innovative companies.

Suggesting that rail rates will remain competitive because of competition between transportation modes also raises several questions. Tank-barge transportation is effectively limited to destinations that are located on, or very near, major inland waterways. Moving freight to tank-barge would require substantial consolidation of shipments given that each barge carries the equivalent of 16 railcars. Shipping trends suggest that customers are ordering smaller, not larger, quantities per shipment.¹²

¹² This is evidenced by the growth of shipping services such as Flexi-~~flex~~ offered by Conrail that allows customers to order in smaller quantities while retaining some cost efficiencies.

Shifting transportation modes from railcars to trucks presents many problems, most importantly that of public safety. Shifting transportation to trucks would require a little more than 4 trucks per carload for equivalent shipping volumes. As indicated by Table 4.3 below, safety incidents involving over-the-road transportation of hazardous materials occur much more frequently than incidents involving railcars. This is not to suggest that trucking firms are less safety conscious than railroads, but rather that greater opportunities for accidents are inherent in over-the-road transportation versus rail transportation. Moreover, when safety incidents do occur, the danger to public safety is almost invariably greater for truck-related incidents compared to rail. Further, even though the use of barge/truck intermodal shipments, as cited in merger application documents as an example of intermodal competition, would rely less on over-the-road transportation than exclusively truck shipping, we believe that these shipments still represent increased safety risks.

Table 4.3
Hazardous Material Transportation Incidents

Year	Highway		Railway	
	<i>U.S.</i>	<i>Texas</i>	<i>U.S.</i>	<i>Texas</i>
1990	7299	367	1279	144
1991	7644	427	1155	162
1992	7794	476	1130	138
1993	11,079	717	1121	169
1994	13,999	789	1157	138

Source: US Department of Transportation

In addition to safety considerations, having additional truck traffic will exacerbate already existing problems of traffic congestion, traffic safety and stress on the public transportation infrastructure. Therefore, regardless of rate-efficiency considerations, we

believe it is unwise to adopt positions that may promote greater use of trucks to transport chemical and plastics commodities.

Finally, the merger applicants have suggested that the proposed agreement for an as-yet-undetailed trackage rights agreement with the Burlington Northern/Santa Fe will provide competitive rail options for customers who are currently served by both the Union Pacific and Southern Pacific. Given that the Burlington Northern/Santa Fe has presented no operating plans as to how they will serve these potential customers, we find it difficult to assume that they will provide effective rail competition. Concerns about adequate yard facilities to support the in-transit storage of these commodities, gaining market access to shippers under multi-year contracts and competing with effective routes remain.¹³ These concerns are especially prominent for shipments moving to the midwest to connect with eastern carriers. If the directional operation proposal is implemented, shippers using the Burlington Northern/Santa Fe will be forced to take a much more circuitous route or go "upstream" against the southbound traffic of the Union Pacific/Southern Pacific. And, while the Burlington Northern/Santa Fe will possess competitive routes to the Pacific Northwest, they will be at an extreme competitive disadvantage for shipments to the lucrative Southern California markets.

Given the concerns about each of these "competition-enhancing" alternatives, we believe that the extreme market concentration in the chemical and plastics shipping market, realized through the merger of the Union Pacific and Southern Pacific railroads, will lead to the merged railroads being able to exert near-monopoly rents from many of

¹³ A further review of concerns regarding the proposed agreement to establish trackage rights is included in the "competition" section of this report.

their customers located in Texas and the Gulf Coast corridor. Estimating the degree to which rates will increase is beyond the scope of this analysis; however, any increase in rates will make Texas-produced goods in these industries less competitive with attendant detrimental impacts on Texas industries and workers.

4.5 *Conclusions*

The proposed merger of the Union Pacific and Southern Pacific railroads could enhance service to chemical and plastics producers located in the Texas and Louisiana Gulf Coast. These service enhancements include lower transit times from shorter routes and single-line routing to markets in Southern California, the Pacific Northwest and possibly to the midwest and connection with eastern rail carriers. However, we feel the extensive market consolidation that will be realized through the merger will lead to rate increases for shippers in these industries. Higher freight rates could have negative impacts on the state of Texas, either through shifting production to plants outside of Texas, making Texas less attractive for new, especially smaller, plants or shifting shipping modes to over-the-road transportation. Therefore, we do not believe that the merger, as proposed, can be supported based on its likely impacts to the chemical and plastics industries.¹⁴

¹⁴ We do acknowledge that the merger applicants have received letters of support from individual chemical and plastics shippers. However, many of these firms are likely exhibiting strategic behavior regarding rate negotiations instead of actual support for the merger's outcomes. Moreover, many of these firms have locations in several states; therefore, their support could be based on net impacts while we are concerned primarily with impacts on Texas industries and citizens.

Section 5: Merger Impact on Intermodal Shipments

5.1 Introduction

In this section we examine the likely impacts of the proposed UP/SP merger on intermodal transportation services into and out of Texas. For the purposes of this discussion, intermodal shipments include trailer-on-flat-car (TOFC) and container-on-flat-car (COFC) shipments.

Trailer-on-flat-car shipments use standard semi-trailers that are conveyed to and from customer locations by local drayage carriers using tractor-trucks. The trailers are transferred to flat-car carriers at intermodal terminals using large straddle cranes. Included in the TOFC category, "Roadrailer" trailers do not require the use of flat-cars. These trailers have undercarriages designed to accommodate rail axles and couplings for direct-to-rail use. (Though the technology for roadrailer-type trailers has existed for many years, only recently have these designs begun to show even modest levels of acceptance. The weight of the special undercarriage limits the effective load capacity making the trailers relatively cost-inefficient for medium- to high-density loads.)

Container-on-flat-cars refer to the use of ocean-shipping containers instead of trailers. The containers are transferred from vessels either directly onto rail cars or onto chassis that are transported by tractor-trucks to intermodal terminals for transfer to rail cars. However, not all of the shipments transported via COFC originate nor are destined for water-borne transportation. Increasingly, containers are used as a substitute for trailers in intermodal shipments to reposition the containers for use in water shipments. For example, a container arrives at the Port of Houston destined for Denver. Upon

unloading in Denver, there is no ready demand for an ocean container. However, there are shipments destined for Dallas where there is a demand for ocean containers by export shippers.

5.2 Impacts of the UP/SP Merger on Intermodal Shipping

5.2.1 Service

Service levels for intermodal shipments originated or destined for several Texas cities is likely to improve following the merger. These improvements are based on shorter routes created by combining UP/SP trackage, proposed directional routing in specified lanes and promised construction/expansion of intermodal terminal facilities.

The greatest improvement in service based on shorter routes will be to those intermodal customers located in or shipping through the Dallas-Fort Worth (DFW) area. Combining the Union Pacific's Fort Worth to El Paso route with the Southern Pacific's "sunset" route to Los Angeles will reduce transit times in this lane by one-half day compared to the best routing currently available on UP or SP. The route will also be 164 miles shorter than the route used by the BNSF. This will enhance competition in this lane not only between the UP/SP and BNSF, but will make intermodal shipping more competitive with over-the-road trucks. (Trucks using driver teams offer 48 hour service from DFW to Los Angeles. Though intermodal shipments will not be that fast, they will be close enough to offer expanded competition.)

Shippers and receivers in Dallas-Fort Worth will also gain access to routing that is nearly 300 miles shorter to Oakland, California compared to the best routings currently available (BNSF). While BNSF will retain the shortest routes from DFW to Portland,

there will be substantial decreases in route-miles compared to existing UP and SP routes (251 and 499 miles, respectively). The improvements in Portland routes is especially important for access to East Asian markets. Portland offers the closest ocean routes between the contiguous United States and Pacific Rim nations thereby offering more cost-effective transportation of import and export goods. (Ocean transportation is typically more expensive than land transportation, therefore international logistics strategies call for minimizing the ocean portion of international transits.)

The benefits of easier access to northwest ports will also be available to shipments originating or passing through El Paso. This is due to the planned construction of a new intermodal terminal at Colton, California that will allow shipments destined to the northwest to bypass the congested Los Angeles terminal. This will affect shippers and receivers in the El Paso-San Antonio-Houston-Beaumont corridor and could serve to promote business for through-shipments at the Port of Houston. The Union Pacific has also stated they intend to initiate new service from Laredo to California after the merger enhancing access for manufacturers and distributors to markets on the west coast as well as East Asia.

Intermodal shipments from San Antonio, DFW and Houston to St. Louis, Chicago and via connections to northeastern markets will likely benefit if the UP's proposed directional operations plan proves successful. This would speed transit times in very competitive transportation routes and could entice some shippers to switch from trucks to intermodal shipping. The use of trackage rights granted to BNSF in the merger application will also allow this carrier to offer shorter routes to its customers between St.

Louis and Houston. However, as noted in the previous section, we count these benefits as uncertain.

The DFW market will gain further route efficiencies from the merger to New Orleans, compared to current UP routes. This could enhance services for importers and exporters located in DFW. However, this could also be detrimental to the Port of Houston's ability to compete for this traffic.

Proposed new terminal facilities at Texarkana and at Harlingen will undoubtedly improve intermodal services available to shippers located in, or transiting through these markets. Similarly, expanding existing facilities at San Antonio and Laredo will improve service to and through these markets.

5.2.2 Price

When intermodal terminals are consolidated, it is anticipated that economies of scale will occur for railcar spots, trailer/container parking, loading/unloading equipment and personnel. The economies should allow the intermodal service provider to become more price-aggressive in the marketplace. However, there are also concerns that market consolidation, leading to fewer competitors, may lead to price increases. We do not believe that market consolidation will result in substantive price increases for consumers of intermodal services in Texas. If at any time the price of intermodal services rises above its perceived value, shippers will revert to truck transportation to satisfy their logistic needs. If anything, the economies of scale noted above will provide an opportunity for the UP/SP to become more price competitive.

5.3 *Conclusion*

The merger of the Union Pacific and Southern Pacific railroads will create rail routes that should improve service offerings for Texas shippers to key markets in the midwest, northeast and west coast and export markets to East Asia. Texas consumers should also benefit from improved intermodal access to these markets (provided that transportation costs and efficiency gains are passed along). Texas ports may also be benefited as improvements in intermodal services enhance their service offerings.

The pricing of intermodal services is a competitive balance between service/price options with over-the-road truckers. It is unlikely that any significant price increase, resultant from rail transportation market participant consolidation, would be viable given the relative ease with which customers could shift their transportation mode. Moreover, service enhancements, along with equipment improvements, may increase the attractiveness of intermodal as a shipping option, thereby promoting the socially-desirable shift of goods transportation from highways to railways.

Section 6: Mexico¹

6.1 Introduction

Currently there are only five land rail ports of entry to Mexico. The Union Pacific has interchange with Mexican railcarriers at Brownsville and Laredo. The Southern Pacific has interchanges at Eagle Pass and El Paso. The Burlington Northern/Santa Fe has an interchange at El Paso and possesses trackage rights to Eagle Pass through Flatonia via the Southern Pacific. The Tex-Mex Railroad is a short-line carrier that runs between Corpus Christi and Laredo. Finally, the South Orient has an interchange at Presidio. This section reviews traffic patterns to and from Mexico and considers the potential impacts of the proposed Union Pacific/Southern Pacific merger on cross-border transportation.

6.2 Patterns of trade.

Mexico is, by far, Texas' largest trading partner. In 1993, almost \$19 billion (45.5 percent of U.S. total) in US-Mexico trade originated in Texas. Furthermore, two-thirds of all shipments from the United States to Mexico pass through Texas ports of entry. Laredo leads the way with more than one-third of the total exports passing through its port of entry (see Table 6.1 below).

These values have declined since the collapse of the Mexican peso in early 1995. However, Mexico has started its long climb to economic health and the long-term outlook for trade with Mexico continues to be bright.

¹ Portions of this section were contributed by Hoy Richards of Richards and Associates.

Table 6.1
U.S. Exports Through Texas
1993

Port of Entry ²	\$ value (millions)	% of total
Laredo	\$ 15,950	38.3%
El Paso	6,460	15.5
Brownsville	2,960	7.2
Eagle Pass	1,980	4.8

Source: Jose San Martin Romero, October, 1995

In 1993, more than 53.7 million tons of cargo from Mexico to the U.S. were carried by truck. This compares to only 14.7 million tons transported via rail carrier.³ Some of this disparity between shipping modes can be explained by near-border maquiladora plants. However, we believe that given sufficient competition there is additional market share available for rail carriers.

6.3 *Merger impacts on cross-border transportation*

The proposed merger of the Union Pacific and Southern Pacific railroads will result in more than 90 percent of current cross-border traffic being held by the merged carrier. It does not take a review of economic theory to understand the potential market dominance that can be exerted when such a huge share of the total traffic volume is handled by one carrier. However, there are some positive outcomes that could result from the merger. Most notably is an extension of the significant infrastructure development that has already been undertaken by the Union Pacific to enhance its ability to service intermodal shipments and railcars through Laredo.⁴ Higher volumes of traffic moving

² Presidio's trans-border shipping does not represent a significant portion of total trade.

³ Based on data presented by Jose San Martin Romero in an October 1995 presentation.

⁴ The Union Pacific has recently completed construction of a new \$25 million yard facility in Laredo.

over the Union Pacific's lines at Laredo would help the company justify expending private dollars to improve cross-border infrastructure (bridges).

However, we remain concerned that the extent of market consolidation represented by the merger of these two railroads may allow the carrier to exert monopoly rents from existing rail customers and will not promote the most rapid expansion of cross-border rail traffic. These concerns have also been expressed by notable officials in Mexican border states.⁵

Texas' citizens, prompted in part by recent actions of the U.S. Secretary of Transportation, are very concerned about the safety risks that are posed by allowing Mexican trucks onto Texas roadways in compliance with the North American Free Trade Agreement (NAFTA). In a recent survey conducted by the University of Texas' Office of Survey Research, 55 percent of responding Texas citizens have "very serious" concerns about allowing Mexican trucks on Texas roads.⁶ While Mexican trucks must pass a safety inspection to enter the United States, safety concerns have been publicly noted by the Texas Department of Transportation and by members of the Texas Railroad Commission. Moreover, with the expectation that trade with Mexico will increase rapidly in the future, and the realization that a federal government set on balancing the national budget will not be as forthcoming with highway development funds, it is important that Texas policymakers seek to encourage the development of alternative modes of transportation

⁵ Letters of concern have been sent to Ms. Brenda Arnett, Director of the Texas Department of Commerce from Lic. Armando Martinez, Head of the Department of Commerce, State of Chihuahua (March 4, 1996); Ing. Enrique Terrazas, Director General, General Directorate of Economic Development, State of Chihuahua (February 13, 1996); and, Ing. Miguel Rubiano, Secretary of Economic Development, State of Tamaulipas (March 5, 1996).

⁶ The survey results are reviewed in a March 9, 1996 Dallas Morning News article by Jennifer Files.

for cross-border shipments. Encouraging competition among rail carriers, not rail market consolidation, will foster the deployment of infrastructure and rate competition that will likely encourage Mexican shippers and receivers to consider rail transportation over trucking.

We also believe that the market dominance of the Union Pacific will lead to a further consolidation of traffic volume in the Laredo corridor. Promoting the development of other border crossings, by contrast, will help alleviate congestion in the already overcrowded Laredo corridor and allow other border areas to enjoy the economic success attendant to increased border activity. In addition, further concentration of traffic over the Laredo crossing could divert critical traffic volume away from the Tex-Mex railroad, thereby lowering service availability to rural communities along this carrier's routes deep south Texas.

An additional consideration that must be evaluated is the impending privatization of the Mexican national rail system. The Mexican government has proposed splitting the national rail system into several regional concessions. Foreign ownership of each concession will be limited to 49 percent and ownership can only be held in one concession. It is expected that several U.S. rail carriers will seek partnerships with Mexican firms to purchase these concessions.

Though the exact makeup of the concessions may change, current information shows that ports of entry at Nuevo Laredo (Laredo) and Matamoras (Brownsville) will be included in the Northeast concession. Piedras Negras (Eagle Pass) and Juarez (El Paso) will be served by the North-Pacific concession, while Ojinaga (Presidio) will be served by the Chihuahua-Pacific concession. Given the likelihood that at least one U.S. carrier will

gain partial ownership of the Northeast concession, we believe it is important to foster rail transportation through a port that will be serviced by the North-Pacific concession.⁷ Since El Paso currently benefits from significant trade activity, we suggest an effort be made to promote expanded rail activity through Eagle Pass.

6.4 *Conclusions*

The Union Pacific/Southern Pacific has argued that granting trackage rights to the Burlington Northern/Santa Fe will obviate concerns about market consolidation. However, as discussed in other sections of this report, we feel that significant questions remain about the viability of these as-yet unspecified rights to foster cross-border rail competition. The development of effective rail competition is the best way to address concerns about the growth of cross-border truck traffic and to promote development opportunities for areas of the Texas border not currently enjoying the trade boom. The infrastructure developments that have been undertaken by the Union Pacific are most probably justified by that rail carrier's existing traffic. Competition among three major rail carriers should be maintained to help ensure that rates and service reliability are enhanced to all Texas ports of entry.

⁷ The Chihuahua-Pacific is the least noted of the three concessions proposed for Texas ports of entry. Further, we do not feel that the South Orient currently possesses the fiscal capacity to provide a viable alternative rail carrier option.

Section 7: Merger Impacts on Rural Rail Transportation

7.1 Introduction

In this section, we briefly consider the merger's likely impacts on rail service to rural areas within Texas. The effects on economic development potential in rural areas are addressed in Section 8.

7.2 Abandonments

As noted in Table 7.1 below, the merger application submitted by the Union Pacific and Southern Pacific specifies remarkably few track segments for abandonment. This is surprising given the overlapping nature of the proposed merger. In comparison, the Burlington Northern/Santa Fe merger, which was characterized as an end-to-end merger, contained more proposed abandonments than the Union Pacific/Southern Pacific proposal. Officials at the Union Pacific contend that the relatively few miles of track included in the proposal for abandonment indicate the market vitality on the combined railroad's Texas tracks. However, much of the line in the Houston to St. Louis corridor avoids redundancy only because of the proposed directional operations in this lane. If this operation plan were ever abandoned, or never begun, then significant portions of trackage along this route would be prime targets for abandonment.

Though the proposed abandonment lines have had little or no use in the past two years, the description of these abandonments (based on maps depicting the abandoned lines included in the merger application) point to a tactic used by most of the major railroads to discourage future development of rail competition along the abandoned track.

For example, the Southern Pacific's Suman to Bryan line abandonment does not encompass the entire line between junction points. At both the north and south end of this line, the Union Pacific intends to retain a small portion of track. Therefore, any short-line railroad, rural rail district, developer or industrial rail user that purchased this track would be forced to pay switching charges and trackage-use fees to the Union Pacific for any traffic moving into the rail junction -- virtually capturing any potential shippers who may ever want to locate along this route.

Table 7.1
Proposed Track Abandonments in Texas

Serving Railroad	Location	Communities Affected	Total Miles
Union Pacific (MP)	Troupe-Whitehead line, Smith Co.	none	7.5
Southern Pacific	Suman-Bryan line, Brazos & Robertson Cos.	Benchley, Sutton	16.2
Southern Pacific	Seabrook-San Leone line, Galveston & Harris Cos.	Seabrook, Clearcreek	10.5

Source: Union Pacific/Southern Pacific merger application.

7.3 *Class III Railroads (Shortlines of Texas)*¹

Currently there are some 45 Class III railroads operating in Texas. The Association of American Railroads classifies these railroads as either Switching & Terminal companies or Local Railroads. The following 1993 data relate to 36 of these Class III railroads.

Shortlines in Texas operate 1,619 miles of railroad and handle approximately 450,000 rail carloads of traffic annually. Although Switching & Terminal railroads operate only one

¹ This discussion was prepared by Mr. Hoy Richards.

third of the Class III mileage, they account for 75% of the employment and 65% of the traffic moved by the Texas Class III railroads. Texas Class III railroads handle approximately 25% of all rail traffic that is both originated and terminated in Texas. Farm products account for 22% of all Class III traffic. This is followed by 17% chemicals, 17% petroleum and coal, and 9% non-metallic minerals. It should be noted that farm products account for 22% of the Class III traffic as compared to only 6% of the Class I railroad origination. The higher percentage of Class I terminations (14%) can be explained by the fact that shortlines deliver to Class I farm product traffic for export out of the State.

The introductory chapter to the Texas Rural Rail Preservation report, prepared for the RRC and the Office of the Governor, suggests the significance of Texas shortlines to the economic future of rural Texas:

Observers of the Texas rail industry will acknowledge that the system is in a continual state of transition. The rail network seen today is not what it was yesterday or what it will be tomorrow.

The changes that have taken place in the system are primarily the results of acquisitions, mergers, consolidations and bankruptcies. In reviewing these changes it becomes apparent that there is an increasing role for the railroad industry in the expanding Texas economy. Although Class I railroad companies operate most of the track miles in the state, and account for the majority of freight tonnage moved, they no longer serve vast regions of the state. Many communities currently served by major railroads are discovering that their rail service may be in jeopardy. Others have lost service, while still others are now being served by a shortline railroad. Unfortunately, over the years, community leaders and users of rail service have taken for granted the existence of the railroad and now find themselves in a reactive position. The situation might be completely different if these same groups had taken a proactive position in past efforts to preserve rail service in rural areas. Just as the rail system has undergone change, so has its users. Line abandonments have left users without service and necessitated the increase use of trucks. Others have relocated their plants or gone out of business.

The preservation of rural rail transportation service is the responsibility of both the private and public sector. Shortline railroads serving rural Texas feed rail traffic to the Class I carriers. In the past as "public utilities," the Class I carriers have had a duty to serve shippers requiring their service. The deregulation of the railroad industry has lessened this responsibility. However, deregulation is not the only reason for rail service abandonment. Rail branch line economics frequently justify the discontinuation of "unprofitable" service. Still other socio-economic factors must be given consideration prior to the dismantlement of a rail line. For instance, including social as well as economic costs of rail abandonments should be a part of state-wide transportation system policy.

7.4 *Impact on agriculture industries*

An expert in the field of rural rail transportation² has noted that four times as much agriculture traffic originating in Texas moves via truck transportation as does agriculture shipments originating outside of Texas destined for Texas ports. This disparity is only partially explained by shorter distances. Previous line abandonments, caused by "economically unfeasible" traffic volumes and rail mergers, have forced many agriculture shippers in rural communities to increase their use of truck transportation. This change in transportation modes has created increased stress on rural roadways leading to higher demand for repairs and infrastructure development. Counties that are financially-strapped are having difficulties adjusting to these increased demands. In addition, Texas agriculture producers in these abandoned areas experience higher total transportation costs that are not readily recovered through commodity prices.

² Mr. Hoy Richards.

7.5 Conclusion

If there are no additional track abandonments, other than those proposed in the merger application, the merger's impact on Texas' rural areas will be minimal. However, a cursory review of previous mergers would suggest the Union Pacific is being overly-optimistic about the future viability of the significantly-redundant tracks that will be created by the merger. It has also been suggested that if the merger is not approved, the Southern Pacific may be forced to abandon significant sections of less-profitable track. In either case, we feel that any abandonments should include all trackage necessary to reach a mainline junction. This will allow abandoned-segment purchasers a reasonable guarantee of mainline access providing the opportunity for effective rural-rail preservation efforts.

Section 8. Merger Impacts on Industrial Development

8.1 Introduction

The popular press, economists, pundits and futurists purport that the United States has passed through the industrial age and has been moving toward an information-based economy. The growth of the business services sectors, particularly information-based services, seem to support this assertion. Texas has also followed this trend. However, even though manufacturing has declined as a percentage of total employment in Texas and the United States, manufacturing employment still represents one out of every seven jobs in the United States and almost one out of every six jobs in Texas. This section examines how the proposed Union Pacific/Southern Pacific is likely to impact Texas' ability to attract and retain employers in the manufacturing sector.

Chart 8.1
US Manufacturing Employment as a Percentage of
Total US Employment 1980-1993

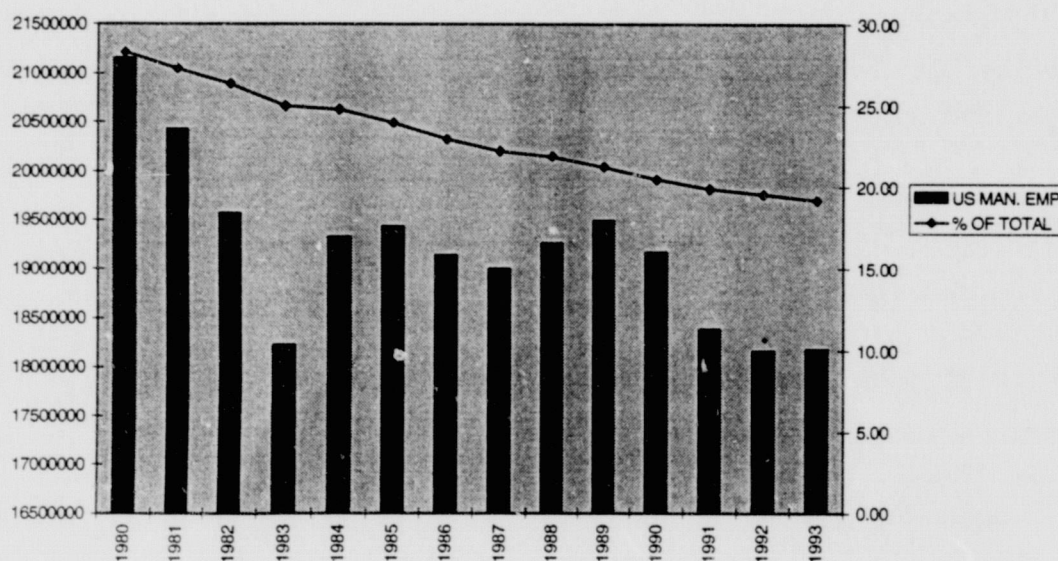


Chart 8.2
US Information Based Services Employment as a Percentage of
Total US Employment 1980-1993

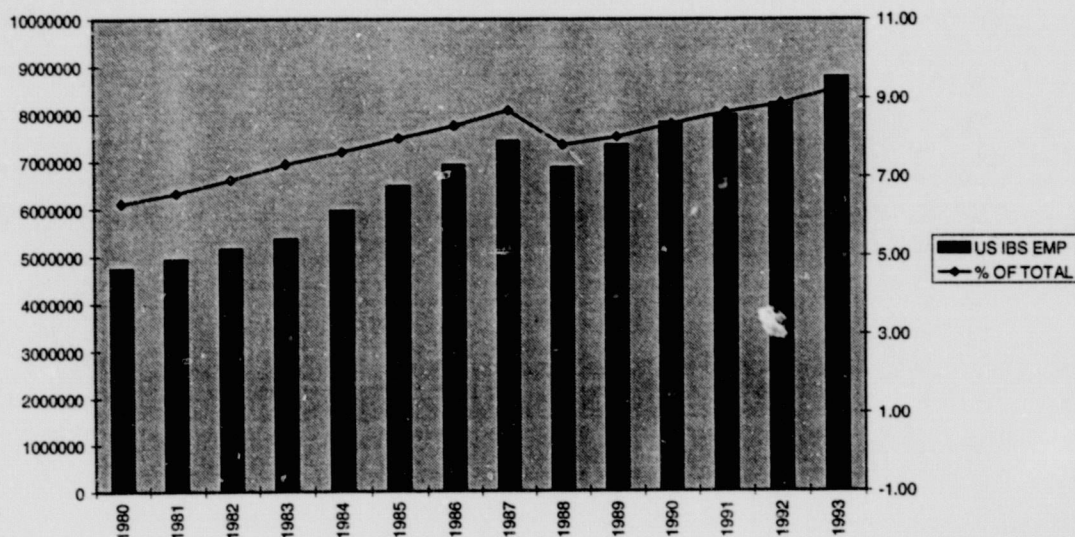


Chart 8.3
Texas Information Based Service Employment as a Percentage
of Total Texas Employment 1980-1993

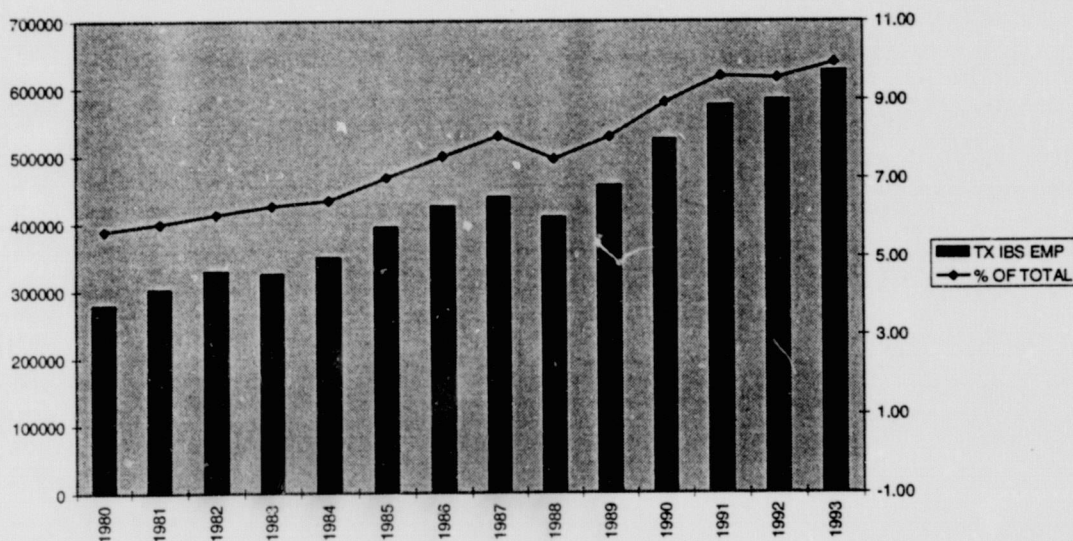
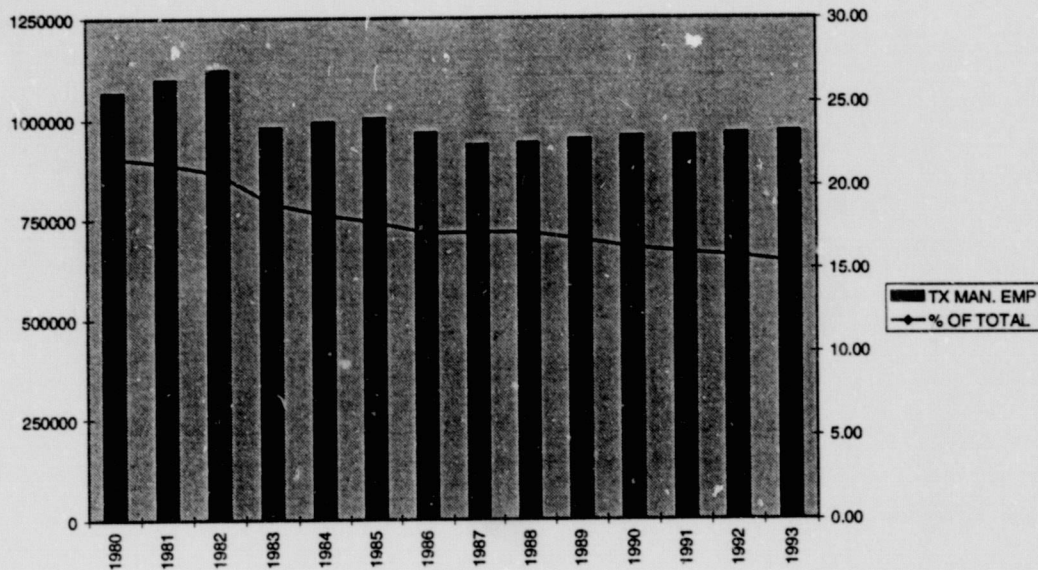


Chart 8.4
Texas Manufacturing Employment as a Percentage
of Total Texas Employment 1980-1993



8.2 *The Role of Rail Transportation*

The economic development literature notes that availability of rail transportation is a critical component in attracting manufacturing plant sites -- especially durable goods manufacturing -- and the warehousing and distribution facilities that support their operations.¹ Indeed, the presence of rail transportation has been found to be a necessary, if not sufficient, condition for attracting industrial development. However, much of the literature fails to illustrate a critical point in its evaluation of the importance of rail transportation in site selection decisions: It is not the just the presence of rail

¹ For example, see Chapman, Keith, *Industrial Location* (1987), Miller, E. Willard, *Manufacturing: A study of Industrial Location*, (1977), Walker, David F., *Industrial Services*, (1977), and McPherson, Edwin M., *Plant Location Selection Techniques*, (1995)

transportation that is important, it is the presence of competitive rail transportation that is important.²

This point is not treated with distinction in most academically-based research efforts. However, there is direct as well as anecdotal evidence in the professional literature to suggest that the presence of two or more competing rail lines is very important in the site selection decision. In a 1991 assessment of plant site location factors in the forest products industry, the availability of access to multiple rail carriers was considered among the three most critical features of any given location.³ In fact, industry specific publications report that competitive rail access is important for manufacturing facilities across a wide range of industries.⁴

Articles and publications that tout the advantages of particular industrial sites regularly highlight their competitive rail transportation assets. In a 1994 article, *National Real Estate Investor* briefly reviewed a number of new development sites across the country.⁵ One prominent project illustrated is the 15,000 acre Cedar Crossing Park development near Houston. The article proudly proclaims that it is served by both the Union Pacific and Southern Pacific railroads. Similarly, a 1995 article illustrating the competitive advantages of Columbus, Ohio, as an industrial development site boasts of the area being served by three Class I railroads.⁶ Another article promoting Oklahoma City

² In this context, competition refers to intramodal competition.

³ Muller, E. J. (1991). Site Selection: Weekes Forest Products. *Distribution*, 90(13), 37-38.

⁴ Kinstrey, Robert (1991). Greenfield Mill Site Permitting Can take Years of Preparation. *Pulp & Paper*, 65(2), 139-143. Kalvin, Judy (1986). How Philip Morris Found Marlboro Country. *Corporate Design & Realty*, 5(8), 124-127.

⁵ Jurgens, Kallie (1994). Park Developers, Managers Capitalize on Changing Times in Corporate America. *National Real Estate Investor*, 36(11), 138-155.

⁶ McKee, William (1995). Voyage to the Midwest. *Distribution*, 94(1), 52-57.

observes that equally important to being at the crossroads of major east-west and north-south highways (IH40 and IH35), is the presence of three Class I railroads.⁷ In conversations with local economic development officials and real estate developers, the presence of competitive rail access is touted as being one of the most important features of their available properties.

Perhaps the most telling arguments for competitive rail access can be found in the comments by senior managers of short-line railroads. These industry insiders are among the loudest voices supporting the maintenance of multiple rail carrier competition. The title of a recent article in *Railway Age* advises: "Don't limit yourself to one Class I connection."⁸ This article presents the results of an informal, nonscientific survey of short-line rail managers who were asked to comment on the need to have access to more than one Class I rail carrier.⁹ The availability of competitive access gives shippers, as well as short-lines, options; therefore, major rail carriers are less likely to take a particular piece of business for granted. One respondent noted: "Spurred by the prospect of losing the move to a competitor, Class Is can deliver creativity, rate flexibility, customized contracts, and improved service reliability." When there is competitive access, shippers can choose among the strengths that each Class I has to offer such as differences in service performance to various destinations or particular strengths, or weaknesses in handling a

⁷ Oklahoma City is currently served by two Class I railroads -- Union Pacific and Burlington Northern/Santa Fe. McConville, D. (1994). Oklahoma City. *Distribution*, 94(1), 52-57.

⁸ Blanchard, Roy (1995). Don't Limit Yourself to a Single Class I Connection. *Railway Age*, 196(1), 14+.

⁹ Participants included managers and executives from the Indiana Harbor Belt, Rail Tex (a short-line holding company), South Central Florida, Michigan Southern and the Central Ohio.

given product line. As noted by Chuck Allen of the Indiana Harbor Belt Railway: "I'd hate to run a railroad with just one connection . . . they'd have one hell of a grip on you."

Clearly, these short-line rail carriers do not want to be captive to a single Class I rail carrier any more than shippers do. An indictment of how captive shippers can be treated by their serving rail carriers is illustrated by noting that two of the ten rail-served electric-utility power plants in Texas are currently building their own rail lines to connect with competing carriers.¹⁰ (Unfortunately, this substantial expense is rarely justified when evaluating a new site.) This points to our major concern with the proposed merger as it relates to industrial development in the state of Texas.

8.3 *Impact of the Burlington Northern/Santa Fe Agreement*

The Union Pacific, as a method of addressing competitive concerns, entered into an agreement to develop a trackage rights agreement with the Burlington Northern/Santa Fe railroad. (The agreement is described in other sections of this report.) The proposed agreement provides that full access trackage rights¹¹ be granted to the Burlington Northern/Santa Fe anywhere that the merger reduces competitive access from two rail carriers (Union Pacific and Southern Pacific) to one. However, the agreement specifies that this provision only applies to those areas that are currently open to reciprocal switching between the Union Pacific and Southern Pacific.¹²

¹⁰ See the included description of the merger's impact on coal shipments.

¹¹ As noted elsewhere in this report, full-access trackage rights refer to the tenant railroad having competitive access to customers located along the specified route.

¹² Being open to reciprocal switching means that a customer located on a given railroad's line has access to another railroad. The carriers will switch each others' cars as directed by the customer's routing.

It is common for industrial development sites to be wholly included within reciprocal switching areas. However, there are defined limits to that area. As confirmed through conversations with executives of the Union Pacific railroad,¹³ any new industrial development outside of existing reciprocal switching areas will not qualify for inclusion in the proposed trackage rights agreements. Therefore, any development that occurs outside of areas that are currently open to reciprocal switching, and are served by the merged Union Pacific/Southern Pacific, will be captive to the UP/SP.

8.4 *Merger Impacts on Industrial Development*

The merger is not likely to have any significant impact on Texas being able to attract new industrial development to areas that are already developed and served by more than one rail carrier -- either directly or through reciprocal switching. In fact, proposed capital improvements and routing efficiencies (leading to improved service) attendant to the merger may enhance the attractiveness of these areas of the state. However, given the extent of combined trackage that would follow a Union Pacific/Southern Pacific merger in Texas, particularly in the relatively undeveloped areas in western and southwestern parts of the state, we are very concerned that these areas will be at a competitive disadvantage for industrial site locations.

Without competitive access, areas of the state that will be captive to the Union Pacific will not be as attractive as already-developed urban areas in-state or sites outside of Texas. This presents problems for areas of the state that are already struggling to maintain or enhance their ability to attract quality job opportunities for their residents.

¹³ Conversation with Mr. Jim Dolan and Mr. John Rebensdorf, Union Pacific Railroad.

Moreover, given the likelihood that the parallel routes created by this merger could, in the future, lead to some track abandonment in rural areas,¹⁴ these hinterlands may be denied the opportunity to ever attract future industrial development. *Without the necessary condition of access to competitive rail service, the sufficient conditions of available land, labor and other resources are meaningless for industrial site locations.*

8.5 Conclusion

We see the proposed merger enhancing the attractiveness of some industrial sites if the Burlington Northern/Santa Fe aggressively pursues business opportunities granted through the proposed trackage rights agreement. However, if the BNSF does not pursue this business, then Texas' industrial sites that will go from two to one serving railroad will find their marketing efforts much more difficult. Under this scenario, it is likely that Texas will lose industrial site locations to other states.

More importantly, we see the merger, as currently proposed, as being detrimental to future industrial development opportunities for much of south, west and southwest Texas. Clearly, state leaders are not seeking to encourage the further concentration of economic opportunity to the states' urban areas. Indeed, much of the effort being undertaken by the Texas Department of Commerce and other agencies is designed specifically to enhance economic opportunities for the less developed parts of the state. With fewer choices of rail carriers, industrial site locators may choose to locate in areas outside of Texas that offer more choices for rail service. Furthermore, the likely

¹⁴ Since many of these rural areas do not possess significant rail-shipping industries now, there is little that can be done, on a broad scale, to prevent the loss of rail service to rural communities. (See the section on rural rail service.)

abandonments that have historically accompanied parallel rail mergers will hinder development efforts in many rural communities across the state.

Section 9: Regional Economic Impacts from the Proposed UP-SP Merger

9.1 Introduction

Measurable regional impacts in the short term will result from: (1) employment changes necessitated by the merger and (2) capital expenditures to upgrade UP-SP lines. Over the long term, the cost structure and economic competitiveness of regions with significantly enhanced or diminished rail infrastructure and service likely will be affected as well. This latter set of impacts is largely unmeasurable and is addressed only in general terms.

9.2 Impacts from Merger-Related Employment Change

9.2.1 Direct Impacts

According to data compiled from the UP-SP Rail Merger Plan, forty-one communities across Texas will likely experience net job gains or losses in UP-SP employment for up to a three-year period should the merger be approved. (Table 9.1 identifies these communities, grouped according to the Comptroller's regional schema.) As Table 9.1 shows, the greatest employment impact from the merger will be felt on the Gulf Coast, which stands to lose 546 jobs. The bulk of these losses will occur along the upper Gulf Coast, with 452 in Houston alone. Next in likely employment impact is the Central Corridor, projected to lose 322 jobs in the aftermath of the merger. Nearly half of these losses (146) will occur in Palestine, while just under one-third will affect San Antonio. Smithville, the other community in the region facing significant job losses should the merger be approved, stands to lose 60 UP-SP positions. East Texas will record a modest post-merger loss of 41 jobs, most in Texarkana and Tyler.

The state's remaining three regions, on the other hand, should record post-merger job gains. By far the most significant gains will occur on the Border, where UP-SP employment should rise by 135 positions. Most of these jobs (123) will be concentrated in El Paso. Among the region's smaller communities, Eagle Pass will feel the greatest impacts, with 31 new UP-SP jobs. The Plains will gain 52 UP-SP jobs should the merger be approved (most in Dalhart and Sweetwater), while the Metroplex will gain 14 UP-SP jobs. Overall, Texas will lose 708 UP-SP jobs should the merger be approved.

It is important to bear in mind that in relative terms, the greatest employment impacts are likely to be felt in the smaller communities. For example, Houston's projected loss of 452 UP-SP positions, given the size of its employment base and economy, will go virtually unnoticed. In Palestine, on the other hand, the loss of 146 UP-SP jobs will proportionately have a much larger effect.

Table 9.2 details the regional change in payroll and retail spending likely to attend employment changes resulting from the merger. The Gulf Coast should lose nearly \$22 million in annual payroll and almost \$9 million in annual retail spending, followed by the Central Corridor with losses of \$12.8 million and \$5.1 million, respectively. East Texas stands to lose \$1.6 million in UP-SP annual payroll and \$600,000 in retail spending.

For the Border, employment changes related to the merger should boost annual payroll by \$5.4 million and add \$2.2 million in retail spending. The Plains is likely to add \$2.1 million in annual UP-SP payroll and \$800,000 in retail spending, while the Metroplex should gain \$600,000 in annual payroll and \$200,000 in spending. Overall, Texas will lose \$28 million in annual payroll and \$12.8 million in annual retail spending.

9.2.2. *Indirect impacts*

In turn, gains or losses in retail spending will ripple through Texas' regional economies, generating secondary or "multiplier" impacts in the form of enhanced or diminished economic activity, household earnings and employment. Table 3 details these impacts for the state and its six regions. As a consequence of UP-SP job losses following the merger, the Gulf Coast can be expected to lose \$21.3 million in annual output, \$7.7 million in household earnings and 453 jobs. In the Central Corridor, output will likely shrink by \$12.5 million, while household earnings will decline by \$4.5 million. The region could also be expected to lose an additional 266 jobs. In East Texas, the secondary impacts of UP-SP employment changes include the loss of \$1.5 million in economic activity, \$500,000 in annual household earnings and 31 jobs.

The Border economy should increase in volume by \$5.4 million as a result of the merger, while households in the region would add \$1.9 million in annual earnings. Regional employment would rise by 115 jobs. The Plains economy stands to grow by \$2 million following the merger, adding \$700,000 in annual household earnings and 42 jobs. In the Metroplex, UP-SP employment changes would add \$500,000 in annual economic activity, \$200,000 in household earnings and 10 jobs. For the state as a whole, changes in SP-UP employment should reduce economic activity and household earnings by \$27.4 million and \$9.9 million respectively, and cost 583 jobs.

9.3 *Impacts from Capital Expenditures to Upgrade UP-SP Lines*

9.3.1 *Direct impacts*

Should the merger be approved, UP-SP has identified nearly \$782 million worth of capital expenditures necessary to upgrade lines. As Table 4 shows, just over \$200 million of this is likely to be spent in Texas. The major beneficiaries of this spending are likely to be the Metroplex, followed by the Plains and Border regions. East Texas also will benefit from expenditures on line upgrades.

The Metroplex figures in three projects representing \$187.2 million of construction activity: The UP OKT line, from Herington, Oklahoma to Fort Worth; the UP T&P Line, from Fort Worth to El Paso; and, the Joint Line, from Big Sandy to Fort Worth. The Plains and Border regions will also benefit from improvements to the UP T&P line, while East Texas will be impacted by construction on the Joint Line. Separately, the Plains and Border regions will benefit from upgrades to the SP Golden State Route, which runs from Topeka, Kansas to El Paso.

9.3.2 *Indirect impacts*

As with UP-SP employment changes, the expenditure of approximately \$200 million by the merged companies on line upgrades will generate secondary economic, income and employment impacts. Estimates of these impacts on the Metroplex, Border, Plains and East Texas regional economies are detailed in Table 9.5. Over the duration of construction related to the proposed upgrades, economic activity for the state as a whole will rise by nearly \$493 million. Of that, \$171 million will go toward household earnings. Additionally, just over 7,700 jobs will be created. Once again, the major beneficiary of

Table 9.4
Proposed Merger-Related Expenditures on UP/SP Line Upgrades in Texas

<i>Line Segment</i>	<i>Total UP/SP Expenditures</i>	<i>Expenditures in Texas</i>	<i>Regions Affected</i>
SP Golden State Route: Topeka-El Paso	\$145.8 Mil	\$14.0 Mil	Plains, Border
UP T&P Line: Fort Worth-El Paso	125.4	125.4	Metroplex, Plains, Border
UP OKT Line: Herington-Fort Worth	91.5	36.6	Metroplex
Joint Line: Big Sandy-Fort Worth	25.2	25.2	East Texas, Metroplex
Total	---	201.2	

Source: Center for Economic Development and Research.

Table 9.5
Estimated Merger-Related "Multiplier Impacts" on Texas Regions from Line Upgrades

<i>Line Segment</i>	<i>Output</i>	<i>Earnings</i>	<i>Jobs</i>	<i>Regions Affected</i>
SP Golden State Route: Topeka-El Paso	\$34.3 Mil	\$11.9 Mil	536	Plains, Border
UP T&P Line: Fort Worth-El Paso	307.2	106.6	4,803	Metroplex, Plains, Border
UP OKT Line: Herington-Fort Worth	89.7	31.1	1,402	Metroplex
Joint Line: Big Sandy-Fort Worth	61.7	21.4	965	East Texas, Metroplex
Total	492.9	171.0	7,706	---

Source: Center for Economic Development and Research and "Texas Table," *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, US Department of Commerce, Bureau of Economic Analysis, p. 46. Multipliers used are those estimated for repair and maintenance construction: output = 2.45, earnings = 0.85, employment = 38.3 jobs per \$1 million of spending.

Table 9.1
Merger-Related UP-SP Job Gain or Loss (Net)
for Texas Regions and Communities

<i>Region/Community</i>	<i>Net Gain(+)/Loss(-)</i>
Border	+135
Alpine	-10
Brownsville	-2
Del Rio	+31
Eagle Pass	-4
Edinburg	-1
El Paso	+123
Harlingen	-9
Laredo	+7
Central Corridor	-322
Austin	+1
Flatonina	-1
Hearne	-7
Palestine	-146
San Antonio	-97
Smithville	-60
Taylor	-9
Waco	-3
East Texas	-41
Longview	+1
Lufkin	-2
Mineola	-2
Texarkana	-18
Troup	-3
Tyler	-17
Gulf Coast	-546
Amelia	-18
Beaumont	-9
Corpus Christi	-7
Dayton	-3
Galveston	-12
Gregory	-1
Houston	-452
Kingsville	+2
Spring	-19
Strang	-2
Victoria	-25
Metroplex	+14
Dallas	+7
Denison	+3
Fort Worth	+5
Grand Prairie	-1
Plains	+52
Amarillo	-1
Big Spring	-44
Dalhart	+36
Sweetwater	+63
Total	-708

Source: Compiled from "Labor Impact Exhibit," UP-SP Rail Merger Plan, Finance Docket No. 32760, #07-421.

these impacts is likely to be the Metroplex, followed by the Plains, Border and East Texas economies.

9.4 *Impacts on Regional Cost Structure and Competitiveness*

Over the long run, the impacts detailed above and displayed in Tables 9.1-9.5 will be dwarfed by changes to each region's cost structure and competitiveness brought on by enhanced or diminished rail infrastructure and service. These latter issues are addressed at length elsewhere in this report and are mentioned here only to underscore their role in regional development. Should, on the one hand, the proposed merger result in more efficient transportation of commodities and, consequently, lower shipping costs to manufacturers, then regions in Texas (and elsewhere in the US, for that matter) characterized by a strong UP-SP presence likely will become more attractive locations for capital investment and industrial development. If, on the other hand, the proposed merger diminishes workable competition in the rail industry and has the effect of raising shipping costs, then Texas and its SP-UP-rich regions could be placed at a competitive disadvantage vis-à-vis other locations in North America.

Section 10: Safety¹

10.1 Introduction

This section considers the impacts of the proposed Union Pacific/Southern Pacific merger on public safety in Texas. In particular, assessments are made on the merger's possible impacts on highway-rail grade crossings. Assessments of the merger's impacts on highway safety related to increased use of over-the-road trucks, the shipment of hazardous chemicals and the presence of Mexican trucks on Texas roadways are addressed in other sections of this report.

10.2 Merger Impacts on highway-rail grade crossings

Safety is a by-product of good engineering. Under public ownership, transportation safety concerns almost always receive top priority in any investment decision. Within the private sector safety risks are sometimes taken when revenue "short-falls" are experienced. One of the few remaining controls states and federal agencies have over railroad operations is in the area of public safety. Federal rules and regulations are monitored by both federal and state agencies. If a railroad does not meet the standards of the regulation it may be fined or restricted in its operation. Just as with any other private concern, a well engineered and financed railroad usually has the best safety record.

Since Texas has the most railroad miles and a very high percent of the nation's annual vehicle miles driven, it is not surprising that the state is the nation's leader in highway-rail accidents. As noted in other sections of this report, railroads operating in Texas move

¹ This section was extracted from a study by Mr. Hoy Richards of Richards and Associates.

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significant volumes of hazardous materials. Given the number of daily hazardous material train movements, it is expected that a derailment, possibly resulting in a spill, will occur occasionally.²

The Railroad Commission of Texas, through a partnership with the Federal Railroad Administration, has responsibility for rail safety. History has shown that as individual railroads have slipped into financial difficulties, safety has deteriorated. A financially sound railroad will provide a safer environment for its employees and the public than a railroad that is fighting for its financial survival.

The Southern Pacific Railroad does not have one of the best safety record among Class I railroads. Highway-rail safety improvement projects on the SP are considered difficult to implement on occasion due to lack of personnel and scheduling of work crews. On the other hand the Union Pacific has one of the best safety records among all railroads. Moreover, the Union Pacific has a reputation of working with local communities and the Texas Department of Transportation to improve safety at highway-rail grade crossings.

The proposed Union Pacific/Southern Pacific merger will create redundancies in rail routes. It has been suggested, though not necessarily by the merger applicants, that these redundancies could lead to track abandonment. These potential abandonments could enhance the ability of local communities in their effort to close and/or consolidate under-used highway-rail grade crossings. Several Texas communities are served by both the Union Pacific and Southern Pacific railroads. The closure of under-used grade crossings would save Texas

² A breakdown of rail and truck hazardous materials incidents is included in Table 4.3 on page 4-9.

taxpayers not only the capital cost of warning device improvements but also the state portion of continuous warning device maintenance costs.

In addition, railroad relocation and consolidation projects in several Texas communities could be assisted by the merger. For example, the Brownsville railroad relocation and the Texas A&M campus rail relocation projects involve both the UP and SP. Where railroads share in the responsibility for maintenance of terminal facilities, such as in Houston and Corpus Christi, strong, financially secure railroads will enhance public safety through adequately funded rail infrastructure maintenance programs.

10.3 Conclusion

The proposed merger of the Union Pacific/Southern Pacific railroads could serve to improve highway-rail grade crossing safety in Texas. The Union Pacific has the financial wherewithal to ensure that safety-based projects are completed and maintained. Inasmuch as the merger may also encourage the abandonment of little-used trackage, it is expected that communities can look to consolidate or close unwanted highway-rail grade crossings with attendant safety improvements. In addition, the merged railroad may also be able to accommodate rail relocation projects in areas currently served by both applicants.

If the merger is opposed, the Railroad Commission should request documentation from the Southern Pacific specifying how they will finance safety-related projects. The Railroad Commission may wish to direct its rail safety staff, in cooperation with the Texas Department of Transportation, to further detail the impacts of the merger on highway-rail grade crossing elimination and consolidation.

Section 11: Competition¹

11.1 Introduction

In this section we will consider elements of rail competition not covered in previous sections of this report. We will discuss the parallel nature of this merger compared to the recently-approved merger of the Burlington Northern and Santa Fe railroads. This will be followed by a brief consideration of the behavior pattern of firms in an oligopoly market. An evaluation is made regarding the degree to which the proposed agreement between the Union Pacific/Southern Pacific and Burlington Northern/Santa Fe will address the anti-competitive features of the proposed merger. Finally, an overall assessment of the merger's competitive consequences is presented.

11.2 Comparing mergers

Much has been made of the inevitability of the merger of the Union Pacific and Southern Pacific mergers once the Burlington Northern/Santa Fe merger was approved. However, there are important distinctions between these mergers.

The Burlington Northern/Santa Fe merger has been characterized as a "vertical" or "end-to-end" merger. This signifies that, in general, the merged railroads served different markets and combining the two systems will lengthen their hauls and extend service territories.² In contrast, a "parallel" or "horizontal" merger is one in which the merging carriers have significantly duplicative routes and serve many of the same markets. In

¹ Many of the issues in this section are drawn in whole or in part from the competitive analysis prepared by Dr. William Tye. The reader is strongly encouraged to read Dr. Tye's report, which is attached as Appendix A.

² See footnote 5 of Dr. Tye's report.

Table 11.1 below³, a comparison of the market coverage of the listed railroads before and after merger indicates that while the Burlington Northern/Santa Fe combination substantially increased the market coverage for these carriers, the Union Pacific/Southern Pacific merger gains very little market over pre-merger coverage. While any major rail merger will have vertical and horizontal elements, concerns are raised about anti-competitive effects when the service territory is not substantially increased. The Union Pacific/Southern Pacific merger appears to be more about market consolidation than market extension -- especially in the Texas-Louisiana, Texas-Midwest corridors.

Table 11.1
Comparison of Major Western Rail Systems
Before and After BN-SF Merger and
Before and After Proposed UP-SP Merger
Percentage of Total Population and Income in Areas Served

Rail System	No. of areas served	Percent of Population	Percent of total income	Percent of agriculture income	Percent of mining income	Percent of manufacturing income
Pre-merger Burlington Northern	47	23.09	22.20	34.96	38.48	22.46
Pre-merger Santa Fe	24	25.12	26.42	27.04	40.05	24.73
Existing BN-SF	60	37.26	37.44	51.24	49.50	36.37
Proposed BN-SF	69	41.76	41.01	55.73	60.99	38.49
Existing Southern Pacific	37	31.39	31.34	29.92	47.18	29.34
Existing Union Pacific	66	38.85	38.52	46.23	55.93	38.04
Proposed UP-SP	75	42.20	41.40	53.48	63.14	40.01

³ The data presented here were compiled by Dr. Charles Zlatkovich. Dr. Zlatkovich's report is attached as Appendix C.

11.3 Firm behavior in an oligopoly

The proposed merger has the effect of reducing the number of Class I rail competitors in the western United States from three to two. In those markets currently served only by the Union Pacific and Southern Pacific, the market is reduced from two to one competitor. However, the merger applicants contend that granting the Burlington Northern/Santa Fe a combination of trackage and haulage rights will maintain the presence of at least two competitors for these two-to-one markets. A review of the professional and academic literature⁴ regarding firm behavior in an oligopoly presents little evidence for predicting the competitive consequences of the proposed merger. The literature documents behavior ranging from intense competition to collusion.⁵

The merger applicants have claimed that the "character of rivalry" is the determining factor guaranteeing that competition will continue. However, the experiences noted in the literature suggest that the "character of rivalry" is highly idiosyncratic to specific markets and is often mercurial. Numbers do count. In our opinion, competition will be diminished by the removal of a third competitor.

11.4 The BNSF-1 agreement

In an explicit acknowledgment of the competitive problems created by the proposed merger, the applicants have negotiated an agreement with the Burlington Northern/Santa Fe to enter into a future agreement for a series of trackage or haulage

⁴ See Dr. Tye's report in Appendix A.

⁵ This range of behavior is reported to include rail firms.

rights⁶ to solve anticompetitive consequences of the merger. However, the agreement does not appear to provide any legal compulsion for the Burlington Northern/Santa Fe to actually initiate any services.⁷ Moreover, if BNSF chooses to provide services based on the proposed agreement, we have additional concerns based on three broad areas: What this agreement should be and is not, features of the agreement that could cause service at some disability, and limitations on the number of customers that could be served via trackage rights.

11.4.1 What the agreement should be and is not

The BNSF-1 agreement is not a trackage rights agreement. The Union Pacific/Southern Pacific and Burlington Northern/Santa Fe state they will make a "best effort" to complete the terms of the trackage rights agreement by June 1, 1996 -- well after the date on which the Commission needs to render its position. Conspicuous in its absence, compared to other trackage rights agreements that have been filed with the ICC (STB), is an operating plan that specifies how operations are to be conducted by the joint carriers. For example, as noted earlier in this analysis, the Union Pacific has proposed to operate "directional traffic" between Houston and St. Louis in which all south bound UP/SP trains will be routed over existing Southern Pacific lines, while northbound UP/SP trains will operate over existing Union Pacific tracks. Yet, the proposed agreement calls

⁶ Trackage rights allow a tenant railroad to utilize a landlord railroad's tracks for a fee to provide service to shippers located on the landlord's tracks. In this case, haulage would refer to the BNSF contracting with the UPSP to transport BNSF equipment to and from customer's locations to an agreed-upon interchange point.

⁷ Once service begins, the carrier serving via trackage rights may assume common carrier obligations. However, in the post-Staggers act rail marketplace, common carrier obligations do not carry the same weight of performance they once did.

for granting trackage rights to the Burlington Northern only over Southern Pacific lines along this route. How the Burlington Northern/Santa Fe is supposed to effectively compete on service when their trains will be going against the flow of traffic 50 percent of the time is not addressed.⁸ Without fairly detailed operating plans, an assessment of the Burlington Northern/Santa Fe's ability to compete aggressively is simply not possible. We are being asked by the merger applicants to trust them to develop an agreement that will provide effective competition. Yet, the Union Pacific/Southern Pacific has every incentive to engage in competitive behavior in subsequent negotiations to limit the level of service that can be offered by the Burlington Northern/Santa Fe.

Another critical element missing from the proposed agreement is information regarding switching charges that may be levied on the Burlington Northern/Santa Fe by the Union Pacific/Southern Pacific for gaining access to those customers who qualify for access through the trackage rights. The proposed agreement calls for switching charges to be set at rates that will recover costs plus "reasonable" returns. Railroad history tells us that one carrier's reasonable return is another's extortion. Under the guise of earning a "reasonable" return, the Union Pacific/Southern Pacific could ensure that Burlington Northern/Santa Fe's costs will always be higher than its own.

11.4.2 Service at some disability

There are several elements of the BNSF-1 agreement that we believe could limit the ability of the Burlington Northern/Santa Fe to compete effectively for traffic from customers accessed through trackage rights. In most every trackage rights agreement, the

⁸ As noted in this report and the merger application, the Houston to St. Louis route is very important for chemical and plastics shippers located on the Texas Gulf Coast.

tenant railroad⁹ is subject to the exclusive direction and control of the landlord railroad. This includes giving the landlord unrestricted power to change management and operations. While the proposed agreement calls for Burlington Northern/Santa Fe to receive "equal dispatch without discrimination," many of the experts we consulted suggest that tenant carriers do not always get equal dispatch. In an apparent acknowledgment of this possibility, the agreement calls for the creation of a joint service committee to regularly review this issue. However, there is no information on the make-up of the committee or specification of its authority to correct "unequal" dispatch.¹⁰

Where the Burlington Northern/Santa Fe believes improvements in infrastructure need to be made, the agreement provides a mechanism for addressing these needs -- at the BNSF's expense. However, these needs must be identified within the first year of the trackage rights agreement. We are very concerned that during the first year of the proposed trackage rights agreements, the Burlington Northern/Santa Fe will be preoccupied with the details of its own merger and thus unable to assess all of the infrastructure improvements needed over the several-thousand miles of tracks covered in the proposed trackage rights. Failure to identify these needs could hinder the Burlington Northern/Santa Fe's ability to effectively compete in these markets.

The proposed agreement also calls for the Burlington Northern/Santa Fe to be able to request terminal support services including fueling, running repairs and switching in conjunction with serving customers accessed through the trackage rights. Of course, access to these services is based on availability and capacity of Union Pacific/Southern

⁹ The tenant railroad is the recipient of the trackage rights, while the landlord railroad owns the tracks.

¹⁰ Rail experts have noted that it is difficult to prove discrimination in dispatch, but it often exists.

Pacific resources. We consider the potential reliance upon the Union Pacific/Southern Pacific by the Burlington Northern/Santa Fe for these services a lessening of the BNSF's ability to manage its operations and compete aggressively for traffic.

A particularly egregious example of the proposed agreement limiting the ability of the competing railroad (BNSF) to effectively manage its own operations is the restriction on changing the type of service that Burlington Northern/Santa Fe can offer its potential customers. The agreement requires that 45 days prior to initiation, Burlington Northern/Santa Fe must elect one of the following as the means by which it will provide service: 1) direct service, 2) service through reciprocal switching, and 3) use of a third party for switching with Union Pacific/Southern Pacific's prior approval. However, once this choice is made, it cannot be changed for five years. This provision could severely limit the Burlington Northern/Santa Fe's ability to adapt to changing market conditions, thus lowering their effectiveness as a competitor.

Industry experts have also called the "quality" of the Burlington Northern/Santa Fe's connections to eastern rail carriers granted through the trackage rights to St. Louis into question. If there are problems with this connection, it could, again, limit the Burlington Northern Santa Fe's ability to compete.

In some markets, the agreement allows the Burlington Northern/Santa Fe to choose haulage agreements for providing the claimed competitive access. These markets include Tyler, Defense, College Station, Great Southwest, Victoria and Sugar Land. In addition, the entire route from Houston through Corpus Christi to Brownsville/Harlingen may be served through haulage arrangements. But haulage arrangements do not constitute effective competition.

Individually, these concerns raise some reservations about the ability of the Burlington Northern/Santa Fe to provide service that would be competitive with the Union Pacific/Southern Pacific. Together, they cast serious doubt about the quality of competition in a post-merger market. The Southern Pacific has survived for years by being the low-cost, low-service carrier. There is no indication the Burlington Northern/Santa Fe will be willing to adopt low-ball pricing to attract customers to lower service levels. With the restrictions placed on the Burlington Northern/Santa Fe's operations by the agreement, a best case example could be characterized as "service with some disability." The worst case could be totally ineffective service competition. Neither is in the best interests of Texas.

11.4.3 Limitations on customer access

Perhaps the feature of the proposed agreement that causes the greatest concern is the limitation on customers who will be granted access to a competing carrier (BNSF) under the trackage rights. The only customers who would qualify for competitive access would be those who are currently served by both the Union Pacific and Southern Pacific. If you are served by only one of these railroads, you remain captive to a single carrier. Similarly, if you are served by a second carrier, other than Union Pacific or Southern Pacific, Burlington Northern/Santa Fe will not be granted access. Therefore, customers moving from three competitive options to two are not guaranteed continued access to a third carrier. Moreover, access to the Burlington Northern/Santa Fe is further restricted to industries within existing reciprocal switching districts served by only the Union Pacific and Southern Pacific. As noted in a previous section of this report, any new development

outside of existing switching districts would be captive to UP/SP. This could effectively eliminate future rail competition for many areas of the state -- particularly rural areas. Furthermore, the restrictions on customer access could result in traffic densities for the Burlington Northern/Santa Fe that are too low to warrant vigorous competition. This concern is heightened by a close inspection of the proposed agreement. **The list of cities whose customers will have access to the Burlington Northern/Santa Fe does not include Houston,¹¹ Dallas and Fort Worth -- the state's largest industrial areas.¹²**

Limiting service choices, the potential to create service barriers, and denying competitive access to many existing and future shippers raises serious questions about the BNSF-1 agreement's ability to provide effective competition to replace an independent service provider. Choosing the Burlington Northern/Santa Fe as the recipient of these proposed trackage rights causes the highest possible level of market concentration. Moreover, the stakes are too high and the remedies too onerous to blindly trust carriers to work out the details of how to provide competition at some time after the Commission renders its position on the merger. Therefore, we believe that the BNSF-1 agreement does not provide sufficient guarantees of viable, effective competition to the merged Union Pacific/Southern Pacific railroad.

¹¹ The description for trackage rights in eastern Texas and Louisiana notes that the rights are for overhead traffic only except for local access to industries served by UP and SP and no other railroad at Baytown, Amelia, Orange, Mont Belvieu and Eldon. The Houston to Memphis grants list no Texas points that will be open to the BNSF.

¹² We do note that there are references to granting access to BNSF for all 2 to 1 points via trackage rights, haulage or other contractual means. For example, as observed in Section 3, the electricity generating plants at Elmendorf are to be included in subsequent trackage rights even though this community is not specifically listed in the agreement. However, this acknowledgment did not occur until after the shipper approached the Union Pacific. This confirms our concern that the level of detail needed to evaluate this agreement's competitive impacts is simply not present. In addition, we are uncertain as to how a shipper might be treated, and what the shipper's recourse would be, if they discover their community is not listed after the merger is approved.

11.5 Conclusions: Overall assessment of competitive consequences of the merger

The table below provides a summary of our concerns about the competitive consequences of the proposed merger.

Table 11.2
Overall Assessment of Competitive Consequences of the Merger

Facts, Claims, and Issues	Responses and Comments
a. The merger is end-to-end for UP for the El Paso-LA-Bay Area-Portland segment, and Tucumcari Line components of the SP system.	a. To the extent that the merger allows UP to "fill in" its route network via these extensions, this seems to fall into the category of mergers the Interstate Commerce Commission has previously approved.
b. The merger is "massively parallel" for the Central Corridor (St. Louis to Bay Area) and Gulf (TX and LA) to St. Louis via AR, Corridor.	b. Applicants' expected route-strengthening, (quasi-) failing firm, and operating efficiency arguments ignore the substantial reduction in competition in the "massively parallel" geographic markets that make up the preponderance of the SP system.
c. The Agreement with BN/SF is designed to solve parallel problems by granting overhead traffic rights to BN/SF for these latter two corridors, plus local rights to serve all "two-to-one" shippers.	c. The choice of BN/SF for the trackage rights has the effect of reducing the major rail systems in the West from three to two; the need for traffic density and the particular limitation to a very small subset of the traffic in the "massively parallel" corridors effectively prohibit BN/SF from replacing the competition lost by SP (<i>i.e.</i> , BN/SF will be even more handicapped competitively in these markets than SP).
d. A large number of city pairs will have competitors reduced from three to two in markets where the merger is "massively parallel."	d. Defining relevant markets to be service to an individual shipper's facility (rather than larger relevant markets such as BEA, county, state, region, O-D corridor, Western U.S., <i>etc.</i>) for the purpose of attaching pro-competitive conditions obscures the loss of "regional rail competition," the relevant market cited by the <i>Interstate Commerce Act</i> .
e. Applicants have advanced the following claims to address the "massively parallel" problem: • Academic studies showing that the reduction from three to two is meaningful cannot be relied upon;	e. Each of the five arguments about the "massively parallel" issue has problems: • The Department of Justice (DOJ) guidelines, the academic literature on railroads, and the academic literature on concentration generally are contrary to these expected claims. Concentration indeed matters.

(Section e cont'd)

- Not much traffic is affected by the three-to-two problem;
- Competition by SP is redundant: stronger against strong is better than strong against strong and weak;
- Shippers seem to care more about extended single-line service than competition, especially by a weak carrier;
- The Commission has frequently ruled that only two carriers are needed to achieve effective competition; and
- Coordination and collusion are unlikely in rail transportation markets.

(Section e cont'd)

- One must be wary of using an "accordion" in the definition of the relevant market: Under the accordion theory, (1) when discussing the benefits of extended single-line service, and the difficulties of SP, the relevant market is the entire West or the rail corridors where all three carriers compete; (2) when looking at the reduction in competition between SP and UP, the relevant market is the lowest possible level of aggregation (direct service, possibly by reciprocal switching, to the facilities of a single shipper's plant).
- One must also be careful not to apply a "stealth (or quasi-) failing firm" defense without meeting the DOJ/FTC Guideline tests; SP has been the "weak runt of the litter" for as long as anyone can remember (SF also unsuccessfully invoked the failing firm defense for SP in the SF/SP merger); once again, one must be careful not to use the accordion (SP competes in large relevant geographic markets where it is allegedly being crushed by BN/SF when SP is being made to look weak, but SP competes in very narrowly defined markets—*i.e.*, its shippers are closed to switching—when it is alleged to compete with UP); again, one should not confuse the end-to-end markets (where the principal competitor is BN/SF) with the "massively parallel" markets (where the principal competition is between UP and SP).
- The benefits of route extensions in the end-to-end markets should not obscure the reduction in competition in the "massively parallel" markets.
- The Commission has never before considered a merger with such "massively parallel" dimensions; the closest thing to it is the proposed SF/SP merger, which the Commission rejected.
- Claims of lack of railroads' ability to coordinate are contradicted by the rail industry's history of antitrust offenses and by the kinds of benefit claims applicants tried to make (when discussing the prospects for collusion and coordination, applicants tend to characterize themselves as having excess capacity and large fixed costs that create incentives for price competition; when they discuss merger benefits, applicants tend to describe themselves as hobbled by capacity constraints and inadequate investment).

<p>f. UP will be alleged to get stronger because of:</p> <ul style="list-style-type: none"> • Extended routes and more single-line service (applies chiefly to end-to-end part of merger); • Operating efficiencies (applies to extended single-line service, via extended routes) and reduced route circuitry and other operating efficiencies. 	<p>f. The reduced circuitry argument makes the "Williamsonian Welfare Tradeoff" (efficiency gains must more than compensate for reduced competition) clearest in the three-to-two corridors.</p>
<p>g. SP will be alleged to get stronger chiefly because UP is able to fix SP's main problems:</p> <ul style="list-style-type: none"> • Service problems (inadequate management?). • Capital constraints. 	<p>g. The STB should be careful not to reward alleged mismanagement and unwillingness by SP's owner to commit capital with a competition-reducing merger. Even if these claims are true, the real issue is: Are there any less anticompetitive ways to replace SP's management, get access to capital markets, and achieve the claimed efficiency gains?</p>
<p>h. The merger has the additional benefit of filling BN/SF's route system and, in particular, creating two single-line carriers along the entire Pacific coast.</p>	<p>h. These are the types of merger benefits the ICC tended to encourage.</p>
<p>i. Fairness dictates that the STB approve this merger as a competitive response to the BN/SF merger.</p>	<p>i. BN/SF was much more an end-to-end merger than UP/SP. This is evidenced by the fact that Applicants have agreed that extensive trackage and/or haulage rights are required to cure the anticompetitive consequences of the merger. The conditions imposed by the BN/SF merger, to the contrary, were rather limited. Indeed, most of the complaints by shippers addressed concerns over route foreclosure resulting from the end-to-end dimensions. Fairness dictates only that UP be allowed the end-to-end component of the merger, and does not go to the issue of the parallel dimensions.</p>

Section 12: Southern Pacific Rail Corporation¹

12.1 History and Background

Southern Pacific Rail Corporation is the parent company of the Southern Pacific Transportation Company (SPT) and Rio Grande Holding Company. In 1994, the company generated more than \$3.14 billion in revenues, making it the sixth-largest railroad in the U.S. in terms of revenue. The company employs some 18,000 people and has over 14,500 miles of track along five main routes, stretching from the West Coast to the Midwest via two major corridors. It is the leading carrier of intermodal (truck-to-train and truck- or train-to-ship) freight in the U.S. Its intermodal business continues to grow, and its international container yard in Southern California is the country's largest. SPT also serves six cities on the Mexican border, the most of any U.S. railroad.

In 1983, facing increasing competition from the Union Pacific and Burlington Northern railroads, Southern Pacific merged with competitor Atchison, Topeka & Santa Fe Railway to form Santa Fe Southern Pacific Corporation. The ICC reviewed the case from 1983 to 1988, during which time the company was held in a trust. In 1988 the ICC deemed the merger anticompetitive and disallowed it. As a result, the Southern Pacific side was spun off and sold to RGI -- the holding company of the Rio Grande Railroad, owned by Denver billionaire Philip Anschutz -- for \$1.02 billion in cash and \$780 million in assumed debt. A public stock offering in 1993 raised cash to reduce RGI's debt. Today, the Anschutz Company owns 32 percent of Southern Pacific's outstanding stock, with Morgan Stanley (a major investment banking firm) controlling an 8 percent interest.

¹ This section was prepared by Dr. Charles Smaistrla and Dr. William Avera.

Since the end of 1992, Southern Pacific has reduced its headcount by more than 4,000 employees and has undergone some of the most extensive efforts of any Class I railroad to upgrade its locomotive fleet. In 1993 and 1994, the company purchased or overhauled more than 500 locomotives -- about 25 percent of its current fleet -- and ordered 282 new AC traction locomotives for 1995. As a result of the new and improved locomotives, outages of the power units fell from 18 percent in 1992 to 10 percent in 1994.

Although Southern Pacific's cash flow is greatly improved in recent years, it has not been sufficient to meet capital expenditure requirements. In order to generate more cash, the company has been selling real estate assets not essential to the railroad's operations. The company estimates that it has about \$1.5 billion in real estate yet to be sold, including transit corridors which are expected to be sold off over the long term. From 1992 through 1994, Southern Pacific has received cash proceeds of nearly \$760 million from real estate sales.

12.2 Comparison of SP with Its Primary Competitors

Southern Pacific's inability to markedly improve the efficiencies of its operation explains much of its poor performance relative to the largest two western railroads. Table 12.1 compares the operating ratios of Burlington Northern and Union Pacific with Southern Pacific's operating ratio for the years 1989 through 1995. Not only are Southern Pacific's operating expenses consistently higher, relative to its revenues, throughout the period, it also incurred operating losses until 1994. Even in that year, its

performance was significantly worse than the other two railroads', and in 1995, the company failed to show year-over-year improvement.

In spring 1995, Southern Pacific noted in its report to the Securities and Exchange Commission (SEC) that its railroad operations have not produced "sufficient cash flows to meet its capital expenditure, debt service and other cash needs."² Table 12.2 compares the net incomes of Burlington Northern, Santa Fe, and Union Pacific with that of Southern Pacific, measuring net income on a before-tax basis excluding gains from real estate sales. The data in the table quickly verify Southern Pacific's appraisal of its cash flow problems. It posted a loss every year except one -- 1994 -- when it made a relatively small profit.

The table also shows the relative strength of the other railroads. Union Pacific shows the consistently highest earnings of the four railroads. Except for a slump in earnings in 1991, Burlington Northern has also shown strong earnings for the period beginning in 1989.

In its SEC Form 10-Q reports last year, Southern Pacific did not offer any encouragement of an immediate turnaround in its earnings prospects. To the contrary, it cautioned investors that

for the next few years, cash flows generated by rail operations, while expected to continue to improve, will be insufficient to meet [Southern Pacific's] cash needs including acquisition of equipment and other necessary capital expenditures.³

²Southern Pacific Transportation Co., Form 10-Q (Mar. 31, 1995). Essentially identical language appears in the company's second and third quarter reports.

³*Id.* at 12.

Of the four major railroads, Southern Pacific has the lowest credit rating. Its bonds carry Moody's "Ba" rating, which puts them in the category of "junk bonds." According to Moody's,

Bonds which are rated Ba are judged to have speculative elements; their future cannot be considered as well assured. Often the protection of interest and principal payments may be very moderate and thereby not well safeguarded during both good and bad times over the future. *Uncertainty of positions characterizes bonds in this class.*⁴

Table 12.4 shows the respective bond ratings of the four railroads. By contrast to Southern Pacific's inferior rating, the bonds of Burlington Northern, Santa Fe, and Union Pacific are classified as "investment grade." Burlington Northern's "A" rating, for example, implies that its bonds "possess many favorable investment attributes and are to be considered as upper-medium-grade obligations."⁵

Southern Pacific's low bond rating, relative to the other railroads, implies that it will have more difficulty obtaining funds in the capital markets and that it will pay significantly higher rates for the money it borrows. In combination with its poor operating performance, the higher borrowing costs put the company at a severe disadvantage to its competitors.

12.4 *Assessment of Southern Pacific's Ability to Compete Absent the Proposed Merger*

Absent the proposed merger, SP is clearly the most financially fragile competitor among the Western railroads. Not only does SP exhibit the weakest financial performance and lowest bond ratings, it is burdened with the highest cost structure and a reputation for

⁴Moody's *Bond Record* (Dec. 1995) at 3 (emphasis added).

⁵*Id.*

the poorest service. The new management team, though experienced, is unproven against the challenges facing SP in the increasingly aggressive competitive landscape created by the merger of Burlington Northern and Santa Fe.

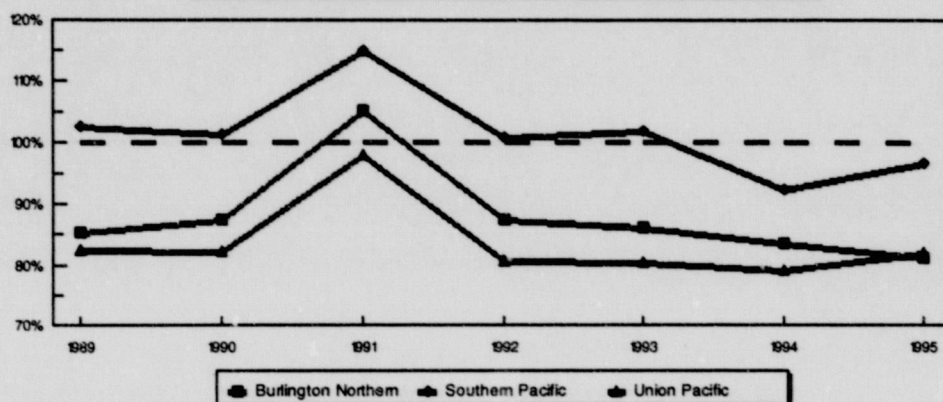
The ability of a free-standing SP to continue to access sources of capital depends on the state of the California real estate market, where most of the nonoperating properties are held. In the past, SP has been able to sell operating properties to local governmental entities for eventual use by urban transit systems. This source of capital, however, has become increasingly questionable as a result of the political vulnerability of mass transit programs (*e.g.*, the defeat of Proposition 185 in California).

The ability of SP to generate capital from operations also depends on events beyond the control of management. The company's dependence on intermodal traffic makes it more sensitive to the vagaries of the business cycle. And as other railroads, its revenues can be sharply curtailed by floods and other natural disasters. Without material changes, SP's fragile financial condition makes its survival as a significant competitor unlikely.

Even if the proposed merger is not effectuated, it is unlikely that SP will continue in its current form. The policy question confronting Texas is not whether SP should be preserved, but what sort of transformation is consistent with our long-term interests.

Table 12.1

RAILROAD OPERATING RATIOS: 1989-95
Burlington Northern, Southern Pacific and Union Pacific



Note: Data for 1995 reflect first nine months only.
Source: Moody's Transportation Manual (1995); Forms T-Q (9/95).

Section 13. Recommendations

13.1 Introduction

We believe on balance that the proposed Union Pacific/Southern Pacific rail merger is likely to have a detrimental effect on the state of Texas. Many of the negative aspects of the merger can be attributed specifically to market consolidation resulting from the extensive level of parallel routes these two rail carriers operate in Texas and beyond. Furthermore, we do not find the proposed agreement between the merged Union Pacific/Southern Pacific and the Burlington Northern/Santa Fe to provide sufficient guarantees of future competition along these parallel routes. However, we have serious doubts that given its current financial condition, the Southern Pacific can maintain its role as a vigorous competitor without outside capital. We are also concerned about anticompetitive tactics that are apparent in the proposals for abandonment in the merger application.

As a part of our analysis, the Commission requested that if the Union Pacific/Southern Pacific merger is not found to be in the best interests of the citizens of the state of Texas that an evaluation be made of potential conditions that could be attached to the merger that would address any potential negative impacts. Furthermore, it has been requested that these conditions fall within the scope of remedies that can be assigned by the Surface Transportation Board. Therefore, we recommend the Commission condition its support for the merger upon changes to the abandonment proposals and a series of track divestitures described below. (See attached map.)

13.2 Conditioning abandonments

Rail carriers proposing to abandon tracks in Texas should be required to include all trackage necessary to ensure that a purchasing carrier, rural rail district or other acquiring entity have unfettered access to rail junction points. Therefore, any line abandonments suggested by the merger applicants must be junction to junction, or industry to junction in the case of abandoning an industrial lead. Requiring these conditions for any proposed abandonment now or in the future is critical to encouraging the preservation of rail service to rural areas of the state.

13.3 Divestitures

The following divestitures and assignment of existing trackage rights are recommended as a condition of support for the proposed Union Pacific/Southern Pacific railroad. These suggestions do not list explicit mileage posts; however, it is assumed that the divestitures will include all junction points necessary for efficient joint connections.

13.3.1 Southern Pacific - Houston to St. Louis

Trackage currently owned by the Southern Pacific from North Junction, Missouri south through Lewisville, Arkansas, and Shreveport, Louisiana, to Houston should be spun off. This is a combination of the old St. Louis and Southwestern (Cottonbelt) line and Southern Pacific tracks. Included in this segment is the Brinkley, Arkansas, to Memphis, Tennessee, trackage. The divestiture should include all necessary yard facilities currently owned by the Southern Pacific in support of this route. The trackage rights currently possessed by the Southern Pacific over Union Pacific tracks from North Junction, Missouri, to East St. Louis should be transferred to the purchasing carrier.

This divestiture addresses competition and abandonment issues while allowing the Union Pacific to maintain its route from St. Louis through Texarkana to Houston. Specifically, this divestiture will address concerns regarding rail market concentration in Texas Gulf Coast chemicals and plastics industries by granting competitive access to a third carrier. In addition, service to the rural areas accessed by this route will be maintained and possibly enhanced with attendant benefits to those area's industrial development efforts. The purchasing carrier should have the financial capacity to improve rail infrastructure, thereby maintaining the safety benefits attributed to the proposed merger. Further, while this divestiture will block the Union Pacific's proposal for directional operations between Houston to St. Louis, we believe the capital obtained through the divestiture of these lines will allow the Union Pacific to expand its current efforts to build double tracks within their existing right-of-ways and potentially operate directional traffic.

13.3.2 Southern Pacific - Lewisville, AR, to Corsicana, TX

Trackage owned by the Southern Pacific from Lewisville, Arkansas, through Big Sandy and Tyler to Corsicana should be divested. Communities along this route currently served by the Union Pacific need to have reasonable guarantees that competition for rail service will continue. There has been no operating or marketing plan offered by the Burlington Northern/Santa Fe that specifies the level of service that would be provided to these communities. It is also unclear how the proposed directional operating plan would impact service to these intermediary communities. Furthermore, if the directional operating plan is dropped, there is a possibility that this line would be deemed redundant

and subject to abandonment. The divestiture of this track will allow the areas served by this route to maintain the effective access to markets necessary to encourage industrial development. Enhanced track maintenance and equipment upgrades will also improve the safety characteristics of these routes.

13.3.3 Southern Pacific - Dallas/Fort Worth to Houston

Trackage owned by the Southern Pacific from Dallas and from Fort Worth to Houston should be divested. For reasons described in our discussion of competitor behavior in Section 11, we believe that for Texas to maintain the best possible competition for its businesses, service by three Class I railroads should be maintained in the busiest corridors. We also feel the proposed directional operating plan will present service difficulties for shippers located on this line. As noted above, in the event the directional operating plan were ever canceled, this trackage would be very redundant and possibly subject to abandonment, with serious implications for rural development potential.

13.3.4 Southern Pacific - Houston to New Orleans

Trackage owned by the Southern Pacific between Houston and New Orleans should be divested to address competition concerns of parallel tracks. The Union Pacific has already agreed to divest part of this line from Avondale, Louisiana, to Iowa Junction, Louisiana; we recommend that the divestiture be extended from Iowa Junction to Houston. We are not specifically suggesting that the Burlington Northern/Santa Fe purchase the entire line but that the divestiture include the entire route from Houston to New Orleans. As with the divestiture described in Section 13.3.1 above, the divestiture of the Houston to New Orleans route will limit market dominance by the Union

Pacific/Southern Pacific in the chemicals and plastics transportation market. Maintaining effective rail competition can help the Texas Gulf Coast remain very attractive for continued industrial development with attendant economic and social benefits from increasing opportunities for relatively high-wage jobs.

13.3.5 Southern Pacific - Houston to Eagle Pass

In order to enhance competition for cross border traffic, and to address problems created by parallel routes, we recommend that the Southern Pacific lines between Houston through San Antonio to Eagle Pass be divested including the Southern Pacific yard and terminal facilities in San Antonio. The existing trackage rights held by the Burlington Northern/Santa Fe from Flatonia to Eagle Pass would be retained. In addition, to promote potential service advantages to Texas shippers in the Beaumont to Houston corridor, we propose that the Union Pacific/Southern Pacific be granted trackage rights over the divested lines. This will maintain three Class I competitors for cross-border traffic, mitigating the potential negative consequences of the extreme market dominance created by the Union Pacific/Southern Pacific merger. In addition, this divestiture will promote the continued development of an alternative port of entry for Mexico while also reducing transportation congestion at Laredo and encouraging the dissemination of the benefits of growing trade to more border communities. In addition, if the Mexican government completes its proposed rail privatization plan, Eagle Pass will serve as the balance for ensuring competition between the purchasers of the North-East and the North-Pacific Mexican rail concessions.

13.3.6 Southern Pacific - Hearne to Placedo

To address market consolidation concerns and to provide competitive access to deep south Texas shippers, we suggest the divestiture of trackage from Hearne through Flatonia to Placedo, including the Coletto Creek industrial lead.¹ This proposal also includes assigning the trackage rights currently held by the Southern Pacific from Placedo to Brownsville to the purchasing carrier. The Union Pacific should also be granted competitive access to facilities on the Coletto Creek industrial lead. This divestiture will encourage the preservation of rural rail service and maintain vital infrastructure necessary for future economic growth for the communities along this route.

13.3.7 Conclusions for divestitures

Though we have suggested significant levels of trackage divestiture, we believe this action is necessary to maintain competitive rail service to substantial areas of Texas. We have neither identified nor recommended potential buyers. However, we caution that selling these assets to the Burlington Northern/Santa Fe would likely create as many problems as the Union Pacific/Southern Pacific proposal itself. We presume that the Surface Transportation Board would not authorize the sale of these properties to an entity that could not demonstrate the financial wherewithal to effectively meet their common carrier obligations.

13.4 Neutral terminal railroads

There are other approaches to dealing with competition problems created by the merger of the Union Pacific and Southern Pacific railroads. For example, Commissioner

¹ An industrial lead is the rail equivalent of an access road to a specific plant site.

Charles Matthews has recently suggested that establishing neutral terminal switching carriers for Texas' largest rail-shipping hubs would serve to improve competitive access and service to a wide range of industrial rail users.

Neutral terminal railroads operate as switching carriers designed to provide all shippers in a given area unrestricted access to any line-haul rail carrier serving the region. Typically these carriers would operate over a combination of publicly-owned, rail-carrier owned and privately-owned tracks held by port authorities, transit authorities, special rail districts, industrial parks, short-line and Class I rail carriers, as well as individual businesses. In addition, sufficient yard and terminal facilities, currently owned by existing terminal, short-line or Class I railroads, would have to be acquired to ensure non-discrimination in service. As circumstances and local preferences dictate, these terminal railroads could be for-profit businesses, public entities or not-for-profit endeavors.

Current proposals include establishing these neutral terminal carriers for the Dallas-Fort Worth Metroplex, Houston, including the Port of Houston and potentially the Port of Galveston, Beaumont-Port Arthur-Orange, Brownsville-Corpus Christi, El Paso, and Amarillo-Plainview-Lubbock. Operations in Dallas-Fort Worth, Houston-Galveston, Beaumont-Port Arthur-Orange and El Paso could emulate the current operations of the Port Terminal Railroad in Houston.

Serving the Brownsville-Corpus Christi areas could be accomplished by acquiring Union Pacific tracks from Placedo to Brownsville. These tracks could be operated by an

entity such as the Brownsville and Rio Grande International railroad in conjunction with the Port Terminal Railroad of Corpus Christi.²

An ambitious proposal has been presented for addressing rail competition issues for customers located in the Texas Panhandle. By acquiring trackage from the Burlington Northern/Santa Fe and several shortline rail carriers operating in the area, this proposal would create an extended terminal rail operation for the Amarillo-Plainview-Lubbock area.

The neutral terminal railroads, though not addressing all of our concerns about the proposed Union Pacific/Southern Pacific merger, would alleviate many of the competitive access problems created by the merger in Texas' industrial areas. In addition, competitive rail service to one of the state's most important agricultural areas would be enhanced. Therefore, we would suggest that the Commission strongly consider exploring the development of these neutral terminal railroads as an adjunct to the line divestitures noted above.

13.5 Rural rail districts

Though we believe the recommendations noted above will greatly lessen the likelihood of substantial future rail line abandonments should the Union Pacific/Southern Pacific merger go forward, industry trends suggest that major carriers will continue to abandon lines in low-volume rural areas. In addressing the preservation of rural rail service, the use of rural rail districts may provide opportunities for maintaining vital rail service and ensuring the economic future of the State's rural areas. We strongly suggest

² Granting trackage rights to the Tex-Mex railroad over these lines could further enhance competition and provide alternative gateways into Mexico.

that the Commission, in cooperation with other state agencies and interested parties, begin exploring options for the role of state government in providing resources to enhance the feasibility of using rural rail districts for service preservation.

Insert Map Here

APPENDIX A

**POST-MERGER
"CHARACTER OF RIVALRY"
IN THE PROPOSED
"SOP/UP" RAILROAD MERGER**

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February 5, 1996
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The view that a reduction in the number of firms facilitates coordinated use of assets among the incumbent firms is a rock upon which much of industrial economics has been built. Consistent with this view is the economic theory underlying the [Department of Justice/Federal Trade Commission] Guidelines: that the main evil of horizontal mergers is their potential of facilitating oligopolistic cooperation, leading to elevated prices and resource misallocation.

Janusz A. Ordover and Robert D. Willig,
"The 1982 Department of Justice Guidelines:
An Economic Assessment," *California Law
Review* (March 1983), p. 555.

In principle, small numbers competition can lead to outcomes covering the entire range from prices associated with maximizing the joint profits of competitors to "cutthroat competition" in which prices are driven to the level of short-run marginal cost.

* * *

Which of these outcomes is most probable? Economics has no unified theory of oligopoly behavior. In markets characterized by a small number of competitors, any behavior ranging from joint profit maximization to cutthroat competition is possible. In the case of railroad deregulation, the prices and profits associated with different behavioral assumptions are so disparate that it is important to attempt to place bounds on the range of most probable outcomes.

Richard C. Levin,
"Railroad Rates and Profitability and
Welfare Under Deregulation," *Bell Journal
of Economics*, Vol. 12, No. 1 (Spring 1981),
pp. 3 and 20.

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INTRODUCTION

The Union Pacific (UP) and Southern Pacific (SP) Railroads (herein after, the "Applicants" or "UP/SP") have recently proposed to merge in a transaction¹ that effectively reduces the "Western" United States rail market² from three to only two major railroads. The only remaining major Western carrier would be the recently merged Burlington Northern/Santa Fe (BN/SF) system. Applicants propose to grant BN/SF certain rights³ in a negotiated Agreement that purports to solve the problems associated with the anticompetitive consequences of the merger.⁴

Applicants believe that BN/SF, UP, and SP are currently in a struggle for rail markets throughout the West. The basic rationale is that the merger allows UP to fill in its route structure and eliminate circuitous routes in order to compete more effectively with BN/SF. However, the merger is largely a parallel one.⁵ The task that Applicants have before them is to convince the Surface Transportation Board (STB) that a UP/SP combination will provide more effective competition with BN/SF than UP and SP separately could provide in the Western U. S. rail carrier markets, broadly defined.

To do this, Applicants acknowledge two separate and analytically distinct competitive consequences of the proposed merger:

- "Three-to-two": because the merger eliminates SP, thereby reducing the basic number of competitors from three to two, Applicants claim that the

¹ Docket No. 32760, before the Interstate Commerce Commission, *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*, November 30, 1995.

² In the lexicon of the rail industry, "Western" refers to the territory west of the Mississippi River where eastern and western railroads interchange traffic at the major rail junctions. This, of course, represents more than half of the continental United States.

³ Under a trackage rights agreement, the tenant railroad uses the landlord's tracks for a fee to provide service directly (or via a switching agreement) to the rail shippers adversely affected by the reduction of competition arising from an approved rail merger.

⁴ As used throughout, the term "Agreement" refers to the Agreement dated September 25, 1995 between the UP and BN/SF as modified and supplemented on November 18, 1995.

⁵ A "parallel" merger involves one where the two merging carriers currently serve the same routes. A vertical or "end-to-end" merger involves extending the service territory of each to lengthen the haul. Of course, most railroad mergers involve elements of both.

Agreement replaces the eliminated SP competition with BN/SF, the net effect of which is to leave only two rail competitors.

- "Two-to-one": because the Agreement provides for BN/SF use of trackage rights to replace SP's competition (previously achieved over SP's own track), there is a significant question as to whether the UP/BN remedy is adequate to overcome the anticompetitive effects of the merger..

In both scenarios, the STB has four major alternative responses to the application available to them:

1. Approve the entire merger and the Agreement;
2. Reject the entire merger;
3. Approve the merger, but require the divestiture of portions of SP to other than BN/SF;
4. Approve the merger, but impose conditions which would effectively ameliorate the anticompetition aspects of the merger.

SUMMARY OF CONCLUSIONS

In their public statements, Applicants have chosen to focus on the competition between a merged UP/SP and the BN/SF.⁶ This discussion ignores the fact that large parts of SP's current route system consists of corridors in which the chief competition currently is between UP and SP. The scope of the Agreement appears to conclude that the competitive problem for these markets exists only at the lowest possible level of aggregation: specific plant sites where both SP and UP serve the shipper directly (or via reciprocal switching). Lost entirely is the possibility that competition of the intramodel, product, and geographic variety⁷ is reduced in broad rail transportation corridors; e.g., (1) the Central Corridor from the Bay Area to Kansas City and St. Louis and (2) Gulf Ports to St. Louis and beyond to Chicago, etc., where currently the chief competition is between UP and SP. Using this more inclusive relevant market for examining the current competition between UP and SP implies that the "two-to-one" competitive problem is much greater than the traffic which the Agreement with BN/SF purports to address.

⁶ Daniel Machalaba, "Union Pacific Sees Big Savings in Merger Plan," *The Wall Street Journal*, December 1, 1995, p. B10.

⁷ See *Ex Parte* No. 320 (Sub-No. 3), *Product and Geographic Competition*, 2 I.C.C. 2d.1, for discussion of product and geographic competition.

The Agreement to allow BN/SF into these markets is an explicit acknowledgment that a competitive problem exists. However the Agreement appears to be restricted too narrowly for BN/SF to effectively replace the competition lost by the elimination of SP. Put another way, to be pro-competitive as the Applicants claim, BN/SF, with only trackage rights or haulage agreements,⁸ must be a more effective competitor than the departing SP using its own crews, equipment, and track in these rail service corridors. But much of the litany of competitive disadvantages imputed to SP (lack of traffic density, *etc.*) appears to apply *a fortiori* to BN/SF under these conditions.

Assuming *arguendo* that a combined UP/SP would make a more effective competitor in markets where it faces a BN/SF operating its own trains over its own tracks, that does not make a BN/SF with highly restrictive trackage rights (and possibly simply relying on a UP haulage agreement) a more effective competitor than SP in the markets where UP and SP are the chief rivals today. Shippers which fall into the "two-to-one" category are the unfortunate victims of this restrictive agreement.

Turning to the "three-to-two" competitive problem, Applicants appear to rely upon what has become the "character of rivalry" claim.⁹ Applicants can be expected to claim a net enhancement of competition, the reduction in numbers of competitors notwithstanding. The logic is that competition will be more strengthened by the efficiency benefits of the merger than it is reduced by the elimination of a competitor—"character of competition" trumps mere numbers.

Our conclusions with regard to these two types of competitive problems are:

- "Two-to-one": Claims about SP's competitive weaknesses and the benefits of the merger to UP/SP imply that BN/SF cannot be as effective a competitor as SP under the current Agreement for the "two-to-one" markets, (narrowly defined for the "two-to-one" points and more broadly defined for the "two-to-one" corridors). Arguments for strengthening UP/SP's ability to compete with BN/SF in the three carrier markets (pre-merger) justify strengthening BN/SF's competitive ability in the two carrier (UP and SP) markets (pre-merger).

⁸ The Applicants and BN/SF contemplate that in many circumstances, BN/SF will not provide direct service, but merely pay UP/SP to haul the cars on its behalf. Obviously, service competition would be eliminated and BN/SF's ability to compete on price would depend on the terms of the Agreement.

⁹ See [Redacted] Verified Statement of Robert D. Willig, Docket No. 32760, November 30, 1995.

- “Three-to-two”: Although it is true that “character of rivalry” has an independent effect on the strength of competitive forces, so does the number of competitors. The fact that “rivalry” matters does not logically imply that numbers do not matter. To carry their competition argument, Applicants must show that the intensity of rivalry will necessarily increase by more than enough to compensate for the loss of a competitor. Oligopoly theory, the relevant branch of economic theory to this inquiry, is not confident of much, but two broad conclusions form a consensus: (1) The “character of rivalry” is highly idiosyncratic to specific markets and is highly mercurial, while (2) numbers almost always count. This conclusion is supported by empirical academic research in the rail industry and in U.S. industry generally.

Table 1 identifies in the left hand column the major “competitive” facts and issues to be addressed in the merger proceeding. The right column summarizes the major comments and findings.

TABLE 1 Overall Assessment of Competitive Consequences of the Merger	
Facts, Claims, and Issues	Responses and Comments
a. The merger is end-to-end for UP for the (1) El Paso-LA-Bay Area-Portland segment, and (2) Tucumcari Line components of the SP system.	a. To the extent that the merger allows UP to “fill in” its route network via these extensions, this seems to fall into the category of mergers the Interstate Commerce Commission has previously approved.
b. The merger is “massively parallel” for the (3) Central Corridor (St. Louis to Bay Area) and (4) Gulf (TX and LA) to St. Louis via AR, Corridor.	b. Applicants’ expected route-strengthening, (quasi-) failing firm, and operating efficiency arguments ignore the substantial reduction in competition in the “massively parallel” geographic markets that make up the preponderance of the SP system.
c. The Agreement with BN/SF is designed to solve parallel problems by granting overhead traffic rights to BN/SF for these latter two corridors, plus local rights to serve all “two-to-one” shippers.	c. The choice of BN/SF for the trackage rights has the effect of reducing the major rail systems in the West from three to two; the need for traffic density and the particular limitation to a very small subset of the traffic in the “massively parallel” corridors effectively prohibit BN/SF from replacing the competition lost by SP (<i>i.e.</i> , BN/SF will be even more handicapped competitively in these markets than SP).
d. A large number of city pairs will have competitors reduced from three to two in markets where the merger is “massively parallel.”	d. Defining relevant markets to be service to an individual shipper’s facility (rather than larger relevant markets such as BEA, county, state, region, O-D corridor, Western U.S., <i>etc.</i>) for the purpose of attaching pro-competitive conditions obscures the loss of “regional rail competition,” the relevant market cited by the <i>Interstate Commerce Act</i> .
e. Applicants have advanced the following claims to address the “massively parallel” problem:	e. Each of the five arguments about the “massively parallel” issue has problems:

<ul style="list-style-type: none"> • Academic studies showing that the reduction from three to two is meaningful cannot be relied upon; • Not much traffic is affected by the three-to-two problem; • Competition by SP is redundant: (1) stronger against (2) strong is better than (1) strong against (2) strong and (3) weak; • Shippers seem to care more about extended single-line service than competition, especially by a weak carrier; • The Commission has frequently ruled that only two carriers are needed to achieve effective competition; and • Coordination and collusion are unlikely in rail transportation markets. 	<ul style="list-style-type: none"> • The Department of Justice (DOJ) guidelines, the academic literature on railroads, and the academic literature on concentration generally are contrary to these expected claims. Concentration indeed matters. • One must be wary of using an "accordion" in the definition of the relevant market: Under the accordion theory, (1) when discussing the benefits of extended single-line service, and the difficulties of SP, the relevant market is the entire West or the rail corridors where all three carriers compete; (2) when looking at the reduction in competition between SP and UP, the relevant market is the lowest possible level of aggregation (direct service, possibly by reciprocal switching, to the facilities of a single shipper's plant). • One must also be careful not to apply a "stealth (or quasi-) failing firm" defense without meeting the DOJ/FTC Guideline tests; SP has been the "weak runt of the litter" for as long as anyone can remember (SF also unsuccessfully invoked the failing firm defense for SP in the SF/SP merger); once again, one must be careful not to use the accordion (SP competes in large relevant geographic markets where it is allegedly being crushed by BN/SF when SP is being made to look weak, but SP competes in very narrowly defined markets—<i>i.e.</i>, its shippers are closed to switching—when it is alleged to compete with UP); again, one should not confuse the end-to-end markets (where the principal competitor is BN/SF) with the "massively parallel" markets (where the principal competition is between UP and SP). • The benefits of route extensions in the end-to-end markets should not obscure the reduction in competition in the "massively parallel" markets. • The Commission has never before considered a merger with such "massively parallel" dimensions; the closest thing to it is the proposed SF/SP merger, which the Commission rejected. • Claims of lack of railroads' ability to coordinate are contradicted by the rail industry's history of antitrust offenses and by the kinds of benefit claims applicants tried to make (when discussing the prospects for collusion and coordination, applicants tend to characterize themselves as having excess capacity and large fixed costs that create incentives for price competition; when they discuss merger benefits, applicants tend to describe themselves as hobbled by capacity constraints and inadequate investment).
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f. UP will be alleged to get stronger, because of:	f. The reduced circuitry argument makes the "Williamsonian Welfare Tradeoff" (efficiency gains must more than compensate for reduced competition) clearest in the three-to-two corridors.
<ul style="list-style-type: none"> • Extended routes and more single-line service (applies chiefly to end-to-end part of merger); • Operating efficiencies (applies to extended single-line service, via extended routes) and reduced route circuitry and other operating efficiencies. 	
g. SP will be alleged to get stronger chiefly because UP is able to fix SP's main problems:	g. The STB should be careful not to reward alleged mismanagement and unwillingness by SP's owner to commit capital with a competition-reducing merger. Even if these claims are true, the real issue is: Are there any less anticompetitive ways to replace SP's management, get access to capital markets, and achieve the claimed efficiency gains?
<ul style="list-style-type: none"> • Service problems (inadequate management?). • Capital constraints. 	
h. The merger has the additional benefit of filling BN/SF's route system and, in particular, creating two single-line carriers along the entire Pacific coast.	h. These are the types of merger benefits the ICC tended to encourage.
i. Fairness dictates that the STB approve this merger as a competitive response to the BN/SF merger.	i. BN/SF was much more an end-to-end merger than UP/SP. This is evidenced by the fact that Applicants have agreed that extensive trackage and/or haulage rights are required to cure the anticompetitive consequences of the merger. The conditions imposed by the BN/SF merger, to the contrary, were rather limited. Indeed, most of the complaints by shippers addressed concerns over route foreclosure resulting from the end-to-end dimensions. Fairness dictates only that UP be allowed the end-to-end component of the merger, and does not go to the issue of the parallel dimensions.

PROBLEMS WITH THE UP/BN AGREEMENT

Turning to the Agreement, it has three features with a profound effect on regional rail competition:

1. *Choice of BN/SF*: the number of western major rail carriers is reduced from "three-to-one"; granting similar rights to another carrier would not have achieved this effect.
2. *Limitation of local traffic to only "two-to-one" points*: by denying BN/SF the local traffic it needs to compete effectively in the "massively parallel" markets, BN will lack even SP's traffic density.

3. *Conflicts with UP's use of SP track to achieve claimed operating efficiencies:* as yet we are not clear how the use of trackage rights and haulage agreements will effectively replace the competition by SP *on its own track*.

An interesting feature of the Agreement is that it gives BN/SF benefits and rights that go beyond the Agreement claimed necessary to restore competition. This raises the question of what was UP's *quid pro quo*. Certainly, the Commission cannot simply rely on an agreement between what would be the last two remaining major western rail carriers to serve the public interest.

HISTORICAL INCONSISTENCIES IN CLAIMS OF APPLICANTS IN RAILROAD MERGER PROCEEDINGS

Inherent contradictions are typical in rail merger applications. Here we outline a few to illustrate.

The "Accordion Theory": Narrow vs. Broad Market Definitions

Applicants in railroad merger proceedings have historically used an "accordion theory" to reconcile conflicting claims over merger benefits and competitive consequences.¹⁰ When attempting to minimize the reduction in competition between the Applicants, Applicants tend to define the relevant market¹¹ for assessing antitrust claims very narrowly. Here, the accordion compresses the relevant market very narrowly, such as rail service to a particular plant. If two railroads do not both serve that same shipper with direct service, they are deemed not to compete.

The accordion expands, however, when the task is to demonstrate the continued strength of competition from sources other than the merged carriers or to stress the need of the merged carriers (particularly the alleged weak partner) for merger benefits to compete with other railroads or other modes of transportation. There the relevant market for analysis of competition is defined to be all the rail service in a BEA, a state, throughout the Western United States, or throughout the entire country—including all other modes of transportation or even railroads in other countries, in this case CN, CP, and the Mexican railroads. With careful use of the "accordion," UP and SP can be made to appear to compete with everyone but each other.

¹⁰ These inconsistencies in merger proceedings are really part of a larger problem. See William B. Tye, "Market Imperfections, Equity, and Efficiency in Antitrust," *The Antitrust Bulletin*, Vol. XXXVII, No. 1 (Spring 1992), pp. 1-34.

¹¹ In lay terms, a "relevant market" is a product (or service) and geographic region that is capable of being monopolized. Narrowly defined markets tend to minimize the perceived competition between Applicants while broadly defined markets tend to minimize the market share of the merged carrier.

Impossibility of Cooperation Between Applicants vs. Efficacy of Trackage Rights Solution to Anticompetitive Consequences

Applicants in rail mergers usually feel compelled to demonstrate that the claimed merger benefits cannot be realized short of merger. Otherwise, the claimed merger benefits arouse suspicion. If such great benefits were possible, why did not the Applicants achieve them already through cooperative agreements? And could they not be achieved by other less anticompetitive means short of outright consolidation?

Applicants at this point usually invoke the "transaction cost" argument: the cost of negotiating and enforcing contractual solutions to the problems of achieving the efficiency gains is simply too great. This indeed is the usual economists' rationale for merger. But, in rail merger proceedings, it tends to raise more questions than it answers.

If transaction costs are such barriers to efficient contracts, how were the Applicants able to negotiate the Agreement which promises a contractual solution to the anticompetitive consequences? Why should contracts work in one case but not the other? And will not the BN/SF service using a contract for trackage rights suffer all the problems charged to a UP/SP contractual solution? Applicants nevertheless tend to minimize the transaction cost issue when addressing the proposed remedies for the anticompetitive consequences of the merger.

Effect of Merger on Capacity vs. Effect of Capacity on Industry Structure and Collusion

Applicants generally stress the fact that railroads have large fixed costs and must price well in excess of incremental costs to recover total costs. This excess capacity, they conclude, creates strong incentives for vigorous pricing decisions to undercut their competitors. The alleged rationale of the competition story is that lost business means low avoided costs and substantial losses in net revenues. *A priori*, of course, it might be argued that the same structural elements of the market and incentives enhance the benefits of collusion, or at least oligopolistic interactions that elevate prices.

Be that as it may, mergers with allegedly weak and undercapitalized firms are deemed to be pro-competitive because they permit investments that relieve capacity shortages. If this is true, however, it contradicts the assumption in the competition story that the merged carrier would be

motivated to engage in vigorous price competition because of substantial excess capacity. Rather, the competition story requires the merged carrier to make new investments far beyond those necessary to relieve the alleged bottlenecks—investments of a magnitude necessary not only to unclog the alleged bottleneck but also to have the requisite excess capacity needed to motivate fiercely competitive pricing. Since the profit-maximizing investment incentive is not to create such excess capacity deliberately, why the merged carrier would be motivated to create such a cutthroat market environment remains a mystery.

THE "CHARACTER OF RIVALRY" AND CONCENTRATION IN THE RAIL INDUSTRY

The economic literature on the economics of the rail industry and U.S. industry in general has addressed the issue of competition and concentration on numerous occasions. The consensus can be readily summarized: *Concentration matters and it has an independent elevating effect on price*, apart from the "character of rivalry."

There is no question in the literature that a second rail competitor can have a major impact on price.¹² This finding, however, is not likely to be challenged in the course of the merger (although the efficacy of the BN/SF Agreement in remedying the "two-to-one" markets will certainly be). More to the point is evidence relating to the competitive consequences of removing a third competitor.

Although researchers have found "the greatest effect occurred when an additional interline carrier raised the number of interline carriers in the market from one to two," additional carriers also were shown to favorably affect economic welfare.¹³ Although Grimm, *et al.*, focus on competition from joint rates over (two-carrier) through routes, their results would likely hold *a fortiori* for competition from three single-line routes (as we have for many of the rail corridors and city pairs at issue in the UP/SP proposed merger). Indeed, the Grimm elsewhere reported:

¹² See C. Winston, T. Corsi, C. Grimm, and C. Evans, *The Economic Effects of Surface Freight Deregulation* (Washington, DC: Brookings, 1990), pp. 42-51; Stephen Schmidt, "Oligopoly Competition and Market Power in Rail Freight Markets," Department of Economics, Union College, August 1995, working paper in progress.

¹³ Curtis M. Grimm, *et al.*, "Foreclosure of Railroad Markets: A Test of Chicago Leverage Theory," *The Journal of Law and Economics*, Vol. XXXV (October 1992), pp. 304.

...increases in concentration in the intermediate ranges [HHI 4500-6500] have perceptibly larger effects on prices. [footnote omitted] . . . It appears that competitive effects of mergers are much more serious when initial concentrations are between .4500 and .6500. . . [T]ransformations of markets with three firms, not equally sized, to two firms appear to produce the greatest harm.¹⁴

Several empirical studies by James M. MacDonald reached the conclusion that in grain transportation markets: "competition among railroads has a statistically significant, fairly strong effect on rates. More competitors, as measured by RRCOMP, are associated with lower rates."¹⁵ Elsewhere, he noted that

...railroad mergers that increase concentration will lead to rate increases. . . . The analysis shows an important, statistically significant effect of concentration on prices in an industry with high barriers to entry and large capital commitments.¹⁶

Richard C. Levin confirmed these empirical results with simulations of the results of rail rate deregulation using various assumptions about market structure.¹⁷ His results were that "the degree of interrailroad competition has a powerful influence on the level of rates."¹⁸ In the model, "the degree of competition," *depends on both the number of firms in the industry and the incumbents' beliefs about how rivals will change the level of service in response to their own change in service.*

A large number of studies have looked at the stability of price-fixing agreements in the rail industry. Most of these looked at a market structure prior to the recent wave of mergers and in situations where antitrust laws were inoperative, or regulation was pervasive.¹⁹ These do not

¹⁴ Curtis Grimm, "Horizontal Competitive Effects in Railroad Mergers," *Research in Transportation Economics*, Vol. 2, T. Keeler, ed. (Greenwich, CT: JAI Press, 1985), p. 40.

¹⁵ "Railroad Deregulation, Innovation, and Competition: Effects of the Staggers Act on Grain Transportation," *Journal of Law and Economics*, Vol. 32, No. 2 (April 1989).

¹⁶ James M. MacDonald, "Competition and Rail Rates for the Shipment of Corn, Soybeans, and Wheat," *Rand Journal of Economics*, Vol. 18, No. 1 (Spring 1987), pp. 160 and 162.

¹⁷ Richard C. Levin, "Railroad Rates, Profitability and Welfare Under Deregulation," *Bell Journal of Economics*, Vol. 12, No. 1 (Spring 1981), p. 16. See also "Railroad Regulation, Deregulation, and Workable Competition," *American Economic Review*, Vol. 71, No. 2 (May 1981), pp. 394-398.

¹⁸ Levin, "Railroad Rates," p. 6.

¹⁹ See, for example, Glenn Ellison, "Theories of Cartel Stability and the Joint Executive Committee," *Rand Journal of Economics*, Vol. 25, No. 1 (Spring 1994), pp. 37-56, for a recent example and citations of other such studies. See also Chapter 10, "Railroad Freight Rates," in *Concentration and Price*, Leonard W. Weiss, ed. (Cambridge, MA: MIT Press, 1989).

necessarily imply that similar findings would hold today, particularly in light of the dramatic reduction in the numbers of competitors that has occurred since 1980.

However, claims that price fixing agreements are bound to fail in the rail industry ignore two important structural elements. First, realistic models of oligopolistic interaction suggest that higher prices may result from increased concentration even in the absence of explicit collusion (see below). Second, rail competitors engage in an unusually high degree of communication because of their joint ownership of facilities and joint pricing actions (even in the absence of rate bureau immunity).

THE "CHARACTER OF RIVALRY" AND CONCENTRATION IN THE ECONOMIC LITERATURE

The economic literature has examined the effects of concentration on price from the two perspectives—oligopoly theory and empirical research. Both tend to suggest that the "character of rivalry" is an elusive concept that is idiosyncratic among different markets and different time periods, while concentration is a more reliable guide to analyzing market structure for possible anticompetitive consequences of mergers.

Turning first to the "character of rivalry" as embodied in the economic literature on oligopoly theory, the results of market structure for market performance are highly sensitive to the assumptions regarding competitive interactions among competitors.²⁰ The competitive equilibrium in a duopoly (*i.e.*, a two-firm oligopoly) can range from perfect competition (the Bertrand model of "cutthroat" competition) to monopoly (perfect collusion), to something in between (*e.g.*, the Cournot model).²¹ In most of the models "in between," particularly the Cournot model, increasing the number of competitors has a depressing effect on price.²² In oligopoly models, the "character of rivalry" is often represented by indicia such as the "conjectural variation": the belief of a competitor as to what response rivals will make to a specified output (or service in this case)

²⁰ See F.M. Scherer and David Ross, *Industrial Market Structure and Economic Performance* (Boston: Houghton Mifflin Company, 1990), pp. 199-233.

²¹ Andreu Mas-Colell, Michael D. Whinston, and Jerry R. Green, *Microeconomic Theory* (New York: Oxford University Press, 1995), pp. 387-405.

²² *Ibid.*, p. 393.

decision. Explicit collusion is not necessary for the number of firms to have a direct effect on price levels in these oligopoly models.

Since all competitors are making conjectures about one another, and these conjectures may well be based on past observations of competitive behavior, oligopoly theory inherently embodies an idiosyncrasy and indeterminacy that many find quite troubling. The difficulty with making antitrust policy based on evaluations of the "character of rivalry" is that the results are, after all, "conjectural." Today's conjectures may not be tomorrow's conjectures or yesterday's conjectures.²³

This is illustrated by the model of Ordover, Sykes, and Willig:

Our analysis shows that some of the most significant economic consequences of a merger may arise from the impact of a merger on interfirm rivalry. Furthermore, even if a merger does not affect the nature of rivalry, the analysis shows that a merger may cause significantly increased market power through its effect on concentration—a problem that may or may not be offset by efficiencies resulting from the merger.²⁴

The difficulty with the model, as the authors note, is that "the usefulness of this result for legal purposes, however, depends upon the derivation of reasonable estimates" of the "conjectural variation." If the merger eliminates "an especially uncooperative entrepreneur," the decrease in competition would be greater than suggested by market share alone.²⁵ Opposite results would hold if the merger created a "maverick." Obviously an assessment of the effect of a merger on the "character of rivalry" could be highly subjective and certainly hard to predict.

For all these reasons, economists have also focused on empirical studies of the relationship between market structure (concentration) and market performance. Much attention has been focused on how to measure market share and whether there were "critical" levels of market share where discontinuities in market performance occurred. At first, the focus was on *profitability* as a measure of performance. Indeed, studies tended to show that greater market concentration was

²³ James W. Friedman, *Oligopoly Theory* (Cambridge: Cambridge University Press, 1983), Chapter 5.

²⁴ Janusz A. Ordover, Alan O. Sykes, and Robert D. Willig, "Herfindahl Concentration, Rivalry, and Mergers," *Harvard Law Review*, Vol. 95 (1981-1982), pp. 1858.

²⁵ *Ibid.*, pp. 1869-1870. Note the connection between the claims of SP's weakness and the "character of rivalry." In the airline industry, stronger carriers have frequently complained that weak carriers precipitated price wars with their aggressive pricing.

marked by greater profitability. Interestingly for the case at hand, one such study found that a third significant competitor had a major significant effect on price/cost margins, because "three firm coordination problems are so severe as to make a third firm more likely a rival."²⁶ However, two difficulties arose. The first was a challenge to accounting profits as a measure of true profitability (different accounting practices across industries, *etc.*). More profoundly, however, was the ambiguity of profits: Perhaps more concentrated firms and industries were composed of firms who had earned their higher profits and higher market shares with lower costs, a result that ought to occur in competitive markets.

More recently, efforts have been made to focus on the nexus between *prices* and concentration. In one of the more ambitious efforts, Leonard W. Weiss and his associates looked at the relationships in a wide variety of industries (including railroads) and concluded that concentration does indeed tend to raise price.²⁷

This belief forms the basis for the Department of Justice and Federal Trade Commission approach to antitrust.²⁸ The *Guidelines* specify analytic approaches for defining relevant markets, measuring concentration, and identifying mergers that might produce troubling increases in concentration. It is safe to say that the *Guidelines* focus on objective measures of market structure such as concentration, barriers to entry, *etc.*, and not "conjectures" over behavioral phenomena such as "the character of rivalry."

The economic literature does not provide any reliable bases for finding that a change in the "character of competition" could trump a reduction in numbers and an increase in concentration. It is true that, for some time, some economists have argued that merger benefits could trump an increase in concentration. This claim is the basis for the "Williamsonian Welfare Tradeoff": True efficiency gains from the merger could more than offset the losses in economic welfare arising

²⁶ John E. Kwoka, Jr., "The Effect of Market Share Distribution on Industry Performance," *Review of Economics and Statistics*, Vol. LXI, No. 1 (February 1979), pp. 101-109. This result appears to parallel results of game theory, where the addition of only one more party to a strategic interaction creates an entirely new and far more complex situation. See Howard Raiffa, *The Art and Science of Negotiation* (Cambridge, MA: Harvard University Press, 1982), pp. 251 and 257.

²⁷ Weiss, *op. cit.*

²⁸ Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, April 2, 1992.

from higher prices.²⁹ It was a given from the argument in favor of performing a tradeoff, however, that greater concentration would increase, not lower, price.

The difficulty, however, is that sufficiently accurate quantification of the welfare gains and losses is questionable.³⁰ Another difficulty is that the tradeoff places no penalty on wealth transfers from customers to monopolists.³¹ And it is also the case that the welfare losses arise from the fact that the welfare losses from mergers usually result from less than total monopoly, implying that more monopoly is better than less monopoly.³²

Accepting the logic favoring the merger requires a conclusion that the "character of rivalry" (a dimension where economists have little confidence in their theories) will be intensified by more than enough to offset the acknowledged reduction in competitors (a dimension where economists are relatively confident of their conclusions).

CONCLUSION

The competitive issues of the merger may be summarized as follows:

1. *End-to-End Markets*: claimed benefits of route extensions in these markets should not be confused with the effects on competition in those where the merger is parallel.
2. *"Two-to-one" in Parallel Markets*: the magnitude of this problem has been minimized by ignoring competition in more broadly defined markets of rail corridors; this feature, plus the operating plan, makes it unlikely that these shippers will have effective competition restored by the Agreement with BN/SF.
3. *"Three-to-two" in Parallel Markets*: the real issue here is whether merged UP/SP will be able to provide stronger competition to BN/Santa Fe, than either UP or SP separately.

²⁹ Oliver E. Williamson, "Economics as an Antitrust Defense: The Welfare Tradeoffs," *American Economic Review*, Vol. 58, No. 1 (March 1968), pp. 18-36.

³⁰ Alan A. Fisher and Robert H. Lande, "Efficiency Considerations in Merger Enforcement," *California Law Review*, Vol. 71, No. 6 (December 1983), pp. 1582-1706.

³¹ Alan A. Fisher, Frederick I. Johnson, and Robert H. Lande, "Price Effects of Horizontal Mergers," *California Law Review*, Vol. 77, No.4 (July 1989), pp. 777-827.

³² William B. Tye, "On the Application of the 'Williamsonian Welfare Tradeoff' to Rail Mergers," in *The Transition to Deregulation* (New York: Quorum Books, 1991), pp. 311-319.

If the logic that the "character of rivalry" trumps market structure cannot be sustained, then the merger should be rejected or conditioned by more expansive rights for another competitor to serve the "massively parallel" markets. Such more expansive rights should simultaneously cure the problems associated with Applicants' plans to address the "two-to-one" problems.

ABOUT THE AUTHOR

William B. Tye is a Principal at Brattle/IRI, the successor firm to the merger of The Brattle Group with Incentives Research, Inc. Dr. Tye received a BA in economics from Emory University and a Ph.D. in economics from Harvard University in 1969. After teaching economics for three years at United States Air Force Academy, he joined Charles River Associates as an economic consultant. When he left Charles River Associates, he was a Vice President and Director of the firm. Dr. Tye joined Putnam, Hayes and Bartlett, Inc. as a Principal in 1980 and continued his consulting and research career there until August 1990, when five colleagues and he left to form The Brattle Group.

Much of his consulting career has involved regulated industries. He has testified before numerous regulatory agencies and courts involving issues of rates, economics, management, and competition. Dr. Tye has authored or co-authored over 100 papers and publications, including four books on regulated industries. Many of these, including *The Transition to Deregulation: Developing Economic Standards for Public Policies* (New York: Quorum Books, 1991), have addressed the issue of competition in the rail industry. He is also the author of *Regulatory Risk* (Boston: Kluwer Academic Publishers, 1993), with A. Lawrence Kolbe and Professor Stewart C. Myers of MIT. The papers have appeared in such publications as *The American Economic Review*, *The Yale Journal on Regulation*, *Energy Law Journal*, *The Rand Journal of Economics*, and *Public Utilities Fortnightly*. He has spoken frequently at seminars and meetings on regulatory issues sponsored by organizations such as the National Association of Regulatory Utility Commissioners, the Federal Energy Bar Association, and the Antitrust Section of the American Bar Association. He has appeared as an expert witness in numerous rail acquisition merger proceedings over the past decade. He is a past national president of the Transportation Research Forum.

VERIFICATION

STATE OF GEORGIA)
) SS.
COUNTY OF BIBB)

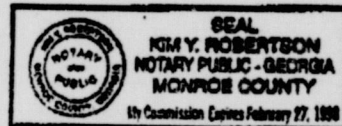
I, William B. Tye, being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated to the best of my knowledge and belief.

William B. Tye
WILLIAM B. TYE

Subscribed and sworn to before me this 27th day of March, 1996.

Kim Y. Robertson
NOTARY PUBLIC

My commission expires:



APPENDIX B

Vitas

PRINCIPAL INVESTIGATORS

Bernard L. Weinstein

Bernard L. Weinstein is director of the Center for Economic Development and Research and a professor of applied economics at the University of North Texas in Denton. The Center was established in 1989 to provide economic analysis and consulting services to university constituents in the private, non-profit and public sectors. He also serves as director of the Institute of Applied Economics, which offers masters degree programs in economic development.

Dr. Weinstein studied public administration at Dartmouth College and received his A.B. in 1963. After a year of study at the London School of Economics and Political Science, he began graduate work in economics at Columbia University, receiving an M.A. in 1966 and a Ph.D. in 1973.

He has taught at Rensselaer Polytechnic Institute, the State University of New York, the University of Texas at Dallas, and Southern Methodist University. He has been a research associate with the Tax Foundation in Washington, D.C. and the Gray Institute in Beaumont, Texas. He has worked for several U.S. government agencies including the President's Commission on School Finance, the Internal Revenue Service and the Federal Trade Commission.

Dr. Weinstein has authored or co-authored numerous books, monographs and articles on the subjects of economic development, public policy and taxation, and his work has appeared in professional journals such as LAND ECONOMICS, CHALLENGE, SOCIETY, POLICY REVIEW, ECONOMIC DEVELOPMENT QUARTERLY, POLICY STUDIES JOURNAL and ANNALS OF REGIONAL SCIENCE. His work has also appeared in THE NEW YORK TIMES, THE WALL ST. JOURNAL, THE LOS ANGELES TIMES and a number of regional newspapers and magazines. He is a former member of the editorial board of SOCIETY magazine and currently serves on the DALLAS MORNING NEWS Board of Economists.

Dr. Weinstein has been a consultant to many companies, non-profit organizations and government agencies, and he testifies frequently before legislative, regulatory and judicial bodies. His clients have included AT&T, Southwestern Bell, Texas Instruments, Conoco, Gulf States Utilities, Central Power and Light, the Nuclear Energy Institute, the U.S. Conference of Mayors, the Western Governors Association, the City of San Antonio, and the Joint Economic Committee of the U.S. Congress.

Dr. Weinstein was director of federal affairs for the Southern Growth Policies Board from 1978 to 1980 and served as director of the Task Force on the Southern Economy of the 1980 Commission on the Future of the South. From 1984 to 1987 he was chairman of the Texas Economic Policy Advisory Council and from 1987 to 1988 served as visiting scholar with the Sunbelt Institute in Washington, D.C. In 1992 he was appointed by Lieutenant Governor Bob Bullock to the Texas Partnership for Economic Development. He is currently a senior fellow with the Southern Growth Policies Board and serves on the boards of the American Lung Association of

Texas, the Dallas Business Finance Corporation and KERA. He is also a director of Beal Bank and AccuBanc Mortgage Corporation in Dallas, Texas.

Harold T. Gross

Harold T Gross is research director of the Center for Economic Development and Research and associate professor of applied economics at the University of North Texas (UNT). The center provides economic and public policy consulting services to clients in the private, non-profit and public sectors. Prior to joining UNT in June 1989, he was associate director of an applied business and economic research center at Southern Methodist University's Cox School of Business, and an economist with the John Gray Institute.

Dr Gross has authored or co-authored numerous books, monographs and articles on the subjects of economic development, taxation, energy policy and labor-management relations, and his work has appeared in professional journals such as Challenge, Economic Development Commentary, Economic Development Quarterly, Petroleum Accounting and Financial Management Journal, Policy Review, Policy Studies Journal and Society. He has also contributed to the editorial and financial pages of The Los Angeles Times, The New York Times and The Wall Street Journal, as well as numerous regional newspapers and magazines. He is co-editor of the Western Tax Review, and serves on the Intergovernmental Fiscal Relations Committee of the National Tax Association.

He has been a consultant to many companies, non-profit organizations and government agencies, and he testifies frequently before legislative, regulatory and judicial bodies. His clients have included AT&T, Phillip Morris, Phillips Petroleum, the San Antonio Spurs, Tenneco, Texaco, the Western Governors' Association, the Joint Economic Committee of the US Congress, the US Senate Finance Committee and the US Treasury Department. He has served on the board of the Texas Lyceum Association, and in 1987 was appointed by Texas Speaker Gib Lewis to the Texas House of Representatives Economic Policy Advisory Committee.

Dr Gross was educated at the United States Air Force Academy and at the University of Texas at Dallas, where he received a BS in business and public administration in 1981, an MA in political economy in 1982 and a PhD in political economy in 1984.

Terry L. Clower

Terry L. Clower is a research scientist for the Center for Economic Development and Research at the University of North Texas. The Center provides economic and public policy consulting services to clients in the private, non-profit and public sectors. Prior to joining UNT in January 1992, Mr. Clower spent ten years in private industry in distribution, transportation and site location management positions.

Mr. Clower has served as project manager, staff researcher and statistical analyst on numerous projects reflecting experience in labor relations, economic and community development, public utility issues, transportation, and economic impact analyses. He serves as the Center's resident expert on telecommunications issues co-authoring two major studies funded by the Texas Telephone Association examining the likely impacts of a broadband telecommunications network in Texas. Mr. Clower has also written papers regarding public utility regulation and the impacts of the proposed information superhighway.

In addition to his work with the Center for Economic Development and Research, Mr. Clower has performed consulting services to municipalities and companies in the electronics, telecommunications and publishing industries. The focus of these activities has included rural development, labor relations, tax policies and market performance issues.

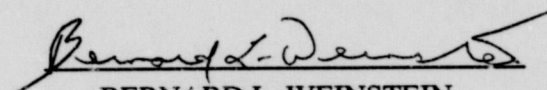
Mr. Clower also holds an appointment as an Adjunct Professor in the Institute of Applied Economics at the University of North Texas. He teaches formal courses in economic and community development, the political economy of Texas and information policy. In addition, Mr. Clower works with several students each semester in one-on-one explorations of a variety of topics.

Mr. Clower received a B.S. in Marine Transportation from Texas A&M University in 1982 and an M.S. in Applied Economics from the University of North Texas in 1992. He is currently completing his work towards a doctorate in information science at the University of North Texas specializing in information policy issues and the use of information resources.

VERIFICATION

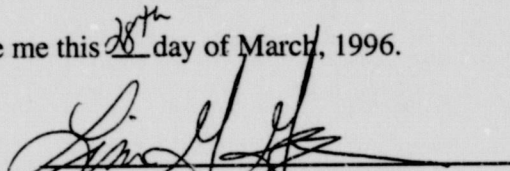
STATE OF TEXAS)
) SS.
COUNTY OF DENTON)

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


BERNARD L. WEINSTEIN

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




NOTARY PUBLIC

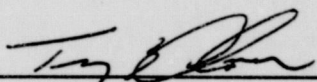
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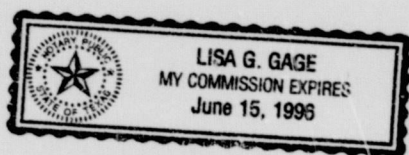
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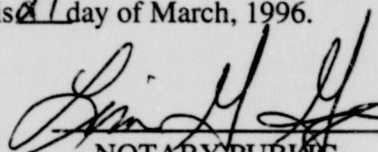
STATE OF TEXAS)
) SS.
COUNTY OF DENTON)

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


TERRY L. CLOWER

Subscribed and sworn to before me this 27 day of March, 1996.




NOTARY PUBLIC

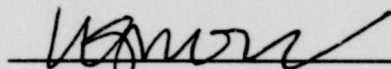
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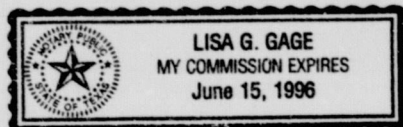
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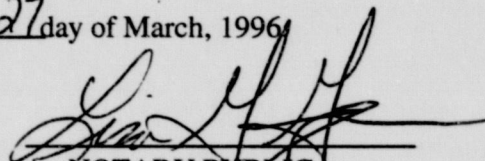
STATE OF TEXAS)
) SS.
COUNTY OF DENTON)

I, Harold T. Gross, being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.


HAROLD T. GROSS

Subscribed and sworn to before me this 27 day of March, 1996




NOTARY PUBLIC

My Commission Expires:

6-15-96

Exhibit 2

A	A	B	C	D	E		G	H	I
1	Texas Based Individuals and Organizations Who Submitted Letters of Support as Part of the UP/SP Merger Application								
2									
3	COUNTY	CITY	NAME	TDM*	SIC **	TX RANK BY SALE/SIC***	ACTIVITY	DESCRIPTION	RAIL PROVIDER
4	Harris	Houston	Meridian Oil, NGL Marketing Div	Y	1321	not found	drilling	natural gas liquids	
5	Midland	Midland	Farstad Oil Inc.	N	1321	not found	mfg.	butane-gasoline, ethane-propane	UP
6	Fort Bend	Sugarland	Dowell, A division of Schlumberger	N	1389	#2 of 36	oil & gas field service	cementing & stimulation service	
7	Williamson	Georgetown	Texas Crushed Stone Co.	Y	1422	#2 of 2	quarry	aggregates - limestone	
8	Brazoria	Clute	Vernon Material & Equipment Co.	N	1422	not found	distribution, mfg.	asphalt paving, aggregates,	UP, SP, BNSF
9	Colorado	Eagle Lake	Colorado County Rice Mill	Y	2044	not found	rice milling	rice products	SP
10	Medina	Hondo	Mummes Inc.	Y	2048	not found	storage	grain, fertilizer	SP
11	Titus	Mt. Pleasant	Glover Feed Mills Inc.	Y	2048	not found	mfg.	livestock feeds	
12	Taylor	Abilene	Abilene AG Service & Supply Inc.	Y	2048	not found	mfg.	livestock feed, fertilizer	UP, SP, BNSF
13	Cameron	Santa Rosa	Rio Grande Valley Sugar Growers	Y	2061	#1 of 1	mfg.	sugar, molasses for feed	
14	Fort Bend	Sugar Land	Imperial Holly Corp.	Y	2062	#1 of 1	mfg.	sugar, molasses	
15	Collin	Plano	Frito-Lay Inc.	Y	2096	#1 of 3	mfg.	food, potato snack and other products	SP, BNSF, DRGW
16	Denton	Carrollton	Heritage Bag Co.	N	2673	#1 of 6	mfg.	polyethylene bags	
17	Harris	Houston	Pioneer Chlor Alkali Co.	N	2812	#2 of 3	mfg.	chemicals	
18	Dallas	Dallas	Occidental Chemical Corp.	Y	2812	#1 of 3	mfg.	plastic resins	
19	Harris	Houston	Criterion Catalyst Co. L.P.	N	2819	not found	mfg.	refining catalysts	
20	Harris	Houston	ISK Biosciences	Y	2819	not found	mfg.	hydrochloric acids, herbicides, fungicides	
21	Tarrant	Mansfield	Spectrum Polymers	N	2821	not found	mfg.	compounding/coloring plastic pellets	UP, SP
22	Dallas	Dallas	Hoeschst Celanese Corp	Y	2821	#12 of 13	mfg.	acrylics, polythelynes	UP
23	Ector	Odessa	Rexene Corp.	Y	2821	#6 of 13	mfg.	petrochemicals, plastic resins	UP
24	Brazoria	Freeport	Shintech Inc.	Y	2821	not found	mfg.	PVC resin	UP
25	Harris	Crosby	KMCO Inc.	Y	2843	not found	mfg.	speciality & custom chemical products	SP
26	Gonzales	Gonzales	Southern Clay Products Inc.	N	2843	not found	mining	smectites	
27	Harris	Baytown	Advanced Aromatics	Y	2869	#9 of 15	mfg.	petrochemicals	UP, SP, BNST, KCS
28	Dallas	Dallas	Hoechst Celanese Chemical Group	Y	2869	#2 of 15	mfg.	chemicals	SP, others
29	Harris	Houston	Exxon Chemical Americas	Y	2869	#1 of 15	refining	chemicals	
30	Hale	Plainview	Zipp Industries	Y	2873	not found	mfg.	ammonium sulphate, phosphatic fertilizer	
31	Harris	Houston	MBT Fertilizer - Milwaukee, WI	N	2873	not found	mfg.	fertilizers	UP, SP
32	Harris	Galena Park	American Plant Food Corp.	N	2873	not found	mfg.	fertilizer, fertilizer warehousing	UP, SP
33	Matagorda	Bay City	Bonus Crop Fertilizer	Y	2875	not found	mfg.	fertilizer, liquid mixed	SP
34	Waller	Hempstead	Texas Liquid Fertilizer	Y	2875	#1 of 2	mfg., distribution	fertilizer, liquid mixed	UP, SP
35	Harris	Houston	M-I Drilling Fluids	Y	2899	#9 of 10	oil services/mining	drilling mud, barite	
36	Harris	Houston	United Salt Co.	Y	2899	not found	mfg.	salt	

TDM: listed in the Texas Directory of Manufacturing; **SIC: Standard Industrial Classification Code; ***Per Ward's Business Dir

A	A	B	C	D	E		G	H	I
37	Bexar	San Antonio	Diamond Shamrock	Y	2911	#9 of 26	refining	petroleum products	
38	Harris	Houston	Neste Trifinery Petroleum Services	N	2951	not found	refining	asphalt	
39	Hays	San Marcos	Colorado Materials Co. Inc.	Y	2951	not found	quarry, mining	aggregates, asphaltic	UP
40	Gregg	Longview	Longview Asphalt Inc.	Y	2951	not found	mfg.	asphaltic concrete and hot-mix	UP,SP
41	Dallas	Irving	GS Roofing Products	Y	2952	#1 of 7	mfg.	asphalt roofing, shingles	
42	Brazos	Bryan	Young Contractors Inc.	Y	2952	not found	building materials	asphalt	UP
43	Rusk	Kilgore	Martin Gas Sales	N	2999	not found	distribution	molten sulphur	UP
44	Jefferson	Beaumont	Polymer Service Inc.	N	3080	not found	mfg.	plastic products	UP,SP,BNSF,KCS
45	Hays	Buda	Texas-Lehigh Cement	Y	3241	#2 of 3	mfg.	cement, portland	SP
46	Tarrant	Ft. Worth	Acme Brick Co.	Y	3251	not found	mfg.	brick	UP,SP
47	Hidalgo	Edinburg	Wilbur Ellis Co. So. Div.	Y	3271	not found	distribution	fertilizer, pesticides	UP
48	Ellis	Midlothian	N. Texas Cement Co. / Gifford-Hill Co.	Y	3272	not found-see Gifford-Hill Co.	mfg.	cement, portland	
49	Dallas	Dallas	Gifford-Hill & Co.	Y	3272	#2 of 10	mfg.	concrete products	UP
50	Bexar	San Antonio	Capitol Aggregates	Y	3273	not found	quarry	aggregates, ready-mix	
51	Harris	Houston	Pioneer Concrete	Y	3273	#2 of 10	mfg./quarrying	ready-mix concrete, aggregates	UP,SP,BNSF,HBT
52	Travis	Austin	Austin White Lime Co.	Y	3274	#2 of 2	quarry, mining	limestone, minerals	
53	Denton	Denton	Western Rock Products	N	3295	not found	quarry	aggregates	SP,BNSF
54	Harris	Seabrook	Gulf Coast Limestone	N	3295	not found	aggregates	aggregates	
55	Harris	Houston	Meridian Aggregates Co.	N	3295	not found	mfg./quarrying	aggregates	UP, BNSF
56	Leon	Jewett	Nucor Corp.	Y	3312	not found	mfg.	steel	
57	Dallas	Dallas	Texas Industries Inc.	Y	3312	#1 of 5	mfg.	concrete products, ready mix	UP,SP,BNSF,KCS
58	Guadalupe	Seguin	CMC Steel Group	N	3312	not found	mfg.	steel mill, fabrication, recycling scrap	
59	Ellis	Midlothian	Chaparral Steel / Texas Industries Inc.	Y	3312	# 2 of 5	mfg.	structural & engineering steel	
60	Harris	Houston	Precision Flamecutting & Steel	Y	3316	not found	fabrication	steel	SP
61	Dallas	Dallas	Commercial Metals Co.	N	3341	# 1 of 5	fabrication	steel, rail salvage, rail car repair	UP,SP
62	Harris	Houston	Krueger Engineering & Mfg.	Y	3433	not found	mfg.	heat transfer equipment	SP
63	Victoria	Victoria	Safety Railway Service	Y	3743	not found	mfg.	rail car repair & parts	UP,SP
64	Bexar	San Antonio	Azrock Commercial Flooring	Y	3996	not found	mfg.	floor products	
65	Angelina	Lufkin	Grinding & Sizing Co. Inc.	Y	3999	not found	mfg.	grinding - drilling compounds/chemicals	UP,SP, TSE
66	Bexar	San Antonio	RailTex Service Corp.		4011	#3 of 7	transportation	railroad line-haul, short-line	
67	Hidalgo	McAllen	Iron Horses Resources, O'Fallon Ill.		4011	not found	transportation	railroad line-haul, short-line	
68	Cameron	Brownsville	Brownsville & Rio Grande Internat'l R.R.		4011	not found	transportation	railroad line-haul, short-line	
69	Dallas	Dallas	Texas, Gonzales & Northern Railway		4011	#5 of 7	transportation	railroad line-haul, short-line	
70	Angelina	Diboll	Texas South-Eastern R.R.	N	4011	not found	transportation	railroad line-haul, short-line	
71	Williamson	Georgetown	Georgetown Railroad	N	4011	#4 of 7	transportation	railroad line-haul, short-line	
72	Angelina	Lufkin	Angelina & Neches River Railroad		4011	#6 of 7	transportation	railroad line-haul, short-line	

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A	A	B	C	D	E		G	H	
73	Potter	Amarillo	Attebury Grain Inc.	N	4221	#1 of 7	distribution	grain	UP,SP
74	Terry	Brownfield	Goodpasture	Y	4221	not found	distribution	grain,fertilizer	SP
75	Cameron	Harlingen	Valley International Cold Storage Inc.	N	4221	not found	warehousing	food products	
76	Bowie	Texarkana	Miller-Bowie County Farmer Assoc.	N	4221	not found	storage	grain,fertilizer	
77	Dallas	Dallas	Quality Logistic Services	N	4225	na	transportation service	warehousing, distribution	
78	El Paso	El Paso	DAJ Enterprises	N	4225	na	drayage/warehousing		
79	Harris	Houston	Evel Logistics	N	4225	na	warehousing/packing		
80	Dallas	Dallas	Stevens Transport	N	4225	na	transportation service	intermodal, trucking, drayage	
81	Webb	Laredo	L.M.S. International	N	4225	na	distribution	warehousing	
82	Harris	Houston	Port of Houston Authority	N	4230	na	intermodal terminal	intermodal	
83	Harris	Houston	Admiral Truck Services	N	4731	na	transportation service	intermodal	
84	Dallas	Dallas	Amser Logistics	N	4731	na	transportation service	consultant	PTRA
85	Cameron	Brownsville	Roser Customs Service Inc.	N	4731	na	transportation service	customs broker	SP
86	Webb	Laredo	Sidney Freidin Inc.	N	4731	na	transportation service	customs broker	
87	Dallas	Garland	Asset Based Intermodal	N	4731	na	transportation service	intermodal	UP,SP
88	El Paso	El Paso	Brown, Alcantar & Brown, Inc.	N	4731	na	transportation service	freight forwarding, customs broker	
89	El Paso	El Paso	Orion Transporation Services	N	4731	na	transportation services	intermodal	
90	Webb	Laredo	Armando Garza & Sons Inc.	N	4731	na	transportation service	brokerage/importer	
91	Webb	Laredo	Southern Forwarding Co.	N	4731	na	transportation service	freight forwarding, customs broker	
92	Harris	Humble	Quality Intermodal Corp.	N	4731	na	transportation service	intermodal, marketing	
93	Dallas	Dallas	Pegasus Transportation Group Inc.	N	4731	na	transportation service		UP, BNSF, KCS
94	Tarrant	Ft. Worth	Con-Way Truckload Services	Y	4731	na	transportation service	intermodal, marketing	UP,BNSF, others
95	Harris	Stafford	Atex Resources	N	4731	na	transportation service	logistics, brokering, trucking, intermodal	
96	Collin	Planó	C.H. Robinson Co.	N	4731	na	transportation service	intermodal	UP,SP,BNSF,KCS
97	Harris	Houston	Four Way Transportation Inc.	N	4731	na	transportation service	brokerage, consultant - intermodal	
98	Harris	Houston	Kalama International	N	4731	na	transportation service	trucking, intermodal, chemicals	
99	Harris	Houston	Industry Express Inc.	N	4731	na	transportation service	consultant, management	UP,SP, PTRA
100	Ellis	Midlothian	MidTexas International Center Inc.	N	4731	na	transportation service	vehicle storage & processing; steel products	SP
101	Tarrant	Grapevine	Danzas Corp.	N	4731	na	transportation service	freight forwarding	
102	Harris	Houston	National Export Crating Co.	N	4783	na	service	industrial packaging and crating	
103	Harris	Houston	Triad Transport Inc.	N	4789	na	intermodal transport	haz-mat	
104	Travis	Austin	Christie Gas Corp.	N	4924	not found	distribution	natural gas liquids	UP,SP,TNM
105	Harris	Houston	Coast Energy Group	N	4925	not found	distribution	LP gas	
106	Harris	Houston	Petrogas Inc.	N	4925	not found	distribution	LP gas, butane gas	
107	Harris	Houston	JTS Enterprises, Inc.	N	4925	not found	distribution	LP gas, chlorine gas	
108	Travis	Austin	Hill Country Hardwoods	N	5031	not found	distribution/wholesale	kiln dried hardwoods	SP

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A	A	B	C	D	E		G	H	I
109	Hidalgo	McAllen	Lone Star Brick, Inc.	N	5032	not found	distribution	brick	SP
110	Harris	Houston	Vinylasa International Inc.	N	5039	na	distribution/wholesale	construction materials - tile	UP
111	Harris	Houston	Tradco Inc.	N	5090	na	distribution	fencing products	
112	Dallas	Dallas	RSP Corporation	N	5093	not found	recycling/refining	lead	
113	Harris	Houston	Cinco Industries	N	5093	not found	recycling	scrap steel & iron	SP
114	Nueces	Corpus Christi	Transamerica E & I Trading Co.	N	5093	not found	brokerage/export	scrap iron	SP
115	Lubbock	Lubbock	Jarvis Metals Recycling	N	5093	not found	recycling	scrap metals	
116	El Paso	El Paso	El Paso Disposal	N	5093	not found	recycling	paper, plastics, leather	
117	Ector	Odessa	Odessa Metals Inc.	N	5093	not found	recycling	scrap metals	
118	Dallas	Dallas	Allied Vista, Inc.	N	5093	not found	recycling	paper	UP
119	Lubbock	Lubbock	Russell E. Womak & Co.	N	5153	not found	processing/distribution	dried beans	
120	Harris	Houston	Vista Trading	N	5153	not found	trading	grain	
121	Harris	Houston	North American Chemicals L.C.	N	5162	not found	import/export	chemicals, plastics	
122	Harris	Houston	Copeq Trading Co.	N	5169	na	trading	glycols	
123	Montgomery	Woodlands	Shrieve Chemical Co.	N	5169	na	marketing	chemicals	
124	Jefferson	Beaumont	Giglio Distributing	N	5180	na	distribution	beer	
125	Harris	Houston	Amerigas	N	5984	na	marketing	LP gas	
126	Harris	Kingwood	Ural Corp.	N	6082	na	import/export	plastic scrap, waste paper	SP
127	Harris	Houston	Fantastic Co.	N	6082	na	import/distribution	toys	SP
128	Bexar	San Antonio	The Tank Company	N	6082	na	importing/marketing	petroleum tanks	
129	Bexar	San Antonio	Over the Line Corp.	N	6082	na	import/transportation service	beer	
130	Harris	Houston	Texas Warehouse Association	N	8611	na	member organization	distribution	
131	Anderson	Palestine	Rep. Todd Staples		9121	na	District 11	Texas House of Representatives	
132	Midland	Midland	Rep. Tom Craddick		9121	na	District 82	Texas House of Representatives	
133	Dallas	Richardson	Fred Hill		9121	na	District 112	Texas House of Representatives	
134	Victoria	Victoria	Sen. Ken Armbrister		9121	na	District 18	Texas House of Representatives	
135	Cameron	Brownsville	Sen. Eddie Lucio, Jr.		9121	na	District 27	Texas House of Representatives	
136	Ellis	Waxahatche	Rep. Jim Pitts		9121	na	District 10	Texas House of Representatives	
137	El Paso	El Paso	Rep. Gilbert Serna		9121	na	District 75	Texas House of Representatives	
138	Tarrant	Ft. Worth	Rep. Bill G. Carter		9121	na	District 91	Texas House of Representatives	
139	Dallas	Dallas	Rep. John Carona		9121	na	District 108	Texas House of Representatives	
140	McLennan	Waco	Rep. Barbara Rusling		9121	na	District 57	Texas House of Representatives	
141	Ector	Odessa	Rep. G.E. Buddy West		9121	na	District 81	Texas House of Representatives	
142	Tarrant	Bedford	Rep. Carolyn Park		9121	na	District 92	Texas House of Representatives	
143	Taylor	Abilene	Rep. Bob Hunter		9121	na	District 71	Texas House of Representatives	
144	Matagorda	Bay City	Rep. D.R. Tom Uher		9121	na	District 29	Texas House of Representatives	

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A	A	B	C	D	E		G	H	I
145	Bexar	San Antonio	Rep. Bill Siebert		9121	na	District 121	Texas House of Representatives	
146	Ellis	Seguin	Rep. Edmund Kuempel		9121	na	District 45	Texas House of Representatives	
147	Parker	Weatherford	Rep. Ric Williamson		9121	na	District 61	Texas House of Representatives	
148	Montgomery	Woodlands	Rep. Kevin Brady		9121	na	District 15	Texas House of Representatives	
149	Harris	Pasadena	Rep. Robert E. Talton		9121	na	District 144	Texas House of Representatives	
150	Tarrant	Arlington	Rep. Toby Goodman		9121	na	District 33	Texas House of Representatives	
151	Harris	Houston	Rep. Talmadge Heffen		9121	na	District 149	Texas House of Representatives	
152	Tarrant	Arlington	Rep. Kent Grusendorf		9121	na	District 94	Texas House of Representatives	
153	Harris	Houston	Rep. Kevin Bailey		9121	na	District 140	Texas House of Representatives	
154	Denton	Carrollton	Rep. Kenny Marchant		9121	na	District 99	Texas House of Representatives	
155	Rusk	Kilgore	Kilgore Economic Development		9532	na	economic development	community	
156	Howard	Big Spring	Moore Development for Big Spring		9532	na	economic development	community	BNSF, UP
157	Burleson	Caldwell	Burleson Co. Industrial Foundation		9532	na	economic development	community	UP, SP, BNSF
158	Brazos	Bryan/C. S.	Bryan/College Sta. Economic Devel.		9532	na	economic development	community	BNSF
159	Parker	Parker	Weatherford/Parker Co. Econ. Devel.		9532	na	economic development	community	
160	Jefferson	Beaumont	Southeast Texas Inc.		9532	na	economic development	community	
161	Bell	Temple	Temple Economic Development Corp.		9532	na	economic development	community	
162	Tarrant	Arlington	Chamber of Commerce		9780	na	local government	city	
163	Anderson	Palestine	Chamber of Commerce		9780	na	business organization	chamber of commerce	
164	Galveston	Galveston	Chamber of Commerce		9780	na	business organization	chamber of commerce	
165	Harrison	Marshall	Chamber of Commerce		9780	na	business organization	chamber of commerce	
166	Travis	Austin	Chamber of Commerce		9780	na	business organization	chamber of commerce	
167	Grayson	Denison	Chamber of Commerce		9780	na	business organization	chamber of commerce	
168	Parker	Weatherford	Chamber of Commerce		9780	na	business organization	chamber of commerce	
169	Hays	San Marcos	Chamber of Commerce		9780	na		chamber of commerce	
170	Webb	Laredo	City, Planning Dept.		9810	na	local government	city	
171	Howard	Big Spring	City, Mayor		9810	na	local government	city	
172	Tarrant	Ft. Worth	City, Mayor		9810	na	local government	city	
173	Taylor	Abilene	City, Mayor		9810	na	local government	city	
174	Anderson	Palestine	City, Mayor		9810	na	local government	city	
175	Harrison	Marshall	City, Mayor		9810	na	local government	city	
176	Taylor	Taylor County	County Judge		9820	na	local government	county	

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Exhibit 3

A	B	C	D	E	F
MODE*	Organization	Name	P*	City	State
LET		E.L. East, Jr.	C	Sabinal	TX
LET	Brazoria County	John Willy, Judge	C	Angleton	TX
HOU	Brazos County	Al Jones	C	Bryan	TX
CC	Brownsville Navigation Dist.	W.W. Reed, Jr.	C	Brownsville	TX
CC	Central and Southwest	Paul Cox	C	Dallas	TX
CC,LET	Corpus Christi Grain Co.	William E. Bailey	C	Corpus Christi	TX
HOU	Customs Broker	Ricardo Gonzales	C	Brownsville	TX
HOU	Dow Chemical	Ron Dipprey	C	Freeport	TX
CC	Farrell-Cooper Mining Co.	C.L. King	C	San Antonio	TX
FW	Fina Oil and Chemical	Mike Spahls	C	Dallas	TX
LET	Ft Bend County	Michael D. Rozell, Judge	C	Richmond	TX
FW	Frank Bailey Grain Co.	Frank Bailey III	C	Ft. Worth	TX
LET	Geon Company	William F. Patient	C	Avon Lake	OH
CC	Global Grain Co.	Abel Gonzales, JR.	C	Corpus Christi	TX
CC	Gtr. Corpus Christi Business Alliance	Keith Arnold	C	Corpus Christi	TX
CC	Gulf Compress	Bob Weatherford	C	Corpus Christi	TX
LET	H.B. Fuller Co.	Milton J. Evenson	C	St. Paul	MN
CC	Hartingen Chamber of Commerce	Ed Corbin	C	Hartingen	TX
LET,HOU	Huntsman Corp.	George Edwards, Katy Zuidis	C	Houston	TX
FW	International Trade & Transport	James Owens	C	Laredo	TX
LET	Montgomery County	Alan B. Sadler	C	Conroe	TX
LET	Pennzoli Products Co.		C	Houston	TX
FW	Perryman Group	Ray Perryman	C	Waco	TX
LET	Reagent Chemical & Research		C	Houston	TX
LET	San Antonio Economic Development Found.		C	San Antonio	TX
LET	San Antonio Hispanic Chamber of Commerce	Leo Gomez	C	San Antonio	TX
HOU	Shell Chemical Co.	George H. Jelly	C	Houston	TX
CC	Skysagle Railroad	Ken Barry	C	Corpus Christi	TX
HOU	Smithville, City of	Vernon Richards	C	Smithville	TX
CC	So. Texas Rural Rail District	H.B. Ruckman	C	Kearnes City	TX
HOU	Society of the Plastics Industry	Maureen Healey	C	Washington	D.C.
LET	South Texas County Elevator Assn.	Doug Young	C	Raymondville	TX
CC	Southern Pacific Transportation	U.L. McNeil	C	Corpus Christi	TX
HOU	TMM - Mexico	Brad Skinner	C	Mexico City	Mexico
LET	Terrill County	Dudley Harrison, Judge	C	Sanderson	TX
FW	Texas Cotton Association	Bob Poteet	C	Dallas	TX
FW,H,CC,LET	Texas Department of Transportation	Burnett,Randell, Douglas	C	Austin	TX
HOU,LET	Texas House of Representatives	Robert M. Saunders	C	LaGrange	TX
LET	Texas House of Representatives	Huey McCoulskey	C	Richmond	TX
HOU	Texas House of Representatives	Patricia Gray	C	Galveston	TX
FW	Texas House of Representatives	Stephen E. Ogden	C	Bryan	TX
CC	Transportation Communications Union	Manuel J. Sanchez	C	Laredo	TX
HOU	U.S. House of Representatives	Jim Chapman	C	Washington	D.C.
HOU	U.S. House of Representatives	Gene Green	C	Houston	TX
FW	United Transportation Union	Robert A. Cushing, Jr.	C	El Paso	TX
HOU,LET	Vista Chemical Co.	Jim Hall, H.W. Higers	C	Houston	TX
CC	Wright Materials	Miss Wright	C	Robstown	TX
LET		John Odum	O	Austin	TX
LET		Milton L. Hardin	O	Waco	TX
LET		Sharon Holmes	O	Houston	TX
LET		Joe T. Jones, CPA	O	Tyler	TX
LET		Arnoldo Cano	O	San Juan	TX
LET		Carroll Waggoner	O	College Station	TX
LET	Affordable MFG Co.	Preston D. Wagner	O	Beaumont	TX
LET	Air Liquide America Corp.	Deve Wedel	O	Houston	TX
LET	Al Hogen Builders	Nelli F. Ameler, III	O	Corpus Christi	TX

F*-Position - U(no position); I(more information); C(concerns); S(support); SWS(support w/ stipulations); O(opposition)

A	B	C	D	E	F
LET	Alamo Street Garden and Market	Cathy Garcia	O	San Antonio	TX
LET	Alice Chamber of Commerce	David R. Cich	O	Alice	TX
FW	American Meize Products Co.	Larry Prince	O	Chicago	IL
CC,LET	Barr Iron & Metal	Dempsey Barr	O	Alice	TX
LET	Brewster County	Val Clark Beard, Judge	O	Alpine	TX
FW	Brotherhood Locomotive Engineers	Raymond Holmes	O	Mineola	TX
LET	Bryan/College Station Chamber Commerce	Ronnie Morrison	O	Bryan/College St	TX
LET	CITGO Petroleum Corp.		O	Tulsa	OK
LET	Chemical Leaman Tank Lines, Inc.	Peter g. Miller	O	Exton	PA
LET	Colorite Plastics Co.	Richard P. Iseman	O	Ridgefield	NJ
LET	Columbia Companies	Ronald R. Havrilla	O	Cleveland	OH
LET(35)	Conrail Supporters Form Letter	Various Buineesses	O	Houston, El Pas	TX
CC,H,LET (3)	Consolidated Rail Corp.	Bruce Wilson, et al	O	Philadelphia	PA
LET	Del Rio Chamber of Commerce	Michael J. Healy, Jr.	O	Del Rio	TX
HOU,LET	Denver Railway Car	John R. Parten	O	Houston	TX
FW	E.P.I.C.	Norm Hammond	O	Tyler	TX
LET	Elf Atochem North America	John O'Leary	O	Philadelphia	PA
HOU	Enterprise Products Co.	John E. Smith	O	Houston	TX
LET	Fabrilcon International Inc.	Lannie Arlington	O	Beaumont	TX
LET	Farmiland Industries, Inc.	H. D. Cleberg	O	Kansas City	MO
LET	Harmon Recycle & Rail, Inc	Robert V. Uguori	O	Croton-on-Huda	NY
LET	Harris County	Robert Eckels, County Judge	O	Houston	TX
LET	Houston, City Councilman	John Castillo	O	Houston	TX
LET	Hubb Oilfield Supply Co.	Dempsey Barr	O	Alice	TX
LET	Hudspeth County	James A. Pesce, Judge	O	Sierra Blanca	TX
LET	International Paper	Charles E. McHugh	O	Memphis	TN
LET	Jeff Davis County	Peggy Robertson, Judge	O	Fort Davis	TX
FW,H,CC,LET	Kansas City Southern Railway	Michael R. Haverly	O	Kansas City	MO
LET	Kraher Steel Co., Inc.	Paul Hackett	O	Melrose Park	IL
CC	Laredo, City of	Saul N. Ramirez	O	Laredo	TX
LET	Liberty Forge Inc.	Jesse Lopez	O	Liberty	TX
LET	Lumber Products Co./B.J. Supply	William Elser	O	Bristol	PA
LET	Necogdoches County C. of C.		O	Necogdoches	TX
LET	Necogdoches, City of	James E. Raney, Mayor	O	Necogdoches	TX
LET	Navarro County Farm Bureau Board of Dir	Frank Commiato	O	Kerne	TX
LET	Northeast Texas Farmers Co-op		O	Sulphur Springs	TX
LET	Ohio Oil Gathering Corp.	Michael McKee	O	Frazeburg	OH
LET (29)	Opposition Letters: 29 individuals opposed to the merger.		O	Various Regions	TX
LET	PQ Corporation	Timothy J. Sally	O	Valley Forge	PA
LET	Party Creations...and flowers	Minnie C. Rodriguez	O	San Antonio	TX
LET	Phillips Petroleum Company	Fred E. Watson	O	Bartlesville	OK
LET	Pilgrims Pride	Lonnie A. "Bo" Pilgrim	O	Pittsburg	TX
LET	Redlands Materials	Ralph Kennedy	O		TX
LET	River City Steel & Recycling	G. Robert Triesch, III, Pres.	O	San Antonio	TX
LET	Smith Search, S.C.	John E. Smith	O	Alpes	Mexico
FW,LET	South Orient Railroad	James Craig	O	Dallas	TX
LET	Statts Terminals Southwest, Inc.	William D. Challenger	O	Brownsville	TX
CC	TX Agricultural Cooperative Council	Tommy Engelke	O	Austin	TX
LET	TexPar Energy Inc.	Beverly Lund	O	Waukeasha	WI
LET	Texas Chemical Council	James V. Woodrick	O	Austin	TX
FW,LET	Texas Farm Bureau	Charles Benton, Vernie Glassco	O	Waco	TX
LET	Texas Grain Sorghum Assoc.	Pat George	O	Alexandria	TX
LET	Texas House of Representatives	Helen Giddings	O	DeSoto	TX
LET	Texas House of Representatives	Yvonne Davis	O	Dallas	TX
FW,LET	Texas House of Representatives	John R. Cook	O	Breckenridge	TX
HOU,LET	Texas House of Representatives	Garnet F. Coleman	O	Houston	TX
LET	Texas House of Representatives	Sylvia Romo	O	San Antonio	TX
LET	Texas House of Representatives	Todd A. Hunter	O	Corpus Christi	TX

P*-Position - U(no position); I(more information); C(concerns); S(support); SWS(support w/ stipulations); O(opposition)

A	B	C	D	E	F
LET	Texas House of Representatives	Ciro D. Rodriguez	O	San Antonio	TX
LET	Texas House of Representatives	Kim Brimer	O	Arlington	TX
LET	Texas House of Representatives	John A. Longoria	O	Austin	TX
LET	Texas House of Representatives	Jessica Farrar	O	Houston	TX
LET	Texas House of Representatives	Ron Lewis	O	Mauriceville	TX
LET	Texas House of Representatives	Kyle Janak	O	Houston	TX
LET	Texas House of Representatives	Debra Danaburg	O	Austin	TX
LET	Texas House of Representatives	Gerald Torres	O	Jacinto City	TX
HOU	Texas House of Representatives	Beverly Woolley	O	Houston	TX
LET	Texas House of Representatives	Christine Hernandez	O	San Antonio	TX
LET	Texas House of Representatives	Diana Davila	O	Houston	TX
LET	Texas House of Representatives	Todd Staples	O	Palestine	TX
LET	Texas House of Representatives	Will Hartnett	O	Dallas	TX
LET	Texas House of Representatives	Gilbert Berna	O	El Paso	TX
FW,LET	Texas House of Representatives	Robert Junell	O	San Angelo	TX
FW,LET	Texas House of Representatives	Tom Ramsey	O	Mt. Vernon	TX
LET	Texas House of Representatives	Dale Tillery	O	Dallas	TX
LET	Texas House of Representatives	Nancy Moffet	O	West Lake	TX
LET	Texas House of Representatives	Clyde Alexander	O	Athens	TX
CC,LET	Texas House of Representatives	Hugo Berlanga	O	Corpus Christi	TX
LET	Texas House of Representatives	Ken Yarbrough	O	Houston	TX
HOU	Texas House of Representatives	Ken Yarbrough	O	Houston	TX
LET	Texas House of Representatives	Robert Turner	O	Coleman	TX
LET	Texas Seed Trade Association	Donald W. Ater	O	Pflugerville	TX
LET	Texas Senate	Mario Gallegos, Jr.	O	Galena Park	TX
CC,LET	Texas State Senate	Frank Media	O	San Antonio	TX
LET	Texas State Senate	Royce West	O	Dallas	TX
LET	Texas State Senate	Jeff Wentworth	O	San Angelo	TX
FW,CC,H,LET	Texas and Mexican Railway	Larry D. Fields	O	Laredo	TX
CC	Texas and Mexican Railway	Juan Garza Jr.	O	Corpus Christi	TX
CC,HOU	Transportation Communications Union	Phillip T. Trittel	O	Houston	TX
CC	Transportation Communications Union	Sergio R. Rodriguez	O	Laredo	TX
LET	Trinity Packaging Corp.	Daniel D. Ellis	O	Armonk	NY
LET	U.S. Congress: Green, Wilson, Gonzalez, Lee, Stenholm, Bryant, Doggett, Chapman, T	John Bryant	O	8 regions	TX
LET	U.S. House of Representatives	Solomon P. Ortiz	O	Dallas	TX
LET	U.S. House of Representatives	Sam Arrington	O	Washington	D.C.
FW,CC,H,LET	United Transportation Union	Sam Arrington	O	Austin	TX
LET	Washington Mills Electro Minerals Corp.	Frank Talarico	O	Niagara Falls	NY
LET	Wheelabrator Clean Water Systems, Inc.	Cal Miller	O	Columbus	OH
LET		Charles E. Gentry	O	Tyler	TX
LET		E. D. Thompson	O	Beaumont	TX
LET		Martin R. Jistel	O	Buda	TX
LET		Duane E. Hamann	O	Hemphill	TX
LET		E. H. Garrett	O	Smithville	TX
LET		Richard C. Dohman	O	Beaumont	TX
LET		James M. White	O	Brenham	TX
LET		Lindy A. Ausburne	O	Waco	TX
LET		Margaret N. Davis	O	Portland	TX
LET		M. L. Perry, Jr.	O	Jasper	TX
LET		Virginia Fulmer	O	Smithville	TX
LET		Branda Klein	O	Beaumont	TX
LET		Steve O. Vorenkamp, Sr.	O	College Station	TX
LET		Steve Gentry	O	Ben Wheeler	TX
LET		Starkey Sonnet, Jr.	O	Lufkin	TX
LET		Jack L. Bailey	O	Goodrich	TX
LET		Jennie LeBlanc	O	Orange	TX
LET		Walter Davidson	O	unknown	TX
LET		L. A. Stewart	O	San Angelo	TX

A	B	C	D	E	F
LET		Bill Foster	O	Huntsville	TX
LET		Steven Trent Lovett	O	College Station	TX
LET		Ernest F. Hoffmann	O	Tyler	TX
LET		Diane Baker	O	Garrison	TX
LET		Michael L. Brown	O	College Station	TX
LET		Herbert & Shirley	O	Lufkin	TX
LET		L. M. Hooks	O	Silabee	TX
LET		H.L. & Louise Patterson	O	Heame	TX
LET		Charlotte T. Cumberland	O	Kingsville	TX
LET		Rick Watkins	O	Lufkin	TX
LET		Raymond L. Callesure	O	Waco	TX
LET		Karen Walker	O	Orange	TX
LET		Connie Shelton	O	Beaumont	TX
LET		Margaret E. & Robert R. Robinson	O	Beaumont	TX
LET		Edmond Burke	O	Beaumont	TX
LET		Harold & Barbara Gant	O	Kountze	TX
LET		Mary K. Touchette	O	Lumberton	TX
LET		W. O. Cornish	O	Beaumont	TX
LET		Nancy Roberts	O	Teague	TX
LET		Marlyn Eanes	O	Nacogdoches	TX
LET		Charles and Dinah Breeden	O	Smithville	TX
LET		Maudie A. Reichman	O	San Angelo	TX
LET		Roderick S. Pankratz	O	Boerne	TX
LET		Maris Elena Chapa H.	C	Monterrey	Mexico

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ENTERED

BEFORE THE
TRANSPORTATION BOARD

Item No. _____

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Case Docket No. 32760

ORIGINAL

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

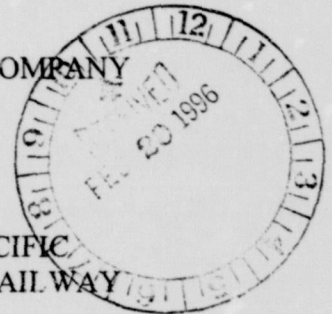
-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANYRESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO THE TEXAS MEXICAN RAILWAY COMPANY'S FIRST
INTERROGATORIES TO BURLINGTON NORTHERN SANTA FEJeffrey R. Moreland
Richard E. Weicher
Janice G. Barber
Michael E. Roper
Sidney L. Strickland, Jr.Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
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Railroad Company
3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102-5384
(817) 333-7954Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 463-2000

and

The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173
(708) 995-0387Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

February 20, 1996

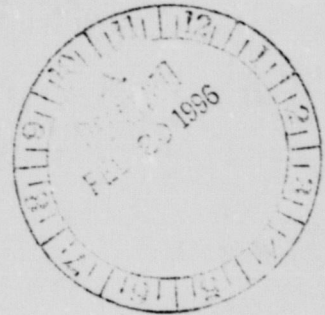
ENTERED
Office of the Secretary

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5 Part of
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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO THE TEXAS MEXICAN RAILWAY COMPANY'S FIRST
INTERROGATORIES TO BURLINGTON NORTHERN SANTA FE

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answer and object as follows to The Texas Mexican Railway Company's ("Tex Mex") "First Interrogatories To Burlington Northern Santa Fe." These responses and objections are being served pursuant to the Discovery Guidelines Order entered by the Administrative Law Judge in this proceeding on December 5, 1995 ("Discovery Guidelines").

Subject to the objections set forth below, BN/Santa Fe will produce non-privileged documents responsive to The Texas Mexican Railway Company's First Interrogatories To Burlington Northern Santa Fe. If necessary, BN/Santa Fe is prepared to meet with counsel for Tex Mex at a mutually convenient time and place to discuss informally resolving these objections.

Consistent with prior practice, BN/Santa Fe has not secured verifications for the interrogatory responses herein, but is willing to discuss with counsel for Tex Mex any particular response in this regard.

GENERAL OBJECTIONS

BN/Santa Fe objects to Tex Mex's First Interrogatories on the following grounds:

1. Parties. BN/Santa Fe objects to Tex Mex's First Interrogatories to the extent that they are directed to BNSF Corporation (now, Burlington Northern Santa Fe Corporation) rather than BN and Santa Fe. Burlington Northern Santa Fe Corporation is not a party to and has not appeared or intervened in this proceeding. Notwithstanding this objection, BN/Santa Fe will include as a part of its responses to Tex Mex's First Interrogatories documents in the possession of Burlington Northern Santa Fe Corporation.
2. Privilege. BN/Santa Fe objects to Tex Mex's First Interrogatories to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.
3. Relevance/Burden. BN/Santa Fe objects to Tex Mex's First Interrogatories to the extent that they seek information or documents that are not directly relevant to this

proceeding and to the extent that a response would impose an unreasonable burden on BN/Santa Fe.

4. Settlement Negotiations. BN/Santa Fe objects to Tex Mex's First Interrogatories to the extent that they seek information or documents prepared in connection with, or related to, the negotiations leading to the Agreement entered into on September 25, 1995, by BN/Santa Fe with Union Pacific and Southern Pacific, as supplemented on November 18, 1995.

5. Scope. BN/Santa Fe objects to Tex Mex's First Interrogatories to the extent that they attempt to impose any obligation on BN/Santa Fe beyond those imposed by the General Rules of Practice of the Interstate Commerce Commission ("Commission"), 49 C.F.R. § 1114.21-31, the Commission's scheduling orders in this proceeding, or the Administrative Law Judge assigned to this case.

6. Definitions. BN/Santa Fe makes the following objections to Tex Mex's definitions:

12. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intracompany communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries, notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulates; trade letters; press releases; financial statements; accounting records; and workpapers and worksheets. Further, the term "document" includes: (a) both basic records and summaries of such records (including computer runs); (b) both original versions and copies that differ in any respect from original versions, including notes; and (c) both documents in the possession, custody, or control of Applicants and documents in the possession, custody, or control of consultants or others who have assisted Applicants in connection with this proceeding.

BN/Santa Fe objects to the definition of "Document" as overly broad and unduly burdensome to the extent that (i) it calls for the production of materials and documents that are as readily, or more readily, available to Tex Mex as to BN/Santa Fe; and (ii) it calls for the production of routine operating and accounting documents such as invoices and receipts.

25. "Relating to" a subject means concerning, making a statement about, referring to, or discussing the subject.

BN/Santa Fe objects to the definition of "Relating to" in that it requires subjective judgment to determine what is requested and, further, that it potentially calls for the production of documents that are not directly relevant to this proceeding. Notwithstanding this objection, BN/Santa Fe will, for the purposes of responding to Tex Mex's discovery requests, construe "Relate to" or "Relating to" to mean "make reference to" or "mention".

35. "Studies, analyses, and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

BN/Santa Fe objects to the definition of "Studies, analyses, and reports" in that it requires subjective judgment to determine what is requested and, further, it is overly broad and unduly burdensome. Notwithstanding this objection, BN/Santa Fe will, for the purposes of responding to SPI's requests, construe "Studies, analyses, and reports" to mean analyses, studies or evaluations in whatever form.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

1. With respect to any customer, has BNSF made the elections specified in subsections 1(d), 4(d), 5(d) or 6(e) of the BNSF Agreement?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 1 to the extent that it is vague, overly broad and unduly burdensome, and on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it has not made any of the elections specified in subsections 1(d), 4(d), 5(d) or 6(e) of the BNSF Agreement.

2. If the answer to Interrogatory 1 is yes, describe the election, including but not limited to identifying the customer and location to be served pursuant to the election.

Response: See Response to Interrogatory No. 1.

3. Has BNSF, BN or ATSF engaged in negotiations with the owner and/or operator of the railcar storage-in-transit yard located at Dayton, Texas and described in Neal D. Owen's verified statement?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 3 to the extent that it is vague, overly broad and unduly burdensome, and on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it will produce non-privileged, responsive documents, if any, in its possession relating to any negotiations it may have had with the owner or operator of the railcar storage-in-transit yard located at Dayton, TX with respect to the use of that yard in connection with rail service by BN/Santa Fe under the BNSF Agreement in accordance with the Discovery Guidelines.

4. If the answer to Interrogatory 3 is yes, describe the negotiations and any resulting agreement.

Response: See Response to Interrogatory No. 3.

5. (a) Has BNSF, BN or ATSF engaged in negotiations with the owner and/or operator of the Houston Belt and Terminal Railway to permit BNSF, BN or ATSF to use Houston Belt and Terminal track, storage-in-transit yards, and/or other Houston Belt and Terminal track and/or facilities or services in or about Houston?
- (b) If yes, describe the negotiations.
- (c) If the negotiations described in this interrogatory have resulted in an agreement, describe the agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 4 to the extent that it is vague, overly broad and unduly burdensome, and on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it will produce non-privileged, responsive documents, if any, in its possession relating to any negotiations it may have had with the Houston Belt and Terminal Railway concerning the use of HBTR track and facilities in accordance with the Discovery Guidelines. No agreements concerning the use of HBTR track and facilities have been executed.

6. Did the operating scenario discussed in Neal D. Owen's verified statement submitted with the Comments of BNSF (BN/SF-1) assume any train meets between UP/SP trains and BNSF trains on the trackage rights granted to BNSF pursuant to the BNSF Agreement over any of the following lines:

- (a) the lines depicted in Appendix A, hereto, which is a copy of page 43 of the verified statement of Messrs. King and Ongerth submitted with the Railroad Merger Application (UP/SP-24), Volume 3?
- (b) the UP lines from Houston to Brownsville?
- (c) the UP lines from Sealy to Smithville?
- (d) the UP lines from Smithville to Waco?
- (e) the UP lines from Smithville to San Antonio?

(f) the SP lines from San Antonio to Eagle Pass?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 6 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 6 to the extent that it is vague, overly broad and unduly burdensome. BN/Santa Fe further objects to Interrogatory No. 6 on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that the operating scenario discussed in the Verified Statement of Neal D. Owen assumed train meets between UP/SP trains and BN/Santa Fe trains on the trackage rights granted to BN/Santa Fe pursuant to the BNSF Agreement over the listed lines.

7. If the answer to any of the interrogatories 6(a) through 6(f) is yes, then for each of the lines described:

- (a) identify how many train meets;
- (b) explain how Mr. Owen took this into consideration in determining the number of trains BNSF would run on each of those lines; and
- (c) explain how Mr. Owen took this into consideration in determining the transit times for each of the trains BNSF would run on each of those lines.

Response: See Response to Interrogatory No. 6. BN/Santa Fe further objects to Interrogatory No. 7 to the extent that it is vague, overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that Mr. Owen did not assume any specific number of train meets on any of the listed lines. What

Mr. Owen did was to review the proposed UP/SP density as well as the proposed BN/Santa Fe density on each line, and then he made a judgment as to whether there was sufficient capacity on each line to handle the combined proposed density.

8. Have any officials or representatives of BNSF had any discussions with officials of the Mexican government concerning the effect of the UP/SP merger or of the BNSF Agreement on rail traffic between the United States and Mexico?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 8 to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it is unaware of any discussions as described in this Interrogatory with officials of the Mexican government.

9. If the answer to interrogatory No. 8 is yes, identify all persons involved in such discussions, identify the dates of such discussions and describe such discussions.

Response: See Response to Interrogatory No. 8.

10. Have any officials or representatives of BNSF had any discussions with officials of the State of Texas or any of its agencies or municipalities concerning the effect of the UP/SP merger or of the BNSF Agreement on rail traffic in the State of Texas?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 10 to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that BN/Santa Fe has had discussions concerning the UP/SP merger and service by BN/Santa Fe

under the BNSF Agreement in the State of Texas with officials of the State of Texas and certain of its agencies or municipalities. These discussions included the following:

<u>Date</u>	<u>Participants</u>
1/10/96	Dennis A. Kearns - BN/Santa Fe Raul Besteirio - Port of Brownsville
1/10/96	Michael E. Roper - BN/Santa Fe Ed Altemus - Director of Trade Development, Port of Corpus Christi
1/19/96	Robert D. Krebs - BN/Santa Fe Jeffrey R. Moreland - BN/Santa Fe Dennis A. Kearns - BN/Santa Fe Chairman Rylander - Texas Railroad Commission
1/19/96	Robert D. Krebs - BN/Santa Fe Jeffrey R. Moreland - BN/Santa Fe Dennis A. Kearns - BN/Santa Fe Commissioner Matthews - Texas Railroad Commission
1/19/96	Robert D. Krebs - BN/Santa Fe Jeffrey R. Moreland - BN/Santa Fe Dennis A. Kearns - BN/Santa Fe Commissioner Williamson - Texas Railroad Commission
1/19/96	Robert D. Krebs - BN/Santa Fe Jeffrey R. Moreland - BN/Santa Fe Dennis A. Kearns - BN/Santa Fe Governor George Bush - State of Texas Joe Albaugh - Chief of Staff, Governor's Office, State of Texas

In addition to these meetings, Michael E. Roper and Dennis A. Kearns attended a series of public hearings held by the Texas Railroad Commission on January 9, 10, and 11, 1996, in Ft. Worth, Corpus Christi and Houston, respectively. Further, on various dates, Dennis A. Kearns met with Texas State Representatives Cook, Horn, Junnell and Woolley and Texas State Senators Cain, Harris and Montford. Document(s) reflecting the subject matter of

these various meetings and discussions will be produced in accordance with the Discovery Guidelines.

11. If the answer to interrogatory No. 10 is yes, identify all persons involved in such discussions, identify the dates of such discussions and describe such discussions.

Response: See Response to Interrogatory No. 10.

Respectfully submitted,

Erika Z. Jones ^{KEO}

Erika Z. Jones

Adrian L. Steel, Jr.

Roy T. Englert, Jr.

Kathryn A. Kusske

Mayer, Brown & Platt

2000 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

(202) 463-2000

Jeffrey R. Moreland
Richard E. Weicher
Janice G. Barber
Michael E. Roper
Sidney L. Strickland, Jr.

Burlington Northern
Railroad Company
3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102-5384
(817) 333-7954

and

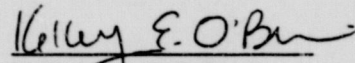
The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173
(708) 995-6887

Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

February 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that copies of Responses and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to The Texas Mexican Railway Company's First Interrogatories to Burlington Northern Santa Fe (BN/SF-22) have been served this 20th day of February, 1996, by fax and by first-class mail, postage prepaid on all persons on the Restricted Service List in Finance Docket No. 32760 and by hand-delivery on counsel for The Texas Mexican Railway Company.


Kelley E. O'Brien
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Suite 6500
Washington, D.C. 20006
(202) 778-0607

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Page Count 4

Feb # 143

nty Development

Jally Heff

Economic Development
Coordinator

Betty Steinert

Development
Secretary

E. Stuart Richter

Planning and Zoning
Administrator

FD 32760

Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Avenue, Room 3219
Washington, D.C. 20423-0001

ATTENTION: FINANCE DOCKET NO. 32760 - Comments

February 12, 1996

Dear Ms. Kaiser:

In response to your request for comment on the proposed merger of Union Pacific and Southern Pacific Railroads, Whiteside County, Illinois, offers the following observations.

1) Rail Line Segments

Whiteside County would include the Nelson to Clinton, Iowa segment currently owned by Union Pacific.

2) Rail Yards

No comment. This is not applicable to Whiteside County.

3) Intermodel Facilities

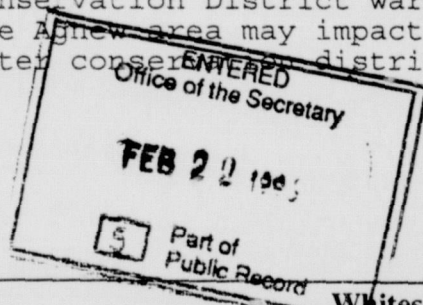
No comment. Not applicable.

4) Rail Line Abandonments

Although there are no immediate plans to abandon rail lines in Whiteside County, please see Attachment A for comment from the county highway engineer on future abandonments.

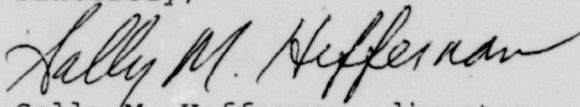
5) Rail Line Construction Projects.

Not currently applicable. Whiteside County Soil and Water Conservation District warns installation of additional track in the Agnew area may impact a nature area owned by the soil and water conservation district.



General areas of concern for increased traffic on the UP/SP track through Whiteside County include safety issues for crossings without lights and gates on county and township roads. Increased noise and public health and safety are issues of concern for the City of Morrison (see Attachment B).

Sincerely,

A handwritten signature in cursive script, reading "Sally M. Heffernan". The signature is written in dark ink and is positioned above the typed name and title.

Sally M. Heffernan, director
Whiteside County Economic Development

cc: Tony Arduini

WHITESIDE COUNTY HIGHWAY DEPARTMENT
18819 LINCOLN ROAD
MORRISON, ILLINOIS 61270

MEMO

February 5, 1996

TO: Sally Heffernan, Enterprise Zone Administrator/
Economic Development Coordinator

FROM: David A. Weaver, P.E., County Engineer *Daw*

RE: SP & UP Mergers

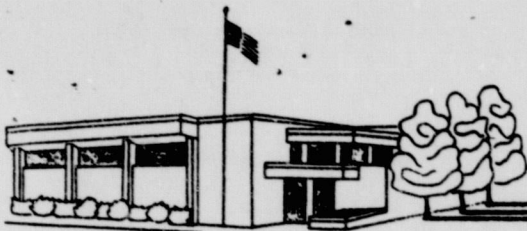
I guess I had heard about the merger but I had not seen its implementation itemized.

I see no short term impact to our area.

Construction should have no undesirable impact if the environmental care that has become routine in road construction is followed.

Railroad removal is the big problem. It opens up as much land as construction but it is normally done by smaller contractors or do-it-yourselfers who can have less appreciation of erosion control.

While railroad drainage does not qualify as natural drainage, it has been available for so long that it has been relied upon and the natural drainage abandoned or abused to the point that it is non functional. Provision for drainage must be made and the necessary easements retained or secured before the railroad is removed.



CITY OF MORRISON

200 WEST MAIN STREET • MORRISON, ILLINOIS 61270-2400 • (815) 772-7657 • FAX (815) 772-4291

Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Avenue, Room 3219
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 - Comments

Dear Mrs. Kaiser:

The City of Morrison, with a population of 4,500, is a small and vibrant community. Our rural community has many historical qualities which make it unique and distinctive. In addition, we cherish our quality of life which we hold dear. Therefore, the City of Morrison requests that the following comments on the potential environmental impacts of the proposed merger between Union Pacific Railroad Company (UP) and the Southern Pacific Transportation Company (SP) be included as part of the review process.

There is no doubt that the City of Morrison has environmental concerns with regards to rail line segments running from Clinton, Iowa to Nelson, Illinois. With the anticipated increase in train traffic on this route we would like to comment on the following environmental impact areas:

- Noise
- Public health and safety, including hazardous materials

The lion's share of the rail line segment runs through Morrison's single family residential area. Therefore, residents have accepted the customary train traffic noise on a daily basis. However, with the anticipation of increased train traffic there will no doubt be an increase in frequency of noise. It is difficult at this time to determine the overall environmental impact with respect to increased noise train traffic. Nevertheless, Morrison's "Quality of Life" which residents greatly cherish will be adversely affected.

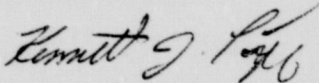
One of Morrison's prime directives is to provide and ensure quality health and safety for our residents. There is no doubt that with increased train traffic the City's ability to respond to any circumstance will need to be reviewed and altered. In

addition, with the ever increasing trafficking of hazardous materials on the nation's rail lines, the City of Morrison would like to express its concerns of the vulnerability to hazardous materials. The City can only anticipate that any and all precautions will be observed with the trafficking of hazardous materials.

In closing, the City of Morrison does not object to the merger of UP & SP. However, the overall impact on the City cannot be truly determined without a local environmental impact study. Again, the City of Morrison is proud of its rural community character with all of its pleasant amenities.

On behalf of the Mayor and City Council, I thank you for allowing the City of Morrison to comment on this subject. Should you have any questions please do not hesitate to contact me at 815/772-7657.

Sincerely,



Kenneth J. López
City Administrator

cc: Mayor Atherton
City Council

surface.tra

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Page Count 1

CLATSOP COUNTY COMMISSIONERS

Feb # 142

Jon A. Taylor
Chairman

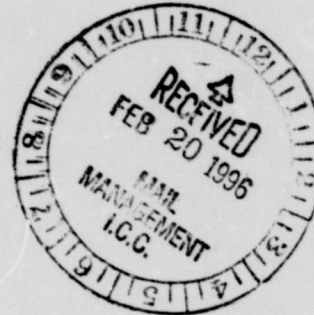
District Two
Joel R. Rupley

◆ District Three
Van A. Youngquist

◆ Admin. Coordinator
Stephanie Dunn

February 13, 1996

Ms. Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis, Surface Transportation Board
12th and Constitution Avenue, Room 3219
Washington, D.C. 20423-0001



RE: Finance Docket No. 32760 - Comments

Dear Ms. Kaiser:

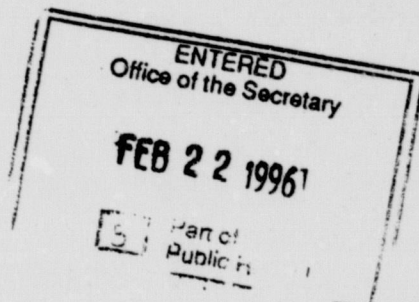
Thank you for the opportunity to comment on the environmental impacts of the proposed merger between the Southern Pacific and Union Pacific Railroads. The summary provided indicates increased traffic will occur on the Portland to Tacoma line over BNSF tracks. These tracks pass through Clatsop County. We believe the impact of increased rail traffic may be mitigated by the addition of a third (freight) track between the Port of Kalama and the Longview Wye. The addition of this track is the third highest priority among all rail infrastructure improvements proposed in Washington's Cascadia Corridor.

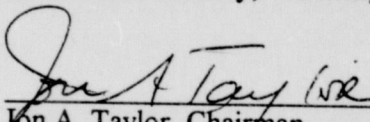
We suggest the merged company should work with other private and public entities to accomplish this important mitigating improvement. The improvement effort is being coordinated by Jim Slakey, Director, Public Transportation and Rail Division, Washington State Department of Transportation.

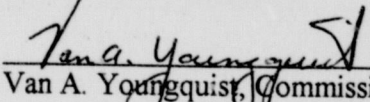
Again, thank you for your interest.

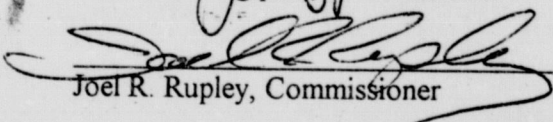
Sincerely,

Board of County Commissioners
Of Clatsop County, Washington




Jon A. Taylor, Chairman


Van A. Youngquist, Commissioner


Joel R. Rupley, Commissioner

cc: Commissioners' Journal