STB FD 32760 3-29-96 D 86546

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Sierra Club HOOSIER CHAPTER

Item No. ____
Page Count 6
March 828

March 28, 1996

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I.C.C.

Attn: Scott Decker
Section of Environmental Analysis
Surface Transportation Board, Rm. 3221
Washington, D.C. 20423

Re: Docket No. AB-459 (Sub-no. 1X)
Central Railroad Company of Indiana
Abandonment Exemption in Dearborn County, IN

Dear Mr. Decker;

Please find contained herein the comment of the Hoosier Chapter Sierra Club on the Environmental Assessment, prepared by the Surface Transportation Board Section of Environmental Analysis, regarding the Verified Notice of Exemption filed February 20, 1996 by the Central Railroad Company of Indiana (Docket No. AB-459 Sub.-No. 1X). As instructed in the Environmental Assessment, I have included two documents, one marked "original", and one marked "copy". Please inform myself and Robert Carroll of any action taken as a result of these comments. Thank-you for your attention.

Sincerely,

Robert D. Pedersen

Robert Pedersen, Chair
Chapter Transportation Subcommittee
Hoosier Chapter Sierra Club
8524 Camby Rd.
Camby, IN 46113
(317) 856-9135

(FYI) Robert Carroll, Transportation Chair
River Hills Group Sierra Club
19636 Brandt Road
Guilford, IN 47022
(812) 487-2450

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Original

Sierra Club HOOSIER CHAPTER

March 25, 1996

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Attn: Scott Decker
Section of Environmental Analysis
Surface Transportation Board, Rm. 3221
Washington, D.C. 20423

Re: Docket No. AB-459 (Sub-no. 1X)
Central Railroad Company of Indiana
Abandonment Exemption in Dearborn County, IN

This letter serves as the Hoosier Chapter Sierra Club comment and appeal of the Environmental Assessment, prepared by the Surface Transportation Board Section of Environmental Analysis, regarding the Verified Notice of Exemption filed February 20, 1996 by the Central Railroad Company of Indiana (CIND) (Docket No. AB-459 Sub-No. 1X). On the basis that the Environmental and Historic Report (Exhibit C of the above-referenced Notice of Exemption) contains false or misleading information, we request that the Surface Transportation Board find the use of exemption void *ab initio*, as per 49 CFR 1152.50 (d)(3).

Supporting Facts

I. Transportation of Hazardous Materials:

The conclusion of the Environmental Assessment prepared for the above-referenced abandonment exemption, that "...abandonment of the line will not significantly affect the quality of the human environment.", is partially or wholly based on a false or misleading Environmental Report (see "Exhibit C" of the notice), in which it is stated, under "7. Safety", that "Hazardous Materials will not be transported in connection with this proposed action.". This is a false statement. Presently, the Seagram Distillery uses the service provided on this right-of-way to ship bulk quantities of ethyl alcohol solution, a Federally listed hazardous material (identification U.N. 1170, hazard class 3 - flammable liquid).

Federal Regulation at 49 CFR 1105.7 (e)(7)(i)-(ii) requires that the Environmental Report: "(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).", and that; "***(ii) If hazardous materials are expected to be transported; identify: the materials and quantity; the frequency of service; ... safety practices (including speed restrictions); the applicant's safety record...; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.***" (our emphasis). None of this information is in the applicant's Environmental Report with regard to the regular shipment of bulk tank containers of a hazard class 3 flammable liquid on the subject right-of-way. We believe that the use of the exemption is void *ab initio* on the basis of this and other false or misleading information, and the exemption notice should be summarily rejected by the Surface Transportation Board (STB) as required under 49 CFR 1152.50 (d)(3).

Sierra Club HOOSIER CHAPTER

Any changes in the shipment route or transportation mode of a toxic, flammable liquid in the same hazard class as gasoline or kerosene would have to be examined to determine if the public and natural environment will suffer increased exposure and risk. The Environmental Assessment prepared by the STB Section of Environmental Analysis should have assessed the additional risk of lengthened transport in populated areas, crossing accidents, damage to the natural environment from spills or leakage, and fire safety issues. None of these are addressed in the STB Environmental Assessment due to the withholding of pertinent information from publication in the Verified Notice of Exemption.

II. <u>Disturbance of Sensitive Natural Areas and Wildlife Habitat</u>

As noted in the Formal Protest to the Verified Notice of Exemption filed by the Hoosier Chapter of the Sierra Club with the Surface Transportation Board, salvage operations and replacement of the rail infrastructure with roadway would be detrimental to the viability of areas within and along the right-of-way for use as habitat by the federally listed endangered species Myotis sodalis (Indiana Bat) and other wildlife. The Verified Notice of Exemption of the proposed abandonment is accompanied by Exhibit E., "City of Lawrenceburg Public Notice". This is a "Notice to Owners and Interested Persons" from the City of Lawrenceburg Board of Public Works regarding the condemnation of the subject property for use as roadway. Item 3 of the Environmental Report (see Exhibit C of the Verified Notice of Exemption) regarding land use states; "In fact, the abandonment is necessary for the conveyance of the right-of-way to the city of Lawrenceburg for highway construction to provide additional access to the city.". The inclusion of this information makes clear the necessity for the environmental assessment of the abandonment to include the impacts of disturbance of the forested surface of the right-of-way and adjoining sensitive wetland areas by both salvage operations and subsequent roadway construction. These impacts are not addressed in the Environmental Report in Exhibit C of the notice or the STB Environmental Assessment.

The notice to the U.S. Department of the Interior Fish and Wildlife Service and its response involved the Region 3 office in Fort Snelling, Minnesota. We believe that the cursory response of the USFWS Region 3 office in Minnesota does not qualify as consultation required in 49 CFR 1105.7 (e)(8). Personnel at the Bloomington, Indiana field office are familiar with and have observed and commented on other proposed construction related to the Argosy riverboat gambling operation in Lawrenceburg, Indiana (see Exhibit A, Hoosier Chapter formal protest). These U.S. DOI Fish and Wildlife Service personnel should have been contacted for examination of the impacts of this proposal. The proposed abandonment, salvage operations, and plans for subsequent roadway construction on the abandoned right-of-way would involve destruction of wooded areas on the right-of -way and disturbance of adjacent wetland and other sensitive areas due to the necessity of supplementing the width of the elevated right-of-way to accommodate the planned roadway.

The Environmental Report (see Exhibit C, "8. <u>Biological Resources</u>", Verified Notice of Exemption) is misleading in its omission of these related impacts, and the STB Environmental Assessment is deficient in not considering them. If this were a conventional abandonment or discontinuance of service proposal, this would not be the case. However, the railroad has included the construction of roadway on the abandoned right-of-way as the intended end result of the abandonment in its Verified Notice of Exemption (in Exhibit C - Environmental Report, "3. <u>LandUse</u>"

and Exhibit E. - City of Lawrenceburg Public Notice). Therefore, impacts of this construction, including destruction of wildlife habitat within the right-of-way, impacts of modification (especially necessary widening) of the elevated right-of-way to accommodate multiple lanes of roadway, and disturbance of sensitive adjacent wildlife sanctuaries, wetlands, and potential endangered species habitat, are inseparable from the proposed abandonment and must be considered by the STB Section of Environmental Analysis.

Personnel at the Bloomington Field Office of the U.S. DOI Fish and Wildlife Service familiar with this area should be contacted to request their consideration of the impacts on wildlife and habitat related to the abandonment, subsequent roadway construction, and intended use. We believe that a full Environmental Impact Statement (EIS) process is warranted by the potential impacts of the necessary modification of the narrow elevated right-of-way, in a floodplain wetland area, for use as roadway.

III. Energy, Air Quality, and Lack of Sufficient Discussion of Alternative Use

A. Energy and Air Quality Impacts

As with impacts on the natural environment discussed above, because the Verified Notice of Exemption for the abandonment in question includes planning for subsequent use of the right-of-way as roadway, an Environmental Assessment of the abandonment must address energy and air quality impacts of this use in assessing the impacts of the abandonment. These impacts are discussed further in our Formal Notice of Protest.

As noted in our Formal Protest of the Verified Notice of Exemption, the statement in the notice (under "4. Energy" in the Environmental Report of Exhibit C) that the proposal will neither increase nor decrease energy efficiency is false. Diversion of overhead traffic to a lengthier route or to motor carriers will certainly cause a decrease in energy efficiency. The first statement under this heading, "Because there is no local service on the Subject Line, the transportation of energy resources and/or recovery of recyclable commodities would not be affected by the abandonment." is misleading in much the same way as other statements in the notice. This statement and others imply that the line is unused or little used, when actually it is under regular use.

As also noted in our Formal Protest of the Verified Notice of Exemption, CIND's contention that abandonment will not cause any effects in excess of the designated thresholds as set forth in 49 CFR 1105.7 (e) (5) (i)-(iii) is questionable. This statement requires substantiation due to the rerouting of regular traffic on the line, or its shifting to motor carriers, and the traffic generated by the roadway construction. We note that the Ohio-Kentucky-Indiana (O.K.I.) Metropolitan Planning Organization, the City of Cincinnati, Ohio, and environmental and other agencies of the State of Ohio are not included in Attachment 1 of the Verified Notice of Exemption among those served this notice. Because of the contiguity of Dearborn County, Indiana, to the State of Ohio, there are detrimental impacts of mobile source air emissions originating in Dearborn County, Indiana on the Cincinnati Metropolitan Area, a non-attainment area for ozone. These entities should also have been served notice, given the opportunity to consider the air quality and transportation planning impacts of the proposal, and comment. Due to the impacts of mobile source emissions originating in Dearborn County, Indiana, on the non-attainment status of the Cincinnati Metropolitan area, the State

Sierra Club HOOSIER CHAPTER

of Ohio is "involved" in this action, and should have received notice required in 49 CFR 1105.7 (b) (1)-(2). In addition, traffic rerouted off this line may have to cross into Ohio and back into Indiana to reach destinations in Lawrenceburg, Indiana, demonstrating further that state and local officials of Ohio are involved and should have been served with the Environmental Report.

B. Inadequate Discussion of Alternative Use

The map provided in the Verified Notice of Exemption is inadequate in scope and scale to recognize that the subject 2.3 mile section of right-of-way proposed for abandonment and subsequent use for roadway is a key link for potential passenger rail service between Lawrenceburg, Indianapolis, and Cincinnati. Under "5. History of Operations" in the Historic Report, Exhibit C of the Verified Notice of Exemption, there is no mention of historic use of the subject line for passenger rail transit. Under "1. Proposed Action and Alternatives" of the Environmental Report of Exhibit C. of said notice, no mention is made of the potential use of the subject line or the right-of-way for future passenger service locally, out of Cincinnati and points beyond, or Indianapolis. This is in spite of the fact that an unsuccessful competitor for the riverboat gaming licence for Lawrenceburg, Indiana had included use of this line for passenger shuttle service to river-front operations in its public proposal.

Of special concern is the preclusion of rail-banking and interim use of the right-of-way as a trail upon abandonment. The STB Environmental Assessment addresses the rules for use of right-of-ways as trails (49 CFR 1152.9), but in the same document, the intention of the City of Lawrenceburg to construct a public highway over the right-of-way is noted. There is a discontinuity in STB policy and procedure between the recognition of the intention of the City of Lawrenceburg, and the processing of the Verified Notice of Exemption. By addressing interim trail use, the STB is acting as though the intended end results of the abandonment proposal, the acquisition of the right-of-way by the City of Lawrenceburg, construction of roadway and its impacts, and its preclusion of alternative right-of-way use, are not part of the notice.

IV. Summary and Conclusions

The Hoosier Chapter of the Sierra Club requests that the use of exemption for the abandonment referenced in Docket No. AB-459 (Sub. no. 1X) be denied by the Surface Transportation Board, persuant to 49 CFR 1152.50 (d)(3), on the basis of false or misleading information and omissions in Exhibit C., Environmental and Historic Report, of the Verified Notice of Exemption published and distributed by Central Railroad of Indiana in regard to its proposal for abandonment of rail-line in Dearborn County, Indiana. Included in the false or misleading statements contained therein are those relating to the transportation of hazardous materials on the subject line. Required information on energy and air quality impacts of this action are absent from the Environmental Report or misleading. Requirements for serving of copies of the Environmental Report to an involved state (the State of Ohio) have not been met, as per 49 CFR 1105.7 (b) (1)-(2).

The Verified Notice of Exemption for this abandonment includes the statement that the abandonment is "...necessary to permit the conveyance of the right-of-way to the City of Lawrenceburg for highway construction..."(Exhibit C., Environmental Report, 3. Land Use). Included in the Verified Notice of Exemption as "Exhibit E" is a public notice by the City of Lawrenceburg of its intent to exercise eminent domain in taking the subject right-of way upon

Sierra Club HOOSIER CHAPTER

abandonment.On the basis of these facts, consultation with the U.S. Fish and Wildlife Service has been inadequate. Impacts of this roadway construction on the natural environment, including impacts on endangered species habitat and/or wetlands in and adjacent to the right-of-way must be considered as results of the abandonment. These impacts are not addressed in the Environmental Report, nor in the STB Environmental Assessment, even though the STB Environmental Assessment acknowledges that roadway construction is an intended consequence of the abandonment in its "Public Use" section.

Alternative use of the right-of-way for public transportation, or rail-banking and trail use, are not addressed in the Verified Notice of Exemption, and would be precluded by the intention to replace the rail-line with road-way. This is untenable because of the critical role the subject right-of-way plays as a key rail link between Lawrenceburg, Indianapolis, Cincinnati, and points beyond. As a key rail link, this right-of-way has potential to contribute to improved transportation and improved air quality in the region.

In light of these concerns, and others presented herein and in the Hoosier Chapter Sierra Club Formal Protest, we believe that the use of exemption should be denied for the abandonment of the subject rail-line. We recognize that the conclusion stated in the STB Environmental Assessment that, "*...as currently proposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.*"(our italics), is based upon the information provided by CIND, which we have shown to contain false and misleading information and omissions. This should result in the denial of exemption, and a full hearing process for the abandonment. This hearing process should include public hearings in the town of Lawrenceburg, Indiana. City and state officials from Ohio, especially Cincinnati, the Ohio-Kentucky-Indiana (O.K.I.) Metropolitan Planning Organization, and the Southern Ohio Regional Transit Authority (SORTA) should be given opportunity to comment on the potential air quality and transportation system impacts of this abandonment on their jurisdictions.

Respectfully submitted on behalf of the
Hoosier Chapter of the Sierra Club,

Christine Pedersen
Christine Pedersen, Chapter Chair
Hoosier Chapter Sierra Club
8524 Camby Rd.
Camby, IN 46113
(317) 856-9135

Lisa Haile
Lisa Haile, Chapter Conservation Chair
Hoosier Chapter Sierra Club
117 Ridge Avenue
Greendale, IN 47205
(812) 537-1225

Robert Pedersen
Robert Pedersen, Chair
Chapter Transportation Subcommittee
Hoosier Chapter Sierra Club
8524 Camby Rd.
Camby, IN 46113
(317) 856-9135

Robert Carroll
Robert Carroll, Transportation Chair
River Hills Group Sierra Club
19636 Brandt Road
Guilford, IN 47022
(812) 487-2450

STB FD 32760 3-29-96 D 62316

62316

Item No.________

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THE STATE OF TEXAS

RAY ALLEN
HOUSE OF REPRESENTATIVES

CAPITOL OFFICE
INS. BLDG., ROOM 351
P. O. BOX 2910
AUSTIN, TX 78768-2910
(512) 463-0694
FAX (512) 463-0495

DISTRICT OFFICE
2321 S.E. 8TH STREET
SUITE 145
GRAND PRAIRIE, TX 75051
(214) 264-4231
FAX (214) 642-6000

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I.C.C.

March 27, 1996

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

ADVISE OF ALL
PROCEEDINGS

RE: Finance Docket 32760

Dear Secretary Williams:

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

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

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

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

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

Sincerely,

Ray Allen

Ray Allen

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

STB FD 32760 3-29-96 D 62313

Item No.______________

Page Count 2

Nar #810

62313

The State of Texas
House of Representatives

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0492

Scott Hochberg
DISTRICT 132

4660 BEECHNUT, #200A
HOUSTON, TEXAS 77096
713-660-7783

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March 28, 1996

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

ADVISE OF ALL PROCEEDINGS

RE: Finance Docket 32760

Dear Secretary Williams:

Currently, you have an application pending before you that seeks approval of a merger between the Union Pacific Railroad Company (UP) and the Southern Pacific Lines (SP). On March 29, 1996, State Representatives Junell, Cook, and Saunders submitted for the board's consideration a request for conditions (JRC-2, RAJ-2, RMS-2) regarding this application. I support this request. The merger of these two companies would result in decreased rail competition in Texas leading to higher shipping costs and inevitably higher prices for consumers. Furthermore, by having the railroad industry controlled by so few, the economy of Texas could be negatively impacted.

As proposed, the merger would grant UP/SP control over 7100 miles of track in Texas including 90% of the rail traffic into and out of Mexico, 70% of the petrochemical shipments from the Texas Gulf Coast, and 86% of the plastics storage capacity in the Texas/Louisiana Gulf Region. UP acknowledges that the merger would greatly reduce rail competition and has proposed a trackage rights agreement with the Burlington Northern-Santa Fe Lines (BNSF) as the solution.

However, a trackage rights agreement would not solve the problem. Owners of rail lines have control over the services they provide and have incentives to invest in the track and to work with local communities to attract economic development. A railroad that operates on someone else's track, subject to another's control, does not.

I believe that to ensure effective rail competition in Texas and to avoid possible severe fiscal repercussions the state could face as a result of the merger, a merger between UP and SP must not occur. Thank you for your consideration.

Sincerely,

Scott Hochberg

Scott Hochberg

cc: State Representative Rob Junell

STB FD 32760 3-29-96 D 62312

Item No.__________

Page Count 5
Mar #625

62312

ORIGINAL

LAW OFFICES
FRITZ R. KAHN, P.C.
SUITE 750 WEST
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934
(202) 371-8037
FAX (202) 371-0900

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March 29, 1996

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

Enclosed for filing in Finance Docket No. 32760, Union Pacific Corp., et al.--Control and Merger--Southern Pacific Rail Corp., et al., are the original and twenty copies of the Comments of Eagle County, Colorado, et al.

Also enclosed is a disc with the text of the Comments in WordPerfect 5.1 format.

Extra copies of the Comments and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed envelope.

By copy of this letter, service is being effected upon counsel for each of the parties.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,

Fritz R. Kahn

Fritz R. Kahn

enc.
cc: All parties
Mr. George J. Roussos

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ORIGINAL

EGL-6

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

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Finance Docket No. 32760

UNION PACIFIC CORPORATION, et al.,
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, et al.[1]

COMMENTS
OF
EAGLE COUNTY, COLORADO, et al.

ENTERED
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MAR 29 1996
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Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

Attorney for
Eagle County, Colorado, et al.

Due and dated: March 29, 1996

[1] Emracing Docket No. AB-12 (Sub-No. 188), Southern Pacific Transp. Co.--Abandonment--Malta-Canon City Line in Lake, Chaffee and Freemont Counties, Colorado, and Docket No. AB-12 (Sub-No. 189X), Southern Pacific Transp. Co.--Abandonment Exemption--Sage-Leadville Line in Eagle and Lake Counties, Colorado.

Leadville to Malta to Sage (Milepost 276.10 to Milepost 271.00 to Milepost 335.00).

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

George A. Gates

George ("Bud") A. Gates, Chairman
Eagle County Board of County Commissioners

CERTIFICATE OF SERVICE

Copies of the foregoing Comments this day were served by me by mailing copies thereof, with first-class postage prepaid, to counsel for each of the parties.

Dated at Washington, DC, this 29th day of March 1996.

Fritz R. Kahn

STB FD 32760 3-29-96 D 62311

Item No.________________ of Representatives

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Page Count 2

MAY #808 District 109

March 26, 1996

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MAIL MANAGEMENT I.C.C.

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

RE: Request for Conditions from Members of the Texas Legislature Regarding Finance Docket No. 32760

Dear Secretary Williams:

I am writing to express my concern regarding the merger of the Union Pacific Corporation and the Southern Pacific Rail Corporation. The merger, as proposed, will significantly reduce rail competition in Texas, seriously impacting Texas business and our State's economy. The railroad is a vital artery of trade throughout Texas, as well as an economic incentive in many areas. While I have a number of concerns, let me cite the major three:

First, the merger between Union Pacific and Southern Pacific will virtually eliminate competition, forcing shipping rates to rise. This will not be in the best interest of Texas rail shippers. With this merger, virtually all Class I rail lines will be controlled by Union and Southern Pacific. Up to 70 percent of the petrochemical shipments from the Texas Gulf Coast and 90 percent of train traffic from Mexico would be controlled with the UP/SP merge. Competition among railroads keep shipping rates competitive. Elimination of competition gives exclusive rights to Union/Southern Pacific to set shipping rates for Texas. I find excessive control of pricing to be a terrible downfall for those who must utilize rail for shipping.

Second, the merger jeopardizes the growth of the short line rail industry in Texas. Many rural areas depend on the shipping industry and short rail shipping. The proposed merger would create large, single-line routes throughout Texas. This will eliminate many short line rails between rural areas. Communities depend on the railway as a means of economic support. The merger allows the Class I rail companies to deny short rail access to valuable rail links, eliminating rural transportation districts.

ADVISE OF ALL PROCEEDINGS

P.O. Box 2910
Austin, Texas 78768-2910
512-463-0953
FAX: 512-463-5887

1510 N. Hampton, Suite #220
DeSoto, Texas 75115
214-224-6795
FAX: 214-228-6796

Third, this merger will likely result in a loss of jobs for Texans. The likelihood of this probability is even greater when neither company is based in Texas.

For all of these reasons, I urge the board to attach conditions to address these concerns should the merger be approved.

Sincerely,

Helen Giddings

Helen Giddings

STB FD 32760 3-29-96 D 62310

Item No. ____________

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Gove

Page Count 14

Mar # 807

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62310

STATE OF NEVADA

ICE COMMISSION OF NEVADA
Capitol Complex
727 Fairview Drive
Carson City, Nevada 89710
(702) 687-6007

Commissioners:
JOHN F. MENDOZA
Chairman

JO ANN KELLY
GALEN D. DENIO
JUDY M. SHELDREW
DONALD L. SODERBERG

TIMOTHY HAY
Counsel

WILLIAM H. VANCE
Secretary

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March 28, 1996

Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, N. W
Washington, D. C. 20423

Re: Finance Docket No. 32760

Dear Mr. Williams:

Enclosed please find an original and twenty copies of the document entitled **PUBLIC SERVICE COMMISSION OF NEVADA'S COMMENTS AND REQUEST FOR CONDITIONS** for filing in the above-referenced Docket.

Very truly yours,

Timothy Hay

TIMOTHY HAY, ESQ.
General Counsel

TH/md

Encls.

ENTERED
Office of the Secretary
MAR 29 1996
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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.

Finance Docket No. 32760

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

COMMENTS AND REQUEST FOR CONDITIONS OF PUBLIC SERVICE COMMISSION OF NEVADA

The Public Service Commission of Nevada (PSCN), submits these comments and requests for conditions. Public meetings were conducted by the Commission throughout Nevada in order to ascertain information useful to the Surface Transportation Board in evaluating the merger. The public meetings[1] elicited comments specific to Nevada but useful under the broad criteria specified in 49 C.F.R. § 1180, specifically:

1. The effect on the adequacy of transportation to the public;
2. The effect of including or failing to include, other rail carriers in the area involved in the proposed transaction;
3. The total fixed charges that result from the proposed transaction;
4. The interest of the rail carrier employees affected by the proposed transaction; and
5. Whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

__General Comments__

The State of Nevada has an historic relationship with the development of the rail transportation system in the West. Nevada's development in the late 19th Century was largely associated with its proximity to the transcontinental

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[1] Public meetings were held in Nevada for this purpose: in Reno on February 12, 1996; in Lovelock on February 13, 1996; in Winnemucca on February 14, 1996; in Las Vegas on February 15, 1996; and in Elko on February 29, 1996.

railroad corridors and the cities which developed along the rail routes. Between 1907 and 1919, the PSCN's predecessor agency, the Railroad Commission, actively participated in proceedings to ensure that Nevada shippers were not captive to the monopolistic power of the railroads. Since its creation in 1919, the PSCN has assumed the responsibilities of railroad oversight.

Nevada's economic development today continues to rely on rail access for origination and termination of shipments. Significant portions of Nevada's economy and commerce are dependent on rail transportation. Agricultural, warehousing, distribution, mining, automotive, manufacturing and industrial businesses rely on transport by rail in order to access both suppliers and markets. Utilities in northern and southern Nevada depend on the delivery of coal by rail to base load electrical generating facilities.

The PSCN is especially concerned about the impact of rail operations on the safety of the general public. The anticipated increase in the number of trains along the Central Corridor through northern Nevada may have a direct and detrimental impact on public transit, emergency response and other local services for the general public in several communities,[2] unless appropriate mitigation measures are provided.

These public meetings formed the basis for the following comments and recommendations which are made with regard to the public interest standard to be utilized by the Board in its decision. The PSCN believes that if the Board approves the merger, it should also impose mitigating conditions to ensure the benefits expected to flow from the merger will accrue not only to the merged railroads, but also to the shippers and the general public in the communities affected.

I. Competition-Coal

A. General

The importance of maintaining competitive rail alternatives is emphasized in the **RAILROAD MERGER APPLICATION** at page 17. Indeed, the **APPLICATION** and supporting testimony imply that the "UP/SP merger, together with the trackage

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[2] For train counts, see **APPLICATION**, Volume 3, pages 384-385; see also Exhibit BN/SF-1, Owen, pages 7-10.

rights agreement with the BN/Santa Fe, will greatly intensify rail competition in the West." "Expanded single-line service" is one of the alleged benefits of the proposed merger and associated agreement with the BN/Santa Fe.[3]

B. Sierra Pacific Power Company's and Idaho Power Company's North Valmy Station

Many of the claimed benefits related to projected increased competition in coal shipments between the UP/SP and the BN/Santa Fe appear to be related to service between origination and termination points located in other states. These benefits may result in increased profits to the railroad, but may not benefit individual shippers who now enjoy competitive access to two railroads. An example of this disparity is the North Valmy Generation Station (Valmy Plant), owned jointly by Sierra Pacific Power Company (SPPCo) and Idaho Power Company (IPC), and located near Battle Mountain, Nevada, on the paired track between Alazon and Weso. Both SPPCo and IPC provide electricity to northern Nevada customers.

Mr. Peterson states that "[T]he substantial numbers of '2-to-1' shippers . . . on the UP-SP paired track between Weso (near Winnemucca) and Alazon (near Wells), Nevada, will have service from two stronger, broader rail networks than they have today."[4] SPPCo's and IPC's Valmy Plant is categorized as a "2-to-1" shipper. Mr. Sharp also states that "[A] principal benefit of the proposed merger is the expansion of efficient, single-line routings . . . ," that coal consumers' choices will be broadened by single-line or improved access to a broader range of coal producers, and that "[C]oal producers will likewise gain single-line or improved access to an expanded array of potential coal customers" may not be true from a Nevada perspective. His claim that the Valmy Plant will retain single-line access to SP coal origins via the merged system is not supported by the facts available to the PSCN.[5] What actually occurs under the merger as presented is that the Valmy Plant loses competitive access to single-line service from the Utah coal sources for which the plant was designed. This

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[3] **APPLICATION**, Volume 1, SECTION 1180.6(a)(2)(I), page 17.

[4] Peterson, **APPLICATION**, Volume 2, page 88.

[5] Sharp, **APPLICATION**, Volume 2, pages 670-672.

generating facility operates efficiently only if it is supplied with coal appropriate for the design of the plant.

Mr. Sharp rationalizes this loss by suggesting that the Valmy Plant has never accessed any other than UP-sourced coal and that it could benefit in the future from competition by gaining single-line access to Wyoming's Powder River Basin.[6] With this rationalization, even though he recognizes the wide diversity in coal quality between Utah and Wyoming coal, Mr. Sharp ignores that the coal quality issue is critical to efficient, economic and environmentally-acceptable operation of the Valmy Plant.[7]

With the merger, the Valmy plant will lose access to one of two railroads (the SP) which is now able to provide competitive, single-line, unit train service from several Utah coal mines, which produce coal meeting the specifications for the Valmy Plant. This result contradicts the claims made by Mr. Peterson in his verified statement about "Expanded Single-Line Service."[8] Under the conditions imposed by the BN/Santa Fe and the Utah Railway agreements, the Valmy Plant would continue to be served via single-line access from Utah mines by UP/SP, but competing service from Utah coal mines by the BN/Santa Fe would require the Utah Railway to originate shipment and BN/SF to terminate the shipment. In the latter case, as recognized by Mr. Gray, shipments of coal would result in delay and extra costs.[9] This noncompetitive aspect of the merger could raise SPPCo's electric utility rates and adversely impact ratepayers due to the higher non-competitive costs of transporting coal.

Utilities, not the railroad, should have the opportunity to choose the appropriate, competitive, coal sources for their generating plants. This choice will become even more critical in a restructured utility environment, where competitive market forces will drive utility customer choice and consequent utility generating resource response.

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[6] Sharp, **APPLICATION**, Volume 2, page 686-687.

[7] Sharp, **APPLICATION**, Volume 2, page 681.

[8] **APPLICATION**, Volume 2, pages 41-43.

[9] See Verified Statement of Gray, **APPLICATION**, Volume 1, page 200-202.

The **APPLICATION** does not demonstrate that restricting single-line access through only the merged UP/SP rail system to Utah coal sources is in the economic interests of SPPCo, IPC, or their northern Nevada ratepayers. The **APPLICATION** and supporting testimony provide no analysis that demonstrates that this restriction enhances competition or is even a viable option for SPPCo and IPC at the Valmy Plant.

C. Other Nevada Utility Coal-Fired Plants

The merger and the associated trackage rights agreements produce no competitive benefits or opportunities for Nevada Power Company (NPC), which has coal-fired plants now served by the UP in southern Nevada. Furthermore, the new coal-fired, Piñon Pine Power Plant, which is a Department of Energy Clean Coal Demonstration Project located east of Reno, Nevada, will have access only to the combined UP/SP system, even though the BN/Santa Fe will operate in close proximity to the Piñon Pine Power Plant's rail siding under the BN/Santa Fe's trackage rights agreement. The claim that "Utah coal producers served by the SP will gain...single line access to new destinations all across the UP system,"[10] is simply not factually supportable with respect to Nevada's utilities. The exclusionary and discriminatory provisions of the merger and associated trackage agreements which prevent competitive access to these utility facilities are not in the public interest of Nevada's utilities or its utility ratepayers.

D. Coal Stockpiles

Mr. Davidson claims that the more reliable rail industry may result in reduction of coal stockpiles in the utility industry.[11] The PSCN disagrees, especially for Nevada utilities. Coal stockpiles are just one aspect of a power plant's reliability; many other factors (such as potential labor disruptions at a mine or with a railroad, inclement weather, accidents, etc.) enter into a utility's determination as to how large a coal stockpile to maintain. Only a utility, not a railroad, can appropriately make that determination.

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[10] Peterson, **APPLICATION**, Volume 2, page 88.

[11] Davidson, Vol. 1, page 204.

If Nevada's utilities are prevented from exploring and maximizing the economic and practical efficiencies of coal shipment competition among railroads from their own perspectives, then it is unlikely that Mr. Davidson's views will prove accurate.

E. Recommendations

One method to address these concerns is for the Surface Transportation Board to condition the UP/SP merger to allow third-party, competing railroad operators, such as the Utah Railway, to obtain nondiscriminatory trackage rights from the UP/SP. These competing operators would then have an opportunity to serve existing or new utility power stations on a single-line basis from competing coal producers. The comments filed by Mr. Ice of the BN/Santa Fe suggest that the use of trackage rights agreements is a viable option to promote competition.[12] Such conditions to eliminate anti-competitive conditions were explicitly authorized by Congress for the Board in the ICC Termination Act of 1995.[13]

Such a requirement should ensure that a competitive railroad operating under a fair trackage rights agreement is not paying charges in excess of what the UP/SP would charge itself for the same service. This would allow the utility to conduct a bidding process and encourage competition for its coal business. This should promote competition not only among railroad operators and but also mine operators. The UP/SP should be made whole from a cost perspective since its costs would be recovered through trackage rights fees.

Similar "open access" provisions have been implemented by the Federal Energy Regulatory Commission in the gas and electric industry, and by the Federal Communications Commission in the telecommunications industry. Allowing competition of this nature is in concert with the competitive market policies outlined for other utility industries by Congress and such a policy recognizes the benefits that competition produce in a restructured and deregulated industry environment.

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[12] BN/Santa Fe's Comments on the Primary Application; Ice, pages 3-4, 11-13; See Exhibit BN/SF-1.

[13] See Conference Report on HR 2539, Sec. 11324, page 191.

II. Competition-Other

A. Nevada Northern

Mr. Rebensdorf expressly recognizes that the Nevada Northern Railway will receive the right to interchange with the UP/SP or BN/Santa Fe near Shafter.[14] The PSCN believes that the "open access" comments offered above should also apply to the Nevada Northern in that the Board should ensure that UP/SP charges to the BN/Santa Fe for trackage rights do not inhibit competition for the interchange traffic (estimated at 5,000-8,000 carloads annually). Requiring comparable access for the Nevada Northern interchange at Shafter should be a condition of any approval so that the balancing test regarding competition is adequately addressed.[15]

B. Shippers

Other than intermodal and automotive service to the Reno/Sparks area, the proposed merger does not open up new opportunities for shippers to obtain competing service from the UP/SP and the BN/Santa Fe. For instance, a shipper in Winnemucca observed that the benefits of competition derived from the merger accrue, not to individual shippers along the line, but rather to the railroad because the railroad is able to compete on an interstate basis with another railroad. The PSCN suggests that this would amount to a windfall profit to the railroad with little benefit to shippers.

The PSCN believes that Nevada shippers on rail lines served by both the UP/SP and the BN/Santa Fe should have the opportunity to access either railroad and not be frozen out of competitive access for the foreseeable future. Competition by shippers should be enhanced, not restricted by the merger. For that reason, the PSCN suggests that, after operating experience is gained with the BN/Santa Fe agreement, but in no more than three years, the competitive access issue be examined by the Board to ascertain the level of shipper interest and evaluate the prospect of expanding competitive opportunities for shippers

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14 Rebensdorf, **APPLICATION**, Volume 1, page 297; See also page 2 of Agreement; **APPLICATION**, Volume 1, page 319.

15 49 C.F.R. § 1180.1(c)

through trackage rights agreements. This could provide guidance in other proceedings considering competitive rail access.

III. Mitigation of Increased Rail Traffic Through Northern Nevada

As indicated earlier, the PSCN held public meetings on the impacts of the merger in Reno, Lovelock, Winnemucca, Elko and Las Vegas. A primary concern of local government expressed at these public meetings was the anticipated effect of increased rail traffic through the cities of Reno, Lovelock, Winnemucca, Carlin, Elko and Wells, Nevada. These concerns have been acknowledged by both UP and SP railroad officials. Despite identifying these issues, however, no specific mitigation measures have been proposed by the Applicants to address the environmental, traffic congestion, safety and emergency response problems that are likely to result from the merger due to greater rail traffic along the corridor.

A. Reno

The impacts of the merger on Reno may be the greatest on any city affected by the merged railroad operations. This results from the proximity of the SP railroad tracks to downtown Reno and the fact that Reno's tourism-based economy make it a destination for millions of visitors each year. Reno is a 24-hour-a-day resort area, and the area adjacent to the railroad is a significant business center with heavy vehicular, public transit and pedestrian traffic at all hours.

The PSCN understands that the City of Reno is an intervenor in Finance Docket 32760 and that issues specific to Reno are being evaluated by experts from the City of Reno, the UP and SP. The concerns of the City of Reno, have also been publicly stated by Nevada Governor Bob Miller, U.S. Senator Harry Reid, U.S. Senator Richard H. Bryan, and Congresswoman Barbara Vucanovich. These elected officials are concerned with the public safety and economic impact the merger, if approved, will have on Nevada's second largest city. As the state agency having jurisdiction over railroad crossings and acting under certification for the Federal Railroad Administration for railroad safety issues, it is the express request of the PSCN that Reno's unique situation be recognized by the Board and that conditions to mitigate the impact of substantially increased rail traffic be required in any order approving the merger. Recognizing that local government expertise is best able to suggest solutions to the variety of problems increased traffic will engender, the PSCN defers to the City of Reno's comments to advise the Board as to which mitigation measures are the most feasible and appropriate.

B. Rural Communities--Lovelock, Winnemucca, Carlin, Wells

There are railroad-related impacts to some of Nevada's rural communities which are as significant to the residents of those communities as the impacts of the merger are to the Reno urban area. The City of Winnemucca has intervened in this proceeding. Lovelock, Winnemucca, Carlin and Wells are all adversely affected because railroad tracks bisect these communities, requiring at-grade crossings. Some city services, such as fire and police services, are located on one side of the tracks while hospitals and emergency care facilities are located on the other. Rail operations often cause substantial delays to vehicular and pedestrian traffic and interfere with the cities' emergency and police response capabilities.

In Winnemucca, it was suggested that the railroads realign the SP mainline track west of town near Rose Creek to connect to the UP mainline right-of-way, double-track the UP main line through Winnemucca as needed, then realign the SP track east of Winnemucca to complete a bypass of the downtown area. UP's tracks and yard do not go through the downtown area and therefore do not create the conflicts with the community that the SP track alignment causes. Except for rail access to a limited number of shippers, one of which is a major employer in Winnemucca, this alternative would eliminate the conflicts the community has with the railroad's at-grade crossings in downtown Winnemucca.

A similar situation exists in Carlin. Carlin has multiple yard tracks at one crossing, which is in poor condition, and these tracks bisect the city. Linda Bingaman, Mayor of Carlin, indicated that a relocation of the tracks bisecting Carlin would resolve most of Carlin's problems. This option seems to make sense in light of the Applicants expectation that SP's Carlin facilities will be closed and the functions transferred to Elko.[16]

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[16] **APPLICATION**, Volume 3, page 173.

At the PSCN's public meetings in both Winnemucca and Elko, railroad representatives indicated an interest in exploring alternatives and suggested that proposals to address these issues might be forthcoming.

C. Recommendations

The PSCN recognizes that without the merger, existing problems are unlikely to be addressed in a comprehensive fashion. However, with the merger, opportunities are presented to eliminate conflicts between the railroad and the local communities, improve overall rail operations, and enhance public safety. Operational efficiencies resulting from merged railroad dispatch may mitigate conflicts in Lovelock and Wells. In Winnemucca and Carlin, some level of capital investment could resolve the conflicts. The railroads have indicated an interest in resolving these conflicts with a possible proposal.

Should such a proposal from the railroad not be made and accepted prior to the time the Board makes its decision on the merger application, the PSCN strongly urges the Board to impose mitigation conditions that require the railroad to evaluate and implement appropriate mitigation measures no later than five years from the date of merger approval.

IV. Local Service and Community Contact

Throughout the public meetings held by the PSCN, a common community concern was that railroad personnel are very difficult, if not impossible, for the general public or local government to contact in order to express complaints, operating problems, hazardous materials, shipper questions or obtain other general information. Local agents have answered that need; but affected citizens must pay for that local attention. For example, in Winnemucca, the UP now charges shippers $50.00 each time the shipper calls the local agent to resolve a problem or obtain an answer that the UP's National Customer Service Center (NCSC) cannot resolve or answer.[17] Shippers should not have to pay for the inability of the railroad to communicate accurate and timely information when questions are asked.

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[17] See Supplement 17 to Union Pacific Railroad Company's Freight Tariff UP 9006-D, Effective October 15, 1994.

Recommendation

The PSCN believes that the railroad should be required to address this problem by improving its communication effectiveness with both its shippers and with the communities it affects so problems can be dealt with in an efficient and timely manner. To this end, the PSCN recommends that the Board require as a condition of any merger approval that the railroads provide personnel and/or points of contact with local or easily accessible phone numbers that would provide timely response to inquiries, not only from shippers, but also from local governments and the general public. This should be implemented within twelve months of the date of any merger approval.

V. Labor

A broad spectrum of labor unions initially opposed the merger. The PSCN understands that an agreement has been reached between the United Transportation Union (UTU) and the UP/SP that ends the UTU's opposition to the merger's approval, and has been informed a similar agreement has been concluded between the Brotherhood of Locomotive Engineers and the UP/SP. If true, then these agreements cover about 39 of the approximately 60 jobs abolished or transferred out of Nevada.

One aspect of the job abolition issue, expressed in public comments and by State Legislators was that a reduction in work force in the maintenance-of-way departments would result in increased track and roadbed problems, thereby potentially contributing to accidents.

The PSCN recognizes and enforces the applicable safety standards promulgated by the Federal Railroad Administration. The PSCN will diligently work with FRA inspectors and administrators to enforce those standards. The PSCN would recommend that if the Board approves the merger it explicitly makes a strong statement that the merger must not result in a relaxed operating or maintenance environment that impairs public safety.

VI. Hazardous Material

A great deal of concern was expressed by speakers at the PSCN's public meetings about the railroads' response to hazardous materials incidents. Recent train accidents and derailments around the country have only highlighted these concerns and make this issue critical for state and local governments. At several of the public meetings conducted by the PSCN, local government officials expressed concern that information was not readily available, and personnel from the railroad could not be contacted. For instance, in Winnemucca, local governmental officials were unaware of the railroads' Emergency Plan for the Winnemucca yard. A railroad supervisor was able to provide, however, an Emergency Operating Plan to local officials at the close of the public meeting.

It is imperative that the railroad share jointly with local government and local emergency response agencies the information and response plans which relate to potential incidents. The Board should require that the railroads provide this type of information to the appropriate local authorities in a timely fashion and on an updated basis.

VII. Comments provided by Nevada State Clearinghouse

The comments regarding environmental issues, dated February 5, 1996, and filed by the Nevada State Clearinghouse should be taken into consideration in any decision rendered by the Board. Of particular note, the Board should seek to mitigate increased emissions from vehicular traffic caused by increased traffic delays along the Central Corridor.

VIII. Conclusion

Nevada provides an appropriate environment for the Board, the railroads and shippers to gain innovative experience in open access operations, especially utilizing the trackage rights agreements. In particular, coal shipments provide an opportunity to spread the benefits resulting from competitive, single-line shipments to a broad category of citizens, electric utility ratepayers.

Competition is recognized as an ideal mechanism to capture economic efficiencies; it should not, however, be a vehicle solely to generate excess profits for the railroads. If the Board accepts the Applicants' premise that the merged railroad enhances competition, then it should also accept its responsibility to ensure that the benefits of enhanced competition actually are achieved. The Board must provide not only the opportunities for private enterprise to operate in an efficient and economic manner, but it should also make sure that the negative effects of those opportunities are mitigated to the greatest extent possible in the communities affected.

The Board's action with regard to this merger should be consistent with the policies espoused by Congress in Public Law 104-88, Sec. 11324, subsection (c), which states that "[T]he Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities." The PSCN believes that the Board should impose appropriate conditions on the merger to mitigate the combination on the general public, consistent with recent deregulatory policies of Congress.

DATED this 28th day of March, 1996.

Respectfully submitted,

Timothy Hay

TIMOTHY HAY, ESQ.
GENERAL COUNSEL
PUBLIC SERVICE COMMISSION OF NEVADA
727 Fairview Drive
Carson City, NV 89710
Telephone: (702) 687-6008

VERIFICATION

I, Galen D. Denio, declare under penalty of perjury that the foregoing is true and correct. Further I declare that I am qualified and authorized to submit this verified statement of Comments and Request For Conditions on behalf of the PSCN.

BY: Galen D. Denio
GALEN D. DENIO, PSCN COMMISSIONER

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1104.12, I certify that I have this day served copies of the document entitled **PUBLIC SERVICE COMMISSION OF NEVADA'S COMMENTS AND REQUEST FOR CONDITIONS** upon parties in this proceeding, by first-class, postage pre-paid U.S. mail.

DATED this 28th day of March, 1996.

Mary K. Dreeson
MARY K. DREESON

STB FD 32760 3-29-96 D 62309

62309

SENA

Item No. ______________

Page Count 2

Mar # 806

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THE SENATE OF TEXAS

The Senate of The State of Texas

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COUNTIES IN SENATE DISTRICT 25

Bandera, Bexar (part), Blanco, Comal (part), Gillespie, Guadalupe (part), Kendall, Kerr, Kimble, Llano (part), Mason, Medina (part), Schleicher, Sutton (part), Tom Green (part), Travis (part), Williamson (part)

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March 24, 1995

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Room 2215
12th and Constitution Ave., N.W.
Washington, D.C. 20423

Dear Secretary Williams:

I am writing to express my strongest support for the request of conditions which were recently submitted to you by Texas State Representatives Robert Junell, John Cook and Robert Saunders regarding finance docket number 32760. As a state senator from Texas representing nearly 600,000 citizens in 17 counties, I am extremely concerned that the merger of these two railroads will dramatically reduce rail competition in Texas.

For example, this proposed merger will greatly limit access to and from Mexico, since Union Pacific Railroad/Southern Pacific Rail (UPRR/SPR) and Burlington Northern/Santa Fe Rail (BN/SF) will control 88% of all US-Mexico rail traffic and have complete control of the only two gateways in Laredo, Texas, which together account for 80% of the rail traffic between the United States and Mexico. To foster competition, I support divestiture of the SPR lines in East Texas which would allow an unaffiliated rail carrier to provide service to Mexico.

Along with dominating rail traffic to and from Mexico, this proposed merger will have a significant impact on transportation of products produced by the petrochemical industry in the Gulf Coast area. It is estimated that this merger will give UPRR/SPR control of more than 50% of the chemical tonnage and 40% of the plastics production. Once again, I support divestiture of parallel UPRR/SPR lines in East Texas, since this would give other railroads an opportunity to compete in the petrochemical market.

ADVISE OF ALL PROCEEDINGS

Supporting my concerns are figures from a study on the impact of this proposed merger on Texas prepared by The Perryman Group. As a result of this merger, Texas stands to lose 3,877 permanent jobs, $392.5M in total annual expenditures, $192.3M in annual gross product, $115.9M in annual personal income and $39.3M in annual retail sales. As you can see, this proposed merger will have a dramatic, negative economic impact on the State of Texas.

Finally, this proposed merger will leave San Antonio, Texas, the ninth largest city in the country and my hometown, with a "choice" of one railroad. As San Antonio begins to become a hub for international trade with Mexico, this cannot happen.

For all of these reasons, I urge the board to consider favorably the request for conditions filed by my colleagues in the Texas Legislature. The approval of this request is vital for rail competition and economic growth in Texas.

Sincerely,

Jeff Wentworth

Jeff Wentworth

JW/amw

STB FD 32760 3-29-96 D 62307

62307 62

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LSBC-3

March 27, 1996

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

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MAR 29 1996
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Finance Docket No. 32760

Union Pacific Corporation, Union Pacific Railroad Company, and
Missouri Pacific Railroad Company
--Control and Merger--
Southern Pacific Rail Corporation, Southern Pacific Transportation
Company, St. Louis Southwestern Railway Company, SPCSL
Corporation, and the Denver and Rio Grande Western
Railroad Company
Docket No. AB-12 (Sub-No. 188)
Docket No. AB-8 (Sub-No. 39)
Docket No. AB-8 (Sub-No. 36x)
Docket No. AB-3 (Sub-No. 130)

Proposed Inconsistant and Responsive Application by LBSC Holdings; Explanation, Commentary, and Position Statement

Including supporting documents

Dear Secretary Williams:

Pursuant to the procedural schedule adopted by the Surface Transportation Board regarding these proceedings, the principals of LSBC Holdings, Inc. had anticipated filing an Inconsistant and Responsive Application in regards to the purchase of the following:

-All of the railroad assets of the former Denver and Rio Grande Western Railroad in Colorado and Utah including: all main lines and connecting secondary, branch line and spur

trackage, all railroad real estate and property, equipment, signalling and dispatching facilities, certain motive power, and rolling stock.

-The rail lines of the former Missouri Pacific Railroad from Kansas City, MO to Pueblo, CO., via Osawatomie, KS-to-Herington, KS-to-Scott City, KS-to-Pueblo, CO.

Explanation and Commentary

At the beginning of March, 1996, LSBC Holdings, Inc. was contacted by representatives of the "DRGW Employee Labor Committee". This committee, made up of former DRGW employees currently employed by the Southern Pacific, was interested in effecting an employee-supported purchase of the former DRGW, including the afore-mentioned lines running east from Kansas. Additionally, this group was also interested in purchasing additional lines west from Salt Lake City/Ogden, UT to the West Coast port of Oakland, CA.

After a series of discussions and written correspondence between LSBC and the DRGW Employee Labor Committee **(please reference exhibit #'s 1 & 2 and reference item #6)**, it was determined by mutual consent, that LSBC Holdings, Inc., would act in consort with the employees of the former DRGW in their attempt to buy back their former railroad **(please reference exihibit #'s 3 & 4)**.

Upon our general agreement to act in consort in attempting to secure the afore-mentioned properties via an employee-supported buyout plan, LSBC prepared for former DRGW employees 6-page summary of what we were trying to accomplish, what our philosophy about operating the property was, and our feelings towards the importance of being able to turn the railroad back over to the former DRGW employees **(please reference exihibit #5)**.

In addition, we began the process of developing a railroad management team. The first individual of that team was Mr. Garry Oglesbee **(please reference exhibit #'s 6 & 7)**. Mr. Oglesbee was given a copy of the document sent to the former DRGW employees so that we could access the viability of what we had proposed. Mr. Oglesbee's comments are included **(please reference exhibit #8)**.

As the month of March wore on, it became increasingly apparent that our ability to develop a Responsive Application that coordinated the goals of LSBC with the best interests of the DRGW Employee Labor Committee would be difficult, at best. There are a number of reasons for that realization, namely:

1.) LSBC Holdings, Inc. officially became a party to these proceedings in January, 1996. While a great deal of grassroots research had been done by LSBC in the months of November and December, 1995, to determine the viability of the desired lines, LSBC did not get into "the loop" of the proceedings, as it were, until we filed our Notice of Intent to Participate. Because of that, we did not receive a number of critical documents that related to these proceedings that had been filed much earlier, specifically:

"Decision #2, Petition for Protective Order" dated September, 1, 1995.
"UP/SP Document Depository Procedures" which we received on March 26th from the law firm of Covington and Burling.

Had the specific Document Depository Procedures information been relayed to us when we requested such information from the Union Pacific (please reference exhibit #9), our ability to apply that data would have been much greater than finding out on March 26th the proper "Document Depository Procedures".

2.) The late entry of the DRGW Employee Labor Committee simply did not allow enough time to coordinate the efforts of that group and the several hundred former DRGW employees who have supported the efforts of the Employee Labor Committee (reference item #7). Since we committed to trying to combine our joint efforts, we felt we also needed to take into account what effect this new alliance with the former DRGW employees would have on the operational and marketing plans we had been developing.

Quite simply, without the luxury of full participation in these proceedings from the start and the attendant access or awareness of the full scope of resources available, plus the inclusion at a very late date of the DRGW Employee Labor Committee and the specific needs and concerns inherent in that group that needed to be coordinated within the breadth and scope of LSBC's plans, LSBC has not been able to develop an Inconsistent and Responsive Application worthy of credible presentation to the STB in regards to these proceedings.

That being said, LSBC Holdings, Incorporated, along with the DRGW Employee Labor Committee fully believe they have the capability to provide third-rail competition in the "Central Corridor" route should the STB rule divestiture of that route as a condition of the UP/SP merger. We would ask you to again to fully review **Exhibit #'s 1-9** at this point.

Given the proper time to coordinate our combined efforts, we will be able to develop the *most appropriate* operational and marketing plan...one that addresses the combined and equally important needs of shippers and employees and the region which the railroad would serve.

Position Statement

1.) LSBC Holdings and the DRGW Employee Labor Committee believe that the most appropriate resolution to the competitive issues surrounding the proposed UP/SP merger is to divest those lines in the region commonly referred to as the "Central Corridor"to a third rail carrier. LSBC Holdings and the DRGW Employee Labor Committee, as a railroad management and labor team stand ready, willing, and able to be that third rail carrier in the Central Corridor region. We believe this action will have the effect of *increasing* competition in the Corridor region for a number of reasons, including:

In discussions with Stewart Sanderson, President of the Colorado Mining Association **(reference item #3)**, a very deep concern for Colorado and Utah coal providers is the fact that the Union Pacific already has access to substantial coal reserves in their Powder River Basin. With such easy accessibility to virtually limitless supplies of surface coal, common sense would indicate that the UP would have very little incentive to market the costlier and less-accessible coal reserves of Colorado and Utah.

UP has indicated that the BNSF would have access to Colorado and Utah coal as a condition of the merger. However, the BNSF also has direct access to the Powder River Basin and their incentive to develop the Colorado and Utah coal reserves would not be much greater than the UP's given the fact that BNSF would be required to share the cost of on-going capital projects on a route that the UP has indicated is plagued by "...clearance problems and mountainous operating conditions" **(Peterson V.S. at 55)**.

The employee-owned and empowered railroad must, out of necessity, aggressively pursue new markets for Colorado and Utah coal because it does not share access to other coal deposits and coal represents a *substantial* source of revenue for the railroad. This will enable the coal industry to remain strong and viable in that region, and will protect competition on these lines by having the specialized service that a local, independent rail carrier can provide.

C.) Ability to develop new, *non-traditional* uses for the in-place railroad infrastructure.

Given Colorado and Utah's scenic and tourist potential, a number of opportunities present themselves for use of the rail lines to benefit the economy of the local region.

Rader Railcar of Denver has proposed running a tourist train west from Denver to Dotsero, then southeast to Pueblo through the heart of the Colorado Rockies. Rader Railcar is successfully running operations like this in Canada, central Florida, and will soon be beginning a Los Angeles to Las Vegas train running on the UP. Rader Railcar bills their train "a cruiseship on rails", and markets this experience to "high-end" travellers **(reference item #4)**.

This type of operation can bring a variety of benefits, namely:

-greater utility of the rail infrastructure to take advantage of the unique geographical characterisitics of the region.
-enhanced tourism opportunities which would economically benefit the entire region.
-revenue for the railroad which would help diversify the total revenue mix.

The City of Leadville, CO is considering establishing a type of commuter rail service to serve the ski resorts of the Vail Valley in Colorado. Leadville is a much more affordable locale for the resort workers who work at the Vail Valley ski resorts to live in. However, to commute by car from Leadville to the resort areas in not practical a

A.) A third rail carrier in the region greatly minimizes or eliminates an unacceptable rail monopoly or dangerous duopoly in many markets.

B.) The employees would share directly in the railroad's fortunes under our proposed structure, as such, our employee-owned and employee-empowered railroad will be much more aggressive in competing for traffic, allowing shippers greater rail transportation flexibility, and helping to make sure that all carriers serving a particular market "keep their pencils sharp".

C.) Employee-owned organizations have a direct incentive to be completely customer-focused and they tend to be much more aggressive in finding new ways to solve customers needs.

D.) Under our proposed financing structure (please reference exhibit #5, page 3), shippers would be given a couple of financial opportunities to participate in the new railroad. One of those potential opportunities would involve providing rebates once a certain level of traffic volume had been reached. This would establish incentives for shippers to use the newly-created railroad and certainly provide competition to other rail carriers.

2.) LSBC Holdings, Inc. and the DRGW Employee Labor Committee believe that divestiture of the Central Corridor region to a third rail carrier is in the best interests of the long-term economic health and future development of the region. LSBC Holdings and the DRGW Employee Labor Committee stand ready, willing and able to be that third rail carrier for a number of reasons, including:

A.) Ability to properly serve the grain markets of eastern Colorado and central Kansas.

In discussions with the Mountains and Plains Shippers Coalition (reference item #1), it has been estimated that an additional 12,000,000 - 15,000,000 bushels of wheat will be available for shipment by rail from eastern Colorado counties. This wheat will come from ground that was set aside in the Conservation Reserve Programs in the mid-1980's (please reference exhibit #10). Additionally, verbal data supplied by Junior Strecker, President of the Mountains and Plains Shippers Coalition indicates that an additional 2,000,000 - 3,000,000 bushels of wheat would be available for shipment by rail. This equates to 5000 to 7000 *new* originating carloads of traffic for these rail lines. The cars needed for shipment of this product are generally required at specific times of the year. The Union Pacific has changed their car allocation from seasonal-specific car delivery to a monthly quota of fewer than 260 rail cars per month to the Kansas portion of the route. This allocation does not properly serve the current market, nor would it properly serve the anticipated market (reference item #1 & 2).

The highway infra-structure of eastern Colorado is not adequate to handle this substantially increased grain traffic flow (please reference exhibit #11). The railroad provides the most efficient, cost-effective means of transport, and the employee-owned and empowered railroad will, out of necessity, provide a maximum level of service to these traffic sources because these new potential carloadings represent substantial revenue potential and keep a substantial amount of truck traffic off an inadequate highway infra-structure in that region.

B.) Ability to aggressively market and promote Colorado and eastern Utah coal.

great deal of time. A commuter rail service from the Leadville to the resort areas would be of great economic benefit to the City of Leadville as it would bring new residential development and the attendant service structures that develop as a result, and provide greater utility of the in-place railroad infra-structure over Tennessee Pass.

The City of Leadville is also building a new regional airport designed to handle commuter-type flight operations in the winter. The City believes that the ability exists to combine the railroad infrastructure with the expanded airport capacity to effectively transport vactioners and tourists. The City of Leadville is situated within 60 miles of the top 8 ski resorts in Colorado **(reference item #5)**.

<u>D. Ability to develop new sources of originating and terminating traffic and develop an operating plan to make the Central Corridor route competitive as a bridge or through route for transcontinental traffic.</u>

Our discussions with members of the DRGW Employee Labor Committee and other former DRGW employees interested in being a part of an employee-supported buyout **(reference item #6)** of the rail lines has indicated the following:

1.) The SP, through it's operating practices over the last number of years has let a substantial amount of locally-originated traffic disappear from the railroad.

2.) The SP, through it's operating practices over the last number of years have not made a concerted effort to develop new sources of rail traffic in this region.

3.) The SP, through it's operating practices over the last number of years has made the former DRGW route through Colorado unattractive to route bridge traffic. They have done this by running trains longer than many of the existing passing sidings between Denver and Salt Lake City, they have done this by not having the proper motive power consist to effectively move freight in an efficient manner, they have done this by running trains that were too heavy for the existing railroad infra-structure in the mountainous portions of the route, thereby incurring additional maintenance expense.

Granted, these are statements of *opinion* expressed by engineers, conductors, and maintenance-of-way personel who were once part of the DRGW, and are now members of the DRGW Employee Labor Committee. While nothing more than statements of opinion, they come directly from those individuals who are responsible for the daily movement of traffic over these lines and the maintenance thereof. As such, these statements should be viewed with some seriousness.

The statement expressed continually by members of the DRGW Employee Labor Committee is that "...if we get the railroad back, we know how to run it...it can make money." We trust the judgement of the rank and file workers when it comes to comments like that.

Concluding Remarks

The merger between the UP/SP is far more than simply an issue of quantifiable "economics and efficiencies." While the UP most assuredly claims that this merger will result in several hundreds of millions of dollars in cost savings and transportation streamlining, there is always another edge to that sword, that being that there can be equally substantial long-term costs, both economic and non-economic that simply cannot be quanitified in today's dollars, yet have a greater long-term and lasting impact.

Let's look at some of the economic issues that the UP/SP has not addressed:

...It's widely held in economic development circles that $1.00 in wages generates between $6.00 - $8.00 in benefits to a local economy. If 1000-plus jobs were to be eliminated from the Colorado and Utah regions by virtue of this merger, that would remove in excess of $35,000,000 (assuming an average payroll of $35,000) in wages per year, which would translate into lost economic opportunity cost to the region of in excess of $250,000,000 per year. Obviously, the greater the number of jobs lost, the greater the cost.

...There are dozens of statements being received by the STB from concerned residents of eastern Colorado and central Kansas detailing, in economic terms what the economic cost of abandonment or non-competitive rail service will mean to them. Not only in higher transportation costs for their products, but also lost property tax revenue, and the potential problems that can cause. These aren't big, multi-million dollar shippers, but they are real people with real concerns and at very real risk.

...There is a rapidly growing group of employees who are part of the DRGW Employee Labor Committee who want the opportunity to purchase their former railroad back. What more powerful statement can be made, than by a group of individuals who are willing to share the burden of financial risk secure in the knowledge that they can make their business run, and eventually share in the financial and personal satisfaction benefits that will result? How can one quantify in today's dollars the potentially huge opportunity cost that could be lost by not allowing the employees to do what they truyl feel is right?

...What is the long-term opportunity cost associated with allowing $9 billion in transportation pricing control to be in the hands of one transportation entity? The Interstate Commerce Commission was created, in part, out of the transportation abuses brought about by the "Robber Barons" of the 1890's when too much railroad control rested in the hands of too few players. The ICC was created to *preserve and protect competition* in order to let the free market decide who should stand and who should fall. That is the basis of our capitalistic, free-enterprise system.

...There are numerous recent examples of very successful regional railroads that were created when a larger parent decided they could not make money on that particular property. Companies like Montana RailLink, Wisconsin Central, Arizona and California, California Northern, Iowa Interstate, Dakota, Minnesota and Eastern, Chicago Central, etc...are all prime examples of railroad properties that have become tremendously successful as regional railroads on lines that were once deemed unsuitable. With the UP/SP willing to abandon and downgrade substantial portions of the Central Corridor route, it would seem the *right* thing to do would be to allow a new competitor access and ability to make the lines in this region profitable, especially a competitor whose employees want to buy their old railroad back.

LSBC Holdings, Incorporated has developed a reasonable, workable, viable basis for a plan that would return the Central Corridor route to an entity better able to manage and develop the local traffic and other serve other specialized rail needs. This plan has received endorsement from:

1.) Respected railroad consultant
2.) DRGW Employee Labor Committee and former DRGW employees
3.) Local press in the State of Colorado **(reference exhibit #12)**

This plan has been submitted to the UP for their consideration **(reference exhibit #9)**, however, in correspondence received by the UP and their Legal Counsel, it would appear that our efforts have not been taken seriously. Their primary concern has been whether or not we have the ability to finance such an undertaking; and probably also a belief that we are nothing more than a couple of really hard-core railfans.

We cannot stress strongly enough our dead-on seriousness of what we have proposed. We have provided "Reference Exhibits" and "Reference Items" in this brief to validate from as many outside entities that we know what we are talking about. We have built a huge base of support from the grassroots level in Colorado and Kansas. And, yes, we have made very favorable contact with potential financial entities and consultants **(reference item #7)** who have both the willingness and ability to finance a purchase of up to $500,000,000. Naturally, their willingness to commit to any level of financing is contingent upon the UP's willingness to enter into negotiations for the sale of the properties.

As a newly-formed entity, and new to the railroad business, we, by admitted lack of experience and lateness to these proceedings (January 15th), were not aware, nor readily made aware of certain information and the processes required to receive that information necessary to more fully develop our responsive application. Additionally, we have detailed the late inclusion of the DRGW Employee Labor Committee and their desire to combine their efforts with ours to effect an employee-led buyout of the former DRGW.

Despite the fact that at this time we are unable to file a Responsive Application worthy of review by the STB, we are highly confident in our ability, working with the former DRGW employees, to build an effective, competitive third rail carrier in the Central Corridor region.

We have always followed this process for the right reasons...competitive access, preserving employee jobs, and enhancing the economic development possibilities of the region. We have never made a decision based upon a profit motive. We believe that if a business is run for the right reasons, the profits will naturally follow. For those, and many other reasons, we believe that an LSBC/Employee-led buyout of the former DRGW would offer the best combination for:

1.) Retaining competition
2.) Serving the economic needs of the region and contributing to future economic growth
3.) Preserving and ultimately creating jobs in the region

We thank the Surface Transportation Board for their consideration of what we present, and hope the Surface Transportation Board decides in favor of divesting the Central Corridor route to a new railroad entity.

Sincerely,

Timothy Eklund
President, LSBC Holdings, Incorporated

Item Exhibit Appendix

The Item Exhibit Appendix provides names and phone numbers and addresses (if available) of individuals whose comments, observations, or opinions were shared with LSBC Holdings, Inc., but who did not provide a sworn written affidavit to these statements.
These names are to be protected under the confidentiality provisions established for these proceedings.

Item Exhibit #

1	**Robert Glynn, Executive Vice-President, Hoisington Chamber of Commerce, 316-653-4311** **Jim Irlandi, Attorney, 316-264-9630** **Cardon Berry, Kiowa County Commissioners**
2	**Junior Strecker, Mountains and Plains Shippers Coalition** **316-872-5823**
3	**Stewart Sanderson, President, Colorado Coal Mining Assn.** **303-894-0536**
4	**Tom F. Janaky, Rader Railcar, Inc.** **10525 East 40th Avenue** **Denver, CO 80239** **303-375-9796**
5	**Kent Hager, Lake County Administrative Dept.** **Leadville, CO** **719-486-3338**
6	**Steve Tucker, President, DRGW Employee Labor Committee** **970-858-9731** **Richard Biocic, DRGW Employee Labor Committee** **970-487-3033** **Murlin Tucker, retired DRGW employee** **970-242-3868** **Robert Nance, former General Manager, DRGW** **813-633-3110** **Bill Gulliford, General Chairman, BMWE DRGW local** **303-360-5592** **Robert Medrano, Maintenance of Way Supervisor, DRGW** **P.O. Box 564** **Salida, CO 81201** **719-539-3418** **Gerald Reese, former DRGW Regional Transportation Supervisor** **303-988-0315**
7	**Steven Basehore, Equity Concepts, Inc.** **1-800-245-3436** **M. G. "Pete" Kennedy, Ashley International, Ltd.** **904-382-5880**

Reference Exhibit Appendix

Reference Exhibit #

1	LSBC Holdings letter to Steve Tucker, railroad engineer and President of the DRGW Employee Labor Committee dated February 28.
2	LSBC Holdings letter to Steve Tucker dated March 2, 1996.
3	News Release issued jointly by LSBC/DRGW Employee Labor Committee on March 4, 1996 to newspapers in Denver, Salt Lake City, Grand Junction, CO, and Pueblo, CO.
4	News article from Grand Junction Daily Sentiaal profiling LSBC's attempt to work with employees to effect employee-led buyout.
5	LSBC Holdings letter to all employees of former DRGW explaining what our philosophy of the new railroad company. This letter was sent to Steve Tucker on March 6, 1996, for distribution to all employees.
6	Resume of Garry Oglesbee, Railroad Consultant and part of eventual management team of the new railroad.
7	Further credentials and information on Garry Oglesbee.
8	Garry Oglesbee's critique of the basics of our plan described in Reference Exhibit # 5.
9	Letter sent to Raymond Allamong, Union Pacific, on February 2, 1996, detailing our intentions and desire to pursue negotiations with the Union Pacific.
10	Agricultural Data supplied by Kiowa County Commissioners (part of the "Mountains and Plains Shippers Coalition".
11	Additional supporting documentation relating to the effects the merger would have on the farm economies of eastern Colorado.
12	Newspaper articles from The Mountain Mail newspaper from Salida, CO..

LSBC Holdings, Inc.
121 West First Street
P.O. Box 65
Geneseo, Illinois 61254-0065

Telephone 309-94[illegible]-4766

February 28, 1996

Mr. Steve Tucker
2048 J Road
Fruita, CO 81521

Dear Steve:

Thank you very much for the visit the other day regarding organizing an employee buyout of the DRGW.

I don't know if it was simply coincidence or providential, but on Saturday, my partner Tom Zwica and myself were discussing the best way to begin a process of contacting the DRGW employees to guage an interest in our plan to purchase the railroad. Your call on Monday may have solved our problem, and perhaps we can solve yours.

Let me share with you some information about who and what **"LSBC Holdings"** is and what our plan has been from the start.

LSBC Holdings, Inc. is privately-held and incorporated in the State of Delaware. It was formed by myself, Tim Eklund and my partner, Tom Zwica, for the express purpose of purchasing rail properties that became available as a result of abandonments, line rationalizations and merger activity.

Tom and I have over 40 years experience in the areas of finance, engineering, and computer and communications technology. We have both built a number of successful businesses from the ground up

We are not currently rail operators. We are businessmen who have recognized the opportunity inherent in a DRGW property. As businessmen, we fully understand the necessity of taking a "hands-off" approach to the daily operations of the railroad. We have a vision of what the railroad can do, and have some new and progressive ideas in terms of making the railroad truly a full-service transportation entity for the West, but these visions are long-term and evolutionary in nature. Please be assured, our intent is to let the railroad people run the railroad on a daily basis.

EXHIBIT #1.

the major resort areas. This would be done in cooperation with the resort operators, etc...
-Commuter rail operations in areas where that potential is possible.
-New alliances with non-traditional shippers to broaden the customer base of the railroad.
-Cooperative efforts with motor freight carriers to take advantage of each other's inherent strengths.
-Develop new uses for the Burnham shops beyond traditional uses. For example, BNSF and UP do not want to do their own heavy locomotive maintenance and repair. By setting up the Burnham shops as a contract repair shop, additional revenue could be derived. Additionally, the Burnham shops would be utilized as a rebuild center to experiment with the rebuilding of motive power to meet specific needs (like the Livingston Rebuild Center on the Montana RailLink).

5.) Over time, develop a modern, highly-efficient motive power fleet (like the DRGW once had) to meet the challenges that the operating terrain provides. This is a process that will take some time, and one doesn't just buy motive power for the sake of motive power, but it is a long-term goal.

That's simply a basic overview of what our philosphy and ideas have been from the start. As you so aptly stated it the other day: "if we get back the railroad, we know it can make money...", we couldn't agree more, and we are absolutely confident that we can get the DRGW bought back and returned to the railroad it once was.

Now, here's some things that need to be accomplished from your end:

1.) The employees need to get "up to speed" in a hurry. The UP wants this thing to get done and go away, and they have done their level best to stack the deck against anyone who would get in the way. I will send to you, under separate cover, copies of everything that would be of importance to you that we currently have. This will take a day or so, but I will get it there.

2.) We need to get a list of sorts of all the rank and file DRGW employees. Bob Glynn in Kansas has indicated that they will underwrite all the postage costs for getting info into their hands. However, we need to have someone, and it can be us if you want it to be, to be a central clearing house for all info sent to and received from DRGW employees.

There are going to be tons of questions by employees as this thing progresses. Unfortunately, many of the well-intentioned questions cannot be answered just yet because the answers don't yet exist, or more pressing and urgent matters need attention first. The key is to point out that the first priority is to preserve the jobs. Period. The other important issues will be dealt with one by one over time. You can't swallow an elephant in one swallow...just little bites at a time.

Additionally, we need to find sympathetic supervisory and management personel willing to support an employee buyout.

3.) We need to coordinate our efforts from now on when contacting UP, SP and the Surface Transportation Board. Should you decide to allow us to take the point on your behalf, we need to provide a united front that is all working from the same page. That means coming to a basic agreement on things like:

A.) Basic operating scheme
B.) Basic financing arrangements
C.) Basic management structure
D.) basic statement of principals and beliefs

I emphasize the word "basic", because time does not allow us the luxury, at this point to hammer out the finite details....those can be determined once we get this thing off the ground.

4.) A core team of DRGW employees will need to be formed to act as the "voice" for the rank and file in this matter. We will work specifically with this core team to get this thing bought and returned to the employees.

LSBC Holdings, Inc. will provide the following to the employees to help in their efforts to purchase the railroad:

1.) Arrangement of all financing options and alternatives.

In our separate attempt to purchase the railroad, we have developed favorable relationships with a variety of financing sources that will aid in financing this purchase. These sources will be very interested in pursuing this venture if they know that an employee buyout is part of the deal. Financiers love the fact that employees are willing to shoulder a portion of the risk to make a venture work.

2.) Securing of legal representation.

3.) Screening and hiring top-level management personel and act as management in this process.

We have connections with numerous top-quality management personel with skills in operations, marketing, engineering and legal. These individuals have indicated a strong desire to pursue the DRGW opportunity, and an employee buyout would make their interest even greater.

4.) Conducting employee meetings at any location along the line.

We will conduct employee meetings to organize and galvanize the troops to action.

LSBC Holdings, Inc. will set up a separate subsidiary, tentatively known as "Rail Properties, Inc. (RPI)" for the management of the DRGW. RPI will perform all the business, marketing, and management functions of the new railroad. RPI, along with all the employees of the DRGW will actually own the railroad.

Steve, we were at the point in our process where the "missing link" was support from rail employees. We had gained shipper support, tentative financial support, and had the basics of a management staff in place. Now, with employee support, we truly believe that we can all accomplish what we set out to do.

Some final points that you need to be aware of.

-SP conferred ownership of the lines from DRGW to SP about 6 weeks ago. In essence, DRGW owns nothing. That may or may not be problem. It may mean that we cannot use the name DRGW for the railroad...who knows...just be aware.

-If UP backs away from the merger, it still is your best interests to effect an employee buyout of DRGW. SP will be a sinking ship that's best to get off of.

-We need to get a basic statement of operational philosophy from the employees as well as statements that assert the railroad can be run profitably. This will counter the arguements of UP/SP that the railroad is a money-losing proposition.

-There are lots of resources that Bob Glynn can put at our disposal.

-We will gain a LOT of shipper support once we get our unified front unveiled. Shippers groups from Kansas to California should fall into support of what we want to accomplish.

I have covered lots of ground here. Again, I know there are tons of questions that need to be asked. I hope I've given you a flavor of the direction we have been pursuing all along. We truly want to be part of the effort you're organizing to combine our two strengths to accomplish our goals. I hope you feel we can be a part of your plans, because we are going to continue our quest to purchase the DRGW in any case.

You are welcome to copy and distribute this information to everyone you can think of. I hope it is well recieved.

Look forward to talking with you soon!

Sincerely,

Timothy Eklund
President

Your phone call to me confirmed what we have thought all along...if you turn the railroad back over to the employees and empower them to do what they know is best; if you focus on becoming a "shipper's road" and bring an active and growing level of local business to the railroad; if you look at <u>all</u> of the transportation needs in the region that the railroad serves and find new and creative ways that the railroad can solve them, then, you can truly make the DRGW a tremendous success...both for the people that it serves, but also for the employees that make it work.

Our basic plan for the railroad has always been:

1.) Return the railroad to the employees and the people of Colorado, Utah and eastern Kansas. Turn it back into a "shippers road". We have found in our research so much potential traffic that either has been ignored or abandoned by the SP. This traffic can represent substantial current and future revenue opportunities for the railroad. We have also discovered new and creative uses for the railroad that have never been used before in the region. While certainly out of the mold of traditional railroading, they offer additional long-term revenue potential and an increased use for the railroad infra-structure that is already in place.

2.) Operate the railroad in a manner that is consistant with the topography of the region. We have long-thought, and you have confirmed, that the SP does not know how to operate the DRGW properly. Improper operational practices can, in the long-run, be much more costly on plant and equipment than doing the job right the first time. While many believe that the topography of the region makes the DRGW a less attractive candidate for routing bridge or through traffic, we disagree. We believe, that given an operational philosophy that stresses the importance of moving priority freight over the road as quickly as possible, as opposed to moving as heavy a train as possible over the road, can make the DRGW an attractive option to route overhead traffic, especially auto racks and double stack originating east, southeast, and south or the region.

3.) Give the employees ownership and empowerment of the property. Too often in today's business climate, the employee is not an important factor in many corporate decisions and is rarely empowered...rarely given the right and responsibility to make the right decisions to most efficiently perform a given task. In today's very competitive business climate, employee empowerment and flexibility are an absolute must to insure long-term success.

We believe that the spirit that originally was the DRGW has withered under SP management policies. We intend to change that. In our opinion, there is nothing more potentially powerful than a group of individuals given the the right <u>and</u> responsibility to band together under a common cause for the common good.

4.) Use our business-building experience and marketing skills to implement, over time, new and creative uses for the railroad. Some of these uses might include:

-Regularly-scheduled passenger operations that make connections with all

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Telephone 309-944-4766

March 2, 1996

Steve Tucker:

Wanted to send you some additional information that I think you will find interesting.

1.) Spoke at length with Rader RailCar from Denver. They are renowned as the premier builder of luxury rail cars and operator of luxury rail tours. They successfully operate tours in Florida, Alaska, and Canada. They are also building the "Marlboro Unlimited" luxury train scheduled to run beginning Spring 1997.

Rader RailCars would like to provide a turn-key luxury passenger/tourist train running from Denver to Dotsero down to Pueblo and back and provide various vacation and tour packages to go along with that. This would follow the same very successful models they have used on their other operations (they tailor their operating schedules so as not to conflict with normal freight operations.)

In return for allowing us to operate their luxury train (with our crews, of course), they would provide substantial financial incentives. It is quite likely that these incentives would cover the maintenance costs of the line over which they operate (according to Rader RailCars). It would appear that we are going to schedule an appointment at Rader very shortly to discuss this very positive development.

2.) I've studied previous employee buyouts of transportation companies and have some information that will be quite useful to you. Specifically, I looked at the C & NW employee buyout of the early 1970's.

Here's probably the best employee buyout scenario that I can develop:

An investment company will be formed to pool the investment dollars of the employees and act as a partial financier of the purchase. This investment company could be known as "Western Employees Transportation Company (WETCO)", or something similar. Any employee that wishes, may invest their money into **WETCO** in one of two forms:

A.) Straight equity...just like buying a stock or other business. All employees would be able to participate. Investments must be made in $1000 increments

EXHIBIT #2.

up to any dollar amount. Employee becomes a direct owner of the railroad up to his/her investment. As profits accrue to the business, that equity investment will increase in value as the value of the business rises. Just like a stock, the entire investment could potentially be at risk if the business fails. So, it encourages each employee to work as productively to as possible to maximize the profitability of the business.

Employees would have the opportunity to invest in WETCO even after a buyout occured.

Using the C & NW employee buyout as an example, each $1000 invested by CNW employees in 1972 (when they helped buy out the company), had appreciated to $72,000 by 1981. Naturally, I wouldn't guarantee that kind of return to any employee, but certainly, the potential is there. (The greater the employee participation in a buyout, the more profitable it would be for the employees because less dollars would leave the company to pay interest on debt and shares of profit to other investors).

B.) Convertible Subordinated Debt. Employees that wish to invest in the company this way would assume the ownership of a "Convertible Subordinated Debt security in $5000 increments up to any amount the employee wishes to own. If, for example, an employee wanted to assume $25,000 of "Convertible Subordinated Debt", each month out of their paycheck, a certain amount would be withheld to "pay-off" this debt. The employee would not have to come up with any money up-front to assume this debt, rather, they would simply have payroll deductions from their paycheck each month to pay off the debt they assumed. This "Convertible Subordinated Debt" would also be paid off by a percentage of the corporate profits. Once each employees debt was retired through a combination of payroll deductions and a share in corporate profits, it would convert over to straight equity (like in example "A").

I think, although I can not completely guarantee it, that to effect an employee-led buyout would, in and of itself, not require wage concessions, work-rule modifications, etc.. Those issues would be addressed by management and labor as an on-going aspect of the business operations. There are a lot of concerns among employees about "what do I have to give up to help buy out the railroad?" Well, I don't think that the employees will have to give up much, if anything to buy the railroad. Naturally, if business conditions warrant, or as we finalize our business plans, it calls for changes to be made, they will be addressed in that context...NOT in the context of an employee buyout.

3.) We are under an extremely tight time schedule. We have 1 month to get this thing done. I am in the process of developing a core management team...right now that will be 3 individuals with long-time rail experience in the following:

-operations
-marketing
-mechanical engineering

These individuals can access a variety of railroad issues that will need to be ready by march 29th, namely:

- -operational plan designed around the varying topography of the region
- -revenue projections from on-line traffic plus overhead traffic
- -motive power needs and costs

These are key points that will need to be in our plan before the STB on March 29.

I hope this information is useful to you. Feel free to call me at either 309-944-5595 (home) or 309-944-4766.

Thanks!

Tim Eklund

LSBC Holdings, Inc.

121 West First Street
P.O. Box 65
Geneseo, Illinois 61254-0065

Telephone 309-944-4766

For immediate release

LSBC Holdings, Inc. and a group of employees of the former Denver and Rio Grande Western Railway (DRGW) have entered into discussions to examine the potential of combining their mutual interests to effect an employee-led buyout of the lines of the former DRGW.

LSBC Holdings, Inc., a privately-held corporation, will file a Responsive Application with the Surface Transportation Board by March 29, 1996 to acquire all of the assets of the former DRGW including all rail lines, trackage rights, and interchange access in the region commonly referred to as the "Central Corridor" which includes Kansas City to Salt Lake City. In addition to these rail properties, the employees of the former DRGW seek to purchase additional rail lines from Salt Lake City to Oakland, California. The combined LSBC Holdings/Employee Buyout Proposal would encompass all "Central Corridor" property plus the additional rail properties to Oakland, California, in effect creating and preserving a much-needed third rail competitor from Kansas City to the West Coast.

The two groups believe that an employee-led buyout of the former DRGW could offer the best solution to former DRGW employees who face job uncertainty in light of the merger discussion between the UP/SP, and to current rail shippers, who should also enjoy a higher level of service and committment from an employee-owned railroad. Additionally, this new railroad entity would bring an aggressive, pro-active "third rail carrier" to the region, thereby alleviating many of the current UP/SP merger concerns being voiced by numerous individual shippers and shipper's groups.

For more information, please call 309-944-4766 or 970-242-3868.

EXHIBIT # 3.

Clipped From:
The Daily Sentinel
March 6, 1996
Grand Junction, Co.

D&RGW employee buyout may save thousands of jobs

Associated Press

DENVER — LSBC Holdings, one of three hostile bidders for the former Denver & Rio Grande Western Railroad, is working on an employee buyout it says would save thousand of jobs.

Tim Eklund, one of the principals of LSBC, says his group is talking with a "broad spectrum" of D&RGW employees — including engineers, conductors, track maintenance and clerical staffers — about an alliance to acquire rail lines from Kansas to California.

The proposal would not only save jobs, but also provide more rail competition and keep open two rail lines in Colorado scheduled for closure, Eklund said.

"Despite what their bosses say, they say they can make this property profitable," Eklund said. "They're willing to put their hard-earned dollars on the line."

LSBC is one of three companies seeking to buy the former D&RGW and other tracks from the Southern Pacific and Union Pacific railroads when they merge next summer. All three would-be bidders — LSBC, Montana Rail Link and Wisconsin Central Transportation — hope to acquire enough track and track rights to form a new major railroad across the western United States.

As it stands now, the merger will leave the West with only two major railroads.

The merger also could cost part of Colorado all rail service. Two D&RGW lines, from Dotsero over Tennessee Pass to Canon City, and from Pueblo to Towner are scheduled to be abandoned.

All three bidders want those lines, plus others that Southern Pacific and Union Pacific refuse to sell. The bidders hope the federal Surface Transportation Board will order the two majors to sell, as a requirement for the merger.

LSBC wants all the old D&RGW lines, including the Moffat Tunnel route into Denver.

Exhibit #4

LSBC Holdings, Inc.

121 West First Street
P.O. Box 65
Geneseo, Illinois 61254-0065

Telephone 309-944-4766
Fax 309-944-4766

To the Employees of the former Denver and Rio Grande Western Railroad:

You are being given the opportunity to take control of your future...the opportunity to take back what was the DRGW and make it your own.

Our company, LSBC Holdings, Inc. believes that the lines and trackage rights of the former DRGW can be purchased and successfully operated as a viable railroad entity...despite what the Union Pacific and Southern Pacific have to say. Our talks with many former DRGW personel have confirmed what we believed to be true, that is, if we take back the railroad, you folks can make it work.

An employee-supported buyout of the DRGW would send a powerful message. It would tell the UP/SP that their desire to abandon most of The Grande was not based on anything but their own greed. It would tell the shippers all along the route that you folks were serious about serving them and their needs. It would tell your State's Governor that perhaps he should become more vocal in support of all of you who stand to have your jobs relocated or eliminated as a result of this merger. Most importantly, however, an employee-supported buyout of The Grande would bind you together as employees to reach a common goal. There is nothing in this world more powerful than a group of folks banded together by a common cause.

LSBC Holdings, Inc. would be honored to stand arm-in-arm with the employees to attempt to purchase back and operate the former DRGW. To that end, we have prepared a summary that will address the major issues surrounding this project.

<u>Who is "LSBC Holdings"?</u>

LSBC Holdings, Inc. was formed by two individuals, Tim Eklund and Tom Zwica for the exclusive purpose of purchasing railroad property that became available through abandonments, line rationalizations, mergers, etc.. We are officially incorporated in the State of Delaware.

LSBC is currently not a railroad operator. We do have over 40 years of combined experience building, owning and managing businesses in computer and information technology, software design and manufacture, finance, and engineering. There are numerous examples of non-railroad businessmen and investors becoming involved in the railroad business. We won't kid ourselves or you into thinking we have all the skills

EXHIBIT #-5

needed to manage the railroad on a day-to-day basis. We realize that we will have to form a management team of highly-qualified and experienced railroad people, and, in fact, have begun that process.

You need to understand our committment to you in our combined attempt to purchase the former DRGW. For us to fully pursue an employee-supported buyout plan of the DRGW, we will be required to cut all ties with our current business and employment situations. We must give up completely the security and income from businesses we have built over many years to pursue this goal. We are absolutely willing to do this, because we believe it is the right thing to do. Please understand, we are committed to you in this far beyond just words.

Description of Purchase

LSBC Holdings, Inc., through it's Rail Properties, Inc. subsidiary will attempt to effect, along with employees of the former DRGW, the following railroad transaction:

1.) Purchase all of the railroad assets of the former DRGW in Colorado and Utah including: all main lines and connecting secondary, branch line and spur trackage, all railroad real estate and property, equipment, signalling and dispatching facilities, certain motive power and rolling stock.

2.) Purchase the rail lines of the former Missouri Pacific railroad from Kansas City, MO to Pueblo, CO via Osawatomie, KS-to Herington, KS-to Scott City, KS-to Pueblo, CO.

3.) Purchase or be granted overhead trackage rights on the UP lines from Salt Lake City, UT to points in California to include:

Salt lake City-Smelter UT
Smelter-Oakland, CA
Niles Jct., CA-West San Jose, CA
Port Chicago, CA-Stockton CA
Stockton, CA-Turlock, CA

Method of Financing Purchase

A variety of financing alternatives exist for the purchase of the railroad, namely:

1.) Creation of an employee-owned company, The Western Employees Transportation Company (WETCO) to help structure an employee-led buyout of the referenced properties. Investment in WETCO will be available to all former DRGW employees (and DRGW retirees, if possible), and all former Missouri Pacific employees in Kansas who will be affected by our purchase of the properties. All of the monies invested into WETCO will become part of the equity of the new railroad.

Employees can choose to invest in WETCO via payroll deduction, up-front investment, or an on-going combination of both.

2.) Securing outside financing sources. Due to the size of the purchase, it will be quite likely that additional outside monies will need to be secured to help finance this purchase. There are a number of private venture capital and investment firms that can structure a combination of other equity and debt financing to supplement the funds contributed by the employees.

3.) LSBC has made favorable contact with a firm that specializes in securing financing guarantees from well-known International Banks such as Barclays Bank, NatWest, and Deutsche Bank. Financing obtained via this source would be structured as a private-placement to large institutional investors.

4.) Equity participation from individual shippers along the route. Shippers could be given the opportunity to invest in a shipper-specific equity investment pool similar to WETCO, however their ownership share would be <u>non-voting</u> with respect to company management and policies. Another option is to offer shippers contracts with rebates after a specific level of revenue is reached. This establishes incentives for the shippers to use the new railroad, and provides competitiion to other railroads.

5.) Hard and "soft"-dollar financial support could come from a variety of state and local government and quasi-governmental entities. Governmental entities have access to ISTEA (Intermodal Surface Transportation Efficiency Act) monies to help support this project.

<u>Operational Philosophy</u>

The topography of the region demands an operational philosophy that can make our service competitive as a transcontinental provider of rail transport. It appears as though the Southern Pacific has not had the proper operational philosophy with respect to this property, and as such, has made the property not competitive to route through traffic and has forced many rail-friendly shippers to use alternate forms of transport. We believe, however, that with the proper operational design, this property can be highly competitive end-to-end as a provider of certain transcontinental traffic and can develop a strong and growing base of locally-originated or terminated traffic.

Some operation themes that should be addressed as the Business Plan is developed would be:

1.) Running shorter, faster trains on a specific schedule, configured with the proper motive power to get the job done.

2.) Development of an "out-and-back" or "turn" concept which would allow each crew to be back at their base of operations every day. Railroads like the Illinois Central are using this concept very successfully. This would require a fairly rigid schedule for operations to make this work, but we truly believe that crew loyalty and support for this type of operation would be great...not to mention support from the spouses of crew members!

3.) Redefine the optimal size of coal trains. Apparently, SP operating practices for their coal trains are contributing a great deal to the wear and tear on the property. Wear and tear translates into a higher expense for maintenance and repair of track, roadbed, and motive power.

4.) Develop an optimal scheme for handling locally-originated traffic and guaranteeing a reliable car supply to handle that traffic. We must make it convenient and efficient for local shippers to use the railroad. The topography of Colorado gives the railroad at least equal footing with regards to competing with motor carriers for traffic in the state.

5.) Development of new potential shippers. While listed as #5, this is an absolute MUST! Too many major railroads ignore the local shipper because they want big-time, mainline railroading...a steel conveyor belt from LA to Chicago. Our railroad will not ignore the local shipper. They can be the bread-and-butter. The great thing about an employee-owned and operated railroad is that it acts much more aggressively and pro-actively to find and secure local business. There are so many exciting possibilities for the employee-owned railroad to find creative solutions to transportation issues. These solutions not only help the shipper, but translate into revenue dollars for the railroad.

Management Philosophy

In too many organizations, management structures become top-heavy. Executive-level management does not generate one dime of revenue, yet can account for a huge cost in terms of payroll. Thus, it will be necessary to keep the management structure of this railroad at it's optimal minimum.

Management exists for the purposes of:

1.) Development and maintenance of overall corporate theme and direction
2.) Leveraging of employee's efforts in running the property by having the ability to secure proper financial, real, mechanical and technological resources to insure the employee's tasks are able to be accomplished on time and in the manner specified.
3.) Disseminating larger economic and transportation trends and applying the resources of the property to meet those trends.
4.) Maintaining compliance with all legal and regulatory requirements.

Management of Rail Properties, Inc., an LSBC Holdings subsidiary part-owner and operator of the new railroad will be tentatively composed of the following:

1.) President and CEO

2.) Vice-President and General Manager of the railroad
    -Prior operations experience will be required
3.) Vice-President of Marketing
4.) Vice-President of Mechanical Engineering
5.) Vice-President and CFO
6.) Vice-President and Chief Legal Council

The potential General Manager position on the new railroad will be tentatively filled prior to April 1. While employee input is certainly welcome, the final decision (due to time constraints and impossibility of making everyone happy) will be decided by the principals of LSBC and Rail Properties, Inc. All other positions will be applied for and filled on a case-by-case basis. Again, employee input is encouraged.

Because of the potentially unique nature of this acquisition, it gives us the tremendous opportunity to delegate much of the daily management authority right down to track level. It truly allows, and quite frankly requires, that we empower the employees to do their jobs in the most efficient, cost-effective manner possible.

This empowering of employees to take full responsibility and credit for their daily tasks is something that should not be taken lightly. This mindset allows an organization to remove many layers of unproductive and costly management, and become an organization that can respond much quicker to changing business and regulatory opportunities and conditions. We believe completely that employees respond to any given situation better when their input and suggestions or not only welcomed, but required.

Job Security

This is probably the area that is of most interest to everyone, and well it should be. While it is absolutely too early in this process to be writing guarantees in stone, we have some general beliefs that will guide us as we look at the employee job-security issue:

1.) We will examine every position currently held on the railroad. If that position is not necessary to the daily operations or long-term goals of the railroad, or it's related cost to maintain is greater than it's benefit received, it will be eliminated. This policy applies from the top on down.

2.) The retention of benefits, etc. as provided under the New York Dock Law is an issue that we haven't even discussed. There are dozens of other issues, that, while important and necessary, simply cannot be answered today. This is not meant to divert attention from those very important issues, rather, we honestly do not know all the answers to those questions, and will not provide false or misleading or inaccurate information to you in that regard.

Since we're talking about job security, some very important points need to be emphasized:

A.) Few alternatives will be available to you should the merger go through <u>and</u> should the UP/SP not be ordered to sell the Central Corridor region. As a DRGW employee, you will very likely be assigned to other districts and departments somewhere in the new UP system, very likely at or near the bottom of the seniority lists in those districts and departments. For many of you, it is very likely that you will be out of a job. Period.

That is simply what happens one company buys out another. It's happened in the airline industry, railroad industry, manufacturing industry, etc. There is no reason, despite the spin UP will put on this issue that it will be any different for you. You can either take what the UP will give you, or take back your railroad and *make* something of great value for you and the generations of new railroaders that follow you. The only lasting job security is one you make for yourself.

B.) There will need to be sacrifices made. What are those sacrifices? Honestly, we don't know. In fact, it's you, the employees that will decide, as part owners of your company where certain cuts and sacrifices will be made to protect or grow corporate profits. Will any potential sacrifices be part and parcel of the employee buyout? That's up to you. The employee buyout can be neat and easy by simply allowing employees to invest their funds in the company, or, it can be part of a whole review and revamp of work rules, wages, etc. as was the case when United Airlines employees bought their company.

The concept that needs to be fully realized by all of this discussion here is that the long-term *opportunity* is so much greater for you as an employee-owner than it is strictly as an employee. However, as an employee-owner, you must shoulder a burden of the responsibility in order to reap those rewards of the opportunity. You can't have one without the other.

(*In the Chicago Northwestern employee-led buyout of 1972, each $1000 invested had grown in value to $71,000 by 1982. Now, I'm not guaranteeing that this would happen, but there is a great deal of long-term potential if everyone is willing to look past next week and look into the future. You folks <u>know</u> how to run a railroad. You folks have <u>seen</u> how the management and operational practices have changed the once-proud tradition of DRGW, you have the opportunity to bring that tradition back.*)

Since the beginning of this project over 6 months ago, one of the highest priorities was to preserve as many jobs as we could of former Grande employees, and over time, have the ability to create new jobs as business conditions allowed. This is, and always will be one of our guiding principals. We want to be able to provide you with as much information as possible, and to that end, it is our strong desire to have the opportunity to attend a number of employee meetings in Colorado. Should you find that acceptable, we would bring the gentleman whom we are considering as our General Manager. In addition, we will make every attempt to secure the services of a legal expert in the matters of those items relating to Job Security and Benefits.

We are confident that an employee-led or employee-supported buyout of the former DRGW plus extensions to Kansas City and the West Coast is the best alternative long-term for rail employees of the former DRGW. We truly look forward to having the opportunity to bring this to a reality for you!

Timothy Eklund
Thomas Zwica

GARRY G. OGLESBEE

(505) 722-2855 1408 KIT CARSON • GALLUP, NEW MEXICO 87301

SUMMARY

Consultant to the Rail Transportation business in matters of:

- Reorganizations
- Government Regulations
- Line start up
- Facility Location / Design
- Planning / Scheduling
- Customer Service
- Switching
- New Business Development

ACHIEVEMENT HIGHLIGHTS

Established and conducted training program for locomotive maintenance including solid state and transistor theory. Graduated 19 students 16 of which became supervisors.

Developed "split yard" concept. Split the yard into areas of storage and operations. Reduced switching time and increased revenue. Realized 46% return on investment in 3 years.

Designed track switching layout to serve new paper mill. The design provides for efficient loading, unloading and turnaround. Grosses $5 million in annual revenue.

Developed train schedules and crew training to move 11 million tons of coal annually from 2 mines to 5 power plants. Represented 35% of the Railroads coal business. Achieved on time service percentage of 96% with no injuries in 3 years of operation.

Redesigned operations plan for service to several industrial customers . Increased on time service to 89%, reduced crew costs by 22%.

Implemented Federal Engineer Licensing. Personally certified 35 engineers in less than 12 months, as well as establishing proper record keeping.

PROFESSIONAL EXPERIENCE

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY **1959-1995**
Transportation Department; Gallup, New Mexico
Manager of Train Operations / Trainmaster 1986-1995

Responsible for all operations of coal traffic on 5 Subdivisions. Managed operations on double track transcontinental main lines, supervised operation of yard and local trains.

EXHIBIT # 6.

PROFESSIONAL EXPERIENCE
(continued)

Mechanical Staff and Agency Positions 1959-1985

Held positions as Gang Foreman, Assistant Supervisor of Diesel Engines, MTC Supervisor, Material Expediter, Car Foreman, Assistant Industrial Engineer, Grand Division Industrial Engineer and Manager Regional Freight Office.

EDUCATION

LASALLE EXTENSION UNIVERSITY; Chicago, Illinois
Graduated in Business Management, 1973
GPA: 3.0

BARSTOW COMMUNITY COLLEGE; Barstow, California
Civil Engineering and Mathematics

AT&SF RAILWAY APPRENTICE SCHOOL; Barstow, California
Graduate Certificate in Locomotive Electrician, 1964
GPA: 4.0 Graduated in the top 10% of my class.

Complete Rail Service Analysis

- *Planning new rail services*
- *Operational improvements*
- *F.R.A. Regulations*
- *Facility development & planning*
- *Equipment utilization*
- *Computer system requirements*
- *Locomotive Engineer Training*

Providing expertise backed by over 30 years of direct experience in all phases of railroad operations

TRAINING AND EDUCATION

Garry has 35 years experience in railroading, over 22 of which were in positions of responsibility with one of the nations top ten carriers.

He has a Diploma from LaSalle University in Chicago in Business Management received in 1973. He also has extensive training in advanced Management Interact, Quality Management, drug abuse detection, Decker Method of Public Speaking, E.I.DuPont Safety Management and locomotive electrical repair.

FACILITY MANAGEMENT

As a facility manager he started, re-organized and upgraded yards, service facilities and office complexes in Arizona, California, Kansas, New Mexico and Oklahoma.

SCHEDULING

With his expertise in scheduling, coal service from two large coal mines in Arizona and New Mexico delivering to five Power Plants grew from 5 million tons annually to eleven million tons at a low operating ratio.

LICENSED LOCOMOTIVE ENGINEER

He is a Federally Licensed Locomotive Engineer and is a Designated Supervisor of Locomotive Engineers with fifteen years of experience handling all types of trains over mountainous territory.

CIVIC ACTIVITIES

His activities with the various communities in which he has lived include:

Chairman • Yavapai Planning and Zoning Commission.
President • Seligman Health Services
Member • Northern Arizona Council of Governments

FAMILY

Garry and his wife Barbara have two sons. Barry is a recent graduate of Palmer College of Chiropractic in Davenport, Iowa, as a Doctor of Chiropractic. Curtis is involved in transportation with a nation wide truck line in the Southwest.

They are members of the United Church of Christ where they served as Senior High Youth Counsellors. Garry served as Chairman of the Board of Christian Education and as a Deacon.

Garry (The Big "O") as his friends call him, offers Rail Transportation Consulting on a Professional level with a high degree of integrity, honesty and forthrightness.

Rail Transportation Consulting, Inc.
Garry G. Oglesbee
1408 Kit Carson Drive
Gallup, New Mexico 87301-5912
Telephone/Faxcom 505.722.2855

March 3, 1996

Mr. Timothy Eklund
LSBC Holdings, Inc.

Tim:

Thank you for the material you sent. In my opinion, this is an excellent plan both in scope and philosophy. The UP/SP Merger offers some "once-in-a-lifetime" opportunities to establish this project. I have studied the proposal and mapped the routes you have described. Please see my offer of suggestions and questions, by section, below;

DESCRIPTION OF PURCHASE

Access to Mexico is something critical because of The NAFTA Agreement. With that in mind, you could explore overhead trackage rights between Herington, KS and El Paso, TX routed through Liberal, KS, Guymon, OK, Dalhart, TX, Tucumcari, NM and Alamagordo, NM on the SP. You would then have major interchange points at Oakland, CA, Salt Lake City, UT, Denver, CO, Kansas City, MO and El Paso, TX. The port of Oakland and the El Paso gateway access foreign markets directly.

METHOD OF FINANCING PURCHASE

4. This is an excellent idea. Another method to accomplish this end is to offer shippers contracts with rebates after a specific level of revenue is reached. This establishes incentives for using "Western Rail" and provides competition to the other railroads. This is something the Surface Transportation Board will be looking at with you and the UP/SP Merger.

5. Are you talking about Lake County, CO and others like them? Don't forget that Governmental Entities have access to I.S.T.E.A. (Intermodal Surface Transportation Efficiency Act) money to support this project.

EXHIBIT # 8.

LSBC Holdings, Inc

121 West First Street
P.O. Box 65
Geneseo. Illinois 61254

Telephone 309-944-4766

February 2, 1996

Mr. Raymond Allamong
Manager Rail Line Planning
Union Pacific Railroad
Room 1110
1416 Dodge Street
Omaha, NE 68179

Dear Mr. Allamong:

Thank you for your response to our initial inquiry regarding our invitation to purchase, lease, or otherwise secure operating ability on the former Union Pacific lines from Pueblo to Kansas City. Thank you also for clarifying the current rail geography as it pertains to this region. We were aware of this situation.

As you are also aware, we extended an invitation to the Southern Pacific to discuss the purchase of all of the assets of the former Denver and Rio Grande Western Railway, which includes trackage for which they have formally filed for abandonment. Mr. Jerry Davis' rather terse reply indicated that they are " not in a position to discuss our proposal...nor are we interested in doing so."

It would appear from his response that should we wish to discuss our proposal in total, it must be done exclusively with the Union Pacific.

As we examine the events since the 15th of January, there are a number of facts that have surfaced.

1.) Montana RailLink has filed with the STB a proposal similar in spirit, but much broader in scope, to the one that ***LSBC Holdings, Inc.*** has filed. Their request includes trackage all the way to the West Coast. According to Bill Brodsky, President of Montana RailLink, they would not have filed if they had not received substantial support for their proposal from a broad spectrum of shippers, including the Western Shippers Coalition. Additionally, Montana RailLink has made substantial inroads and gained the support of many shippers groups and coalitions throughout central Kansas, such as the Mountains

EXHIBIT # 9.

and Plains Shippers, and others, and has been working to gain additional support for their proposal from shipper's groups and governmental bodies from Texas to California.

2.) Wisconsin Central has also filed with the STB a proposal similar to the one that ***LSBC Holdings, Inc.*** has filed. Like Montana RailLink's, their proposal also includes trackage from Kansas City to the West Coast. We are not aware of which, if any, specific shippers groups or coalitions have given their support for Wisconsin Central's proposal, however, it is our reasonable assumption that they have garnered some measure of tangible support.

3.) ***LSBC Holdings, Inc.'s*** basic proposal and operating plan has also made the rounds of a variety shipper's groups, quasi-government and governmental bodies in both Kansas and Colorado. While it has not been our intent to attempt to conduct a private business transaction in the public spotlight, our progressive proposal *has* generated a great deal of interest and support for what we believe to be the best use of the combined properties. As a result, those parties that have indicated their support have taken appropriate actions with the STB, and will continue with their lobbying efforts.

Thus it would appear that the "battle lines" in this issue have been drawn, and while the UP/SP has made a fine case from an economic standpoint for eliminating a third rail competitor in the West, and the confidence in your victory is no doubt high, as in any battle, especially one conducted in the public spotlight, there is always the risk of an unexpected defeat.

It is our firm belief that neither Wisconsin Central nor Montana RailLink would have decided to file on January 29th if they did not have fairly substantial support behind them. With that assumption, the risk to the UP (and SP) would appear quite obvious.

If the combined actions of the many entities fighting this merger *are* successful, it could cause, at best, that the merger approval be conditioned upon the sale of the Kansas City-to-West Coast lines to preserve a competitive third rail route, potentially to a current rail competitor like Montana RailLink or Wisconsin Central. At worst, it could cause the merger to be delayed or denied. As your own lawyers have stated, "every passing day, BN/Santa Fe's competitive advantages grow, especially over the SP." Any delay or denial in this process could have profoundly negative implications for the SP, and could put UP at a competitive disadvantage to an aggressive BN/SF.

The principals of ***LSBC Holdings, Inc.*** have developed a progressive solution that will provide a win-win-win situation for all parties involved.

Our holding company would like to purchase all of the assets of the former Denver and Rio Grande Western Railway, including all former trackage and operating rights including the "Joint Line". Additionally, we would like to purchase all sections that are to be abandoned by the UP in both Colorado and Kansas. Additionally, we would like operating rights from the DRGW yards in Pueblo to NA Tower, and leasing the remaining portion of the line from Towner to Bridgeport, including an outlet to the UP at Salina and Herington or Topeka.

LSBC Holdings, Inc.'s intent is to operate these lines as a focused regional railroad, designed primarily to serve the regions of central Kansas to Salt Lake City. Our field work in these regions over the last numbers of months has led us to the conclusion that our concept of management and operation can and will work on these properties.

...We have discovered specialized transportation needs and opportunities to utilize the in-place rail infrastructure in Colorado. These are opportunities that have the potential to bring great rewards over the long-term, but do not fit into an operational plan of a rail concern like the UP. Our operational plan can address these unique situations, and these situations could also lead to financial benefit for the UP. More on that in a bit...

...We have discovered a great need among certain regions to have a focused, local railroad presence. There are substantial local traffic opportunities that we have been made aware of, and potential new rail customers that would locate on the rail if they knew they could be properly served. These opportunities are currently not being exploited by the UP, but certainly would be through our operational plan. These new traffic sources would obviously lead to substantially increased interchange traffic with the UP at both the eastern end (Herington or Topeka) or the western end (Salt Lake City).

...Finally, we have been pleaded with to "take back the railroad" to serve the regions of Kansas, Colorado, and Utah. These pleadings have come from individuals, companies, economic development groups, shipper's coalitions, city and county governments, and trade associations. Obviously, our plan would address those wishes, but again, it would ultimately lead to increased interchange traffic for the UP.

What advantages would be available to the UP/SP under our proposal:

1.) As a non-carrier entity, we are currently not a competitor in any transportation mode with the UP or SP. Should Montana RailLink or Wisconsin Central become successful in their efforts, you will face the risk of being forced to allow a current rail competitor and known rail quantity into your service areas. We believe your competitive risk is much less with us. Additionally, we would agree to not use the name "Denver and Rio Grande Western" or any name of similar derivation. We would develop a new corporate name, image, and color scheme and would build market awareness of this new corporate entity.

2.) It is our intent to utilize as many of the current employees along these lines as possible. This will allow the UP/SP combination the freedom to not bear the financial burdens to relocate, buyout or pay serverence on many hundreds of employees.

3.) Through our market research, we believe that there are tremendous sources for additional on-line originating traffic to an operator whose primary focus was on regional development. Hand-in-hand with new sources of on-line originating traffic is on-line terminating traffic. This additional traffic would represent substantial interchange (and revenue) opportunities for the UP that currently are not available. We also believe that our Marketing and Business Development Plan will, over time, bring new sources of traffic on-line, again, enhancing future interchange and revenue opportunities.

4.) We can provide a "back-door" for secondary and tertiary traffic between Denver and Salt Lake City. While the UP mainline across Wyoming provides the obvious choice to route high-priority transcontinental traffic, a natural route for lower priority or excess traffic would be the "back-door" route through the Central Corridor, allowing as much priority traffic as possible to utilize the high-speed Wyoming route. Our ownership of the Central Corridor route would still enable the UP to operate run-through and overhead traffic to points east or west, without the long-term cost to UP of ownership of that route. BN's utilization of Montana RailLink and Santa Fe's (BNSF) utilization of the Arizona and California provide appropriate comparisons of this benefit.

5.) As a through route, many have indicated that this route must be kept open for National Defense. With capacity over many of the other east-west through routes nearing maximum, the Central Corridor provides another alternative in the case of a National emergency.

6.) By agreeing to our proposal as outlined, the UP has the chance to look like the "good guy" in these proceedings. It is no secret that the UP/CNW merger caused a fair amount of anger among many shippers. The proposed UP/SP merger has also stirred up a hornet's-nest of opposition and some rather unpleasant statements and allegations are being made. The UP can put an end to all that in a matter of days by agreeing in principal to sell/lease the properties to our company. Additionally, you will effectively eliminate the risk that a current rail competitor such as Montana RailLink or Wisconsin Central will be allowed to have increased access to your markets. Finally, much of the ancillary opposition to the merger will likely dissolve, and the balance of the proceedings should become nothing more than a mere formality.

7.) The sale and lease of the properties as outlined previously will generate substantial cash to the UP that can be used for other corporate purposes. Additionally, there would be substantial immediate cost savings relating to employees and long-term cost savings relating to maintenance and repair of the property.

While we see many benefits to a combined UP/SP in our proposal, we see few risks to the UP.

1.) UP's actions have indicated, and the topography of the region has dictated, that the entire Central Corridor will take on, at best, secondary status in a UP system, and that much of the Central Corridor is, in fact, superfluous to the operational plans of the UP. With a lower level of priority being assigned to this region, the UP would not be sacrificing much by agreeing to it's sale, especially since UP would have a majority of interchange traffic generated throughout the region. Conversely, the sale of the aforementioned properties to our group will result in the long-term benefits of cost-savings and substantially increased interchange traffic that will accrue to the UP. Paradoxally, this new traffic would not be available to the UP if the properties were not sold to an operator who can focus almost exclusively on regional traffic development. Our conservative estimates of new additional carloadings of originating traffic on just the eastern end of the line (NA Tower and east) are between 6000-8000. These estimates have been derived through our market research, and from sources believed to be reliable.

2.) We are not desirous of pursuing transcontinental dreams. We have a definite focus and business agenda whose heart lies in developing and serving the Kansas, Colorado, Utah region as a regional railroad. Our goals and objectives are counter-cultural to the corporate focus of such a large entity like the UP. Granted, we feel we offer some attractive alternatives to route certain overhead and through traffic over portions of the route, and would certainly need to accomodate that traffic within our operational plans, but we believe that our purpose is best served by focusing on the niche that we have identified.

We believe that we have laid out a compelling reason for the UP/SP to consider our proposal. We feel it offers a win-win-win situation for everybody involved. In point of fact, it's a win for...

Union Pacific. We've outlined 7 immediate advantages we see to the UP for agreeing to the sale/ lease of all of these properties. We believe these benefits are real and offer much to the UP. We see few disadvantages, especially in light of the Central Corridor's diminished status and higher maintenance requirements.

The regions of Kansas, Colorado, and Utah. These regions get the specialized, localized rail operator they've been asking to have. They get an operator who is willing to bring creative management and operational practices to utilize the rail infrastructure to it's best-use capability.

LSBC Holdings, Inc. We have the opportunity to put in place an operational and marketing plan that we know will work for everyone's benefit.

There are a number of items of information we need to receive from the UP/SP. Specifically:

1.) Updated and accurate systems maps detailing in entirety both properties, including valuation strip maps for those segments of both lines that have been filed for abandonment

2.) Final version of waybill data tapes for all the routes detailed in our proposal. We would also like to receive 5 years worth of data which details the number of originating and terminating carloads on all the referenced properties.

3.) 5 years of Financial Statements from the former DRGW up until the time these statements were consolidated on the Southern Pacific Transportation Co. Balance Sheets.

4.) Listing of motive power specifically configured for use on the DRGW that would be available for sale should you agree to our proposal.

5.) Listing of any and all rolling stock that would be available for purchase assuming we can come to agreement on our proposal.

6.) Listing showing numbers of employees that would lose their jobs or be relocated on both UP and DRGW if the merger application was approved as is.

7.) Cost figures for maintenance of the Tennessee Pass route.

8.) Per-mile maintenance cost for the properties to be abandoned.

We thank you for this information.

One final point. ***LSBC Holdings, Inc.*** would not be opposed to the UP holding a minority non-management ownership interest in the new rail company that would be created out of our proposal. Since a majority of the traffic we generate on-line would be interchanged with the UP anyway, it would only make sense to find as many areas where we could complement the operations of the UP and allow the UP the opportunity to benefit long-term from our success. We believe that this type of cooperation and coordination of effort holds many interesting possibilities.

We ask that you give serious consideration to our proposal. It offers what we perceive to be many advantages to the UP with little risk. Namely:

...It would protect the UP from being forced to open their service territory to an existing rail competitor should the merger proceedings be affected by recent filings from established railroads.

...It would allow the UP to come out of these proceedings looking like the "good guy", and almost assure a dissapation of current merger opposition.

...It will offer an increased flow of traffic to the UP at interchange points along the route, plus provides an additional route for through traffic without the burden of ownership.

...Most importantly, it's a "clean" business proposal. It's not a "zero-sum" situation. Our success translates into increased revenue for UP. Our success translates into more focused service for on-line customers. Our success allows the railroad infrastructure of the region to be utilized in new and creative ways to serve the unique needs that we have identified in certain parts of this region. Quite simply, our progressive proposal offers a winning combination for all parties involved.

We look forward to your reply.

Sincerely,

Thomas H. Zwica
Executive Vice-President

CE-WHEAT-ESTS

COLORADO AGRICULTURAL STATISTICS SERVICE

1-800-392-3202

YEAR	STATE	DISTRICT	COUNTY	WINTER WHT PLANTED ALL PURPOSES AC	WINTER WHT GRAIN HARVESTED AC	WINTER WHT GRAIN YIELD\ HARV AC (BU)	WINTER WHT GRAIN PROD (BU)
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1986	CO	60	KIOWA	182,000	150,000	17.0	2,547,000
1987	CO	60	KIOWA	168,000	116,200	26.5	3,072,000
1988	CO	60	KIOWA	170,000	156,000	24.0	3,754,000
1989	CO	60	KIOWA	190,000	135,000	20.0	2,706,000
1990	CO	60	KIOWA	213,000	204,000	30.0	6,120,000
1991	CO	60	KIOWA	182,000	164,000	30.0	4,923,000
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	Baca	Bent	Crowley	Kiowa	Otero	Prowers	Totals
# of Farms	562	268	204	309	509	530	2,382
Land in Farms (acres)	1,257,229	796,892	423,785	878,447	633,279	1,004,380	4,993,982
Cropland (acres)	650,060	119,154	49,033	495,908	79,497	477,781	1,871,433
Harvested Cropland	(D)	63,474	16,378	195,310	55,832	224,957	554,951
Irrigated Land (acres)	51,158	52,877	11,552	2,276	60,432	113,922	292,215
Market Value Crops	$22,724,000	$10,095,000	$1,988,000	$14,058,000	$16,186,000	$28,391,000	$93,352,000
Market Value Livestock	$28,618,000	$42,032,000	$92,613,000	$11,639,000	$86,249,000	$138,848,000	$399,999,000
Total Market Value	$51,341,000	$52,037,000	$94,601,000	$25,697,000	$102,436,000	$167,239,000	$493,351,000
Corn for Grain (bu)	2,114,435	867,660	227,219	175,460	2,798,095	2,285,198	8,468,067
Wheat (bu)	4,150,060	426,145	31,804	3,899,825	211,179	2,865,355	11,584,168
Grain Sorghum (bu)	3,076,707	331,907	53,480	737,872	18,914	1,007,203	5,226,083
Rail Car Equivalent*	2,641	468	93	1,501	897	1,875	7,694
Agribusiness Employment	622	416	235	306	355	724	2,036
Percent of County Jobs	57%	32%	51%	70%	33%	19%	29%
Agribusiness Income	$37,160,000	$9,937,000	$14,727,000	$17,700,000	$34,792,000	$37,291,000	$114,447,000
Percent of County Income	40%	12%	29%	43%	11%	17%	16%

Sources: "1992 Census of Agriculture"
"Colorado's Farm and Food System: Its Contribution to the State's Economy in 1992" (Colorado State University)
(D) Withheld to avoid disclosing data for individual farms.

WIFE Women Involved in Farm Economics

RESOLUTION ADOPTED BY KIOWA COUNTY WIFE CHAPTER # 124
AT ITS OCTOBER 18, 1995 MEETING

The members of Kiowa County WIFE Chapter # 124 are deeply concerned about the abandonment application submitted by Union Pacific Railroad Company to the Interstate Commerce Commission, specifically ICC Finance Docket Number 32760.

This application proposes to abandon the entire and only railroad system serving Kiowa and Crowley Counties, Colorado. The line that is proposed to be abandoned is 122 miles in length. Kiowa County produces five million bushels of wheat annually. The loss of the railroad would substantially increase the demand to an already insufficient highway system. In 1996, there is the potential for another 27% of the county's crop land to be released from the Conservation Reserve Program and put back into crop production..

Over 70% of all jobs in Kiowa County is related to agricultural business. The loss of the railroad will cause direct and indirect business failure since the entire economy is dependent on agriculture.

The rail abandonment would also result in a loss of direct tax revenue of approximately twenty percent for Kiowa County. This will result in decreased governmental services, loss of tax dollars for the maintenance of roads and bridges and loss of revenue for our school districts.

This rail abandonment will severely damage these two counties as well as the entire state of Colorado. We are opposed to the application and urge the Interstate Commerce Commission to deny ICC Finance Docket Number 32760.

FREDA SCHMIDT, PRESIDENT
KIOWA COUNTY WIFE CHAPTER # 124
20120 COUNTY ROAD 78
TOWNER, CO 81071-9618
PHONE (719) 727-5151

EXHIBIT #11.

Editorials

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But this railroad would be different from the D&RGW or, more recently, the Southern Pacific, in that its main focus would be on serving local business. Over the last several decades, D&RGW never seemed interested in developing small business customers. The SP, like its big, nationwide competitors, focused on cross-country traffic.

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In addition and even more important, a regional rail company serving Colorado could also provide a boost to economic development efforts in the valley.

It is a major advantage to light industries to be on a rail line that's willing to serve small firms. With tracks running through Salida, BV and Leadville, all three could see existing businesses taking immediate advantage of rail freight service.

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Ironically, the regional railroad would make the railroad what it was to the valley and to Colorado when rails were first laid down along the Arkansas and across South Park back in the 1880s.

— MJB

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Southern Pacific railroad officials believe the best use of the rail line through the Upper Arkansas Valley would be as a trail corridor.

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Things would get a bit more complex if an outside group came in to create a regional railroad, an entity consisting of basically the old Denver and Rio Grande system covering Colorado and Utah. This would mean the merged SP/UP would have to compete for local freight with a second railroad doing short hauls or even serving as a link to the east and west with other railroads.

Yes, SP/UP presumes that someone or some group is able to put together a new company, or that some other existing regional railroad would come in to purchase the SP's extraneous system in the state. But this is a possibility, as noted in news stories in *The Mail* last week. Tim Eklund, an Illinois businessman, is a part of a group exploring those possibilities.

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While SP/UP officials would prefer not to have to deal with a regional company, they might swallow the deal and they may even make a few financial concessions, especially if these became some of the conditions for getting approval from state and federal officials as well as from business and labor groups lining up to oppose the merger.

Colorado state and local officials should protest the abandonment and hold the SP and UP's collective feet to the fire on a regional railroad, an entity that makes excellent sense from local and statewide competitive business standpoints.

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Exhibit 17

Editorials

Missing the train

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Yes, it is vitally important to preserve these corridors in the face of abandonment given the proposed Union Pacific/Southern Pacific merger.

But we as a region and a state might be missing the train, so to speak, by centering attention on abandonment proceedings and corridor preservation instead of on saving a statewide railroad as an operating business.

Tim Eklund, an Illinois businessman, told local government officials and business leaders Wednesday the way to maintain a rail corridor in the valley is to include it in a regional railroad serving Colorado and Utah. Eklund's proposal makes sense. It is perhaps the most plausible means of maintaining an operating rail link the valley has.

Rather than establishing an independent rail company, Eklund's proposal would make the Malta line, the stretch from Cañon City to Minturn, a part of a two-state regional railroad. Essentially, this company would be basically the old Denver & Rio Grande Western with some major modifications.

This company would encourage all types of uses, including passenger as well as freight service; would encourage businesses in cities served to use rail for their shipping needs; and would encourage economic developers to include rail in their plans.

None of these three concepts were something in which officials of the old D&RGW or the SP have shown any interest, at least not in the past 30 years. According to Eklund, though, other regional rail companies such as Wisconsin Central, Iowa Central and Montana Rail Link turned these ideas into highly successful operations.

Eklund says businesses in the state would benefit because a regional firm would provide a link to other nationwide rail companies to the east and west which would provide competition to a merged UP/SP operation.

Commentary

Letters to the Ed

Thoughts on P

Dear editor:

Our local American Legion Commander asked a couple of us veterans if we'd pen some thoughts about Pearl Harbor Day and its implications.

Well, not exactly. He didn't mention implications. He didn't have to, for implications overshadow events and they're what carry on into the next go-round.

War veterans aren't a noisy lot on these subjects, until you get a bunch of them off by themselves. It's not that

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THE COMPANY would buy SP's existing track in the state and staff the new railroad with the 1,500 or so former employees of the UP/SP who will otherwise lose their jobs under the merger.

UP/SP officials, namely Carl Lewis and Phil Anschutz, just might agree to sell to a newly created regional company or an outfit wishing to expand to Colorado. Although it might represent some competition to a merged UP/SP operation, it might also be an acceptable evil to Lewis and Anschutz if it meant their merger proposal would receive blessings from labor, business, state and federal officials.

Right now, Eklund said, the merger faces substantial opposition from businesses fearing they will be held hostage to inflated rail freight rates from UP/SP. Labor officials are also adamantly opposed to the merger because of the jobs it will cost state railroad employees.

The regional concept is also the best chance a tourist railroad might have. By itself, a tourism line would be hard pressed to survive, given the tremendous costs of first buying the track, obtaining equipment, doing required rail maintenance, marketing and then hanging on until the concept could catch hold with the public.

As a part of a larger statewide entity, though, a Cañon to Minturn tourism train stopping at towns up and down the valley just might make the grade, especially if overhead costs can be shared on a regional basis.

Preserving rail corridors in the face of abandonment should be a second, fallback approach. What's more important right now is for rail supporters to get behind Eklund or some other group with a similar regional rail plan.

If such a rail plan can be developed, we are talking about maintaining an existing railroad and building it into an economic asset for businesses across the state while preserving jobs for state railroad employees.

— MJB

share experiences that were etched when, for them, everything was on the line.

THIS WEEK I came across a familiar name in the American Legion magazine. Sure enough it matched up with my address for the irrepressible Granvyl G. Hulse, with whom 40 years ago I did time in Greece. I sat down and wrote him my appreciation for what he had to say. (On any of the frequent times when he used to spout off, Major Olson would rumble, "Sergeant Hulse!" And on the heels of the exclamation point you would hear Sgt. Hulse's uncontrite but instant, "Yes, dammit, Sir").

Sgt. Hulse, long since retired, wrote in the Legion magazine, "My country, you can take back all you've given me and you'll never hear a

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Understanding 's

Dear editor:

As I have stated before, I am neither a Democrat or a Republican, nor a liberal or a conservative — just a simple futurist. With that being said; I certainly hope Curtis Imrie will divorce himself from the campaign slogan, "none of the above," and replace it with "understanding the word symbiosis."

In the past, the Democratic Party has signed on to the concept of tax the wealthy in excess and create a bunch of

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Certificate of Service

I hereby certify that the foregoing document has been served upon applicant's Representatives:

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P.O. Box 7566
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Harkins and Cunningham
1300 Nineteenth Street, N.W.
Washington, DC 20036

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One Market Plaza
San Francisco, CA 94105

Robert Opal, General Attorney
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179-0830

Via Next Day Air Delivery

Dated at Geneseo, Illinois, this 28th day of March, 1996

____
Timothy Eklund
President, LSBC Holdings, Incorporated

CE-WHEAT-ESTS

COLORADO AGRICULTURAL STATISTICS SERVICE
1-800-392-3202

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THE COMPANY would buy SP's existing track in the state and staff the new railroad with the 1,500 or so former employees of the UP/SP who will otherwise lose their jobs under the merger.

UP/SP officials, namely Carl Lewis and Phil Anschutz, just might agree to sell to a newly created regional company or an outfit wishing to expand to Colorado. Although it might represent some competition to a merged UP/SP operation, it might also be an acceptable evil to Lewis and Anschutz if it meant their merger proposal would receive blessings from labor, business, state and federal officials.

Right now, Eklund said, the merger faces substantial opposition from businesses fearing they will be held hostage to inflated rail freight rates from UP/SP. Labor officials are also adamantly opposed to the merger because of the jobs it will cost state railroad employees.

The regional concept is also the best chance a tourist railroad might have. By itself, a tourism line would be hard pressed to survive, given the tremendous costs of first buying the track, obtaining equipment, doing required rail maintenance, marketing and then hanging on until the concept could catch hold with the public.

As a part of a larger statewide entity, though, a Cañon to Minturn tourism train stopping at towns up and down the valley just might make the grade, especially if overhead costs can be shared on a regional basis.

Preserving rail corridors in the face of abandonment should be a second, fallback approach. What's more important right now is for rail supporters to get behind Eklund or some other group with a similar regional rail plan.

If such a rail plan can be developed, we are talking about maintaining an existing railroad and building it into an economic asset for businesses across the state while preserving jobs for state railroad employees.

— MJB

share experiences that were etched when, for them, everything was on the line.

THIS WEEK I came across a familiar name in the American Legion magazine. Sure enough it matched up with my address for the irrepressible Granvyl G. Hulse, with whom 40 years ago I did time in Greece. I sat down and wrote him my appreciation for what he had to say. (On any of the frequent times when he used to spout off, Major Olson would rumble, "Sergeant Hulse!" And on the heels of the exclamation point you would hear Sgt. Hulse's uncontrite but instant, "Yes, dammit, Sir").

Sgt. Hulse, long since retired, wrote in the Legion magazine, "My country, you can take back all you've given me and you'll never hear a

knew the Japan
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INEXPLICA
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Understanding 's

Dear editor:

As I have stated before, I am neither a Democrat or a Republican, nor a liberal or a conservative — just a simple futurist. With that being said; I certainly hope Curtis Imrie will divorce himself from the campaign slogan, "none of the above," and replace it with "understanding the word symbiosis."

In the past, the Democratic Party has signed on to the concept of tax the wealthy in excess and create a bunch of

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Here is a simple

Certificate of Service

I hereby certify that the foregoing document has been served upon applicant's Representatives:

Arvid E. Roach, II, Esq.
Covington and Burling
1201 Pennsylvania Avenue
P.O. Box 7566
Washington, DC 20044

Paul A. Cunningham, Esq.
Harkins and Cunningham
1300 Nineteenth Street, N.W.
Washington, DC 20036

Gary Laakso, General Attorney
Southern Pacific Building, Room 846
One Market Plaza
San Francisco, CA 94105

Robert Opal, General Attorney
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179-0830

Via Next Day Air Delivery

Dated at Geneseo, Illinois, this 28th day of March, 1996

____
Timothy Eklund
President, LSBC Holdings, Incorporated

STB FD 32760 3-29-96 D 62306

Item No.________________

Page Count 10

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62306 61

ORIGINAL

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MAR 29 1996
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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

John P. LaRue, Executive Director, Port of Corpus Christi
Comments and Request for Conditions

On behalf of John P. LaRue, Executive Director, Port of Corpus Christi, we respectfully file these Comments and Request for Conditions in the above-referenced Docket.

Factual Background

The Port of Corpus Christi (the "Port"), a self-supporting Navigation District created under the laws of the State of Texas and a political subdivision of the State of Texas, owns and operates dry bulk cargo facilities, liquid bulk cargo facilities, general cargo docks and a public grain elevator for cargos with prior or subsequent movement by water. In terms of tonnage, the Port of Corpus Christi is the sixth largest port in the nation, having handled just over 78 million tons of cargo in 1995. To serve its dry bulk, grain and general cargo customers in moving their goods to market, and to attract other land-only cargo movements through the Port, the Port has had constructed and owns 26 miles of railroad tracks which are operated and jointly served by three railroads. The current estimated value of the Port-owned track structure is approximately $20 million, excluding buildings, small Port-owned locomotives, and on-dock tracks.

The Port is currently served by two Class I railroads, the Union Pacific Railroad ("UP") and the Southern Pacific Transportation Co. ("SP"). The UP and the SP are head-to-head competitors in the major marketing areas of the Midwest, West and Southwest, including Corpus Christi.

In addition, the Port is served by a regional railroad, The Texas Mexican Railway Co. ("Tex Mex"), which operates exclusively between Corpus Christi and Laredo, Texas, and, like the UP and SP, has unrestricted access to the Port. At Laredo, the Tex Mex interchanges traffic with the Government-owned Mexican railroad. Tex Mex serves not only its local customers and the Port of Corpus Christi, but also participates with the SP in traffic moving to/from Mexico via an interchange with the SP at Corpus Christi. The SP/Tex Mex service provides competition to the UP for business moving over the Laredo gateway to and from Mexico.

The UP, SP and Tex Mex accounted for over 9,600 loaded car movements over Port-owned trackage in 1995, with the UP having a 45.32 percent share of this total, the SP 34.34 percent and the Tex Mex 20.34 percent. Compared to 1994, in 1995 UP's use of Port trackage has declined by nearly 4,000 loaded cars, while SP has increased by over 400 loaded cars, and the Tex Mex has increased slightly. The UP 1995 total represents by far the lowest number of loaded cars moved over Port-owned trackage since statistics were first kept in 1984. On a 12-year average, the Port has had 14,801 loaded car movements a year, with the UP representing 60 percent of the total, the SP 19.01 percent, and the Tex Mex 20.98 percent. While varying in their individual percentage shares, the two Class I railroads, UP and SP, together account for 80 percent of the Port's rail business and are critical for its well-being.

The Port of Corpus Christi understands that the UP and SP have entered into a "Settlement Agreement" with the Burlington Northern Santa Fe ("BNSF"), which, if included as a condition in the final order of the Surface Transportation Board ("STB"), will allow BNSF to receive extensive trackage rights over the merged UP/SP system. More specifically, BNSF will be able to serve customers or localities currently served by both UP and SP, including direct access to the Port of Corpus Christi. In addition, BNSF will be allowed to interchange directly with Tex Mex at Robstown, Texas (near Corpus Christi), potentially replacing a competitive alternative to the SP/Tex Mex route that will be lost if the merger is approved by the STB.

The Port also understands that Kansas City Southern Industries (KCSI) has bought 49 percent of the Tex Mex and that KCSI's subsidiary, The Kansas City Southern Railway Co. ("KCS"), has sought from the UP/SP the right to be allowed a physical connection with Tex Mex via trackage rights between Beaumont, Texas and Corpus Christi, Texas, over the UP/SP. The Port further understands UP/SP have rejected the KCS requests, stating their belief that the BNSF settlement agreement meets all criteria for amelioration of competitive issues for merger approval. As indicated in STB Decision No. 14 in this docket, Tex Mex intends to seek trackage rights to effect a physical connection with KCS; and KCS indicated it will file comments on or before March 29, 1996, opposing the merger.

From an announcement that was released by UP on approximately February 1, 1996, copy attached as Attachment A, the Port also understands UP/SP have reached an agreement with the Illinois Central Railroad ("IC") that will require UP/SP to negotiate first with the IC if additional competition beyond the BNSF Settlement Agreement is imposed by the STB as a condition to approval of the UP/SP merger.

Support for the UP/SP Merger and Request for Conditions

The Port supports the UP/SP merger and urges its approval. The Port is greatly concerned that without the merger, the SP will not have the financial strength to continue as a stand-alone, independent railroad. In addition, the Port expects that the UP/SP would provide strong competition to the BNSF, which has excellent physical and financial assets.

However, the Port of Corpus Christi also urges that conditions be placed on the STB approval of the merger. As stated by the predecessor of the STB, the Interstate Commerce Commission ("ICC"), in Burlington Northern Inc. and Burlington Northern Railroad Company-Control and Merger-Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, Decision No. 38 (August 16, 1995) at 55-56:

> "[W]e will not impose conditions unless we find that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), and that the conditions will ameliorate or eliminate the harmful effects, will be operationally feasible, and will produce public benefits (through reduction or elimination of the possible harm) outweighing any reduction to the public benefits produced by the merger. . . . To be granted, a condition must first address an effect of the transaction. We will not impose conditions 'to ameliorate longstanding problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.'" [Case citations omitted}.

The two conditions set forth below, that the Port respectfully urges the STB to place on the approval of the UP/SP merger, clearly meet the tests of the Burlington Northern decision.

Condition One: The Port requests that the STB condition approval of the merger by approving and requiring the "Settlement Agreement" between the UP/SP and the BNSF to be implemented. Without implementation of the settlement agreement, Corpus Christi would be left with service from only one Class I railroad, with no railroad to replace the competition formerly provided by the SP. Further, if BNSF is not required to fill the void left by the SP, the UP/SP service would have a monopoly, and the Port stands to lose grain export shipments which now are routed through the Port via BN/SP and Santa Fe/SP. As recognized by the UP/SP in entering into the agreement with the BNSF, there is a critical need for the agreement to remedy the substantial reduction in competition and potential loss of market caused by the merger.

Condition Two: If the STB determines the BNSF Settlement Agreement does not adequately resolve competitive issues, the Port of Corpus Christi respectfully requests that a third Class I railroad be granted access to Corpus Christi, including access to the Tex Mex and the Port of Corpus Christi. While BNSF has indicated in an exchange of letters with the Port, Attachment B hereto, that it will serve Corpus Christi if the STB approves the Settlement Agreement with UP/SP, it has carefully avoided stating that it would interchange Port traffic with the Tex Mex without additional charge, and it has not committed to a specific level of rates in general.

Because of the merger, the Port and Tex Mex would lose the competitive services provided by SP, and Tex Mex would lose SP as a "friendly connection" for a substantial portion of business that augmented its local carriage between Corpus Christi and Laredo, and made possible more frequent Tex Mex service for all of its customers. The Port is seriously concerned about loss of effective Tex Mex service and competition as a result of the UP/SP merger. The Port is seriously concerned about the loss of effective Tex Mex competition through disruption or reduction of Tex Mex interchange business with SP which would result in reduced and/or higher cost of Tex Mex service at the Port. The Port of Corpus Christi therefore requests that the STB permit a third Class I railroad unrestricted access to the Port in the event the Settlement Agreement between BNSF and UP/SP is determined not to sufficiently ameliorate competitive concerns. This condition would be particularly necessary if the STB did not order other conditions that would provide the Port of Corpus Christi with the "insurance policy" of assuring two Class I competitive services at the Port. Corpus Christi does not desire to designate a particular third Class I railroad, but only desires that if the STB finds the BNSF Settlement Agreement insufficient to maintain effective competition that a third class I railroad be granted competitive access to provide the equivalent of the essential services now provided by an independent SP. If, as the ICC ordered in the Burlington Northern case in relation to conditions imposed there, the STB desires that the UP/SP and the Port meet to work out precise details of this condition, the Port would be pleased to do so.

Conclusion

John P. LaRue, Executive Director, and the Port of Corpus Christi appreciate the opportunity to provide these comments and request for conditions to the STB. We respectfully request that they be considered by the STB in relation to its consideration of the request to approve of the merger of the UP and SP.

Respectfully submitted,

By: Paul D. Coleman

HOPPEL, MAYER & COLEMAN
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-5460

Attorneys for Party of Record
JOHN P. LARUE
Port of Corpus Christi
P.O. Box 1541
222 Power Street
Corpus Christi, Texas 78403

March 29, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above Comments and Request for Conditions on all parties of record in this proceeding this 29th day of March, 1996, by first-class mail.

Paul D. Coleman

Paul D. Coleman

UNION PACIFIC RAILROAD

NEWS RELEASE

1416 Dodge Street
Omaha, NE 68179
(402) 271-3475

FOR IMMEDIATE RELEASE

Union Pacific and Southern Pacific have reached agreement with Illinois Central Railroad on a variety of marketing and operational issues associated with the pending UP/SP merger.

"This agreement will mean more efficient operations for both railroads, especially through some key gateways," said UP Corporation President Dick Davidson.

Illinois Central President E. Hunter Harrison added, "This agreement assures efficient routing options will continue to be available post-merger for all shippers. We have excellent working relationships with both the UP and the SP and are confident that will continue following their merger."

In the marketing area, the agreement is designed to take advantage of mutually beneficial interline routes and business opportunities. For example, the agreement contemplates cooperative efforts in marketing forest products, coal, chemicals, and carload business.

In the operating area, the agreement focuses principally on issues designed to ensure efficient operation after merger. It covers interchange of traffic between the two railroads in the Chicago area, rebuilding of certain facilities in the New Orleans area, and the resolution of the impact of the merger on certain trackage rights. For example, IC will be sold SP's interest in a line between Church and Valley Junction in Illinois and the new UP/SP system will retain trackage rights on that line. In the Chicago area, the agreement specifies how operations will be conducted after merger on the Illinois Central track between Chicago and Joliet.

The accord also resolves IC's role in UP/SP's pending merger approval case before the Surface Transportation Board (STB). IC agrees not to oppose UP/SP's application. UP/SP agrees to negotiate first with IC if additional competition beyond the Burlington Northern Santa Fe (BNSF) agreement is imposed by the STB and UP still decides to go ahead with the merger.

Davidson said, "UP's and SP's existing agreement with BNSF would be imposed as a condition to the merger, and it fully addresses all competitive issues."

Harrison noted, "UP and SP have demonstrated their good-faith and proactive efforts to address upfront the anticompetitive elements of their proposed merger. If the STB decides UP's agreement with BNSF is sufficient to protect the public interest, this element of our agreement will not be triggered."

The agreement is contingent upon approval of the proposed Union Pacific-Southern Pacific merger. In all, more than 1,500 customers and government agencies have supported the proposed combination. A merger application was filed November 30, 1995. A decision is expected from the Surface Transportation Board, the successor of the Interstate Commerce Commission, by mid summer.

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PORT of CORPUS CHRISTI

JOHN P. La RUE, Executive Director

November 27, 1995

Ms. Janice G. Barber
Adm. and Comm. Law Counsel
Burlington Northern Santa Fe
777 Main Street
Fort Worth, Texas 76102

Dear Janice:

This will confirm our understanding of Burlington Northern Santa Fe's (BNSF) access to Corpus Christi upon approval of the Union Pacific/Southern Pacific merger, as discussed during our meeting in Ft. Worth on Friday, November 10, 1995.

1. The Port of Corpus Christi understands BNSF will provide direct service to the port for unit train and for other carload volume business, including intermodal and non-bulk commodities. The Port of Corpus Christi supports this direct access.

2. For less than unit train/volume business, the Port of Corpus Christi understands BNSF will enter into an agreement with the Texas Mexican Railway Company (Tex Mex) for interchange at Robstown, Texas, whereby Tex Mex will deliver to or receive cars from the Port's interchange tracks for account of BNSF. This arrangement with the Tex Mex will be at no additional charge and will appear "seamless" to customers.

3. The Port of Corpus Christi understands BNSF will access Corpus Christi via trackage rights over the Union Pacific line from Algoa, Texas. The access via Algoa is represented by BNSF as the most economical and low cost alternative because service can be provided with existing crews. Access to Corpus Christi over other routes, e.g., via Caldwell and Victoria, or via San Antonio, would require the establishment of additional crew bases and significantly increase operating costs.

Port of Corpus Christi Authority 222 Power Street • P.O. Box 1541 • Corpus Christi, Texas 78403 • 512-882-5633 • Fax 512-882-7110

4. The Port of Corpus Christi understands unit train/volume carload business will bypass the Houston terminal and move directly to/from BNSF and UP at Algoa. Other than unit train/volume business may be consolidated at Houston with other traffic moving to/from Corpus Christi.

5. The Port of Corpus Christi understands BNSF will offer pricing to and from Corpus Christi at rates competitive with Houston/Galveston on similar business.

Your confirmation of agreement with our understanding will be most appreciated.

Please accept our thanks for meeting with us and your interest in the Port of Corpus Christi.

Sincerely,

John P. LaRue
Executive Director

JPL/slt

cc: Rollin Bredenberg - BNSF
Phil Weaver - BNSF
Mike Roper - BNSF
Larry Meyne - BNSF
Robert Brautovich - BNSF
Ed Altemus - Port of Corpus Christi
Fred Babin - Port of Corpus Christi

BURLINGTON NORTHERN RAILROAD

LAW DEPARTMENT

3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102
(817) 333-7954

December 15, 1995

Mr. John LaRue
Port of Corpus Christi
222 Power Street
P. O. Box 1541
Corpus Christi, TX 78403

RECEIVED
DEC 27 1995
TRADE DEVELOPMENT

Dear John:

Burlington Northern Santa Fe has appreciated the opportunity to discuss with you potential rail service to Corpus Christi in the event the Union Pacific/Southern Pacific merger and the related BNSF settlement agreement are approved. We have reviewed your November 27, 1995, letter and can confirm the understandings set forth in paragraphs 1, 3 and 4.

With regard to your paragraph 2, our discussions did not encompass any reference to the charges applicable to Tex Mex service, and accordingly we have made no commitments in that regard. I can confirm that we anticipate negotiation of an interchange agreement with Tex Mex for certain traffic not covered by paragraph 1 of your letter.

While our discussions did not address the rates at which BNSF would offer service to Corpus Christi or the issue to equalization of rates among any ports, I can confirm that BNSF intends to compete vigorously for rail traffic moving to and from Corpus Christi. We believe that the trackage rights access provided by the settlement agreement, along with BNSF's newly integrated network, will afford shippers in Corpus Christi expanded service opportunities at competitive rates.

If I can be of further assistance, please let me know.

Sincerely,

Janice G. Barber

Janice G. Barber
Administrative & Commercial
Law Counsel

cc: Ed Altemus
Fred Babin
Phil Weaver
Roland Bredenberg
Mike Roper

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No. __________________

Count . 19

Mar #802

PETE WILSON, Governor

March 28, 1996

VIA FEDERAL EXPRESS

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

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

Dear Board Secretary:

Re: Union Pacific – Control - Southern Pacific
Finance Docket No. 32760

Enclosed for filing please find an original and 21 copies of a document titled **COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.**

Please file-stamp the extra copy and return it to the undersigned in the enclosed stamped, self-addressed envelope. Thank you for your cooperation in this matter.

Sincerely,

James T. Quinn

James T. Quinn
Commission Attorney

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

JTQ:mal

Enclosures (22)

ORIGINAL

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 CRP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Public Utilities Commission of the State of California (CPUC) hereby submits its comments on the above-described proceeding whereby the Union Pacific Corporation, et al. (UP) and the Southern Pacific Rail Corporation, et al. (SP) seek authorization for the merger of the Southern Pacific Rail Corporation into the Union Pacific Railroad Company and the consolidation of their railroad operations. The CPUC is an administrative agency established under the Constitution and laws of the State of

California. Among its responsibilities, the CPUC regulates various areas of railroad operations in California.

The CPUC held two public workshops on the proposed merger – at San Francisco on March 13 and at Los Angeles on March 15. Presentations were made by the applicants, interested railroads, public officials, shippers, union leaders and other parties, most of whom were favorable to the merger. The comments herein address many of the issues raised at the workshops, along with others developed by the CPUC staff.

I. INTRODUCTION

The consolidation of the UP and SP would represent a major realignment of railroads in California that could result in improved service and a positive economic impact on the state, assuming certain conditions are addressed. Presently, the state is served by three Class 1 railroads, with SP operating approximately 3,225 miles of track in California, UP 1,000 miles, and Burlington Northern Santa Fe (BNSF) 1,200 miles. The merger is essentially "parallel" (as opposed to "end-to-end") and proposes to reduce California's Class I railroads from three to two. Although the CPUC supports a UPSP merger, it is concerned about the possible impact of the merger on competition in certain corridors.

The CPUC reserves formulation of its final position on the merger pending review of the further submissions of the applicants and the parties. Additionally, the CPUC plans to carefully review the two inconsistent applications that are anticipated regarding operations through the Central Corridor. Subsequently, the CPUC may file responses to such applications. At this point, CPUC support for the merger is dependent upon the granting of the conditions stated herein.

The conditions address the following subject areas:

- Agreement Term and Replacement of BNSF as UPSP Competitor;
- BNSF Right to Serve Future Industries;
- Central Corridor Competition;
- BNSF Option to Acquire Keddie-Stockton Line;
- Continued Modoc Line Operation;
- North Coast Railroad Authority Access to BNSF.

Additionally, the CPUC sets forth comments on the Capitol Corridor, the Alameda Corridor, NAFTA, and the impact of the merger on railroad employees.

II. PROPOSED UPSP MERGER CONDITIONS

Condition 1: Agreement Term and Replacement of BNSF as UPSP Competitor

The importance of maintaining adequate and effective railroad competition is widely accepted, both in public policy and by the shipping public. UPSP and BNSF have reached a private agreement that BNSF shall replace SP as UP's competitor in selected corridors and at selected stations within California, for a term of 99 years.

BNSF has stated that it intends to provide the desired competition to UP. However, with the exception of BNSF's ownership of UP's Bieber-Keddie Line, BNSF must do so through trackage rights operations in California, instead of through ownership and control of roadway facilities and trackage. BNSF has no inherent financial commitment to continue for the entire 99-year term of the Agreement to provide adequate and effective competition over such UPSP lines in California, particularly in light of the wholly variable character of the agreed-upon rates of compensation for use of the trackage rights. Yet, neither UPSP nor BNSF has suggested any process by which a successor to BNSF would be designated either at the end of the 99-year term or if BNSF fails to provide adequate and effective competition where it has agreed to do so.

It is unacceptable to the CPUC that UPSP gain a monopoly through the termination of the UPSP Agreement with BNSF at the end of a 99-year term. Assuming that the UPSP merger is approved, the restructuring of railroad competition in California will likely have been completed in perpetuity; the assurance of BNSF's vigorous competition with UPSP should match that same perpetual term.

To address the need for a perpetual term as well as the potential for ineffective competition on the part of BNSF, the CPUC requests that Board approval of the UPSP Merger be conditioned on the following ongoing requirements: (1) that the term of the UPSP and BNSF Agreement shall be perpetual, and (2) that upon complaint by any interested party and the Board's subsequent finding that BNSF has provided inadequate or ineffective competition to UPSP in any selected Corridor or to any selected station in California, the Board shall be empowered to order any appropriate corrective action, including the replacement of BNSF as the designated railroad competitor of UPSP.

Condition 2: BNSF Right To Serve Future Industries

By their Agreement, except where local access was specified, UPSP granted to BNSF only bridge trackage rights for the movement of overhead traffic on most UPSP routes in California. New customers locating on the lines served by BNSF's bridge trackage rights will be served only by UPSP, and BNSF will be denied access to them. Had UPSP elected to sell such routes to BNSF instead of granting bridge trackage rights, then BNSF would have benefited from the new customers, instead of such benefits flowing entirely to UPSP.

The UPSP and BNSF Agreement fails to recognize and accommodate the historic geographic competition which existed between SP and the Western Pacific, or its successor, UP, in locating new industries on these lines within California. Instead, UPSP has reserved for itself a geographic monopoly for new business in that territory. Therefore, the CPUC requests that Board approval of the UPSP Merger be conditioned on BNSF access to serve all future industries located on those lines which the Agreement permits BNSF to serve.

Condition 3: <u>Central Corridor Competition</u>

During the 1988 acquisition of SP, a significant public interest argument advanced by Rio Grande Industries in support of its acquisition of SP was that railroad competition with UP in the Central Corridor would be strengthened; that commitment was embraced by California. In contrast, the merged UPSP would minimize Central Corridor competition by retaining ownership of all of the roadway facilities and trackage, and by substituting BNSF as UPSP's competitor despite the fact that BNSF's primary service corridor between Central California and the Midwest will continue to be via the former Santa Fe's Southern Corridor route.

Two other financially and operationally qualified rail carriers have indicated their intentions to file inconsistent applications to acquire all or portions of the Central Corridor. The CPUC will express an opinion concerning the inconsistent applications following a review of those proposed filings. At this stage, the CPUC requests consideration of its proposal that Board approval of a UPSP Merger be conditioned on a finding and order either (1) that the BNSF is committed to and will provide adequate and effective competition to UPSP as tenants on the same tracks that UP will own and operate or (2) necessitating that the UP divest a stand-alone UPSP Central Corridor route, facilities, trackage, and traffic base to a carrier other than BNSF.

Condition 4: BNSF Option To Acquire Keddie-Stockton Line

BNSF's trackage rights operation via the UPSP-owned line between Keddie and Stockton is crucial to its provision of adequate and effective competition with UPSP in the north-south I-5 Corridor. It is also important to the ability of BNSF or another carrier to provide adequate and effective competition in the east-west Central Corridor.

Owner discrimination against tenants in similar trackage rights arrangements is a matter of record, including evidence submitted in the recent UP/CNW merger proceeding that UP had discriminated against SP's operations as UP's tenant in the Central Corridor.[1] Accordingly, the CPUC requests that Board approval of the UPSP merger be conditioned on the granting to BNSF of a perpetual option to acquire UP's Keddie-Stockton Line at its net liquidation value, as determined by the Board. BNSF's option may be exercised upon complaint and the Board's subsequent

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[1] Union Pacific Corp., et al. -- Control -- Chicago and North Western Transp. Co., et al. (F.D. 32133), SP-19, p. 21; SP-20, pp. 170, 211.

finding that UP has failed to provide on the Keddie-Stockton Line either (1) equal-priority, non-discriminatory dispatching or (2) adequate roadway maintenance or capital improvements.

Condition 5: Continued Modoc Line Operation

During the 1988 acquisition of SP, another public interest argument advanced by Rio Grande Industries (RGI) in support of its acquisition of SP was that the Modoc Line would be reopened and continued in operation. Indeed, one of the reasons why the CPUC (and the State of Oregon) supported RGI's acquisition of the SP was RGI's plan to reopen the Modoc Line.[2] In contrast, UPSP proposes to abandon a portion of the Modoc Line, a proposal that has precipitated public objections. Moreover, contrary to the statement in the instant UPSP application that the Modoc Line presently serves only one or two trains per day, the planning director for Modoc County and the City of Alturas recently stated at a CPUC workshop that traffic is much greater and that actually about six to ten trains a day utilize the line.

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[2] Rio Grande Industries, Inc., et al. -- Control-- Southern Pacific Transp. Co., et al., 4 ICC 2d 834, 863-864 (1988) (F.D. 32000).

The CPUC believes that UP should keep RGI's and SP's commitment to the public. Accordingly, the CPUC requests that Board approval of the UPSP merger be conditioned on the continued operation of the entire Modoc Line by UPSP from Klamath Falls, OR to Flanigan, NV for a period of not less than five years, subject to continued oversight by the Board. At UPSP's option, the operation could be performed by some other financially and operationally qualified railroad operator. However, any such operator shall operate the entire Modoc Line without traffic surcharges, with any financial losses paid for by UPSP, and with full and unrestricted interchange rights with BNSF at Klamath Falls, at Flanigan, and at such other locations as the operator may elect.

Condition 6: <u>NCRA Access to BNSF</u>

The North Coast Railroad Authority (NCRA) is a local agency created in 1992 by the California Legislature to preserve the only rail service to the North Coast of California. At present, NCRA owns and operates the approximately 160-mile North Coast Railroad which extends from the Eureka-Arcata-Korbel area of the North Coast to Willits. In combination with the Northwestern Pacific Railroad Authority (NWPRA), a joint powers agency created under California law, NCRA is negotiating the purchase of an additional 140-mile line extending from Willits to Lombard, a point near Suisun-Fairfield on SP's "Cal-P Line." All of the 300-mile line which will then be in public ownership previously constituted SP's subsidiary, the Northwestern Pacific Railroad Co. (NWP). As a result of the purchase and required rehabilitation of the NWP Line by the NCRA and NWPRA, more than $75 million of public funds will have been expended.

In September 1993, SP inserted between NCRA and itself the California Northern Railroad Co. (CFNR) as a short line operator between Willits and Suisun-Fairfield. Neither NCRA nor CFNR has the right to connect with any Class I carrier other than SP. Both are dependent on SP for all of their car supply, and SP alone possesses the right to price all of the traffic to and from NCRA and CFNR points. As a result of SP's exclusive commercial arrangements with NCRA and CFNR, and as a result of SP's demonstrated inability to compete effectively in the marketplace on behalf of NCRA's shippers, the financial and operational viability of the NWP Line is in question. Thus, the investments made with the substantial public funds that have been expended to preserve rail service to the North Coast of California are in jeopardy.

NCRA's public board has requested competitive access to BNSF as a condition of the UPSP merger, in order to ensure NCRA's competitive ability indefinitely into the future. NCRA states that such competitive access is of great importance given SP's historic failure to provide NCRA's freight shippers with adequate car supply, reasonable and consistent transit times, and competitive rates, and because of SP's threatened use of its power to surcharge NCRA out of business.

The CPUC supports NCRA's request for competitive access to BNSF. Accordingly, CPUC requests that Board approval of the UPSP merger be conditioned on the granting to NCRA (or its designated operator for NCRA traffic only) of bridge trackage rights over UPSP-owned or leased lines between Lombard and the designated BNSF interchange at Suisun-Fairfield or at Richmond, at the Board's option, under the same terms and conditions as contained in the UPSP-BNSF Agreement.

III. FURTHER COMMENTS

In addition to the concerns for which conditions are set forth above, the CPUC also has concerns about how the proposed merger might impact various projects and areas. These include the Capitol Corridor, the Alameda Corridor, NAFTA, and impacts of the merger on railroad employees.

The Capitol Corridor – The Capitol Corridor refers to rail passenger service between San Jose and Sacramento, utilizing SP's main line route for freight. The State of California has committed itself to furnishing extensive funding for improving the line, with an emphasis on track and signalization upgrading between Oakland and Sacramento. In return the state has requested that additional passenger runs be allowed. After lengthy negotiations, SP and the state have agreed on a corridor upgrade plan. The plan is pending approval from the California Transportation Commission.

The CPUC believes that if the UPSP merger were to be granted, the authorizing decision should include language noting UP's duty to assume the obligations for the Capitol Corridor that have been agreed to by SP.

The Alameda Corridor – This $1.8 billion project calls for the construction of a 20-mile rail corridor between the Ports of Los Angeles and Long Beach and points in central Los Angeles where the corridor would connect with existing SP, UP and BNSF lines. Construction would generally be along the former San Pedro Branch of the SP. The corridor, part of which would be located in a sub-surface trench, would greatly facilitate the speed and volume of rail transportation to and from the ports. It also would enhance safety and air quality.

The above-mentioned three railroads have all signed a Memorandum of Understanding to participate in the corridor project through agreed upon trackage rights and user fees. Approval of the merger apparently would not affect the project, as UP asserts that it is committed to assuming SP's obligations. Nonetheless, the CPUC requests that any decision authorizing the merger underscore this new UP obligation and the importance of the Alameda Corridor for California and the nation.

NAFTA –The North American Free Trade Agreement (NAFTA) has presented California with new opportunities to develop trade, particularly with Mexico. The specific concern that the CPUC has, relative to NAFTA and the UPSP merger, is focused on the Calexico-Mexicali gateway. Presently SP serves this gateway via a secondary main line that runs north from Calexico to El Centro and the Imperial Valley and then connects at Niland with SP's Southern Corridor main line.

The CPUC requests that any decision authorizing UP control over this line also stress the importance of developing the Calexico-Mexicali gateway to its fullest potential in the public interest. Doing so not only will further trade but also reduce the large volume of truck traffic from Mexico that is expected in California soon.

UP should be urged either to develop this gateway or to divest it to another carrier. Alternatively, if UP prefers, it could nominate a short line to develop the gateway. Another solution, and perhaps the most effective, would be for the Board to authorize trackage rights for BNSF from Calexico to Colton.

Impact of Merger on Railroad Employees – California will be the hardest hit state as regards job loss and job transfer due to a UPSP consolidation. Approximately 2,000 employees in California will have their jobs abolished. Also, many California employees will see their jobs transferred out of state -- largely to Denver, St. Louis or Omaha. This is part of a total of some 7,041 SP and UP employees nationwide who would be affected by job abolishment or job transfer. Moreover, according to union leaders appearing at CPUC workshops, final figures for job layoffs due to mergers consistently exceed railroad pre-merger estimates.

The CPUC believes that the large number of persons adversely affected and the distant location of many job transfer points qualify as instances of "special circumstances" that will allow the Board to "tailor employee protective conditions" to the elements present in this particular merger case -- if indeed the Board does approve the merger. Union Pacific

Corp., et al. – Control – Chicago and Northwestern Transportation Co., et al. (F.D. 32133) Decision served March 7, 1995, at p. 95, citing Railroad Consolidation Procedures, 363 ICC 784, 793 (1981); 49 CFR 1180.1(f). See also New York Dock Ry. v. United States, 609 F.2d 83, 91-92 (2d Cir. 1979).

Adversely affected employees should receive fair and equitable settlement amounts, even if, contrary to normal New York Dock requirements, they choose not to relocate. This exception is particularly appropriate for SP's California employees where union statistics demonstrate that numerous employees have long service records. Union figures show that of those employees in California whose jobs have been adversely affected by the merger, many have been employed by SP for more than 25 years. These longtime employees deserve special consideration, not only for long years of service to SP but also because they are generally at an age when uprooting themselves and their families is particularly difficult.

Finally, for a reasonable period of time after the merger, job training

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and out-placement programs should be offered to SP and UP employees whose jobs have been abolished or transferred.

Respectfully submitted,

PETER ARTH, JR.
EDWARD W. O'NEILL
JAMES T. QUINN

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Attorneys for the Public Utilities
Commission of the State of California

March 28, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all known parties of record by mailing by first-class mail a copy thereof properly addressed to each such party.

Dated at San Francisco, California, this 28th day of March, 1996.

James T. Quinn

James T. Quinn

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March 28, 1996

BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Twelve Street and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of the Comments of The Geon Company.

Very truly yours,

Paul M. Donovan

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Office of the Secretary
MAR 29 1996
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

COMMENTS OF
THE GEON COMPANY

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Attorneys for The Geon Company

March 29, 1996

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

COMMENTS OF
THE GEON COMPANY

I. Statement of Position

The Geon Company believes that the proposed merger of the Union Pacific and Southern Pacific Railroads is not in the public interest and should be denied by the Board. As will be discussed more fully below, Geon believes that the merger would, if approved, substantially reduce competition for the rail transportation of Geon's products so as to increase transportation charges and reduce the quality of service.

II. The Geon Company

The Geon Company (Geon) with annual sales of approximately $1.2 billion, is one of the largest vinyl (PVC) producers and the largest producer of vinyl compounds in North America and Australia. Geon also ranks as one of the leading manufacturers of vinyl chloride monomer in North America. Geon competes globally in the commodity vinyl markets. Cost position and supply competition are crucial to its business success.

A. Products

Resin, which is the base form of vinyl, is produced in a two-step process. Vinyl chloride monomer (VCM) is first produced from ethylene and chlorine and the polymerized into a powder-like resin. Before this resin can be utilized by customers to make finished parts, it is combined with other ingredients to create compounds with specific physical characteristics or end use properties.

Geon produces various types of resins. General purpose resins are typically used in applications such as pipe or exterior siding and comprise the largest application segments. More specialized resins with unique characteristics such as color, clarity and processibility are utilized in a wide variety of applications including film, medical and automotive.

Dispersion resins, a special product with unique particle size, are ideal for vinyl flooring, wall coverings, fabrics and children's toys.

As the world's largest vinyl compounder, Geon produces compounds for an array of end use applications. These compounds are formulated to provide unique physical performance characteristics, matching the needs of customer products and processes.

B. Facilities

Geon has 13 manufacturing facilities located in the United States, Canada and Australia. Eleven of these are in North America.

All VCM made by Geon is produced at LaPorte, Texas. The VCM is shipped by rail to Geon resin manufacturing facilities located at Henry, Illinois, Louisville, Kentucky, Niagara Falls, Ontario, and Pedricktown, New Jersey. VCM is also shipped by rail to other commercial resin producers. Resins are shipped from Deer Park, Texas to Plaquemine, Louisiana and to Long Beach, California. All resin shipments from Deer Park move by rail to Geon facilities at Plaquemine and Long Beach for further processing. All other commercial customers are also served by rail.

Four Geon facilities, including its two largest plants, are significantly impacted by the proposed merger. These are the LaPorte facility served by the PTRA and also accessible by the Southern Pacific; the Deer Park facility served only by the PTRA; the Plaquemine facility served only by the Missouri Pacific; and the Long Beach facility served only by the Southern Pacific. Geon has previous equity holdings in Mexico and a continuing interest in various trading arrangements which rely upon rail transportation to and from Mexico.

III. Impact of the Proposed Merger on Geon

Geon is heavily dependent upon rail transportation. The nature of its products, VCM and resins particularly, together with the length and volume of its movements make motor carrier transportation only rarely feasible. Water transportation is similarly unacceptable for a host of reasons. Accordingly, intramodal rail competition is the only practical limiting factor on the rates that rail carriers can demand from Geon, and the only incentive to provide efficient and expeditious service.

Only two years ago, Geon had available to it at its LaPorte and Deer Park plants four major railroads. The Burlington Northern, the Santa Fe, the Southern Pacific and the Union Pacific all accessed the plants either directly or through the PTRA. Approval of the pending merger application will reduce that number to two. It is Geon's experience that the level of rates and the quality of service varies directly with the number of carriers competing for the available traffic. Thus, Geon expects that if the proposed merger is consummated, its rates at LaPorte and Deer Park will increase and its service will deteriorate.

A. Rates

There can be no real dispute as to the value of competition in assuring that rail rates will be maintained at levels that reflect costs, spur efficiency and permit Geon to market its products on a profitable basis. On the other hand, a lack of effective competition places rail carriers in the position of extracting prices based on "what the traffic will bear" rather than on a fair rate of return for the carriers.

Geon's various plant locations are served by one, two and in some cases three rail carriers. Without exception, those plant locations where three carriers provide service enjoy lower rates than those with two carriers. At the same time, of course, two carriers are better than one. Our lowest rates occur when there are three or more carriers at the origin and three carriers or more at the destination.

The nature of the commodity chemical business precludes the use of long term contracts (ten years or more) as an effective means of counteracting the lack of rail competition. Accordingly, when only two carriers are involved, particularly at origin, there may be little incentive for them to actively compete for increased market share since that market share cannot be locked in for a long period of time. The introduction of a third carrier generally changes this equation and results in more aggressive carrier bidding, even for the relatively short term volume commitments that Geon can offer.

In view of this experience, it is little wonder that Geon is very concerned about the continued reduction of the number of carriers bidding for its business. Only two short years ago, four carriers competed for our movements originating at the LaPorte and Deer Park plants. Now Geon is faced with the possibility of being limited to only two carriers. Two carriers of similar size lack the competitive zeal of the three competitor environment. In a worst case scenario, the two carriers fail to compete. It anticipates that such a reduction in available competition will inevitably result in higher rates.

B. Service

Invariably, merger proposals are accompanied by ringing promises of improved service resulting from better coordination and increased capital investment. It has been Geon's experience that those promises are not fulfilled.

It is Geon's experience that competition for available traffic spurs improved service in the same way that it spurs lower rates. Carrier coordination often results not from a single carrier controlling a movement, but from a carrier seeking to increase its market share by offering coordinated service or run-through trains with a second carrier also interested in increasing its market share.

For example, Geon enjoys a run-through train movement via the Union Pacific from LaPorte to beyond St. Louis where the power and train crew operate as Conrail's. Conrail then moves the cars to Geon's Pedricktown plant, which is served only by Conrail. This run through service is the result of the desire of the Union Pacific to increase its market share in competition with the Southern Pacific and the BN/Santa Fe. The service will not improve if the proposed merger is consummated. In fact, one of the reasons for the expedited service, the competition of the Southern Pacific, will disappear.

It is no accident that the fastest and most reliable service offered by the rail industry is the service offered on intermodal

TOFC/COFC movements. By definition, these movements are competitive with motor carriers and subject to highway diversion. Unfortunately, Geon's movements of VCM and resins are almost never susceptible to highway or water movement. Geon must rely on intramodal rail competition to increase the incentive to improve service.

IV. Product and Geographic Competition

Those parties supporting the proposed merger will surely argue that the existence of product and geographic competition will limit the ability of the merged carrier to increase its rates above a competitive level. The simple answer to this argument from Geon's perspective is that product and geographic competition already exist, and they have not operated to keep rail rates at levels even approaching those that exist in the presence of intramodal rail competition from three of more carriers.

Geon has taken every opportunity to increase in influence of intramodal rail competition upon its operations. It has expanded those facilities such as LaPorte and Deer Park where three or more carriers provide service while limiting production at those served by only one carrier such as Plaquemine and Long Beach. It has even created its own short line carrier (The Lincoln and Southern) to provide competitive access to its Henry, Illinois plant. Certainly, these actions, with their substantial capital investment consequences, would not have been necessary if product or geographic competition effectively restrained rail rates on Geon's products.

V. The Southern Pacific's Future

Geon is not unmindful of the fact that the Southern Pacific has not been maintained in such a way as to permit it to offer the quantity and quality of rail service that Geon and other shippers might like to see. There is clearly a certain attraction to allowing a large, prosperous carrier such as the Union Pacific take over its operations. On balance, however, Geon believes that the long-term competitive damage that would be done by such an action far outweighs the relatively shorter-term advantages that such a solution might offer.

There are variety of suitors willing to take parts of the Southern Pacific if it indeed should no longer be able to operate. A solution that the marketplace would dictate following the denial of the merger application is, in Geon's opinion, far preferable to the anti-competitive consequences of the merger.

VI. Conclusion

For all the reasons stated above, The Geon Company respectfully submits that the merger application here involved should be denied.

Respectfully submitted,

WOODROW W. BAN
Senior Corporate Counsel
and Assistant Secretary
The Geon Company

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Attorneys for The Geon Company

March 29, 1996

CERTIFICATE OF SERVICE

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

Director of Operations
Antitrust Division
Room 9104-TEA
Department of Justice
Washington, DC 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, DC 20580

Paul M. Donovan

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Texas
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March 28, 1996

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VIA FEDERAL EXPRESS

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

RE: Finance Docket No. 32760

Dear Secretary Williams:

Pursuant to the procedural rules of the Surface Transportation Board, enclosed please find the original and twenty (20) copies of the "Request for Conditions from Members of the Texas Legislature" for filing in the above-referenced proceeding. Also enclosed please find a 3.5" computer diskette containing the "Request for Conditions from Members of the Texas Legislature".

Sincerely,

Melodie Stegall

Melodie Stegall
Administrative Assistant to State Representative Robert Junell

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Enclosures

JRC-2
RAJ-2
RMS-2

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

REQUEST FOR CONDITIONS FROM MEMBERS OF THE TEXAS LEGISLATURE

The Honorable Robert Junell
Texas House of Representatives
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Austin, TX 78768-2910
(512)463-0472

The Honorable John R. Cook
Texas House of Representatives
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(512)463-0656

The Honorable Robert Saunders
Texas House of Representatives
P.O. Box 2910
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Members of the Texas Legislature

March 29, 1996

rights settlement between UPRR/SPR and BN/SF (BN/SF-1) will not adequately address the reduction of competition in Texas but will instead create a Class I railroad duopoly to the detriment of Texas shippers, and Class II and III rail carriers. Therefore, we adamantly oppose the merger of UPRR and SPR unless the approval of the merger is conditioned whereby the applicant is required to negotiate certain trackage, reciprocal switching, and divestiture agreements with a third rail carrier or consortium unaffiliated with UPRR, SPR, or BN/SF. It is not our intent to endorse a particular rail carrier with regards to seeking divestiture of certain SPR lines. We believe the reduction of competition can be adequately addressed by any of the rail carriers currently seeking divestiture of those SPR lines, and we do not wish to compromise UPRR/SPR's ability to negotiate a reasonable agreement for the divestiture of the SPR lines.

II.a. SETTLEMENT AGREEMENT OF BN/SF AND UPRR/SPR

We do not share the opinion of UPRR, SPR and BN/SF that the settlement agreement, referenced as Appendix I of BN/SF-1, provides an adequate solution to the reduction of rail carrier competition in Texas. In our opinion, support for BN/SF's request in BN/SF-1 that the settlement agreement be imposed as a condition of the merger must be based upon the actual existence of a trackage rights agreement and operating plan which demonstrates how a stable level of competition will be maintained in Texas. However, the settlement agreement only communicates the intent of BN/SF and UPRR/SPR to formulate trackage rights agreements at a later date. There is only a promise, but no guarantee, of competition in this settlement agreement.

The routes over which BN/SF would allegedly operate under the agreement are not of the same quality as competing UPRR/SPR routes. According to the assessment of the rail merger conducted by Dr. Weinstein at the request of the Railroad Commission of Texas, BN/SF will be at a competitive disadvantage if the directional operation proposal in the merger application is implemented(The UP/SP Merger: An Assessment of the Impacts on the State of Texas, Dr. Bernard Weinstein, March 1996, pp. 4-10 and 11-4). The report states that BN/SF will be forced to use a much more "circuitous route" or go against the southbound traffic of UPRR/SPR under the proposal. In particular, the ability for BN/SF to gain market access to routes along the Texas Gulf Coast are suspect due to the multi-year contracts for rail service entered into by the petro-chemical and plastics industry. The settlement agreement also makes no provisions to alleviate the extreme disadvantage for BN/SF shipments to Southern California, where UPRR/SPR will maintain control over the most direct route. Finally, those shippers currently served by only UPRR or SPR will remain captive, because BN/SF's rights to those routes are not contained in the agreement. The BN/SF-1 agreement only gives BN/SF rights to service those markets where the number of rail carriers will be reduced from two to one.

BN/SF will not have the same support structure as UPRR/SPR in terms of yard space, terminal facilities and sidings, or an acceptable opportunity to target needed capitol improvement of these facilities under the agreement. BN/SF has only one year to provide UPRR/SPR with a description of any capitol improvements it intends to undertake, while it continues to be preoccupied its own merger. This is considered to be extremely cumbersome task by many rail experts, and is generally agreed to put BN/SF at a disadvantage. The settlement agreement contains several-thousand miles of proposed trackage rights, and the failure to identify these needed infrastructure improvements could hinder BN/SF's ability to compete.

The BN/SF-1 settlement agreement creates a disadvantage for BN/SF when outlining the type of service it intends to provide over the UPRR/SPR routes. Once again, BN/SF has only a year to develop a service plan for submission to UPRR/SPR, and this plan can be amended only once every five years. This provision does not provide BN/SF with the ability to react to any changes in the service environment caused by dynamic market forces. Therefore, BN/SF's ability to compete will be suspect and could result in increased market dominance by UPRR/SPR over those routes. The problem will also remain of BN/SF's involvement in multiple major projects: the continuing integration with the ATSF system, developing an infrastructure improvement plan for submission to UPRR/SPR, and the development of a service plan.

Under these circumstances, it is doubtful BN/SF will find it to their advantage to utilize the trackage rights it secures under the settlement agreement. Any decision by BN/SF to abandon competition with UPRR/SPR over routes outlined in the agreement will certainly leave shippers captive and basically eliminate competition. We believe the overwhelming control over Texas rail shipping that this agreement, coupled with the merger, will give BN/SF and UPRR/SPR creates a duopoly that provides no guarantee of reasonable competition in Texas. Without the additional conditions described in this document for other rail carriers unaffiliated with UPRR/SPR or BN/SF, the settlement agreement in itself provides no real solution to reduced rail competition.

III.a. PROPOSED CONDITIONS FOR DIVESTITURE

We request the divestiture of the following SPR East Texas lines to a single unnamed rail carrier or consortium unaffiliated with the applicant, or BN/SF:

1. The SPR line from Corsicana, TX to Mt. Pleasant, TX

2. The SPR line from Texarkana, TX/AR to Lewisville, AR.

3. The SPR line from North Junction, MO to Brinkley, AR.

4. The SPR line from Memphis, TN to Brinkley, AR.

5. The SPR line from Brinkley, AR to Lewisville, AR.

6. The SPR line from Lewisville, AR to Shreveport, LA.

7. The SPR line from Shreveport, LA to Houston, TX.

8. The SPR line from Houston, TX to New Orleans, LA.

9. The SPR line from Houston, TX to San Antonio, TX.

10. The SPR line from San Antonio, TX to Eagle Pass, TX.

11. The SPR line from San Antonio, TX to Sierra Blanca, TX.

12. The SPR line from Ft. Worth, TX to Galveston, TX.

13. The SPR line from Hearne, TX to Port Lavaca, TX.

The request under Section III(a)(1) should be accompanied by trackage rights over SPR's line from Mt. Pleasant to Texarkana, TX/AR so a connection can be made with the line described by Section III(a)(2). The request under Section III(a)(9) should be accompanied by trackage rights over the current SPR line from Sierra Blanca, TX to El Paso, TX.

III.b. ARGUMENT FOR DIVESTITURE

The proposed merger of the Union Pacific Railroad Company and the Southern Pacific Rail Corporation is competitively significant for the state of Texas due to the equivalent portions of end-to-end and parallel combinations in Texas. The divestiture of the SPR lines described in Section III(a) attempts to provide a solution for the loss of competition which will result from the consolidation of UPRR/SPR parallel combinations in East Texas.

Currently, the principal area of parallel UPRR/SPR service is the Gulf Coast petro-chemical belt. *The merger will provide UPRR/SPR with control of more than 50% of the chemical tonnage originating from that area, and 41.6% of the chemical carload market.* The CSX is the next closest competitor with only 20.1% of the market. Also, UPRR/SPR's market dominance will hold 40% of the plastics production "captive" with 71% of the Gulf Coast polyethylene and 81% of the Gulf Coast polypropylene under the applicant's control(Dr Weinstein, pp. 4-3 and 4-5). This equates to over $3 billion of North American petro-chemical traffic through the state of Texas. Divestiture of the parallel UPRR/SPR combinations currently existing from Central/South Texas to Tennessee/Missouri would avoid such pervasive control of the petro-chemical traffic by providing an alternative rail carrier to UPRR, SPR, and BN/SF for Texas and Eastern U.S. petro-chemical traffic. Divestiture of the SPR lines will provide a competitive access to the Texas petro-chemical and plastics industry for the Eastern U.S. rail carriers.

According to the economic impact analysis of Dr. Ray Perryman, the merger of UPRR and SPR will create a direct detrimental affect on Texas petro-chemical shippers(The Impact of the Proposed Union Pacific-Southern Pacific Merger on Business Activity in Texas, Dr. Ray

Perryman, January 1996). Dr. Perryman estimates the impact of increased shipping rates resulting from the reduced competition associated with the merger on the Texas petro-chemical industry will be a loss of:

1. $45,202,749 in annual total expenditures
2. $13,675,691 in annual gross state product
3. $5,593.703 in annual personal income(Perryman, Table 5).

This analysis does take into consideration the settlement agreement between UPRR/SPR and BN/SF.

As a result of the proposed merger, UPRR/SPR and BN/SF will control 100% (90% and 10% respectively) of the Class I US-Mexico rail traffic (1993 Traffic Data). UPRR/SPR will have ***complete control*** of the gateway at Laredo, TX, which accounts for 55.21% of the export and 49.24% of the import rail traffic between Mexico and the United States, and control over SPR's major gateway at Eagle Pass, TX (El Ferrocarril en el Commercio Mexico-Estados Unidos, Monterrey Tech CEE, March 1996). The SPR gateway at Eagle Pass, TX has become increasingly important as the exports through this route have increased from 15% in 1993 to 34% in 1995. Currently, the amount of imports and exports at Eagle Pass is only second to Laredo. *Together these two gateways will give UPRR/SPR control over 92% and 59.67%, of the exports and imports respectively, by rail between the U.S.-Mexico*(Monterrey Tech CEE, March 1996).

Divestiture of the SPR line from San Antonio to Eagle Pass to a third unaffiliated rail carrier provides two advantages. First, the dominance of the Mexican gateways demonstrated above will be alleviated by providing a third rail carrier with direct connections to eastern markets through a major U.S.-Mexico route. This would obviously increase competition with UPRR's San Antonio to Laredo route. Second, divestiture will guarantee the continued growth of Eagle Pass as a major gateway into Mexico by the operation over the SPR line from San Antonio to Eagle Pass by a third unaffiliated rail carrier. Due to the substantial monetary investment of UPRR in capitol improvements to UPRR's San Antonio to Laredo route it is obvious that UPRR is expecting Laredo to continue as its major gateway into Mexico. We believe this will be deleterious to the current growth of the gateway at Eagle Pass.

The divestiture of the SPR lines to a rail carrier unaffiliated with UPRR, SPR, and BN/SF is essential to provide shippers a viable competitive alternative for rail traffic moving between the U.S. and Mexico. Divestiture of these lines, along with the trackage rights requested on the behalf of the Texas Mexican Railway and the South Orient Railroad, creates the opportunity for a third unaffiliated rail carrier to provide service to and from Mexico through the gateways at Laredo, Eagle Pass and Presidio, TX. We believe this is the most viable solution to any reduction in competition through the Mexican gateways that will result from the proposed merger.

It is crucial to avoid the "bottleneck" of rail traffic at the U.S.-Mexico gateways which will occur as a result of this proposed merger. According to 1994 traffic data, higher intermodal container rate levels exist on the UPRR Chicago, IL to Laredo, TX route where UPRR is the single carrier, as opposed to the competitive rate levels on UPRR routes where there are multiple carriers. The intermodal container rate levels increased by .25 cents per container-mile from 1991 to 1993 where only 1 carrier, UPRR, was available to shippers. The availability of service to Mexico from a third unaffiliated rail carrier is essential to prevent such rate increases for U.S. and Texas shippers.

In our opinion, a third unaffiliated rail carrier operating over the divested UPRR/SPR parallel combinations will provide the only real competitive force to UPRR/SPR. The BN/SF is not in position to fill this role because they own a single gateway into Mexico at El Paso, TX. The BN/SF's other access to Mexico is handicapped due to the fact it is through trackage rights with the SPR through Eagle Pass, TX. It is vital for a third unaffiliated rail carrier to have complete control of a major gateway into Mexico for the future of ever-increasing imports and exports between the U.S. and Mexico under NAFTA.

IV.a. REQUEST FOR TRACKAGE RIGHTS, MARKETING RIGHTS AND DIVESTITURE OF UPRR AND SPR LINES ON THE BEHALF OF TEXAS MEXICAN RAILWAY COMPANY

1. Trackage Rights and Marketing Rights

   A. Main Line

      i. The UPRR line between Corpus Christi, TX and Odem, TX.

      ii. The UPRR line between Robstown, TX and Placedo, TX.

      iii. The SPR line from Placedo, TX to Victoria, TX.

      iv. The SPR line between Victoria, TX and Flatonia, TX.

      v. The UPRR line from Victoria, TX to Bloomington, TX.

      vi. SPR line between Flatonia, TX and West Junction, TX.

      vii. The UPRR line from Robstown, TX to Algoa, TX.

      viii. The BNSF line from Algoa, TX to Pierce Junction, TX.

      ix. The UPRR line from Pierce Junction, TX to Amelia, TX.

x. The UPRR line from Settegast Junction, TX to Amelia, TX.

xi. The joint UPRR/SPR line from Amelia to Beaumont, TX and the connection with the Kansas City Southern Railroad (KCS) at the Neches River Draw Bridge in Beaumont, TX.

B. Houston SPR Lines

i. The SPR line from West Junction to the connection with the Port Terminal Railway Association (PTRA) near Tower 30 by way of Pierce Junction.

ii. The SPR line from West Junction to Eureka at SPR Milepost 5.37.

iii. The SPR line from SP Milepost 5.37 to SPR Milepost 360.7 near Tower 26.

iv. The SPR line from Milepost 360.7 to the connection with the Houston Belt Terminal Railway Company (HBT) at Collingsworth near SPR Milepost 1.5.

v. Full and complete operating and marketing rights to all industries and to customers on the Houston & Belt Terminal and Port Terminal Railroad Association without any restrictions.

vi. The HBT line from Collingsworth to the HBT's connection with UPRR at Gulf Coast Junction.

vii. The HBT line from its connection with the SPR line at T. and N.O. Junction to HBT's connection with UPRR at Settegast Junction.

viii. Terminal Facility Rights: we support the right of Tex Mex to use yards and other terminal facilities of SPR, UPRR and HBT in the Houston area outlined in their responsive application filed on or before March 29, 1996.

ix. Divestiture of SPR line between Victoria, TX and Flatonia, TX to Tex Mex, if UPRR/SPR decides to abandon the line.

x. Capitol Improvements: we support the right of Tex Mex to construct two improved connections, at Robstown, TX and Flatonia, TX. This construction is necessary to improve Tex Mex's service over those lines.

IV.b. ARGUMENT FOR REQUEST ON THE BEHALF OF TEXAS MEXICAN RAILWAY COMPANY

To date the Texas Mexican Railway(Tex Mex) and SPR have provided the competitive alternative to UPRR through the principal gateway for rail traffic between the United States and Mexico at Laredo, TX. The Tex Mex line running eastward from Laredo crosses and connects with the UPRR's Brownsville Line at Robstown, Texas and proceeds to Corpus Christi, where it connects with a UPRR branch line and is able to interchange traffic with UPRR and SPR. The vast preponderance of traffic that Tex Mex has interchanged at Corpus Christi, TX has been with SPR. We believe the merger of UPRR and SPR will eliminate the use of Tex Mex as a competitive alternative. A combined UPRR/SPR will not interchange traffic with the Tex Mex at Corpus Christi or Robstown, rather they will ship all U.S.-Mexico traffic from Corpus Christi to Mexico over UPRR's Brownsville Line.

Under the settlement agreement between BN/SF and UPRR/SPR, the applicant intends to grant BN/SF the trackage rights currently utilized by SPR from Bloomington, TX to Robstown, TX. While the agreement purports to provide a competitive alternative, the rights sought in Section IV.A. of this document are imperative to guarantee a competitive alternative for rail traffic moving from Corpus Christi to Mexico. We fully support the responsive application of Texas Mexican Railway Company with regards to seeking the rights requested in section IV.A., or any other rights sought by Tex Mex which will perpetuate the alternative of a third rail carrier for U.S.-Mexico rail traffic through Laredo, TX. It is our position that a third competitive alternative to UPRR/SPR and BN/SF will guarantee benefits for Texas shippers seeking service from Corpus Christi to Mexico through the gateway at Laredo. Texas Mexican Railway Company has provided, and will continue to provide under the requested rights, the guarantee of a competitive alternative for Texas shippers.

The approval of the trackage rights requested for Texas Mexican Railway will provide benefits to shippers outside Texas as well. The right to connect with KCS at the Neches River Draw Bridge in Beaumont, TX will provide shippers on KCS's line an alternative to UPRR, SPR, and BN/SF when moving goods to Mexico. Shippers using KCS's routes from Chicago, IL; Kansas City, MO; St. Louis, MO; Memphis, TN; and New Orleans, LA would be provided connection to the Ferrocarriles Nacionales de Mexico(FNM) over the Texas Mexican Railway. NAFTA traffic flows are increasing at over 20% per year, and the Texas Mexican Railway will provide a strong and balanced competitive force with the Union Pacific for the Laredo, TX traffic to Mexico.

V.a. <u>REQUEST FOR TRACKAGE RIGHTS ON THE BEHALF OF SOUTH ORIENT RAILROAD COMPANY</u>

1. Ft. Worth UPRR line-UPRR's Ft. Worth line from Tower 55 to the UP Ft. Worth connection

with Railtran's line.

2. Dallas UPRR line-UPRR Dallas Connection with Railtran's line to the C.J. Yard in Dallas.

V.b. ARGUMENT FOR TRACKAGE RIGHTS ON THE BEHALF OF SOUTH ORIENT RAILROAD COMPANY

The South Orient Railroad Company currently operates from Ft. Worth, TX to Presidio, TX over the only gateway into Mexico not controlled by BN/SF or UPRR/SPR, and is a vital alternative for Texas shippers moving goods to Mexico. With the absence of a Class I rail carrier unaffiliated with UPRR, SPR, and BN/SF, and its access to Ft. Worth, TX, the South Orient is currently the only Class I, II or III rail carrier in Texas with a possibility to provide reasonable competition for UPRR, SPR, and BN/SF for Mexico traffic. The trackage rights requested above would provide more Texas shippers and rail carriers the ability to utilize the South Orient as an alternative by:

- Allowing shippers in Dallas, TX access to the South Orient over rail lines which the South Orient currently does not have trackage rights.
- Providing access through the South Orient to rail carriers serving the Eastern United States who currently do not have any rail lines which reach Ft. Worth, TX from Dallas, TX.

Absent of the trackage rights outlined on behalf of the South Orient in section V.a., South Orient will continue to have limited access to shippers and other rail carriers which will hinder its ability to provide a competitive alternative to UPRR, SPR, or BN/SF for Mexico traffic.

VI. Support for the Comments of the Railroad Commission of Texas

We support our colleagues at the Railroad Commission of Texas in their comments filed before the Surface Transportation Board. We respectfully request the board's due consideration of the commission's following comments regarding:

a. The divestiture of the following SPR lines:

1. The SPR line from Houston, TX to North Junction, MO;

2. The SPR line from Lewisville, AR to Corsicana, TX;

3. The SPR line from Dallas/Ft. Worth, TX to Houston, TX;

4. The SPR line from Houston, TX to New Orleans, LA;

5. The SPR line from Houston, TX to Eagle Pass, TX; and

6. The SPR line from Hearne, TX to Placedo, TX.

b. The divestiture of all ancillary, connecting trackage and support facilities for the above-mentioned SPR lines.

c. The establishment of open reciprocal switching through Neutral Terminal Railways in:

1. Dallas/Ft. Worth Metroplex;

2. Houston and the Port of Houston;

3. Port of Galveston;

4. Beaumont-Port Arthur-Orange;

5. Brownsville-Corpus Christi

6. El Paso; and

7. Amarillo-Plainview-Lubbock.

d. The divestiture of all necessary junction connections to any entity purchasing trackage targeted for abandonment by the applicant.

e. Trackage rights for the Texas Mexican Railway Company.

f. The access to Eastern U.S. markets for the Port of Corpus Christi by a rail carrier unaffiliated with the applicant, or BN/SF.

g. All other comments by the commission which would advocate competition, and safer rail travel, in Texas.

We feel the comments of the commissioners are vital to maintain the public's interest in the state of Texas. The approval of these comments by the board will necessarily guarantee a competitive environment to the benefit of shippers not only in Texas, but to shippers doing business with Texas throughout the United States and Mexico.

VII. Conclusion

We, as public servants for the citizens of Texas, reviewed the applicant's proposal for merger, the settlement agreement between the UPRR/SPR and BN/SF, and various economic analyses to determine the effects this proposed merger will have on our state. In the final analysis, we have determined that definite deleterious effects to this state, and nation, will result from the merger under the application presently before the board. The Request for Conditions from Members of the Texas Legislature provides a real competitive solution to the inevitable market dominance of UPRR/SPR under the provisions of this proposed merger. Through the requested conditions, competition will be guaranteed by the ownership of competitive rail routes by a third unaffiliated rail carrier as well as, trackage and terminal rights for smaller, strategically located rail carriers in Texas. Absent of these conditions, there is no other real solution to the reduced rail competition which results from this "side by side" merger. It is evident Texas needs a third rail carrier with an interest in providing competitive service, while investing in the creation and improvement of the current rail system in Texas. Any conditions which do not provide for the divestiture of parallel UPRR/SPR combinations to a third unaffiliated rail carrier is not acceptable to the members of the Texas Legislature. We remain staunchly opposed to the application of Union Pacific Corporation and Southern Pacific Rail Corporation absent of the requested conditions described in Sections III(a), IV(a), and V(a).

Respectfully Submitted,

Robert A. Junell
District 72
Texas House of Representatives

John R. Cook
District 60
Texas House of Representatives

Robert M. Saunders

Robert M. Saunders
District 28
Texas House of Representatives

VERIFICATION

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

The following persons being duly sworn, deposes and says that they has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.

State Representative

Melodie Stegall
Administrative Assistant for
Representative Robert A. Junell

Frederick C. Cruz
Legislative Aide for
Representative Robert M. Saunders

Texas House of Representatives
P.O. Box 2910
Austin, TX 78768-2910

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

NOTARY PUBLIC STATE OF TEXAS
BARBARA J. ERICKSON
Notary Public
STATE OF TEXAS
My Comm. Exp. 04-27-2000

Barbara J. Erickson
Notary Public

My Commission expires:

CERTIFICATE OF SERVICE

I, Billy W. Howe, certify that, on this 29th day of March, 1996, I caused a copy of the foregoing Request for Conditions from Members of the Texas Legislature to be served by first-class mail, postage prepaid, on all parties of record in Finance Docket No. 32760.

Billy W. Howe

Legislative Aide to
Representative John R. Cook
Texas House of Representatives

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MAR 29 1996

8 Part of Public Record

United States Gypsum Company
P. O. Box 806278
Chicago, IL 60680-4124
312 606-4000 Fax: 312 606-4093

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62303

USG

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

March 28, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, DC 20423

USG-2

Re: Finance Docket 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.

Dear Mr. Williams:

My name is Alex J. Pavin. I am Director of Transportation for United States Gypsum Company (USG). My address is 125 South Franklin Street, Chicago, IL 60606-4678. USG is the leading producer and shipper of gypsum wallboard products, gypsum rock and plasters, joint compounds and gypsum board paper in the United States. In 1995, USG's sales exceeded $1.3 billion dollars. As Director of Transportation, my responsibilities include the oversight of all transportation and distribution policies and activities for 33 manufacturing plants throughout the United States, managing a staff of 24 transportation professionals and management of over $200,000,000 in annual transportation expenses. Effectively transporting USG products requires the utilization of every Class I railroad and a substantial number of Class II and

125 South Franklin Street
Chicago, IL 60606-4678

other shortline railroads. In addition, USG utilizes over 300 motor carriers, barge lines, intermodal carriers, etc., in providing service to our customers. In 1995, over $50,000,000 of USG's freight expenses were with railroads, with the BNSF, UP and SP combined accounting for roughly 65% of our rail expenditures. Rail transportation service is critical enough for USG that we have secured private railcars to competitively access markets throughout the western United States.

USG has held a neutral position in regard to the Union Pacific, et al (UP) proposed control and merger with the Southern Pacific, et al (SP). However, after a thorough investigation of the proposed UP-SP merger, including the impact of the UP-BNSF trackage rights and track sales agreement dated September 25, 1995 (Agreement) and the UP-SP-IC operating, pricing, and most favored nations agreement dated January 30, 1996 (Accord), USG has determined that without the Surface Transportation Board (STB) addressing the damaging situations outlined below and STB granting the conditions sought by USG, USG strongly opposes the UP's proposed merger with the SP and requests the STB to stop the UP-SP merger.

1) EMPIRE, NV (RAIL STATION GERLACH, NV):

USG's Empire, NV, plant manufactures and ships gypsum wallboard, gypsum rock, plasters, and stucco by rail throughout California, Oregon, Washington, Idaho, and Montana, and brings in oil by rail. Empire does its own switching between Empire and the UP Gerlach, NV, rail station. Empire's most service sensitive and critical rail shipment is of stucco to USG's Fremont, CA, wallboard plant (UP and SP served). Stucco is the basis for manufacturing gypsum wallboard. Fremont cannot produce stucco and relies solely on Empire for all its stucco supply.

With Gerlach being served by the UP, USG worked with the Western Pacific Railroad (WP - now part of the UP) to design Fremont's stucco unloading system around a pool of WP specified and provided hopper cars. The WP had set up a pool of over 100 primary and reserve pool cars. This large car pool helped offset the inconsistent rail service between Gerlach and Fremont. The pool of all usable WP cars now stands between 55 and 60 cars. The UP has indicated that there are no more cars of this configuration. With the dwindling number of WP cars handling almost 1,400 stucco carloads per year, the consistent timely movement of loaded and empty cars remains critical for Fremont as a viable wallboard producing plant.

USG continues to experience UP interchange switching limitations at Gerlach. The UP's inability to fully and consistently switch all of USG's carload business from and to Gerlach continues to present UP service limitations which have resulted in shutting down Fremont and lost customer rail shipments. UP's manifest trains ordinarily "fill up" prior to reaching Gerlach, forcing Empire's rail shipments to frequently sit while full UP trains run past Gerlach. UP has given stucco carloads a priority, but we still experience periods where UP manifest trains bypass switching Gerlach. USG presses UP to establish switching and service consistency at Gerlach for all of our rail business but to no avail at this time.

The first section of the Agreement references Western Trackage Rights, specifically BNSF gaining trackage rights: 1) Over the UP line between Weso, NV, through Gerlach, NV (USG's Empire plant UP rail station) and Stockton, CA, as well as 2) Over the SP line between Weso, NV, through Oakland, CA; Fremont, CA (including USG's Fremont plant); and San Jose, CA.

Per the Agreement Section 1g, BNSF is limited to one intermodal and one manifest train per day over the SP line between Weso, NV, and Oakland, CA. This limitation requires all other BNSF trains to traverse the UP's line between Denver, CO, through Weso and Gerlach, NV, and Stockton, CA. The Agreement specifically references at least 25 City-points that will have access to both the UP-SP and BNSF (including Fremont) that BNSF trains will be moving loaded and empty cars over the UP line running between Stockton, CA, through Gerlach, NV, and points east up to Denver, CO. BNSF will most likely operate at least daily trains past Gerlach.

BNSF can also request the UP-SP to provide train and engine crews to move BNSF trains between Salt Lake City through Gerlach and into Oakland. This additional service burden on the UP that the BNSF can request will most likely reduce UP train availability for Empire's rail shipments - critical stucco as well as other inbound and outbound rail movements. Additionally, per the UP-SP merger application Volume 3, Operating Plan, Attachment 13-6, UP plans to actually reduce their daily train flows by 10 trains per day (segment from Winnemucca past Gerlach to Flanigan via UP).

The merged UP-SP operating plan clearly amounts to a reduction in the UP's capabilities to meet even the current unacceptable switching and train space availability at Gerlach. With BNSF freight on this line having the option to utilize UP-SP trains and crews, UP train space and switching service will be again limited and add to the further erosion of the UP's ability to provide the full and consistent switching needs and train space availability for USG's Empire rail movements.

CONDITION SOUGHT FOR USG EMPIRE, NV:

In 1996, Empire anticipates shipping and receiving about 1,950 carloads of stucco, wallboard, rock, plasters, and oil by rail. With Empire's continued experiences with 1) The UP's inability to fully and consistently provide daily switching at Gerlach for all Empire's rail movements; 2) The UP's limitations in daily train space availability for all Empire rail shipments; 3) The probable shortage in UP switching service and train space availability due to the probable increased demand on UP trains and train space from the BNSF, and 4) The merged UP-SP Operating Plan which identifies a reduction in daily UP trains operating from Winnemucca past Gerlach to Flanigan. Based on these issues, USG believes that UP's switching at Gerlach and train space availability for all of Empire's rail inbound and outbound movements will be reduced, severely limited as to negatively impact USG's operations at Empire, NV, and Fremont, CA. The negative impact on USG's shipments between Empire and Fremont and other customer locations warrants, and USG requests, the STB impose as a condition of the UP-SP merger that the Agreement be amended to specifically provide for BNSF having access to both serve and switch any and all of USG's loaded or empty rail movements from and to the Gerlach, NV, rail station.

2) PLASTER CITY, CA:

USG's Plaster City, CA, plant manufactures and ships gypsum wallboard, gypsum rock, plasters, and stucco by rail. These products are shipped throughout southern and northern California, Arizona, Oregon, and Washington. Plaster City is served and switched by the SP. Plaster City is over 50 miles away from Niland, CA, where the SP's mainline between Yuma, AZ, and Colton, CA, is located.

The San Diego & Imperial Valley Railroad (SDIV - previously the SDAE) can also serve Plaster City if track and tunnel repairs are made. The SDIV lost access to Plaster City after damage to the SDIV tracks and tunnels occurred. Plaster City was using the SDAE for Plaster City plant switching and for SDAE-ATSF routings of wallboard, gypsum rock, plasters and stucco to points throughout California and Arizona, including plant transfers of stucco to USG's Santa Fe Springs, CA (Los Nietos) plant. USG has been in discussions with the SDIV on reopening the line to Plaster City. The SDIV has been restoring service on the rail line between San Diego and El Centro and has reached Jacumba, CA (about 25 miles from Plaster City). To complete the remaining 25 miles, the SDIV must clear out, repair, and upgrade three tunnels at considerable, uncertain expense. The SDIV has not presented any firm plans or timetables for doing the costly tunnel work.

Subsequent to the demise of SDAE's providing plant switching service and rail routings from Plaster City, switching and virtually all rail services from the SP have deteriorated to levels resulting in the frequent shutdown and slowdown of our Santa Fe Springs plant, as well as ongoing service problems on shipments to our customers. The loss of SDAE access at Plaster City and resulting lack of SP-SDAE competition has lessened SP's interest in providing competitive rail services.

SP SERVICE FAILURE BACKGROUND:

One of Plaster City's most service sensitive and critical rail shipments is of stucco to USG's Santa Fe Springs, CA (SP rail station Los Nietos) wallboard plant. Stucco is the basis for manufacturing gypsum wallboard. Santa Fe Springs cannot produce stucco and relies solely on Plaster City for all its stucco supply. Plaster City stucco shipments to Santa Fe Springs are moving on SP trains from Yuma, AZ, picking up the stucco cars at Niland, CA, then moving through West Colton, City of Industry, Bartolo and on to Los Nietos (Santa Fe Springs). The inconsistent switching at both Plaster City and Santa Fe Springs and widely fluctuating transit times results in frequent plant shutdowns and forced slowdowns at Santa Fe Springs. The switching and transit time problems are very representative of the problems on all SP rail movements from Plaster City. USG's contract with SP to move the stucco to Santa Fe Springs provides for plant switching and transit time commitments. The SP provides records of actual versus contractual commitments. Even with plant switching and transit time commitments in this USG-SP contract, the SP frequently operates outside the SP commitment causing plant shutdowns and slowdowns.

The SP recognizes that their West Colton yard is one of their most troublesome yards with frequent delays in the movement of loaded and empty cars and is one of the primary causes of Plaster City's transit time fluctuations. Virtually all of Plaster City's rail shipments are moving through West Colton. Under the UP-SP Operating Plan, Attachment 13-6, SP plans to increase the daily trains per day into West Colton by 11 (segment from Yuma to West Colton) and to reduce the daily train flows for Santa Fe Springs by 5 trains per day (segment from Bartolo to Los Nietos via SP).

Adding 11 trains per day into West Colton will further compound the service problems for Plaster City's rail shipments resulting in increased delays in moving rail products to our rail-served customers. Reducing the service to Los Nietos by 5 trains per day may add to further shutdowns and slowdowns at Santa Fe Springs.

Additionally, the UP-SP Operating Plan does not address coverage and operational changes that will occur on the segment between Niland, CA, through the SP's El Centro yard and Plaster City. If no UP-SP service improvements are planned, then Plaster City absolutely needs another rail alternative for improved rail service to meet the service requirements and consistency to prevent Santa Fe Springs from frequent shutdowns and slowdowns and to provide our rail-served customers with the option that can best provide the consistent service to retain rail service.

Plaster City's current problems with the SP's plant switching and transit times have not been resolved and continue today. With the UP's demonstrated operational problems with merging with the much smaller Chicago and North Western Railroad, USG is seriously concerned with the negative effects the combined UP-SP's stated operating plan will have on shipments from Plaster City where service problems already exist, specifically: 1) The additional daily trains moving through West Colton which will add to the current delays in getting all of Plaster City's loaded and empty cars moved in a timely manner; 2) The reduction in daily train service for delivery of our stucco shipments to Los Nietos (Santa Fe Springs) which will add to current car bunching and shortage problems; and 3) The lack of any reference to UP-SP operating plans between Niland, El Centro, and the Plaster City plant.

COMPETITOR IMPACT:

USG also has concerns over the negative impact on current Plaster

City rail served markets in the west due to the opening of single line rail capabilities from multiple competitor locations, specifically, wallboard and gypsum rock competitors in Nevada and, specifically, Las Vegas, NV.

Example:

There are three wallboard and gypsum rock competitors in Las Vegas (UP service) who will gain new access to single line direct rail service to all of California's markets on a single line direct UP-SP rail routing. The SP serves an estimated 95% of all the rail served wallboard, gypsum rock and plaster customers throughout California and a combined UP-SP will control over 70% of the total rail miles in California. The rail markets USG now serves in Bakersfield, Salinas, Permanente, Davenport, and Creal CA (to name a few locations) will see cost and service advantages by being directly on the UP-SP mainline that shipments from Plaster City (over 50 miles from SP's mainline connection at Niland) will not have. The Las Vegas competition will also have shorter single line routings (by at least 450 rail miles) into Salt Lake City, Pocatello, and Colorado markets which will result in new, faster, less costly rail opportunities not available to Plaster City. These competitive disadvantages will most certainly result in eliminating Plaster City from competing by rail into these markets. The UP-SP merger will not be supporting additional rail competition it, in fact, will be reducing rail competition by eliminating rail business from Plaster City. It is possible that USG will lose rail business from Plaster City and that may reduce the number of rail competitors serving the market.

Plaster City's future rail shipments are jeopardized by the following rail advantages that will be in place as a result of the UP-SP merger: 1) Single line direct rail service from UP-served wallboard and gypsum rock shippers in Las Vegas into SP markets in California, Utah, Idaho, and Colorado; 2) Shorter distances from Las Vegas origins to SP-served markets than from Plaster City; 3) Rail switching and service advantages from being directly on the UP-SP mainline versus Plaster City being on a small branch line; 4) Cost advantages for Las Vegas rail shippers from being directly on the UP-SP mainline versus Plaster City being over 50 miles off the UP-SP mainline; and 5) With most western (UP or SP) markets, wallboard, gypsum rock, and plaster customers now served by the SP, accessing the SP from Las Vegas (UP service only) is effectively providing access to two Class I railroads which Plaster City doesn't have.

Plaster City's ability to overcome these UP-SP merger created competitor rail shipping advantages will minimize or eliminate Plaster City's ability to compete by rail into some of the largest wallboard, gypsum rock, plaster, and stucco markets in the country.

CONDITIONS SOUGHT FOR USG PLASTER CITY:

In 1996, Plaster City anticipates shipping about 4,300 carloads of gypsum wallboard, gypsum rock, stucco, and plasters to other USG plants and to our customers. USG believes that the UP-SP merger will negatively impact and limit Plaster City's ability to ship by rail due to: 1) Increased UP-SP rail switching and transit time service failures due to increases in the daily trains moving through West Colton adding to an already problematic rail yard and the decrease in daily trains serving Los Nietos (USG's Santa Fe Springs plant); 2) The lack of any operational plan to address UP-SP service between Niland and Plaster City in light of the UP-SP operating plan outlining significant changes which will impact on UP-SP service capabilities at Plaster City; and 3) The rail advantages that will be provided to USG's competitors in Las Vegas, specifically the shorter single line direct routes to markets throughout California, Utah, Colorado, and Idaho, and the cost and operational advantages USG's competitors will have by being on the UP-SP's mainline.

The negative impact of the UP-SP merger on USG's operations at Plaster City and on Plaster City's ability to effectively compete by rail to our customers as outlined above warrants the STB imposing conditions on the UP-SP merger that address the service, transit time, and cost penalties that will minimize or eliminate Plaster City from participating in rail shipments to our plants and customers.

USG is requesting that the STB impose as a condition of the UP-SP merger that the BNSF be granted haulage rights access to both serve and switch any and all of USG's loaded or empty rail movements from and to Plaster City over SP track between USG's Plaster City plant, through Niland and into USG's Santa Fe Springs plant via SP's City of Industry, Bartolo, Los Nietos route and between USG's Plaster City plant, through Niland to the BNSF interchange with the UP-SP at West Colton for all shipments not moving to or from USG's Santa Fe Springs plant.

USG is requesting that the STB impose as a condition of the UP-SP merger that the BNSF be granted trackage rights over the SDIV between USG's Plaster City plant and the SDIV interchange with the BNSF in San Diego, CA.

BNSF having access to Plaster City will 1) Provide alternatives to provide for plant switching at Plaster City; 2) Provide for a competitive rail service option between Plaster City and Santa Fe Springs (Santa Fe Springs is served by the BNSF and SP), and on our customer rail shipments; 3) Provide a rail alternative for impaired transit times on shipments moving through West Colton; and 4) Balance the negative effects of Las Vegas competitors' rail improvement gains from the UP-SP merger that will minimize rail shipments from Plaster City.

3) **SOUTHARD, OK:**

USG's Southard, OK, plant manufactures and ships gypsum wallboard, gypsum rock, and various specialty plasters throughout the United States. Southard is USG's sole or primary source for many specialty plasters. With Southard the sole or primary source for many specialty plasters, rail is one of the key modes for serving customer markets and other USG plants throughout the United States. USG's Southard, OK, plant is served by Farmrail System, Inc.'s subsidiary, Grainbelt Corporation (GNBC), a Class III railroad. GNBC accesses the BNSF and UP in Enid, OK, and the SP in Quanah, TX. Prior to the BN-ATSF merger, GNBC accessed three Class I railroads, the BN, ATSF and UP. USG and GNBC identified the shortcomings of the BN-ATSF merger on GNBC and Southard by reducing Southard and GNBC access to three Class I railroads. USG and GNBC filed with the ICC to condition the BN-ATSF merger such that GNBC and Southard would retain access to three Class I railroads.

USG and Farmrail were successful in securing as a condition of the BN-ATSF merger continued access to three Class I railroads, including new GNBC rights to the SP in Quanah, TX, under the ICC's September 1995 Decision No. 38 to Finance Docket No. 32549. With the proposed UP-SP merger, Southard and GNBC are again threatened with the loss of access to three Class I railroads. In light of the September 1995 ICC decision to uphold retaining access to three Class I railroads at Southard and GNBC, the STB should again uphold the ICC decision to retain three Class I railroads access to Southard and GNBC.

SOUTHARD CONDITIONS SOUGHT:

Southard anticipates shipping over 4,200 carloads in 1996, including essential transfers of raw materials to several USG plants and shipments of various plasters and gypsum rock to almost every major market in the United States. The September 1995 ICC Decision 38 to Finance Docket No. 32549 approving continued access to three Class I railroads at Southard and the GNBC warrants the STB retaining such access as a condition of the UP-SP merger.

USG is requesting that the STB grant CSX Transportation overhead bridge trackage rights, terminal trackage rights, and/or reciprocal switching trackage rights over the lines of the merged UP-SP between Enid, OK, and St. Louis, MO, for USG's loaded or empty rail movements originating or terminating on the GNBC. Granting this condition will preserve the recent ICC decision granting Southard and GNBC continued access to three Class I railroads.

4) FORT DODGE, IA:

USG's Fort Dodge, IA, plant manufactures, ships, and receives gypsum wallboard, gypsum rock, various plasters, including HYDROCAL plaster, and limestone, by rail. Fort Dodge ships these products throughout the Midwest, the Pacific Northwest, the Northeast and Canada, by rail. Fort Dodge also receives rail shipments of limestone from Illinois which are used in the production of various compounds. Fort Dodge is the primary rail source of HYDROCAL plasters moving to USG's Gypsum, OH; Port Reading, NJ; and

Stony Point, NY, plants, as well as to USG's sister company, Canadian Gypsum Company's (CGC), Hagersville, ON, and Montreal, PQ, plants. HYDROCAL plaster is one of the primary raw materials used by these plants in the manufacture of various compounds and specialty plaster products. Rail service from Fort Dodge, including plant switching, transit times, and operating consistency, is very critical for keeping these five USG and CGC plants operational.

Fort Dodge is switched and served by the UP and is also served by the Chicago Central & Pacific (CC) Railroad. The Illinois Central (IC) is seeking to merge with the CC (Finance Docket No. 32858). UP service at Fort Dodge comes from the non-merger acquisition of the Chicago and North Western Railroad (CNW). Prior to the UP's acquisition of the UP, Fort Dodge could access the BN, ATSF, UP, and all other Class I railroads through both the CNW and CC. Fort Dodge had a balanced competitive rail environment.

UP-SP OPERATIONAL CONCERNS WITH FORT DODGE:

Subsequent to the UP's acquisition of the CNW, Fort Dodge has experienced severe problems, including plant switching, transit time, customer service, car weighing, and equipment shortages from the UP. These UP problems have negatively affected USG's ability to meet our customers' and other USG and CGC plant service requirements on UP routed shipments and is resulting in lost rail business for USG at Fort Dodge. The balance of rail competition also has been skewed by having UP single line routings in competition with CC-BNSF routings on west rail moves. Fort Dodge needs to have competitive rail service to and over both western railroads and over the UP and CC for connection to eastern railroads. Presently, the UP's services penalize Fort Dodge, and CC-BNSF or CC-XXX routings are two-line hauls that are not always price competitive with UP direct routings. The UP's inability to effectively integrate with the CNW, which continues now, is a major concern if the UP were granted approval to merge with the SP.

Below are two examples of UP generated problems at Fort Dodge:

Example 1

The UP's acquisition of the CNW has limited Fort Dodge's access to BNSF railcars for shipments to the Pacific Northwest forcing Fort Dodge to use CC-BNSF routings to access BNSF railcars. CC-BNSF and CC-UP routings to the Pacific Northwest are at a premium to UP direct and UP-BNSF routings. However, UP routings from Fort Dodge have sufficiently deteriorated so that paying a premium for CC's service and access to BNSF railcars is better than losing customers due to UP's poor service.

Example 2

Fort Dodge has lost business moving by rail to Mason City, IA (Mason City Junction-UP service only) due to the UP's inability to provide consistent service from Fort Dodge, weigh cars prior to delivery, and provide information on the status of car transit times, delays, and weights. Fort Dodge went from shipping an average of 20 cars per week down to an average of 5 cars every other week. Fort Dodge's customer in Mason City is now seeking truck delivery which most likely will eliminate Fort Dodge from this business. This business dropoff was primarily due to UP service, transit time, car weighing, and information failures of the UP.

These two examples demonstrate the type of continuing problems the UP is having in integrating with the CNW. USG is extremely concerned with the UP's ability to effectively merge with the SP without adding to the UP's ongoing unresolved problems and the additional threat of Fort Dodge losing other customer rail business due to equipment availability, transit times, and accessorial services required to meet customer needs. Additionally, production shutdowns or slowdowns at USG and/or CGC plants are a very strong possibility with current UP problems and USG's reliance on Fort Dodge as the primary rail source for HYDROCAL plaster.

USG'S CONCERNS WITH THE UP-SP-IC ACCORD:

USG has three primary concerns with the UP-SP-IC Accord. These concerns are: 1) Fort Dodge being served by the UP and CC, 2) The IC seeking to merge with the CC, and 3) The UP-SP and IC agreement dated January 30, 1996 (Accord) addressing issues related to the proposed UP-SP merger, the impact of the UP-SP merger on Fort Dodge requires USG to include the terms and application of the Accord, including the proposed merger between the IC and CC, in analyzing the impact at Fort Dodge of the UP-SP merger.

There are three areas that most concern USG with the UP-SP-IC Accord. First, how the Accord addresses the IC and the merged IC-CC. Second, the impact of a merged IC-CC on the Accord as it relates to Fort Dodge. Third, the limiting rail impact of the Accord on the Fort Dodge plant. The following addresses each area more specifically:

1) How the Accord addresses the IC and the merged IC-CC:
USG has held discussions regarding the Accord with the IC in reference to the Accord's application with the IC and merged IC-CC. USG had pointed out to the IC that the Accord was inconsistent in its reference to the IC and merged IC-CC. For example, the first paragraph of the Accord solely references the IC, while Section 8, paragraph "a", part "i", references the merged IC and CC railroads. USG specifically asked IC's counsel, who indicated his direct involvement with establishing the terms of the Accord, if references to the IC included the merged IC-CC. IC's counsel responded that the translation of Accord's references to the IC included the merged IC-CC. The issue has not been tested or resolved which clouds USG's ability to correctly analyze the UP-SP merger impact--including the IC-CC merger effects on the Fort Dodge plant.

2) The impact of a merged IC-CC on the Accord as it relates to Fort Dodge:
Assuming that references to the IC include the merged IC-CC, then the application of Section 8 of the Accord, <u>Joint Rates and Routes</u>,

comes into question. Under paragraph "a", neither parts "i" or "ii" address scenarios where the Accord would apply at Fort Dodge and paragraph "c" does not address interline rates for Fort Dodge's interline business when shipping westbound (gypsum wallboard falls under "forest products" grouping). With these issue still to be worked out between the IC and UP, USG is unable to correctly analyze the UP-SP merger impact--including the IC-CC merger effects on the Fort Dodge plant.

3) The limiting rail impact of the Accord on Fort Dodge plant: Fort Dodge is already limited in rail service capabilities subsequent to the UP's acquisition of the CNW. USG believes that any concessions sought as a result of this filing to eliminate Fort Dodge's anti-competitive rail situation with the UP, would also have to be viewed under the terms of the Accord, including the merged IC-CC. Under the Accord, Section 14 Government Approvals, paragraph "b", any conditions imposed by the STB not addressed by the Agreement cannot be negotiated with any other party until the UP-SP fails to reach agreement with the IC. Under these terms, this Accord in effect limits rail competition at Fort Dodge and, as such, is unacceptable to USG. If Fort Dodge is required to use the IC-CC for conditions sought, it would, in effect, reduce Fort Dodge's rail access from two railroads to one controlling railroad--the UP. This situation is totally unacceptable in light of the anti-competitive position that the UP has at Fort Dodge.

FORT DODGE CONDITIONS SOUGHT:

Fort Dodge anticipates shipping and receiving over 1,800 carloads of gypsum wallboard, gypsum rock, specialty plasters, including HYDROCAL plaster, and limestone in 1996 to customers, other USG and CGC plants, and into Fort Dodge. The ongoing problems the UP continues to experience with incorporating the CNW and the resulting negative impact of lost customer rail business at Fort Dodge, and the uncertain interpretation, negative impact, and limiting ability that the Accord will have on reducing competitive rail access at Fort Dodge, require USG to seek conditions from the STB to address the obstacles to continued effective rail service and retaining rail competition as a result of the proposed UP-SP merger.

USG is requesting that the STB impose as a condition of the UP-SP merger that the BNSF be granted haulage rights access to both serve and switch any and all of USG's loaded or empty rail movements from and to Fort Dodge over the UP and former CNW track between 1) USG's Fort Dodge, IA, plant through Mason City, IA, and the BNSF yard in Minneapolis, MN, 2) USG's Fort Dodge, IA, plant and the BNSF yard in Council Bluffs, IA, and 3) USG's Fort Dodge, IA, plant and the BNSF yard in Sioux City, IA.

USG is also requesting the STB require clarification on the application of the Accord as it relates to the IC versus the merged IC-CC, that USG's Fort Dodge plant sitution be specifically clarified, and that the anti-competitive ability of the Accord to limit competitive rail access at Fort Dodge be eliminated.

BNSF having access to Fort Dodge will 1) Provide for alternatives to UP plant switching at Fort Dodge, 2) Provide for Class I railroad competition rail service options at Fort Dodge, and 3) Improve BNSF transit times, equipment availability, and service to Fort Dodge customers.

Clarification of the terms and application of the Accord as they impact on USG's Fort Dodge plant and the proposed UP-SP merger will 1) Clarify the intent of the UP, SP, and IC to include the potential merged IC-CC track, 2) Provide for application of the Accord from Fort Dodge, and 3) Eliminate the potential of USG's Fort Dodge plant to be limited in Class I rail access at Fort Dodge to just the UP.

In summary, the UP-SP merger will create the largest rail services provider, not only in the United States, but for USG rail movements. The merged UP-SP railroad would be USG's largest rail provider and would access to 15 of USG's plants. USG will be negatively impacted by the proposed merger of the UP and SP at four of our key rail shipping and receiving plants. USG believes that the significant negative ramifications of the UP-SP merger, as outlined above, at USG's Empire, NV; Plaster City, CA; Southard, OK; and Fort Dodge, IA, plants, and in excess of 12,200 annual carloadings moving from and to these plants, warrants the conditions sought by USG. If the STB grants the conditions sought, USG would drop opposition to UP-SP merger.

Sincerely,

Alex J. Pavin
Director, Transportation
United States Gypsum Company

I, Alex J. Pavin declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further I certify that I am qualified and authorized to file this verified statement.

Executed on March 28, 1996

OFFICIAL SEAL
JO ANN M ZACK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 12/09/99

Alex J. Pavin

Jo Ann M. Zack
NOTARY PUBLIC

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All P.O.R. will receive a copy of this filing.

end.

STB FD 32760 3-29-96 D 62299

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U.S. Department of Transportation

Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

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March 29, 1996

Vernon A. Williams, Secretary
Room 2223
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, D.C. 20423

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

Dear Mr. Williams:

Enclosed for filing herewith are the original and twenty copies of the Preliminary Comments of the United States Department of Transportation in the above-referenced proceeding. A computer diskette in WordPerfect 5.1 format containing these comments is also provided.

By Decision No. 17 in this proceeding, the Surface Transportation Board corrected the service list previously issued in this matter. Although the corrected list indicates that it was served late on March 7, 1996, the Department of Transportation did not receive a copy until March 19. Unfortunately, through an oversight we only became aware late on March 27 of the Board's directive in Decision No. 17 to serve a list of pleadings on the new parties of record **[POR]**.

Because the Department's preliminary comments on the proposed consolidation are due today (March 29), we considered it appropriate to serve the new parties of record a list of DOT's prior pleadings at the same time that all parties of record were sent the preliminary comments. Since DOT's only pleadings until now have been a comment on the procedural schedule and a notice of its intent to participate, we trust that no party will be inconvenienced by this delay.

Accordingly, I hereby certify that on this day I have served a list of the Department of Transportation's pleadings on the **POR** designated by Decision No. 17, and copies of DOT's preliminary comments on all parties of record, by first-class mail.

Sincerely,

Paul Samuel Smith

Paul Samuel Smith

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

PRELIMINARY COMMENTS OF THE
UNITED STATES DEPARTMENT OF TRANSPORTATION

Introduction

On November 30, 1995, the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"), Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and the Denver and Rio Grande Western Railroad Company ("DRGW") (collectively, the "Applicants") filed an application with the Interstate Commerce Commission ("ICC" or "Commission") seeking approval and authorization under 49 U.S.C. 11343-45 for: (1) the acquisition of control of SPR by UP Acquisition Corporation ("Acquisition"), an indirect wholly owned subsidiary of UPC; (2) the merger of SPR into UPRR; and (3) the resulting common control of all of these entities by UPC.

The Commission established an expedited procedural schedule in this proceeding. Decision No. 6, served October 19, 1995. Subsequently, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, abolished the ICC and established as its successor agency the Surface Transportation Board ("Board"). See Decision No. 11, served February, 2, 1996, at note 1. The Board has adopted the original schedule set by the ICC, which calls for the United States Department of Transportation ("DOT" or "Department") to submit its preliminary views on the proposed transaction by March 29, 1995.

The role of the Department in this proceeding is ultimately grounded both in the statutory provisions that govern this transaction, 49 U.S.C. § 11345(b), and in the Department's statutory responsibilities as the Executive Department of the United States established by Congress "to provide general leadership in identifying and solving transportation problems," [1] to the end that the Secretary of Transportation "shall provide leadership in the development of transportation policies and programs." [2] Pursuant to these provisions and to prior orders in this proceeding, DOT hereby submits its preliminary comments on the proposed consolidation. [3]

Preliminary Comments

This consolidation would join two of the largest three remaining Western railroad systems and create the largest rail carrier in the country. An integral part of this proceeding is an agreement entered into between the Applicants and the recently-merged Burlington Northern Railroad Co. and the Atchison, Topeka and Santa Fe Railway Co. (collectively, "BN/SF"). That agreement grants to BN/SF trackage rights on, and the right to purchase track from, the Applicants; in the aggregate the BN/SF would gain access to approximately 4,000 miles of track. [4] The Applicants have requested that this agreement be made a condition of approval of the pending merger.

It is the Applicants' position that the proposed merger, conditioned in this

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1/ 49 U.S.C. § 101 (b)(5).

2/ 49 U.S.C. § 301 (2).

3/ DOT also has a creditor interest in SSW and SPSCL, but this is not a relevant factor in the Department's participation in this proceeding.

4/ The agreement also grants some trackage rights on BN/SF lines to the Applicants.

fashion, is in the public interest and should be approved. They contend that this transaction, together with the above agreement, will enhance intramodal and intermodal competition, because it will result in more efficient and lower cost operations and will extend the benefits of single-line service to more of the shipping public. Furthermore, they contend that the merger will produce significant savings through improved integration of facilities and operations, and better utilization of equipment. The Applicants have submitted statements from many shippers, receivers, and states and various public bodies in support of the transaction.

According to published reports, other parties, including utility and mining companies, petrochemical producers, other shippers, and rail carriers may oppose the transaction as proposed because of alleged anticompetitive effects. Several of these parties may seek trackage rights or other relief that they deem necessary to correct these perceived consequences. Finally, there are reports that some railroad labor organizations oppose the merger while others support it.

The Department is not taking a position on the merits of the application or the BN/SF agreement at this time. Neither does DOT take a position at this time as to whether additional relief would be required in the public interest as a condition to any approval by the Board. However, it is clear that the proposed merger presents fundamental issues concerning the rail industry in the United States. These include the transaction's impact on competition, and the effectiveness (in coverage and operational terms) of the access granted in the BN/SF agreement. Moreover, the Applicants contend that this consolidation is compelled in significant measure by the creation of the Burlington Northern Santa Fe rail system; at the same time statutory provisions call upon the Board both to "ensure the development of and continuation of a sound rail transportation system" and to take into account a merger's effect "on the adequacy of transportation to the public." 49 U.S.C. §§ 10101a, 11344(b)(1)(A), respectively. Pursuant to these factors, the Board must consider whatever implications approval of this merger may have on the nation's remaining Class I rail carriers. Finally, DOT is concerned about the magnitude of the impacts of the merger on the Applicants' employees and the prospect that employment changes resulting from the transaction may occur well into the future.

The Department accordingly considers it essential for the Board to develop a complete evidentiary record and to consider the full impacts of the proposal. We intend to participate in these proceedings in order to assist in the development of a complete record. DOT anticipates submitting its views on the merits of the transaction and the BN/SF agreement in its brief, which is due June 3, 1996.

The Department believes the following major issues warrant consideration:

1. Whether the merger will significantly reduce competition (including intramodal, intermodal, product and geographic), as reflected in the transportation rates and services likely to be available to the shipping public after the acquisition.

2. If the merger would significantly reduce competition, whether the anticompetitive effects can be eliminated or mitigated through conditions on the transaction.

3. If the merger would significantly reduce competition, whether this loss would be offset by transportation benefits to the shipping public.

4. If the merger would significantly reduce competition, whether the public benefits could still be secured by less anticompetitive measures.

5. Whether the merger would result in a loss of essential services now provided to communities.

6. The effect of the transaction on the merging carriers' employees.

7. Whether the merger would lead to a railroad industry structure that would adversely affect the adequacy of transportation available to the public and/or the development and maintenance of a sound rail transportation system in the United States.

The Department appreciates this opportunity to participate in a decision of pivotal significance to the nation's rail industry and the general public. We look forward to contributing to a sound final decision.

Respectfully submitted,

Nancy E. McFadden

NANCY E. McFADDEN
General Counsel

March 29, 1996

STB FD 32760 3-29-96 D 62298 1/2

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STATE OF NEVADA
EXECUTIVE CHAMBER
Capitol Complex
Carson City, Nevada 89710

BOB MILLER
Governor

TELEPHONE
(702) 687-5670
Fax: (702) 687-4486

RECEIVED
MAR 29 1996

March 28, 1996

The Honorable Vernon A. Williams
Secretary
The Surface Transportation Board
1201 Constitution Avenue, Room 2215
12th and Constitution Avenue, NW
Washington, D.C. 20423

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

Dear Secretary Williams:

I am writing to comment on the proposed Union Pacific/Southern Pacific railroad merger.

As you may know, a private consulting firm, Nolte and Associates, Inc., was commissioned by the City of Reno to assess how the merger will effect the city. I endorse this work in progress, and I have enclosed segments of their report that I believe best illustrate some of the more disturbing consequences of the merger. To date, the study has revealed economic, health and safety concerns that the State of Nevada finds unacceptable. Since the study is ongoing, we reserve the right to comment further should additional ramifications be revealed.

It is anticipated that the train traffic through Reno will grow from 14 to approximately 38 trains per day. The subsequent vehicular traffic delays at Reno's 15 at grade street crossings are estimated to increase by 339 percent. The heart of Reno will essentially be split in two. In addition, downtown pedestrians can expect a wait three times the current wait. Most notably, these delays will further endanger the health and safety of those who need immediate assistance from emergency medical teams, police, fire crews, etc. It should also be noted that the potential for pedestrian accidents, given the thousands of tourists and casino personnel who walk downtown every day, will also grow.

Neither should the possible economic benefit to the shipping industry or a Union Pacific/Southern Pacific company supersede the need to avoid these recognized repercussions.

(O)-3412

Summary

Enclosed is updated cost estimates, preliminary project schedule and estimates total cost for construction period (4% rate).

	Cost Update 3-31-96	Construction Period	Total Cost
Depressed Rail	$129,800,000	7½ years	$158,000,000
At Grade Rail	$146,500,000	7½ years	$179,000,000
I-80 Corridor	$418,600,000	10 years	$533,000,000

In addition, the Union Pacific Railroad has developed an interim short-term grade separation alternative with costs as follows:

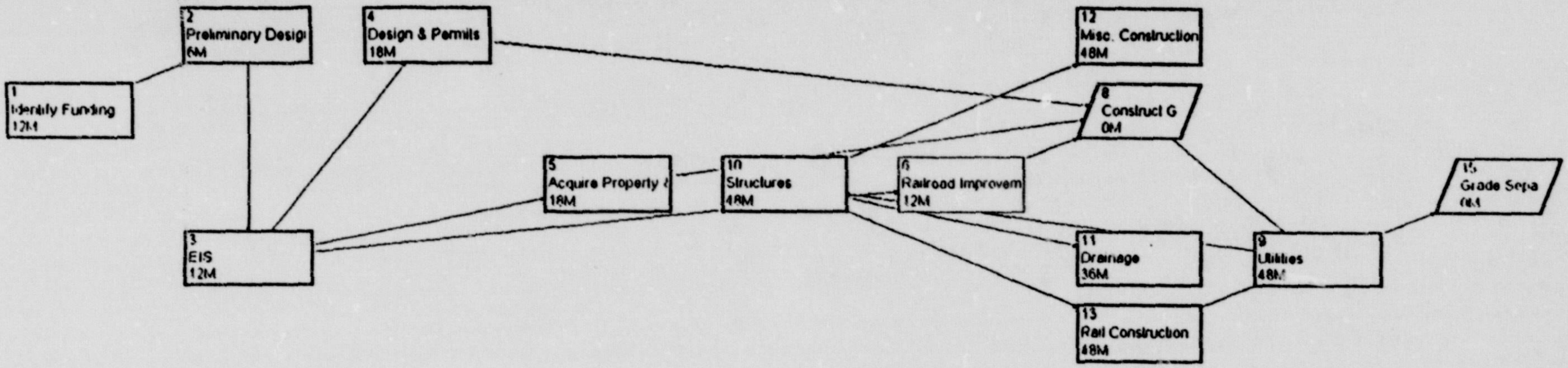
	Cost Update (1996 dollars)	Construction Period	Total Cost
Selected Grade Separations Phase I (Evans & Washington) Phase II (Keystone) Phase III (Arlington)	$59,500,000	------ Phase I - 2 years Phase II - 3½ years Phase III - 4½ years	$67,230,000

AT-GRADE RAILROAD, GRADE-SEPARATED STREET CROSSING (ALL STREETS)

4% Inflation Rate
1996 Estimate Base Year

Estimate Line Item	Amount	Start	Duration	1996	1997	1998	1999	2000	2001	2002	2003	2004	TOTAL
AT GRADE w/o STREET CROSSING STRUCTURES													
8' Security Fencing (Keystone Avenue to Lake Street)	400,000	10/00	4.0					29,246	121,665	126,532	131,593	102,643	511,680
[illegible] 20 Universal Crossovers, 2 @ $500000	1,000,000	2/99	1.0				1,031,125	97,488					1,128,614
Signal Work (control points, approaches, intermediate signals, crossing lie	1,150,000	2/99	1.0				1,185,794	112,111					1,297,906
Miscellaneous Track Construction, 12000 LF @ $150	1,800,000	2/99	1.0				1,856,026	175,479					2,031,504
Underpass Structure, Sutro Street	8,000,000	9/00	1.5					2,079,749	6,488,815	1,124,728			9,693,292
Environmental Mitigation, Downtown and Sutro Street	4,000,000	9/00	4.0					389,953	1,216,653	1,265,319	1,315,932	912,379	5,100,236
Construction Signing and Flagmen	71,000	2/99	5.5				13,311	15,102	15,706	16,334	16,987	10,306	87,746
Mobilization	66,000	9/00	0.5					51,474	26,766				78,240
Preliminary Engineering	200,000	9/97	0.5		138,667	72,107							210,773
Miscellaneous Work, Ten Percent	1,700,000	10/00	4.0					124,207	517,077	537,761	559,271	4[illegible]6,231	2,174,[illegible]
Engineering, Fifteen Percent	2,600,000	2/99	1.5				1,787,284	1,182,857					2,970,141
STREET UNDERPASS, Washington													
Preliminary Engineering	300,000	9/97	0.5		208,000	108,160							316,160
Engineering	500,000	2/99	1.5				343,708	227,472					571,181
Construction	3,578,000	9/00	4.0					348,813	1,088,296	1,131,828	1,177,101	816,123	4,562,161
STREET UNDERPASS, Ralston													
Preliminary Engineering	300,000	9/97	0.5		208,000	108,160							316,160
Engineering	500,000	2/99	1.5				343,708	227,472					571,181
Construction	3,578,000	9/00	4.0					348,813	1,088,296	1,131,828	1,177,101	816,123	4,562,161
STREET UNDERPASS, West													
Preliminary Engineering	300,000	9/97	0.5		208,000	108,160							316,160
Engineering	500,000	2/99	1.5				343,708	227,472					571,181
Construction	3,578,000	9/00	4.0					348,813	1,088,296	1,131,828	1,177,101	816,123	4,562,161
STREET UNDERPASS, Sierra													
Preliminary Engineering	300,000	9/97	0.5		208,000	108,160							316,160
Engineering	500,000	2/99	1.5				343,708	227,472					571,181
Construction	3,578,000	9/00	4.0					348,813	1,088,296	1,131,828	1,177,101	816,123	4,562,161
STREET UNDERPASS, Virginia													
Preliminary Engineering	300,000	9/97	0.5		208,000	108,160							316,160
Engineering	500,000	2/99	1.5				343,708	227,472					571,181
Construction	3,578,000	9/00	4.0					348,813	1,088,296	1,131,828	1,177,101	816,123	4,562,161
STREET UNDERPASS, Center													
Preliminary Engineering	300,000	9/97	0.5		208,000	108,160							316,160
Engineering	500,000	2/99	1.5				343,708	227,472					571,181
Construction	3,578,000	9/00	4.0					348,813	1,088,296	1,131,828	1,177,101	816,123	4,562,161
STREET UNDERPASS, Lake													
Preliminary Engineering	300,000	9/97	0.5		208,000	108,160							316,160
Engineering	500,000	2/99	1.5				343,708	227,472					571,181
Construction	3,578,000	9/00	4.0					348,813	1,088,296	1,131,828	1,177,101	816,123	4,562,161
STREET UNDERPASS, Arlington													
Preliminary Engineering	200,000	9/97	0.5		138,667	72,107							210,773
Engineering	500,000	2/99	1.5				343,708	227,472					571,181
Construction	3,158,000	9/00	4.0					307,868	960,547	998,969	1,038,928	720,324	4,026,636
Keystone Avenue Overcrossing, Four (4) Lanes, Lump Sum	9,300,000	9/99	5.0				697,416	2,175,937	2,262,974	2,353,493	2,447,633	1,697,026	11,634,479
Vine Street Overcrossing, Two (2) Lanes, Lump Sum	5,900,000	9/99	5.0				442,447	1,380,433	1,435,650	1,493,076	1,552,799	1,076,608	7,381,014
Holcomb Avenue - Evans Avenue Overcrossing, Four (4) Lanes, Lump Sur	13,600,000	9/99	5.0				1,019,877	3,182,015	3,[illegible]9,296	3,441,668	3,579,334	2,481,672	17,013,862
Four Pedestrian Overpasses	4,700,000	9/00	4.0					458,195	1,[illegible]9,567	1,486,750	1,546,220	1,072,046	5,992,777
General Damages	34,500,000	2/99	1.5				23,715,883	15,695,602					39,411,485
Fourth Street Right-of-Way	3,900,000	2/99	1.5				2,680,926	1,774,285					4,455,211
Contingencies	19,109,000	10/00	4.0					1,397,177	5,812,255	6,044,745	6,286,535	4,903,497	24,444,210
TOTALS	146,500,000				1,733,333	901,333	37,179,755	34,890,738	31,215,046	26,812,171	26,714,940	19,125,594	178,572,911

GRADE SEPARATIONS - RENO, NEVADA

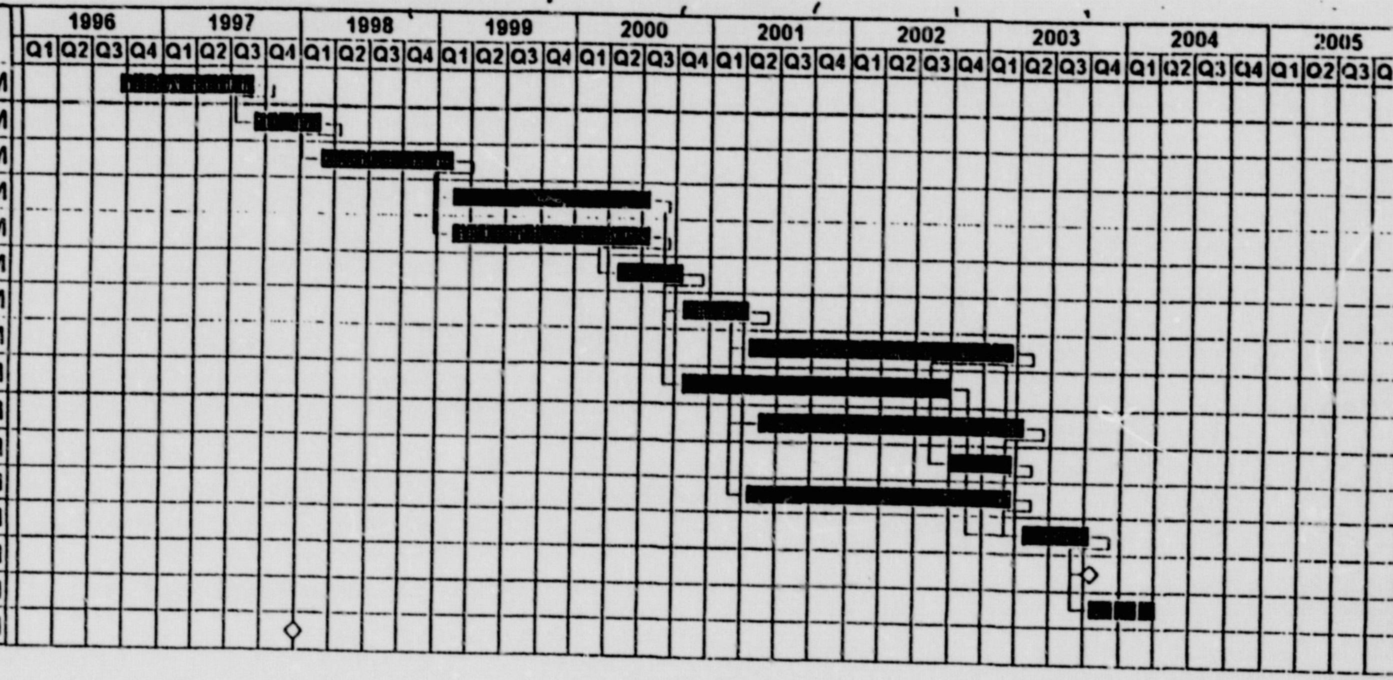


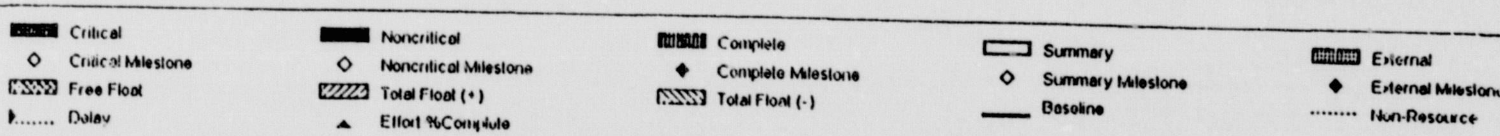
UP/SP MERGER - MARCH 13, 1996

7½ years

DEPRESSED TRAINWAY - RENO, NEVADA

Task Name	Dura
Identify Funding	12M
Preliminary Design	6M
EIS	12M
Design & Permits	18M
Acquire Property & Easement	18M
Demolition	6M
Construct Shoofly	6M
Construct Depressed Section	24M
Utilities	24M
Structures	24M
Drainage	6M
Misc. Construction	24M
Rail Construction	6M
Begin New Line Operation	0M
Remove Shoofly	6M
Begin Double Stack Opns.	0M





UP/SP MERGER - MARCH 13, 1996

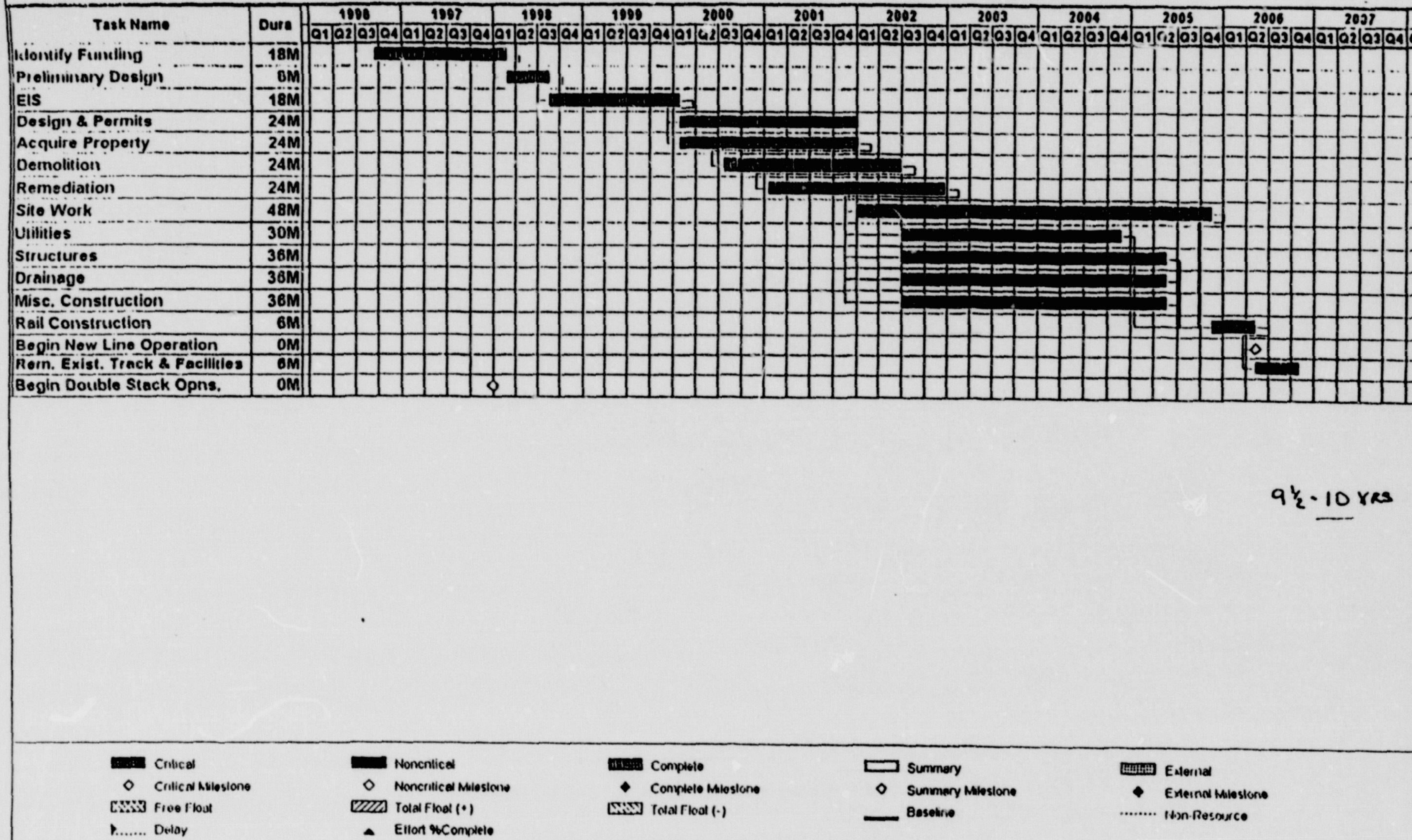
GRADE SEPARATIONS - RENO, NEVADA

Task#	WBS	Task Name	Duration	Elapsed Dura	Predecessors	Calendar	Sched Start	Sched Fin
1		Identify Funding	12M	12M			09/13/96	09/01/97
2		Preliminary Design	6M	6M	1 FS		09/02/97	02/24/98
3		EIS	12M	12M	2 FS		02/25/98	02/11/99
4		Design & Permits	18M	18M	3 FS		02/12/99	07/25/00
5		Acquire Property & E	18M	18M	3 FS		02/12/99	07/25/00
6		Railroad Improvemer	12M	12M	3 FS		02/12/99	01/31/00
8		Construct Grade Sep	0M	0M	4 FS,5 FS,6 FS		07/25/00	07/25/00
9		Utilities	48M	48M	8 FS		07/26/00	06/04/04
10		Structures	48M	48M	9 SS		08/24/00	07/05/04
11		Drainage	36M	36M	10 SS		04/17/01	03/09/04
12		Misc. Construction	48M	48M	10 SS		09/22/00	08/03/04
13		Rail Construction	48M	48M	10 SS		08/24/00	07/05/04
15		Grade Separations C	0M	0M	13 FS		07/05/04	07/05/04
16		Begin Double Stack (	0M	0M			01/01/98	01/01/98

RIALROAD RELOCATION TO THE I-80 CORRIDOR

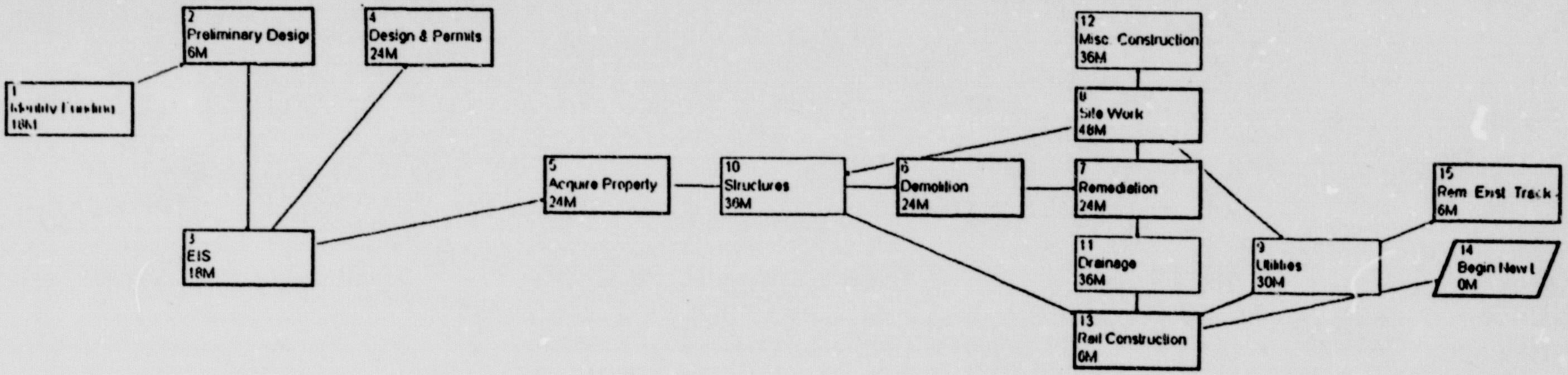
ITEM	DESCRIPTION			quantity	cost	unit	TOTAL 1996 $
Demolition:	Buildings and Site						$ 1,400,000
Earth work:	Clearing and Grubbing			60	$ 2,925	acre	$ 200,000
	w/dozer & brush rake, medium brush to 4" diameter				$2,925		
	Excavation			2,660,000	$ 5.48	c.y.	$ 14,600,000
	backhoe, hydraulic, crawler mtd., 3 c.y. capacity				$2.70		
	ripper, medium hard, 300 h.p.				$2.78		
	Material Haul from Site and Dispose			1,200,000	$ 8.25	c.y.	$ 9,900,000
	16.5 c.y. dump trailer, 10 mile round trip				$8.25		
	Material Haul to Site, Place, and Compact			1,460,000	$ 5.15	c.y.	$ 7,500,000
	borrow, loaded				$4.75		
	compaction, sheepsfoot, 6" lifts, 2 passes				$0.40		
Concrete Work:	Open Railway Culvert and Enclosed Railway Tunnel						$ 31,500,000
708-3200	Tunnel Ventilation						$ 1,000,000
	Intermediate Access Ramps						$ 500,000
Street Crossings:	in place, includes concrete, reinforcing, and excavation						$ 4,600,000
		lineal feet	excavate/ft	lineal feet	trench add/ft		
	Vine	60	$ 6,000	60	$ 1,000		
	Washington	80	6,000	80	1,000		
	Ralston	80	6,000	80	1,000		
	Arlington	30	6,000	30	1,000		
	Sierra	80	6,000	80	1,000		
	Virginia	100	6,000		1,000		
	Center	80	6,000		1,000		
	Evans	80	6,000		1,000		
	WPRR	40	6,000		1,000		
	Valley	80	6,000		1,000		
	Sutro						$ 8,000,000
	East 4th						$ 8,000,000
Rail:							$ 55,500,000
	rail and utilities				$ 11,483,000		
	Keystone				$ 2,822,348		
	W.P. crossing				$ 3,365,243		
	Wells Avenue				$ 11,245,907		
	Highway 395and 4th Street				$ 26,571,645		
Right-of-Way:							$ 100,000,000
Environmental:							$ 15,000,000
Drainage and Pumping System							$ 6,000,000
Utilities							$ 4,000,000
Amtrak Station and Platform							$ 2,000,000
Miscellaneous Construction and Mobilization							$ 15,000,000
Preliminary Engineering						5%	$ 14,200,000
SUB-TOTAL							**$ 298,900,000**
Miscellaneous Work						25%	74,800,000
Engineering and Contingencies						15%	44,900,000
TOTAL PROJECT COST							**$ 418,600,000**

RAILROAD RELOCATION TO THE I-80 CORRIDOR - RENO, NEVADA



UP/SP MERGER - MARCH 13, 1996

RAILROAD RELOCATION TO THE I-80 CORRIDOR - RENO, NEVADA



UP/SP MERGER - MARCH 13, 1996

RAILROAD RELOCATION TO THE I-80 CORRIDOR - RENO, NEVADA

Task#	WBS	Task Name	Duration	Elapsed Dura	Predecessors	Calendar	Sched Start	Sched Fin
1		Identify Funding	18M	18M			09/13/96	02/24/98
2		Preliminary Design	6M	6M	1 FS		02/25/98	08/19/98
3		EIS	18M	18M	2 FS		08/20/98	01/31/00
4		Design & Permits	24M	24M	3 FS		02/01/00	01/04/02
5		Acquire Property	24M	24M	3 FS		0[illegible]1/00	01/04/02
6		Demolition	24M	24M	5 FS		07/26/00	07/01/02
7		Remediation	24M	24M	6 FS		01/18/01	12/24/02
8		Site Work	48M	48M	7 FS		01/07/02	11/16/05
9		Utilities	30M	30M	8 SS		07/02/02	11/29/04
10		Structures	36M	36M	8 SS		07/02/02	05/24/05
11		Drainage	36M	36M	8 SS		07/02/02	05/24/05
12		Misc. Construction	36M	36M	8 SS		07/02/02	05/24/05
13		Rail Construction	6M	6M	FS,10 FS,11 FS		11/17/05	05/11/06
14		Begin New Line Oper	0M	0M	13 FS		05/11/06	05/11/06
15		Rem. Exist. Track & I	6M	6M	13 FS		05/12/06	11/03/06
16		Begin Double Stack (	0M	0M			01/01/98	01/01/98

UP/SP MERGER - MARCH 13, 1996

RAILROAD RELOCATION TO THE I-80 CORRIDOR

4% Inflation Rate
1998 Estimate Base Year

Estimate Line Item		Amount	Start	Duration	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	TOTAL
Demolition	Buildings and Site	1,400,000	8/00	2.0					341,200	851,657	516,672					1,709,538
Earthwork	Clearing and Grubbing	200,000	1/02	0.5							253,064					253,064
	Clearing and Grubbing	14,600,000	1/02	0.5							18,473,658					18,473,658
	Material Haul from Site and Dispose	9,800,000	1/02	4.0							3,131,665	3,256,931	3,387,208	3,522,697		13,298,501
	Material Haul to Site, Place, and Compact	7,500,000	1/02	4.0							2,372,473	2,467,372	2,566,067	2,668,710		10,074,622
Concrete Work	Open Railway Culvert and Enclosed Railway Tunnel	31,500,000	7/02	3.0							8,642,826	13,017,204	14,368,075	7,472,307		47,907,571
	Tunnel Ventilation	1,000,000	7/02	3.0							210,007	438,644	458,100	237,210		1,012,[illegible]
	Intermediate Access Ramps	500,000	7/02	3.0							105,443	219,322	228,005	118,[illegible]		671,[illegible]
Street Crossings	in place, includes concrete, reinforcing, and excavation	4,600,000	7/02	3.0							970,078	2,017,762	2,098,473	1,091,206		6,177,518
	Sutro	8,000,000	7/02	3.0							1,687,092	3,509,151	3,649,517	1,897,749		10,743,510
	East 4th	8,000,000	7/02	3.0							1,687,092	3,509,151	3,649,517	1,897,749		10,743,510
Rail	rail (subballast, ballast, signal, pipeline, fiber-optic)	11,485,454	11/05	0.5										5,449,127	11,334,185	16,783,312
	Keystone	2,822,951	7/02	3.0							585,322	1,238,270	1,287,801	669,657		3,781,050
	W.P. crossing	3,365,982	7/02	3.0							709,038	1,476,450	1,535,517	798,469		4,550,201
	Wells Avenue	11,248,310	7/02	3.0							2,372,117	4,934,003	5,131,[illegible]	2,668,308		15,105,791
	Highway 395 and 4th Street	28,577,323	7/02	3.0							6,604,798	11,857,881	12,124,301	6,304,636		35,691,717
Right-of-Way		100,000,000	2/00	2.0					53,618,517	80,832,645	5,272,163					119,723,325
Environmental		15,000,000	1/01	2.0						9,124,897	9,489,893					18,614,789
Drainage and Pumping System		8,000,000	7/02	3.0							1,265,310	2,631,864	2,737,138	1,423,312		8,057,632
Utilities		4,000,000	7/02	2.5							1,012,255	2,105,401	2,189,710			5,307,457
Amtrak Station and Platform		2,000,000	7/04	1.0									1,368,689	1,422,312		2,791,001
Miscellaneous Construction and Mobilization		15,000,000	6/00	6.0					1,700,044	3,041,832	3,163,298	3,289,828	3,421,423	3,868,280	1,641,821	19,722,428
Preliminary Engineering		14,200,000	3/98	0.5			15,358,720									15,358,720
Miscellaneous Work and Contingencies		74,800,000	6/00	6.0					8,507,471	16,167,608	16,774,310	16,405,283	17,061,484	17,743,854	7,689,047	98,349,168
Engineering		44,800,000	2/00	2.0					24,074,714	27,313,858	2,307,201					53,755,773
TOTAL PROJECT COST		418,800,000					15,358,720		86,247,856	118,357,295	83,877,560	72,074,798	77,262,358	58,[illegible]45,380	20,565,15[illegible]	533,364,220

DRAFT

PROPOSED UP/SP MERGER
RENO, NEVADA

March 14, 1996

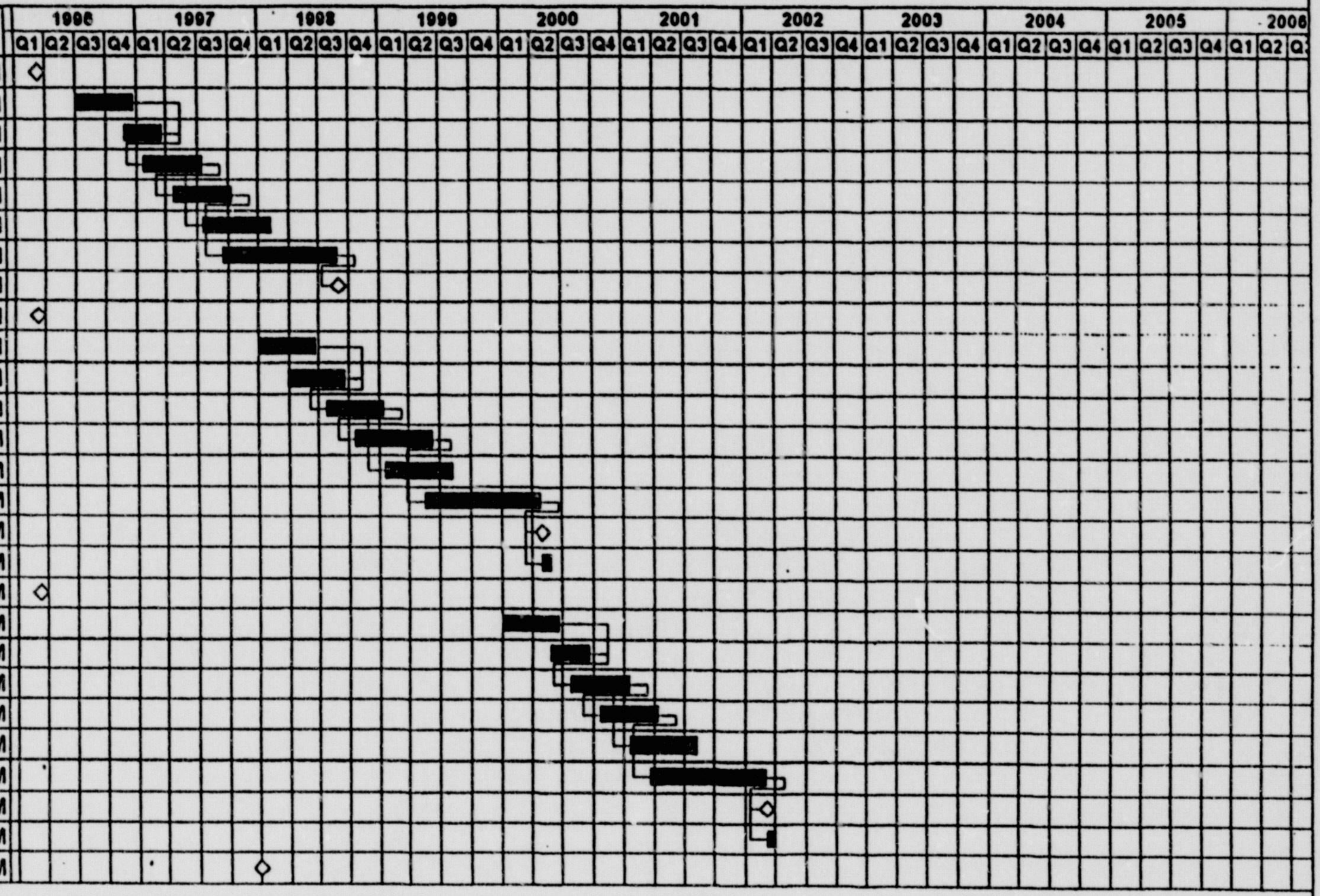
Summary of Proposed Alternatives

Description	Est. Cost ('96 Dollars) ($000)	Projected Total Cost * ($000)	Estimated Completion Date
I-80 Corridor	420,000	535,000	May, 2006
Depressed Corridor	130,000	160,000	Oct., 2003
Selected Grade Separations			
Phase I, Evans & Washington	26,105	27,615	Sep., 1998
Phase II, Keystone	22,475	25,785	May, 2000
Phase III, Arlington	10,920	13,830	Mar., 2002
Sub-Total	59,500	67,230	

* The costs noted below have been increased to allow for inflation which must be expected to occur between 1996 and the completion of construction.

GRADE SEPARATIONS - RENO, NEVADA

Task Name	Dura
EVANS & WASHINGTON	0M
Identify Funding	6M
Preliminary Design	4M
EA	6M
Design & Permits	6M
Acquire Property & Easement	7M
Construct Grade Separations	12M
Grade Separations Complete	0M
KEYSTONE	0M
Identify Funding	6M
Preliminary Design	6M
EA	6M
Design & Permits	8M
Acquire Property & Easement	7M
Construct Grade Separations	12M
Grade Separations Complete	0M
Close Vine St. Crossing	1M
ARLINGTON	0M
Identify Funding	6M
Preliminary Design	4M
EA	6M
Design & Permits	6M
Acquire Property & Easement	7M
Construct Grade Separations	12M
Grade Separations Complete	0M
Close Ralston St. Crossing	1M
Begin Double Stack Opns.	0M



Critical
Critical Milestone
Free Float
Delay
Noncritical
Noncritical Milestone
Total Float (+)
Effort %Complete
Complete
Complete Milestone
Total Float (-)
Summary
Summary Milestone
Baseline
External
External Milestone
Non-Resource

PROPOSED UP/SP MERGER - MARCH 14, 1996 (DRAFT)

RENO TRANSPORTATION CORRIDOR ALTERNATIVES STUDY

MARCH, 1996

Preliminary Summary

TABLE OF CONTENTS

1.0 INTRODUCTION

In the summer of 1995 the Union Pacific Corporation (UP) announced that it had reached an agreement with and would acquire the Southern Pacific Corporation (SP). On November 30, 1995, they filed an application with the Interstate Commerce Commission (ICC) for approval of this merger. In December, 1995, the City of Reno (City) retained the services of Nolte and Associates (Nolte) along with Kleinfelder Associates to perform this study on the UP/SP merger and determine the effects of this proposed merger on the community.

2.0 PROJECT APPROACH

Our team started this project by meeting with the City, railroad personnel, local engineering professionals, legal experts, and in-house railroad specialists. We gathered information on past, present, and future surface transportation issues related to the railroad through Reno. Our team examined historical data, reviewed the UP/SP merger application, and developed estimates on the rail traffic changes. We submitted a draft Fact Finding Report to the City and interested citizens for their review and included comments and feedback in the report.

The objective of this study was to determine the pertinent facts surrounding the effects of this merger on the City and assist the City in establishing their position on the merger. The study team was also to be available to provide a verified statement if needed. This report summarizes, in draft form, these findings and estimates.

3.0 AREA PROFILE

3.1 Northern Nevada Region

The Northern Nevada Region includes three cities and a number of smaller communities dependent upon the larger metropolitan area for goods and services. The city of Reno and the adjacent community of Sparks are located in Washoe County and serve as an anchor for the regional area which includes portions of northeastern California and all of northern Nevada. The Reno-Sparks communities are nestled in a valley at the 4,300 foot elevation framed by the Sierra Nevada Mountains on the west (11,000 foot peaks within 15 miles) and the Virginia Mountain range on the east. The valley, traversed in a west to east by the Truckee River, is often referred to as the Truckee Meadows. The valley floor and surrounding mountains create a bowl effect and a fragile air quality basin.

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Warehousing - Located in Reno and opened in 1986, Foreign Trade Zone #126 allows foreign goods to enter the U.S. without formal customs entry and payment of customs duties and excise taxes. The opportunities provided by the FTZ has led to rapid expansion of industrial space by 5.6% in 1994 reaching a total of 35 million square feet.

Air Quality - The central core area of the Truckee Meadows, known as hydrographic basin #87, has violated national air quality standards for carbon monoxide and fine particulate matter less than 10 microns in diameter (PM10). The entire Washoe County has violated standards for ozone. Although air quality has been better in recent years, the U.S. Environmental Protection Agency has designated all or a part of the County as a non-attainment area for these three pollutants [RTC 1995]. The most recent violations for ozone, carbon monoxide and PM20, respectively, were in February 1990, December 1991 and January 1993, according to the Washoe County District Health Department (WCDHD), which has asked the U.S. EPA to lift the non-attainment designated for ozone. Both carbon monoxide and PM10 concentrations have been somwhat higher in the central business district than in other areas of the County since the late 1980's.

From 1989 to 1994, good air quality days increased and moderate and unhealthy days decreased. The was due, in part, to good weather buy also tot he following controls: use of oxygenated fuels in winter months, vapor recovery programs at gas stations, restrictions on residential wood burning, federal new car emission standards and motor vehicle inspection and maintenance.

Government and Taxes - The Washoe County area is governed by a County Commission, the Reno City Council and Sparks City Council. Other forms of intergovernmental coordination are present which allow the efficient provision of public service. The tax base in Washoe County includes a minimal property tax and sales and use tax. Special tax incentives are available to stimulate business investment and growth. The State of Nevada does not have a personal income tax.

3.2 The City of Reno

The City of Reno serves as a regional center for all of northern Nevada and north eastern California. As the economic center of Northern Nevada, the City provides a broad range of goods and services to people from an extremely large geographic area.

Economy - Gaming and tourism is the anchor of the economy and in the year ended June 30, 1995, gross gaming revenues of $692,572,000 were reported compared to $605,879,000 in 1990. A unique feature of the tourism industry is the ability to attract families to the area for winter skiing, summer hiking and touring of nearby Lake Tahoe and a myriad of other outdoor activities. Gaming and tourism are growing in the Washoe County area and represent the economic engine which sustains the economy of the community and the region. **The City has recently added a major entertainment venue, the National Bowling Stadium, the Silver Legacy, a new destination resort and a new**

Harrah's Hampton Inn Hotel. These recent additions represent private and public investment of approximately $450 million.

Conventions - National and regional corporate and industry trade groups continue to select Reno as primary convention location. The area boasts a 370,000 square foot convention center with support facilities including the Pioneer Center for the Performing Arts, the Reno Livestock Events Center hosting indoor rodeos, track and field events and other special venue activities, Lawlor Events Center and a new National Bowling Stadium which draw visitors from throughout the region. In additional, local hotel properties include 415,000 square feet of on-property convention space.

Hotel Accommodations - As home for major national conventions, the City of Reno has over 9,000 licensed deluxe hotel rooms located in the downtown Reno area. In addition, other hotels and facilities outside of the downtown boost the total to nearly 13,000. Occupancy in the downtown facilities has averaged 83% in the last three years. Approximately 4,074,000 visitors utilize Washoe County commercial accomodations annually.

University of Nevada - The land grant college is a centerpiece of the community and has an enrollment of over 12,000 students. The University includes a wide variety of programs including Engineering, Business Administration, Mining, Agriculture and School of Medicine. The national Judicial College is located on the University campus and hosts judges from all over the world. The campus is located approximately 2,700 feet from the SP railroad main line.

Medical Services - Serving as the regional medical service provider, three major hospitals are located in the Reno-Sparks area. The ultra-modern facilities provide emergency trauma care, a wide range of medical treatment and specialized care to citizens form throughout Nevada and Northeastern California.

Industrial Diversification - The Northern Nevada area has created a diversified economy through the aggressive development of a variety of industries. Porche North America, International Game Technology, Ricoh Corporation and Reno Air are just a few of the national corporations based in Reno. Gannett Company, Blue Cross/Blue Shield and State Farm Insurance Companies have regional headquarters located in the Truckee Meadows and a number of major distributors utilize the transportation facilities in the Reno area to quickly and efficiently move products to retailers.

Culture - The City of Reno is home to the Reno Philharmonic Orchestra, two ballet companies, chamber orchestras, and a wide range of artisans. The community takes great pride in the multi-talented individuals that have chosen to make their home in the Truckee Meadows. In addition to the medical and economic issues described above, the Truckee Meadows serves as the cultural center of the region.

Special Events - In keeping with the nature of the tourism based economy, the area hosts a number of special events including the National Championship Air Races, Great Reno Balloon Races and a spectacular nostalgia event, Hot August Nights which attracts approximately 30,000 spectators to downtown Reno.

Reno is no longer a sleepy little town located beside the Southern Pacific tracks and Interstate 80. The community has grown and blossomed into a small but beautiful metropolitan area with a unique vitality providing a high standard of living and quality of life not available in other communities of similar size.

4.0 RENO TRANSPORTATION PROFILE

4.01 Railroad Operations in General

Railroad operations through northern Nevada utilize two main line routes. The first is the UP's line from Sacramento to Winnemucca via the Feather River canyon. The second is the SP route from Roseville through Reno and Winnemucca via the Donner pass. The SP route is at least 136 miles[4] shorter than the UP route between Oakland and Salt Lake City, saving an estimated two crews per train between those points. The UP line consists of single track with maximum 1% grade, while the SP line is double track with maximum 2.6% grade. The gradient of the SP track through downtown Reno ranges from 0.28% to 0.84% downward to the east.[5] The UP route is cleared for maximum-height double-stacked containers while the SP route is not.[6] Appendix A contains route maps and track charts illustrating these lines.

Union Pacific accesses Reno via its Reno Branch. This branch connects to the UP main line at Reno Junction about 28 miles north of UP's yard at their station of North Reno and 33 miles north of downtown Reno. The North Reno yard consists of 4 tracks, 2 used for intermodal loading and 2 for manifest storage and switching.[7] North Reno also contains the local UP intermodal facility (trailers and containers on flat cars). Appendix A also contains a UP diagram illustrating these tracks.

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[4] ICC Finance Docket No. 32760, Railroad Merger Application, Volume 3, Attachment 13-6, Pages 378, 384, and 385.

[5] SP Main Line Track Profile Plan, Section V-1/P-5.

[6] The merger application indicates the costs of increasing overhead clearances on SP's route to be $18 million. A similar program was completed on UP's route around 1990.

[7] UP-SP Common Point Team #3 report on Area #6.

4.02 Current SP Reno Operations

Reno is located on the Roseville Subdivision of the SP at Mile Post (MP) 242.8. Two main tracks pass through downtown Reno, identified as No. 1 for westward trains and No. 2 for eastward. Established train operating rules mandate maximum train speeds of 20 mph for both passenger and freight as they pass between MP 243.2 and MP 242.0. The maximum authorized westward speed through downtown after locomotives have passed through these limits is 45 mph for passenger trains and 40 mph for freight trains. The eastward maximum authorized speed for passenger and freight trains is 25 mph due to the location of the Sparks yard.

Presently, Amtrak operates 4 trains east and 4 trains west through Reno each week. These trains are generally about 1,200 to 1,500 feet long including locomotives. Reno is a regular station stop for intercity passenger trains.

Approximately 13 freight trains[8] presently operate through Reno. SP train density records from 1994 validate this number. These trains consist of expedited automobile, intermodal, manifest (box car), unit grain, and coal trains operating 24 hours per day, seven days per week. Train lengths vary depending on train type, tonnage, and commodity. Auto and intermodal trains are generally 5,000 to 6,000 feet long and are operated at faster speeds than the heavier, longer manifest and unit trains. The manifest trains can range from 5,000 to 8,000 feet long and are much heavier. Unit grain and coal trains usually operate with 65 to 75 cars and approximately 7,500 to 10,000 tons at lengths from 5,000 to over 6,000 feet.

An actual 24-hour lineup of trains through Reno on January 19, 1996, showed 15 trains. The same lineup on January 22, 1996, showed a total of 14 trains. Neither of these lineups showed the daily switch engine that travels from Sparks to West Reno and back approximately once each day. These trains included all categories of passenger and freight operating over Donner Summit.

Southern Pacific conducts its yard and intermodal operations at its terminal in Sparks. SP's Sparks yard consists of 16 tracks with a holding capacity of 800 cars plus a small intermodal facility (trailers and containers on flat cars). The Sparks terminal is served by 4 yard engines spread around the clock. Up to two local trains operate east out of Sparks daily. The SP intermodal facility utilizes 3 tracks, two of which are for loading or unloading, and uses a single PC-90 sidelift loader.[9]

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[8] This number was generated from an analysis of SP train density records showing train traffic through Reno on two representative days in 1994.
[9] UP-SP Common Point Team #3 report on Area #6.

4.03 Current UP Reno Operations

Union Pacific runs one local train from North Reno MP 28.3 to Reno Junction MP 0 six days per week. They also operate a local switcher from North Reno to Martin MP 21.3 as needed to service industries in the area. The UP intermodal facility can hold up to 41 intermodal flat cars on two tracks and uses one PC-90 sidelift loader. North Reno also supports an automobile unloading operation.[10]

Union Pacific and SP have an interchange track near 4th and Record Streets connecting the UP Reno Branch with the SP main line for exchanging rail cars. We received information from local SP operating representatives that this interchange is currently inactive. An inspection of this interchange track confirms this information.

4.04 Railroad Property Issues

This issue divides into two sub issues. The first concerns ownership of the railroad right-of-way and the second the ownership of the right to cross the railroad over a City street.

The first issue concerns both the size and type of title of the existing right-of-way through Reno. Pending further study, we believe that from Lake Street east, there is a Land Grant Station Reservation 400 feet in width. From Lake Street west, the right-of-way width is probably the two-hundred foot strip provided by the Congressional Grant. Southern Pacific has disposed of some of this property. However, since the ownership of much of the right-of-way results from the Congressional Land Grant, SP and UP may still have some control over the property occupied by others, even after the merger.

Two methods of disposal of land grant property are most common. The first is an Act of Congress granting title to a purchase. The second is a long term lease giving the railroad the right to cancel the lease if the property is needed for railroad operating purposes. Southern Pacific has also used other means of conveying title. A thorough analysis of the present status of title to the property composing the original land grant is needed, as we have indication that SP has conveyed air rights to other property owners at several points in this rail corridor.

The second issue, that is who owns the property needed to cross the City streets over the railroad, depends on whether the street was in use by the public before the railroad was built. If the railroad came first, they own the property under the street and will usually grant the City easement to cross the tracks. If the street existed before the railroad was built, the City owns the property under railroad and will generally grant the railroad a franchise to cross the street.

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[10] Ibid.

Whether the railroad or the City owns the property has a direct bearing on how the costs of improving grade crossings are allocated according to Nevada Public Service Commission (PSC) and federal rules. The agreement contained in a deed of easement or the franchise usually controls. We believe that Lake Street and possibly Virginia Street were public streets before the railroad was built. The rest of the streets in Reno were most likely built after the railroad.

4.05 Other Railroad Corridor Facilities

The SP right-of-way through downtown Reno also contains two other significant features, a 6 inch petroleum product pipeline and an MCI fiberoptic cable. The pipeline provides finished petroleum products to a large tank farm terminal in Sparks. This terminal is the easternmost outlet for pipeline-delivered petroleum products in northern Nevada. The fiberoptic cable is the principle "information superhighway" between Sacramento and Salt Lake City. Both facilities are buried at various depth and locations adjacent to the SP tracks.

4.06 Railroad Crossings in Downtown Reno

Reno streets cross the SP main line at-grade 15 times. These include the following:

1. Woodland Ave.
2. Del Curto Drive
3. Keystone St.
4. Vine St.
5. Washington St.
6. Ralston St.
7. North Arlington St.
8. West St.
9. Sierra St.
10. Virginia St.
11. Center St.
12. Lake St.
13. Morrill Ave.
14. Sutro St.
15. Sage St.

The Nevada (PSC) has issued an Order to construct a new at-grade crossing at Evans Avenue. This new crossing has not yet been constructed, and the City has no immediate plans to do so.

Galletti Way is not included in this list since it is in the City of Sparks. Other crossings of SP tracks not on the main line include Fourth St., Record St., and Fifth St., all of which are on inactive SP rail spurs. Appendix B contains a SP list of these crossings along with maps showing their location. All public crossings in Reno have active warning devices (flashers, gates, or both).

4.07 Vehicular Traffic Levels

Traffic models for downtown Reno forecast significant growth in vehicular and pedestrian traffic on nearly every street. For instance, from 1990 to 2015 traffic volumes across the tracks on Virginia Street could increase by 7,400 vehicles per day, Center St. by 7,400 vehicles per day, and Sierra St. by 9,600 vehicles per day.[11] With train traffic doubling, conflicts between trains and vehicles or pedestrians could represent the greatest potential constraint to the smooth flow of traffic in the downtown area.[12] Appendix C contains excerpts from Barton-Aschman's Reno Downtown Traffic/Parking Study report showing these traffic estimates.

4.08 Pedestrian Traffic Levels

The City conducted a pedestrian count "under the arch" on Virginia Street on Tuesday, February 27, 1996. This data represented a low to moderate level of room occupancy and general activity in the downtown area. Peak hour pedestrian counts were 1,623 across the tracks at Virginia St. (1:00 to 2:00 PM). Pedestrian traffic levels fall off at the crossings east and west of Virginia Street.

This count does not represent pedestrian traffic levels that would correspond to a major downtown special event or even a busy weekend. Additional data would be required to quantify peak pedestrian levels during these times.

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[11] Reno Downtown Traffic/Parking Study, Dec. 1995, Barton-Aschman Assoc. & Strategic Project Management.
[12] Ibid.

4.09 Accident History

Police files indicate that 3 people have died in railroad crossing accident in Reno from 1970 through 1995. During that same period 18 people have been injured in vehicles, and 41 collisions have resulted in some level of damage. Three pedestrians have been killed and 2 more injured. These figures do not include trespasser incidents between crossings. Appendix E contains a summary of these accident statistics.

As mentioned in a previous section, all at-grade public crossings in Reno are equipped with active warning devices including bells, flashers, and gates. The crossing detail table in Appendix B provides a summary of the present warning systems.

4.10 Emergency Access

The Regional Emergency Medical Services Authority (REMSA) indicates that they received 28,956 calls requesting service in 1995. Of these calls, 835 patients were transported code 3 to hospitals with life threatening illness or injuries. A significant number of these code 3 transports traveled over railroad crossings. Longer queues and more frequent blockages will cause problems for some patients. Also, two crossings at the west end of town, Woodland Ave. and Del Curto Drive, are the only ingress or egress for the surrounding area. Emergency access is cut off during train blockages in these neighborhoods.

4.11 Public Transit

The Regional Transportation Commission (RTC) advises that 704 bus trips cross the railroad tracks in Reno each day. These buses are on routes 1, 6, 9, 10, 13, 14, 16, 18, 19, and 24. These buses carry 8,713 rider across the tracks each day. These crossings are taking place primarily at Sierra, Center, and Lake Streets. Current rail traffic delays buses for 2 to 3 minutes according to RTC. However, Amtrak trains have been known to delay buses for as much as 20 to 30 minutes.[13]

Another transit issue is trains blocking pedestrian access between the CitiCenter transit center and points south of the tracks. Passenger transferring from one bus to another will often miss their connection due to crossing blockages. As some routes currently operate at a one-hour frequency transit riders can be delayed up to an hour by even a short train. Longer or more frequent trains will exacerbate these problems.

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[13] Statistic provided by RTC in Jan. 29, 1996 letter to Reno Redevelopment Agency, copy on file.

4.12 Air Quality

The merger application indicates an increase in air pollutants proportional to the anticitpated increase in train traffic of 9 trains per day.[14] These pollutants include 8.23 tons per year of CO (Carbon Monoxide) and 1.34 tons per year of PM (Particulate Matter). Both of these pollutants are already in a non-attainment status in Air Quality Control Region (AQCR) 148 that includes Reno and Sparks. It appears that these numbers do not include any adverse air quality impact from idling vehicles stopped at crossings which could be significant.

4.13 Water Quality

The Truckee River provides drinking water for the entire Truckee Meadows population as well as communities downstream. Historically this stream has been the only reliable source of water for a region in which water is seasonally in short supply. While water quality has been good, this river is at risk from highway or railroad spills or releases between Reno and Truckee. We could find no record of a recent railroad hazardous material spill or release into the Truckee River above Reno, though we did hear of numerous spills in the Sparks rail yard.[15]

Groundwater issues have a significant bearing on any major infrastructure changes made to remediate the effects of this merger in the downtown area. Groundwater was one of the major concerns voiced by SP engineers during the planning of the proposed depressed trainway in 1980.

Groundwater depth is controlled to a large extent by surface flows in the Truckee River. Water is shallowest adjacent to the river with depths ranging from 10 to 15 feet. Water depths increase to the north in proportion to the distance from the river. Water in the area of the SP tracks is on the order of 20 to 30 feet deep. This depth typically decreases during the spring and early summer when high snow melt flows in the river recharge basin. In the fall and winter, groundwater levels decline as the underground flows reverse and the river becomes the gaining stream. Groundwater depths may vary 5 to 10 feet depending on the season.

Groundwater quality has been impacted by a variety of historical activities over the years. Kleinfelder performed a preliminary assessment of hydrocarbons in the groundwater for the City in the early 1980's. This study revealed the presence of floating products including heating oil. This material was being intercepted by various basement drainage systems and discharged to the Truckee River. Dissolved constituents of gasoline and diesel fuels (BTEX) have also been encountered in the uppermost unconfined aquifer. Several small scale remedial projects are now underway.

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[14] ICC Finance Docket No. 32760, Railroad Merger Application, Volume 6, Part 2, Table 2-22, Page 85.
[15] Based on conversations with a Sparks Fire Department representative.

The State commissioned a study which revealed widespread presence of chlorinated solvents at relatively low concentrations. These pollutants have also been discovered in at least one municipal well (Morrill Street site). The Washoe County Regional Water Management Agency is pursuing the creation of a remediation district encompassing most of the downtown to effect a clean-up.

5.0 IMPACTS OF MERGER

5.01 Proposed Merged UP/SP Operations

The merged railroads' operating plan (Plan) included in the merger application shows one passenger and 20 freight trains per day through Reno for an increase of 7 trains per day from current levels.[16] The Plan calls for an increase in train tonnage through Reno from the present level of 20 million to 33 million gross tons per year, an increase of 63%. However, the Plan's estimates are not consistent and don't seem to match historic data or projected future traffic levels. For instance, the numbers in the Plan do not include Burlington Northern Santa Fe (BNSF) trains, Reno Fun trains, Ski and special excursion trains, or local operations. The environmental report section of the merger application, however, indicates an increase in train traffic of 9 trains per day,[17] which is different than Volume 3. Also, the Plan only looks at what traffic levels will be the day after the merger changes and construction projects take place with no provision for growth.

The Plan showing 21 trains per day does not include the expected 6 BNSF trains, 1 Reno fun or ski train, or 2 local switching movements. In addition, it shows 10 trains diverted away from the UP's Feather River route while only 7 are added to the Donner route.[18] Based on conversations with SP operating officers we believe that some trains might be diverted from the Feather River or Donner Pass routes to other rail routes including Roseville to Oregon and Roseville to southern California. We cannot, however, account for all trains removed from the Feather River route. We also believe that the Plan does not account for peak volumes that occur seasonally.

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[16] ICC Finance Docket # 32760, Railroad Merger Application, Volume 3, Page 385.
[17] Ibid., Volume 6, Page 2, Pages 56 and 93.
[18] The 7 trains would increase to 9 if the figures in Volume 6, Part 2 are used.

We estimate that actual post-merger traffic will be 34 through-freight, 2 passenger (on average), and 2 local trains per day through Reno for a total of 38 trains per day.[19] Historical trends factored into this estimate take into account the 22 trains per day moving through Reno in 1980,[20] the former Western Pacific Railroad (WP) operation of 6 trains per day, anticipated BNSF traffic of 6 trains per day,[21] expected and historic passenger train activity at 2 trains per day on average, and 2 movements of the local switch engine between Sparks and West Reno. This projection also takes into account the growth anticipated in rail traffic in and out of the Port of Oakland as part of their major expansion plans. The Port of Oakland is anticipating 6% average annual growth in rail demand. With UP's enhanced competitive position over the central corridor brought on by this merger, intermodal traffic through Reno should grow at a rate at least equivalent to this rate.[22]

Southern Pacific historically operated over Donner Summit with trains that ranged up to 8,000 feet in length and 10,000 tons. Trains of 7,000 feet (8,000 tons) or greater generally required helper locomotives to negotiate the 2.6% grade and heavy curvature. SP trains historically averaged around 6,000 feet in length.[23] Union Pacific operating personnel have indicated that they will probably operate most trains on this route without helper locomotives, indicating that most trains will not exceed 7,000 feet. We believe average post-merger train lengths will be around 6,500 feet with a few in the 7,000 to 8,000 foot range using helper locomotives. UP could, however, choose to operate standard-length 8,000 foot trains should business and locomotive availability favor the use of helper locomotives on this route segment.

Hazardous materials are most generally handled in manifest trains under strict positioning rules and regulations. Cars must be placarded identifying the commodity or chemical being moved. According to statistics from the American Association of Railroads (AAR) movement of these chemicals by rail is considerably safer that movement over the road. It is possible that a modest increase of this traffic will occur through Reno as a result of this merger. However, heavier and slower manifest trains most likely to carry these commodities will probably be routed

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[19] Based on the knowledge of railroad operating specialists and historical trends in northern Nevada.

[20] 1980 represents the year of the Reno trainway bond issue vote.

[21] Verified statement of Mr. Neal D. Owen in BN/Santa Fe's Comments on the Primary Application, December 29, 1995, representing a possible diversion from their Southern California to Chicago route. This study assumes all 6 BNSF trains will use the Donner Pass route due to its reduced operating costs. Diversion to the Feather River route would reduce this number; however, increases due to additional business could offset these reductions.

[22] Western Region Automotive Intermodal Terminal Rationalization, Revised 9/21/95, Page 13, indicates that 50,000 additional containers will be handled through the Oakland railroad intermodal yards per year, post merger, due to truck-to-rail traffic diversions.

[23] According to a former SP Sacramento Division operating superintendent.

through the Feather River line to avoid delaying the expedited intermodal and auto trains using the Donner route.

Similarly, unit coal, grain, and ore trains (80 to 90 cars, 12,000 tons, 5,000 feet) will also probably operate via the Feather River route.

The merged operating plan indicates that UP will reduce their Reno branch operation to one local train per day from North Reno to Reno junction. They will also move their intermodal and automotive operations from North Reno to Sparks. This move will require an eventual expansion of SP's current intermodal facility at Sparks.[24]

5.02 Traffic Effects

As part of this study our team calculated the average time crossing gates would be down at a typical downtown Reno crossing for a variety of train lengths. We determined that a 6,000 foot train traveling at 20 mph would result in gates down for 3.9 minutes; a 6,500 foot train would hold gates down for 4.2 minutes; and a 1,500 passenger or local freight train would keep gates down for 1.4 minutes. We estimated that current gate down time based on 14 trains per day (11 freight, 1 passenger, and 2 local switching movements) would be 52.7 minutes per day. This number compares well with actual field measurements made by the City's traffic control computer for 4 downtown crossings in January, 1996.[25] Based on these assumptions we estimated that downtown traffic on the 8 crossings from and including Washington to Lake are presently causing around 4,314 minutes of delay to vehicles stopped for trains. Using this same methodology we estimated the delay that might occur by 2015 based on projected train and vehicular traffic levels downtown. For the same crossings we calculated a total of 18,952 minutes of delay to vehicles stopped for trains, an increase of 339%. This corresponds to each crossing being blocked about 133 minutes each day. See the table in Appendix D for a detail of these estimates.

These crossing blockage estimates do not account for a situation where two trains simultaneously converge on the downtown area. In this case some crossings would stay down for up to 8.5 minutes. Traffic stopped on streets such as Virginia, Center, or N. Arlington would probably gridlock several cross streets under such conditions.

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[24] UP-SP Common Point Team #3 Report, Area #6, and Intermodal Rationalization Summary.
[25] Memo dated 1/30/96 from Mr. Jim Position, City of Reno traffic department, copy on file, showing a range of total crossing closures from 41 min. 33 sec. to 54 min. 21 sec. on Sierra, Center, Virginia, and Sutro Streets from 5 Jan. to 25 Jan, 1996.

Based on available figures, we estimate that current levels of crossing delay are costing motorists $163,000 per year. Without mitigation, this cost could climb to $720,000 per year by the year 2015.

5.03 Environmental Assessment Thresholds

The ICC requires an environmental analysis when increases in rail traffic exceed the thresholds established in 49 CFR 1105.79(e)(5)(i) and (ii). These thresholds include air quality for line segments with increases of 8 trains per day in attainment and 3 trains per day in non-attainment areas. They also include noise for line segments with increases of 8 trains per day or 100% of annual gross ton miles. The SP route through Reno exceeds these thresholds. The merger application therefore includes an air quality and noise analysis for the increased rail traffic through Reno.

The ICC thresholds also apply to railroad yards and intermodal facilities. Based on criteria contained in the merger application,[26] the virtual doubling of activity at SP's intermodal facility at Sparks should require both an air quality and noise analysis for that location. However, the merger application does not contain such an analysis.

5.04 Air Quality

Kleinfelder estimated vehicular air emissions resulting from an increase in the number of trains traveling through Reno, Nevada. Emissions of volatile organic compounds (VOC), carbon monoxide (CO), oxides of nitrogen (NO_X), and particulate matter with aerodynamic diameter less than 10 microns (PM_{10}) occur when vehicles decelerate to a train crossing, idle, and then accelerate from the train crossing. The number of train trips through the area is expected to increase from 13.6 trains/day (1993 estimate) to 38 trains/day. The methods used to calculate vehicular emissions due to future train traffic are presented below. The results of all emission calculations are provided on the attached spreadsheets.

Vehicular air emission factors for VOC, NO_X, and CO due to train-caused delays were estimated using the United States Environmental Protection Agency's (U.S.EPA's) MOBILE5a model. Included as VOC are all non-methane and non-ethane hydrocarbons and aldehydes. MOBILE5a is useful for the analysis of air pollution impacts from gasoline and diesel-fueled highway mobile sources. The model calculates pollutant emission factors for eight individual vehicle types in two regions (low and high altitude areas). The emission factor estimates depend upon such conditions as ambient temperatures, average travel speed, operating modes, fuel type

[26] ICC Finance Docket No. 32760, Railroad Merger Application, Volume 6, Part 1, Page 5.

(e.g. oxygenated, reformulated, etc.), fuel volatility, and mileage accrual rates. Conditions such as the possibility of fuel system tampering and the existence of an inspection and maintenance program can be taken into account. MOBILE5a supersedes MOBILE4.1, incorporating several new options, calculating methodologies, emission factor estimates, and emission control regulations.

In order to account for differences in fuel types used and ambient temperatures from month to month, 12 separate monthly runs of MOBILE5a were completed. Model inputs were based almost exclusively upon data used by the state of Nevada to prepare a State Implementation Plan (SIP). Only the average vehicle speed was changed. It was assumed that inspection and maintenance and anti-tampering programs are in place. Oxygenated fuels were assumed to be used for 4 months of the year (October through January). For each month, the emission factor in grams/mile (g/mile) for each pollutant emitted per vehicle was obtained from MOBILE5a output. As described below, the emission factors were then used to calculate monthly emissions of each pollutant for all vehicles delayed at the train crossings. Annual emissions of each pollutant were obtained by summing the monthly emissions.

Each day, an estimated total of 125,283 vehicles travel over train tracks at 16 train crossings. About 38 trains are expected to pass through Reno, with an expected delay time of 9.5 minutes per train. The total delay time will be 38 x 9.5 minutes, or about 6 hours/day (6 hrs/day was the estimated blockage at the time the model was run. Lower levels of blockage would adjust pollution levels proportionately). Assuming vehicles pass over the tracks at a constant rate, the number of vehicles that will be delayed is calculated as 6 hours/day divided by 24 hours/day x 125,283 vehicles, or 31,321 vehicles delayed.

Much of the vehicular air emissions released during a train-caused delay occur when vehicles begin a phased cycle: 1) decelerating, 2) idling and, 3) accelerating. Daily emissions for each pollutant from vehicle deceleration (including the contribution to VOC emissions from exhaust, running losses, resting losses, and evaporation) were estimated by multiplying the emission factor (g/mile) obtained from MOBILE5a applicable to a given month by the length of the deceleration zone (assumed to be 200 feet) and the number of vehicles delayed (31,321). The emission factors were based upon a conservative input average vehicle speed of 2.5 miles/hour. The total emissions of each pollutant in each month were estimated by multiplying the daily emissions by the number of days in that month. Then monthly emissions were summed to obtain annual emissions

The minimum average vehicle speed MOBILE5a accepts is 2.5 miles/hour, and idling emissions are not calculated. To allow for this fact, to estimate idling emissions, MOBILE5a model was run with an input vehicle speed of 2.5 miles/hour, obtaining g/mile of each pollutant emitted from each vehicle. As required by U.S. EPA guidance (*Estimating Idle Emission Factors Using MOBILE5*, July 30, 1995), the emission factor for each pollutant (in g/mile) was converted to an emission rate (in g/hr) by multiplying by 2.5 miles/hour. Only the exhaust portion of VOC emissions were considered for idling, as suggested by U.S. EPA guidance. Daily emissions of each substance in each month were then calculated by multiplying the emission rate for each vehicle by the number of vehicles delayed, adjusting for the average delay time of each vehicle per day (9.5 min/day). Monthly and annual emissions of each pollutant were calculated using the procedures stated above for deceleration emissions.

Daily emissions for each pollutant from vehicle acceleration (including the contribution to VOC emissions from exhaust, running losses, resting losses, and evaporation) were estimated by multiplying the emission factor applicable to a given month by the length of the acceleration zone (assumed to be 150 feet) and the number of vehicles delayed (31,321). As with the deceleration emission calculations, the emission factors were based upon a conservative input average vehicle speed of 2.5 miles/hour. Monthly and annual emissions of each pollutant were then calculated using the procedures stated above for deceleration emissions.

Vehicular emissions of PM_{10} were estimated using emission factors stated in the South Coast Air Quality Management District's (SCAQMD's) California Environmental Quality Act (CEQA) manual, which is based upon the EMFAC7 model. The vehicle exhaust PM_{10} emission factors are 0.01 g/mile for light-duty vehicles (under 6001 lb vehicle weight), and 0.47 lb/mile for heavy-duty vehicles (over 6000 lb vehicle weight). PM_{10} emissions due to tire wear were ignored for this analysis, because tire wear emissions would already occur without a train-caused delay. Based upon the default vehicle mix assumed for the MOBILE5a model, 91.2% of the vehicles were assumed to be light-duty vehicles, and 8.8% were assumed to be heavy-duty vehicles. The deceleration, idling, and acceleration emissions were then calculated using methods stated above for other pollutants, accounting for a PM_{10} emission factor weighted by vehicle type. The emission factor for idling (g/mile) was converted to an emission rate (g/hr) by multiplying by 5.0 miles/hr instead of 2.5 miles/hr, since the EMFAC7 model runs were completed using an average vehicle speed of 5.0 miles/hr.

The results of emissions calculations are presented in the attached spreadsheets. The total estimated annual vehicular air emissions of VOC, CO, NO_X, and PM_{10} due to 38 train trips through the Reno area are 85.4 tons/year, 1,112 tons/year, 24.8 tons/year, and 0.55 tons/year, respectively.

The merger application indicates an increase in air pollutants from locomotives proportional to the anticipated increase in train traffic of 9 trains per day.[27] These pollutants include 8.23 tons per year of CO (Carbon Monoxide), 1.34 tons per year of PM (Particulate Matter), 2.65 tons per year of HC (volatile Hydocarobons), and 61.60 tons per year of No_x (Nitrogen Oxides). The air Quality Control Region (AQCR) 148 that includes Reno and Sparks is in a non-attainment (NA) status for PM, CO, and Ozone (Ozone is formed during complex photochemical reactions between No_x and HC in the preence of sunlight). However, if these pollution number are adjusted for the correct number of anticipated trains, they would indicate 22 tons per year of CO, 3.6 tons per year of PM, 7 tons per year of HC, and 165 tons per year of No_x. These numbers do not include added air pollutants from idling vehicles trapped in queues behind crossing gates.

[27] Ibid, Part 2, Table 2-22, Page 85.

5.05 Noise

Page 56 of Volume 6, Part 2, Page 56 of the merger application contains the following quote:

> "Reno, NV: The line runs through the center of Reno. There are several grade crossings along the tracks. The area is mainly industrial and commercial, but there are residential areas near Sparks, on the western edge of town, and near the tracks throughout the middle of town."

Table 2-14 on page 58 indicates that Reno has 41 sensitive receptors pre-merger and 146 post-merger. This number does not account for the actual number of additional trains, nor does it seem to match the actual number of sensitive receptors, especially in the downtown area. In fact downtown Reno is a high-density commercial and recreational area with 13,075 licensed hotel and motel rooms within one-half mile of the tracks along with 362 single family and 1,770 multi-family residential units. Over 9,000 hotel rooms are within 1,500 feet of the tracks. Hotel and motel room capacity has grown by over 18% in the last 5 years with this trend continuing.

The precise effect of added noise due to this merger cannot be determined without a more extensive study.

5.06 Water Quality and Toxics

Neither the existing nor the proposed rail routes lay near CERCLIS, NPL, or RCRA sites under remediation or investigation of releases of hazardous or regulated materials.

Both routes pass near sites with registered USTs, sites undergoing leaking UST cleanups, and near both large and small quantity RCRA generators. The existing route passes 24 sites with registered USTs, four active leaking UST cleanup sites, seven RCRA SQGs, and three RCRA LQGs. The alternate I-80 route passes eight sites with registered USTs, two active leaking UST cleanup sites (one is nearly complete), seven RCRA SQGs, and five RCRA LQGs.

The existing route traverses directly over the groundwater PCE plume and passes over the northern edge of the groundwater hydrocarbon plume. The alternate I-80 route passes over the known northern edge of the PCE plume, but avoids the hydrocarbon plume.

Groundwater depths vary from less than 20 feet below ground surface to greater than 60 feet below ground surface. Generally, the depth to groundwater is deepest the I-80 alternate route and shallowest along the existing route.

Southern Pacific Railroad

Input Data

AVT	125,283	vehicles/day (all streets)
Veh. delayed	31,321	vehicles/day (all streets)
Delay Time	9.5	min/vehicle
Accel. Zone	200	ft
Deaccel. Zone	150	ft

Emissions Due to Rail Crossings in Reno Calculated Using MOBILE5.0a

	Emission Factors				Idling Emissions			Decel./Accel. Emissions		
Month	Idling VOC (g/mile)	All VOC (g/mile)	CO (g/mile)	NOx (g/mile)	VOC (tpy)	CO (tpy	NOx (tpy)	VOC (tpy)	CO (tpy	[illegible]
JAN	17.32	17.33	204.85	4.67	7.34	86.8	1.98	1.23	14.5	[illegible]
FEB	16.56	23.58	241.53	4.48	6.34	92.4	1.71	1.51	15.5	[illegible]
MAR	15.72	25.56	238.72	4.40	5.66	101	1.86	1.81	16.9	[illegible]
APR	14.96	28.90	235.09	4.31	6.13	96.4	1.77	1.98	16.1	[illegible]
MAY	12.58	18.98	186.18	4.16	5.33	78.9	1.76	1.35	13.2	[illegible]
JUN	11.75	16.25	172.75	4.07	4.82	70.8	1.67	1.12	11.9	[illegible]
JUL	10.95	17.11	162.63	3.94	4.64	68.9	1.67	1.21	11.5	[illegible]
AUG	10.95	17.11	162.63	3.94	4.64	68.9	1.67	1.21	11.5	[illegible]
SEP	11.01	15.90	160.96	4.00	4.51	66.0	1.64	1.09	11.1	[illegible]
OCT	12.29	29.34	165.97	4.18	5.21	70.3	1.77	2.08	11.8	[illegible]
NOV	14.15	22.20	174.09	4.43	5.80	71.4	1.82	1.52	12.0	[illegible]
DEC	15.93	15.94	190.2	4.58	6.75	80.6	1.94	1.13	13.5	[illegible]
TOTAL					68.2	952	21.3	17.3	160	[illegible]

SUMMARY OF EMISSIONS

Substance	Idling (tpy)	Decel./ Accel. (tpy)	Total (tpy)	Source of Emission Factors
VOC[1]:	68.2	17.3	85.4	Mobile 5.0a model runs
CO[1]:	952	160	1,112	Mobile 5.0a model runs
NOX[1]:	21.3	3.56	24.8	Mobile 5.0a model runs
PM_{10}[2]	0.50	0.0422	0.546	SCAQMD CEQA Manual (EMFAC7EP factors)

[1]For idling, g/mi values were multiplied by 2.5 mi/hr to obtain g/hr. Decel./accel. emissions conservatively assume a vehicle speed of 2.5 mi/hr.

[2]About 88% of vehicles are assumed to be under 6000 GVW (the default Mobile5a assumption). Emissions do not account for tire wear.

Figure 5-1

5.07 Emergency Services -Public Safety

The service infrastructure of the City of Reno is impacted to a great extent by the proposed merger of Union Pacific and Southern Pacific Railroads. While the community has built-up around the railroad environment, the significant increase in utilization of the corridor by virtue of the post-merger Union Pacific operation and the additional traffic occasioned by the use of trackage by Burlington Northern/Santa Fe has pointed out the danger and adverse impact of the rail operation in downtown Reno. While the impacts on air, water and ambient noise levels can be quantified, the following comments from the Reno Chief of Police clearly describe the impact of having a major rail operation cut through the center of a 24-hour tourism based community.

> ***Delays*** - There is little question that the closure of the main street thoroughfares as a result of train usage hampers our police response and patrol ability on a daily basis. The Police Department had divided the City into three policing districts. Two south districts are basically divided by the train tracks from the north district. This districting, which spans the entire west and east limits of the city, is not the most effective districting method but has been forced on the department because of the physical barrier trains create during an emergency response. Because of police staffing shortages and workload increases, police dispatchers routinely cross-dispatch north officers to emergencies and routine calls in the south part of town and vice versa. North district officers routinely cover officers on the south side of the train tracks. Train traffic has been a problem for years to responding police units, fire units, and paramedics, forcing the time consuming rerouting of personnel to avoid trains. This situation has become much worse in the past few years because of population growth, increased calls for service, and fewer police officers. In many cases, emergency vehicle delays result in a domino effect resulting in a time delay that impacts almost all our pending calls for service. In emergency and critical incident response cases, these delays require an immediate tactical redeployment of resources to insure an adequate response, leaving many of our citizens confused and irate when the police need to leave their call to respond to another with a higher response priority. The continual bisecting of special event activities downtown by trains already hampers the ability of police to control the events.
>
> ***Post-Merger Delays*** - Any increase in train traffic, length, or decrease in speed will have a direct impact in the following areas:
>
> 1) Police response times will increase to emergency and non-emergency calls which are cross-dispatched. Cross-dispatching is routine and occurs 24 hours per day because of current police staffing shortages. Citizen response time complaints will increase.
> 2) Officer safety and citizen safety will be impacted by delayed response of police units to assist officers needing cover, police response to injury traffic accidents, or any other citizen injury type call.
> 3) Increased train crossing traffic violations will occur. Currently, impatient drivers ignore crossing arms to beat oncoming trains, make U-turns, or drive the wrong way to find an escape route to avoid train delays. Adding train traffic will exacerbate this already dangerous situation.

4) Special events management will deteriorate as trains bisect parades, static display street closures, and major special events.
5) Intoxicated pedestrians (tourists, transients, and locals) currently race across tracks to avoid trains. Their impaired condition increases the potential for an injury. Massive special event crowds, combined with noise levels of the event, often force pedestrians too close to train tracks. Reno's entertainment industry often results in tourists and local citizens being intoxicated or under the influence of alcohol in the downtown area.

Policing Problems - The physical environment created by the railroad tracks downtown serves as a magnet for local transients, bums, drug dealers, and even provides weapons for unruly crowds. Consider the following:
1) Our local population of street criminals congregate on railroad tracks right-of-ways behind buildings, crossing arms, and underpasses because these areas are often hidden from direct view of police officers. The right-of-way also makes excellent places of operation for panhandlers, strong arm robbers, and permanent homeless residents to accost our citizens. The railroad provides no immediately available property owner or security to monitor this problem and help regulate this crime. Since property owners throughout downtown prohibit this activity on their properties and can authorize trespassing arrests to remove petty criminals, the situation has forced many petty criminals onto the railroad right-of-way.
2) The railroad bed includes rocks, broken bottles, cans, grease, oil, and dirt. Rocks and bottles are routinely used during fights among petty criminals, provide drunks ammunition during major special events, and are hard to navigate by pursing officers.

Other Impacts - The presence of the railroad tracks in their current location represents a mixture with our economy not unlike oil and water. They are a critically dangerous segment of our downtown area in which we contain thousands and thousands of residents, tourists, gamers, and visitors. The police department has had to physically adapt its emergency operations to accommodate the train tracks. However, the accommodations are not in the best interest of the City.

Note: Additional information concerning public safety has been received but is not included here.

5.08 Economic Effects of Merger on the Railroad

The combined UP/SP route between Oakland and Chicago will be shorter than the UP or the SP route. Mileage reductions will come from combining parts of the UP and SP routes to create a new route much shorter than either railroad's present system. Oakland to Chicago, via Reno, will show a reduction of 388 miles from SP's present route and 189 miles from UP's line.[28]

---

[28] Ibid., Volume 1, Pages 29 & 30.

This merger will generate significant net savings to UP. Overall it will benefit the merged system approximately $750 million.[29] Operating savings coming from changes to yards and intermodal facilities in Reno and Sparks contribute about $400,000 annually to this figure.[30]

6.0 MERGER SCHEDULE

The City made the obligatory Notice of Intent to Participate by the January 16, 1996, deadline and is now listed as a party of interest. Any inconsistent and responsive application, comment, protest, request for conditions, or opposition evidence or argument is due not later than March 29, 1996. The City must now determine if it will prepare and submit verified statements to the Surface Transportation Board (STB). If these statements are to be submitted they must meet the March 29, 1996, deadline, and the City should be prepared to provide testimony before the STB supporting these statements if necessary.

7.0 CONCLUSION AND DISCUSSION

7.01 Problem Statement

Throughout this study we have attempted to more sharply focus the challenges caused by this merger into a concise problem statement. We have determined that along with the problems brought on by a significant increase in train traffic through Reno comes an opportunity to solve a long-standing problem, now brought back into the spotlight. This problem statement has evolved into the following:

> ***Increased train traffic through Reno as a result of the UP/SP merger will increase crossing blockages, noise, and air pollution beyond acceptable limits, but also creates the opportunity to reshape the transportation and urban infrastructure of central Reno to realize significant land use and economic benefits.***

---

[29] Ibid., Page 93.

[30] UP-SP Common Point Team #3 Study, Page 2.

7.02 Potential Solutions

We have heard from a large number of intelligent, articulate, and informed professionals, civil servants, and residents concerning possible "fixes" for this problem. Most have been well conceived. Following is a brief list of the alternatives now being seriously discussed:

- No action
- A fully depressed trainway
- A partially depressed trainway
- Limited grade separations (underpasses or overpasses)
- Railroad relocation, possibly to the I-80 corridor

Throughout our discussions we have heard the recurring theme of combining a number of different transportation facilities such as pipelines, fiberoptics, power, water, and sewer into the same corridor. This "Transportation Corridor" concept could allow much more efficient use of valuable property and should be pursued.

7.03 Suggested Action Items

We suggest the following action items be considered be the City.

1. Union Pacific should provide financial assistance in finalizing the study effort which will identify reasonable mitigation efforts to resolve impacts on the downtown Reno area while increasing the efficiency of the railroad operation through downtown Reno.

   In order to clearly identify the impacts of the post-merger condition and to accurately assess the alternatives, additional engineering studies should be initiated and complete. The City of Reno has committed considerable effort and funds to move the project to the current stage. Additional funds should be forthcoming from Union Pacific to complete the initial engineering studies and to conduct a full alternatives analysis and /or major investment study. These studies, while expensive, would clearly delineate the alternatives and investments necessary to allow for informed decision making.

2. The Union Pacific and City of Reno should establish a mutually acceptable schedule to complete the study effort described in No. 1.

3. The Union Pacific and City of Reno should cooperatively develop a strategy to help resolve all of the issues which may impact identified implementation scenarios.

Legislative action at the state level - In order to implement a selected alternative, it may be necessary to develop a specific legislative program providing for legislative change. The Union Pacific could play a key role in this activity.

Legislative action at the federal level - Although current funding levels of ISTEA are limited, this is clearly a source of funding which should be explored.

Identification of potential funding sources - Private funding sources, as well as local, state and federal funding should all be considered for each mitigation element. Initially, in order to expedite the alternative analysis, it is suggested that funding be provided by Union Pacific to allow quick and complete evaluation of the alternatives. A major investment analysis should be performed and the task should be initiated as quickly as possible.

4. Establish a project coordination team to assure the timely and effective resolution of the issues and implementation strategies.

This coordination team should be composed of members of the consulting team, City of Reno, Union Pacific and other stakeholders. A team approach to identifying problems and finding solutions will clearly benefit all parties to the effort.

APPENDIX A

RAILROAD TRACK CHARTS AND MAPS

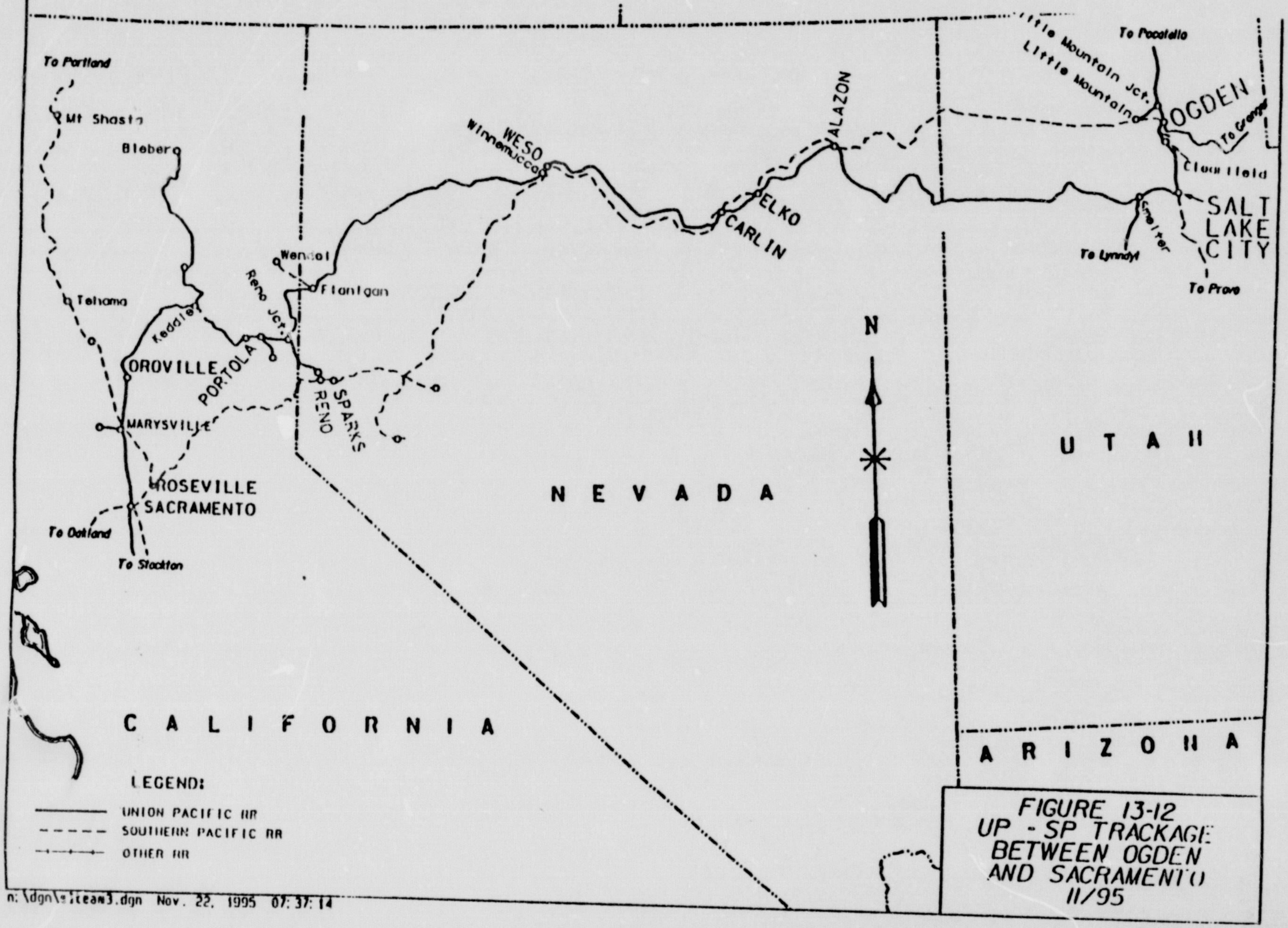
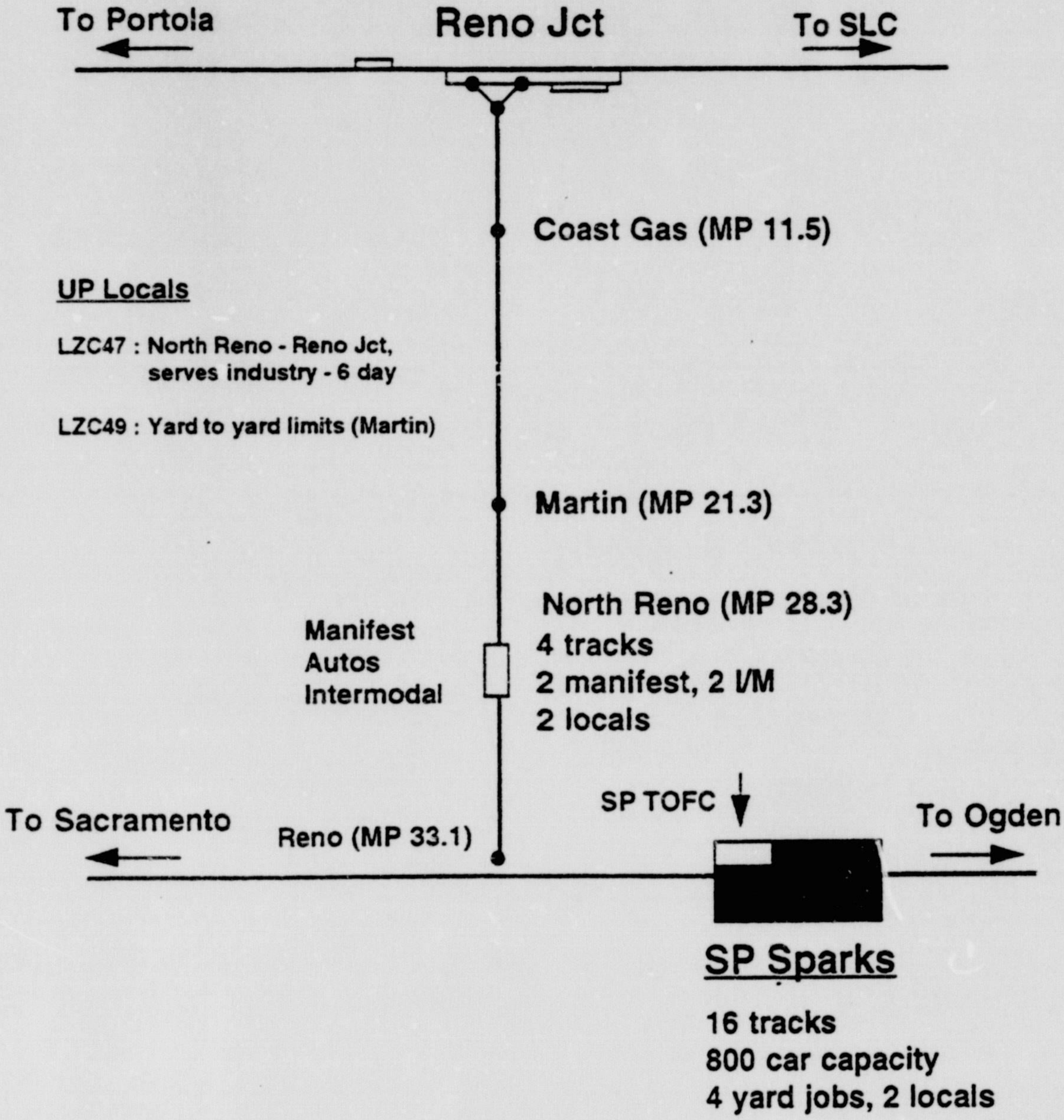
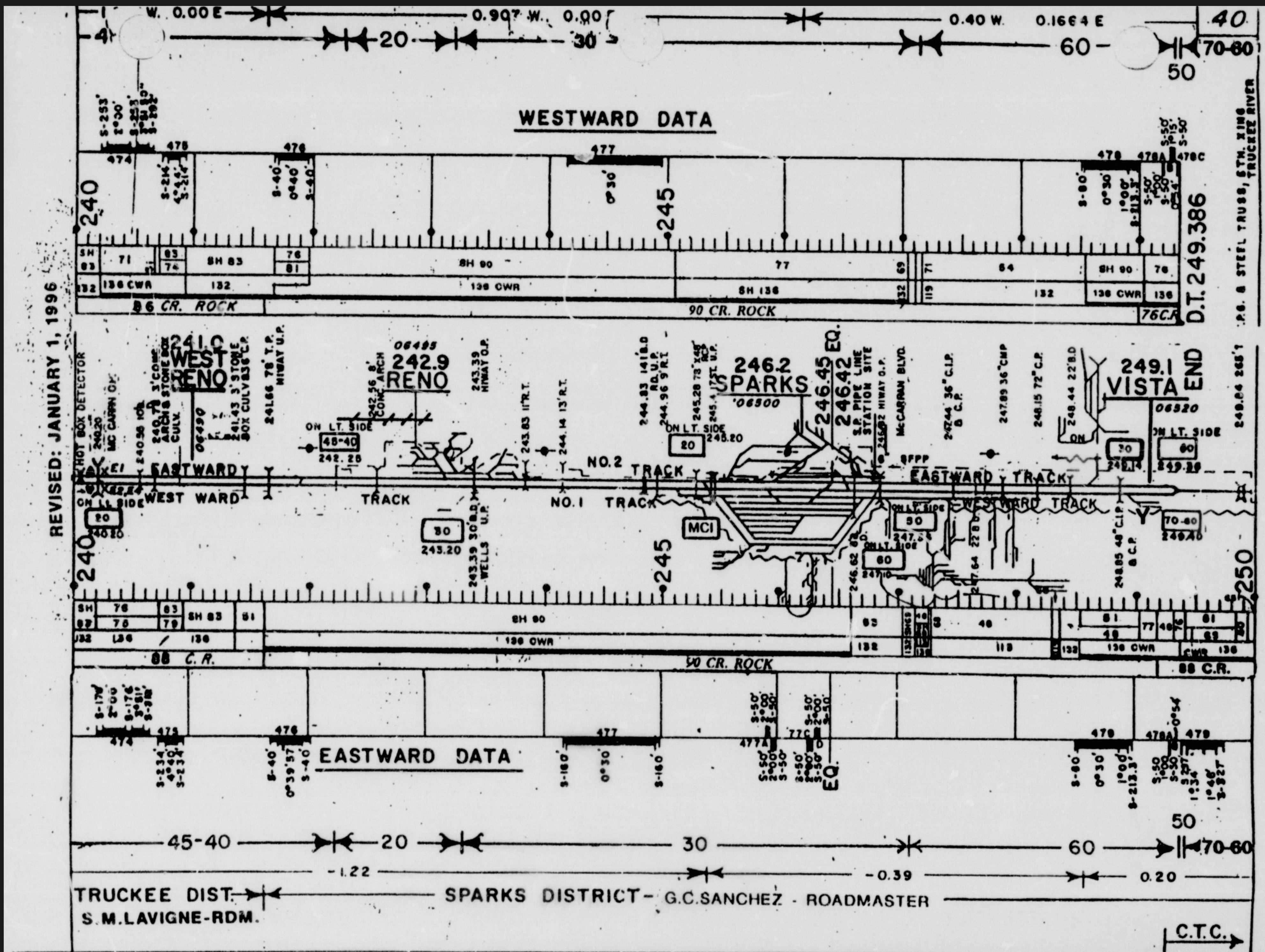


FIGURE 13-12
UP - SP TRACKAGE
BETWEEN OGDEN
AND SACRAMENTO
11/95

n:\dgn\siteam3.dgn Nov. 22, 1995 07:37:14

UP/SP Reno Current Operations




WESTWARD DATA
EASTWARD DATA
REVISED: JANUARY 1, 1996
D.T. 249.386
240
245
250
241.0 WEST RENO
242.9 RENO
06495
246.2 SPARKS
06500
249.1 VISTA
06520
END
246.45 EQ.
246.42
EASTWARD TRACK
WESTWARD TRACK
NO. 2 TRACK
NO. 1 TRACK
MCI
ON LT. SIDE
SH 90
136 CWR
90 CR. ROCK
88 C.R.
45-40
20
30
60
50
70-60
-1.22
-0.39
0.20
TRUCKEE DIST.
S.M.LAVIGNE-RDM.
SPARKS DISTRICT - G.C.SANCHEZ - ROADMASTER
C.T.C.

APPENDIX B

CROSSING DATA AND LOCATIONS

DETLOC

DETAIL OF CROSSINGS BY LOCATION

.ILROAD ID	FEDERAL DOT NUMBER	STATION		STREET OR ROADWAY	PRESENT WARNING SYSTEM		DATE IN SERVICE	CROSSING SURFACE
- 234.58-A	740713A	MOGUL		I 80 OVERPASS				
- 234.98-BX	740712T	MOGUL		PRIVATE UNDERPASS				
- 235.40-X	740714G	MOGUL		CANEPA RD (PRIVATE)				FULL PLANK
- 235.60-	740715N	MOGUL		MOGUL ROAD	2 9		11/09/83	PLASTIC
- 235.81-	740716V	MOGUL		MOGUL ROAD	2 9		11/09/83	PLASTIC
- 236.10-X	740717C	MOGUL		PRIVATE CROSSING				FULL PLANK
- 237.00-X	740718J	LAWTON		GEORGE I.BENNY XING.	2 9 2 8		03/14/66	FULL PLANK
- 237.75-C	740903D	LAWTON		WHITE FIR				ASPHALT
- 238.00-	740719R	LAWTON	1	WOODLAND AVE.	2 9		04/06/73	ASPHALT
- 238.40-B	762080Y	LAWTON		MAYBERRY RD UNDERPAS				
- 238.75-X	740720K	LAWTON		PRIVATE CROSSING				ASPHALT
- 240.04-A	753563G	WEST RENO		MCCARRAN BL OVERPASS				
- 240.40-	740722Y	WEST RENO	2	DEL CURTO DRIVE	2 9		07/31/80	HEADERS
- 241.63-B	740723F	WEST RENO		WEST SECOND ST U.P.				
- 241.85-C	740893A	WEST RENO		WEST FOURTH STREET				
- 242.10-	740724H	RENO	3	KEYSTONE ST	2 9A		07/18/80	RUBBER
- 242.20-	740725U	RENO	4	VINE ST	2 9A		12/07/77	PLASTIC
- 242.30-	740726B	RENO	5	WASHINGTON ST	2 9		05/23/80	PLASTIC
- 242.38-C	740896V	RENO		FIFTH STREET		NOT ON MAIN LINE		ASPHALT
- 242.45-	740727H	RENO	6	RALSTON STREET	2 9		07/25/80	PLASTIC
- 242.60-	740728P	RENO	7	N ARLINGTON ST	2 9A 3G10		03/12/50	RUBBER
- 242.70-	740729W	RENO	8	WEST ST	2 9A 4G10		09/04/90	PLASTIC
242.74-	740730R	RENO	9	SIERRA ST	2 9A 4G10		04/16/80	RUBBER
242.81-	740731X	RENO	10	VIRGINIA ST	2 9A 4G10		04/18/80	RUBBER
242.88-	740732E	RENO	11	CENTER ST	2 9A 4G10		05/16/80	RUBBER
- 242.95-	740733L	RENO	12	LAKE ST	2 9A 4G10		06/27/80	PLASTIC
- 243.11-C	762076J	RENO		RECORD		NOT ON MAIN LINE		
- 243.37-C	740734T	RENO		FOURTH STREET	2 8A		01/30/81	
- 243.40-A	740735A	RENO		WELLS AVE OVERPASS				
- 243.50-	740736G	RENO	13	MORRILL AVENUE	2 9		04/24/81	ASPHALT
- 243.68-	762088D	RENO	14	SUTRO STREET	2 9A 2 9		06/16/89	RUBBER
- 243.91-	753815F	RENO	15	SAGE STREET	2 9		07/10/90	RUBBER
- 244.23-A	740739C	RENO		US 395 OVERPASS				
- 244.33-C	762072G	RENO		HAROLDS SPUR		PRIVATE		
- 244.38-C	762073N	RENO		NEV PURCHASING RD				GRAVEL/DI
- 244.41-C	762074V	RENO		NEV PURCHASING SP				
- 244.46-C	762075C	RENO		NEV PURCHASING RD				ASPHALT
- 244.65-	740740W	SPARKS		GALLETTI WAY	2 9		11/02/76	RUBBER
- 244.80-B	740741D	SPARKS		KIETZKE LANE U.P.				
- 245.34-C	762065W	SPARKS		18TH ST				ASPHALT
- 245.40-B	740742X	SPARKS		ROCK BLVD UNDERPASS				
- 245.69-C	762066D	SPARKS		15TH ST EXTENSION				ASPHALT
- 246.27-C	740898J	SPARKS		FREEPORT BLVD				ASPHALT
- 246.29-C	740899R	SPARKS		GREG STREET	2 9A		02/10/86	ASPHALT
- 246.40-C	740897C	SPARKS		GLENDALE AVE	2 9A		01/04/85	HEADERS
- 246.45-C	762071A	SPARKS		SEARS				GRAVEL/DI
- 246.90-A	740743S	SPARKS		MCCARRAN BLVD O.P.				
- 246.95-C	740900H	SPARKS		EAST GLENDALE				ASPHALT
- 247.19-C	762070T	SPARKS		S S KRESGE CO				

APPENDIX C

CROSSING TRAFFIC LEVELS

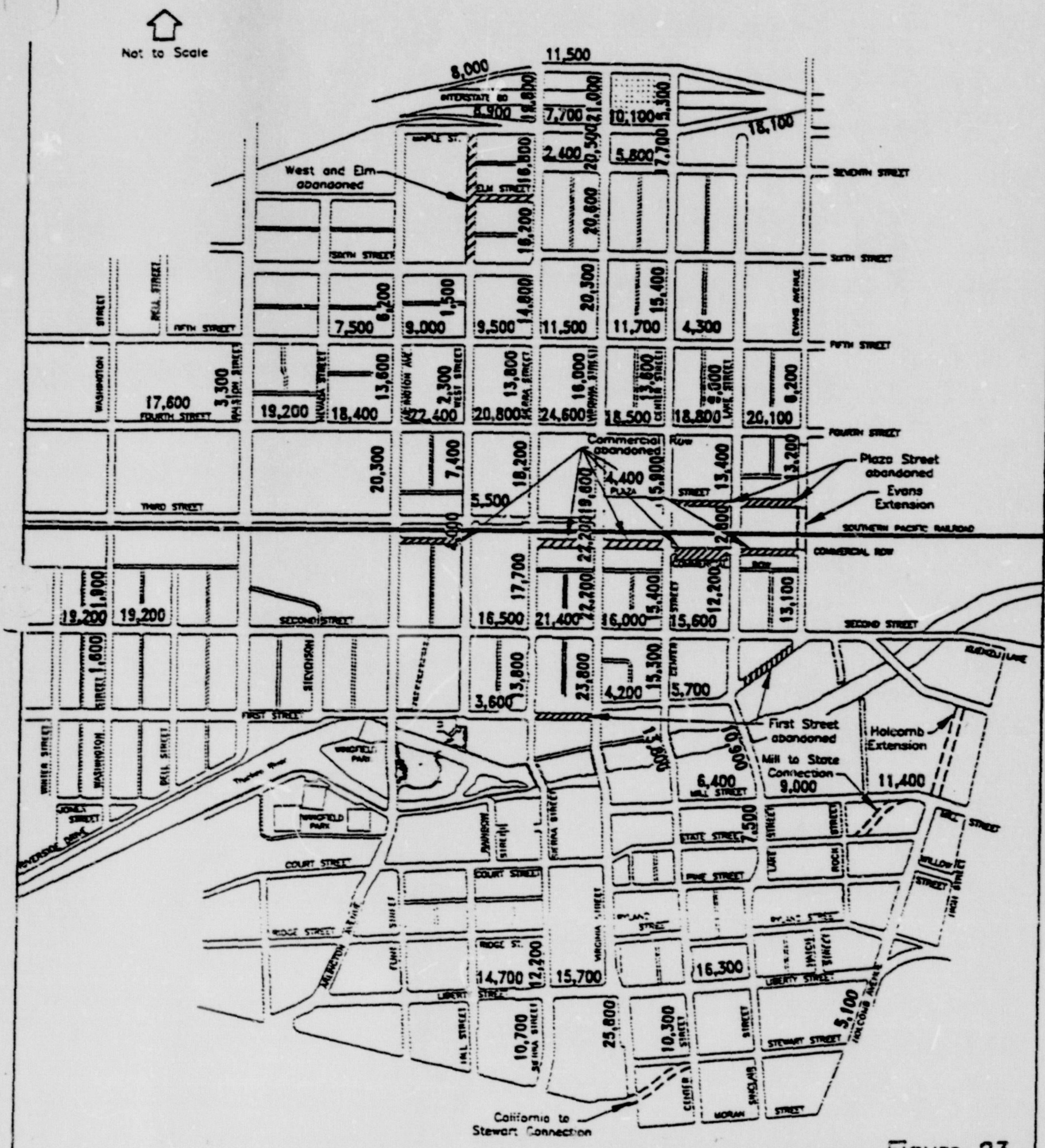


Figure 23

YEAR 2015 AVERAGE DAILY TRAFFIC VOLUMES (Modified Network)

APPENDIX D

VEHICULAR DELAY CALCULATION

ESTIMATED VEHICULAR DELAY

Crossing	1995						2015					
	ADT	Freight Trains (6000')*	Delay (min.)	Other Trains (1500')**	Delay (min.)	Total Delay (min.)	ADT	Freight Trains (6500')***	Delay (min.)	Other Trains (1500')**	Delay (min.)	Total Delay
Keystone	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Vine	N/A	11	-	3		-	N/A	30	-	4	-	-
Washington	2,000	11	117	3	4	121	1,900	30	348	4	5	353
Ralston	2,800	11	163	3	6	169	3,300	30	604	4	9	613
N.Arlington	15,200	11	886	3	32	918	20,300	30	3,715	4	57	3,772
West	3,200	11	187	3	7	194	7,400	30	1,354	4	21	1,375
Sierra	10,800	11	630	3	23	653	18,200	30	3,330	4	51	3,381
Virginia	15,200	11	886	3	32	918	22,200	30	4,063	4	62	4,125
Center	12,700	11	740	3	27	767	15,900	30	2,910	4	45	2,955
Lake	9,500	11	554	3	20	574	12,800	30	2,342	4	36	2,378
Morrill	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Sutro	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Sage	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Total						4,314						18,952
Increase												339%

* A 6,000 foot train causes 3.9 minutes of gate-down time @ 20 MPH

** A 1,500 foot train causes 1.4 minutes of gate-down time @ 20 MPH

*** A 6,500 foot train causes 4.2 minutes of gate-down time @ 20 MPH

APPENDIX E

CROSSING ACCIDENT DATA

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1263 S. Stewart Street
Carson City, Nevada 89712

BOB MILLER, Governor

TOM STEPHENS, P.E., Director

January 25, 1996

In Reply Refer to:

Ms. Dori Owen, Special Projects Manager
Reno Redevelopment Agency
City of Reno
P.O. Box 1900
Reno, NV 89505

Re: Your Information Request on SP-UP Merger

Dear Ms. Owen:

We have prepared data on grade crossing accidents for your use in considering the impact of the SP-UP merger in Reno. Our information is obtained from accident reports filed with the Reno Police Department and other law enforcement agencies. As incidents involving pedestrians and trains are not considered motor vehicle accidents, NDOT does not receive these reports. When we hear of these incidents, we request the reports from the law enforcement agencies, so our data is not complete. Additionally, our computer system has no means of capturing this data, so there is a great probability that the pedestrian accidents will be understated. Other trespass (between crossings) fatalities have occurred, however NDOT does not have these records.

As we mentioned at your first meeting, the Railroad Safety Section has a number of railroad crossing improvement projects planned in the downtown Reno area over the next few years. These projects are financed 95% by federal funds and 5% by a local match. This year, Vine St. will be improved. In 1997, Morrill Ave. is scheduled for enhancements. Were these crossings closed, the project funds may become available for other projects, such as grade separations, that would temper the effects of the merger and would greatly enhance safety in the downtown area. All projects must be approved by the Federal Highway Administration.

Crossings are chosen for improvements based on a Hazard Index. Many of the downtown crossings have very low traffic volume, such as Ralston St., and would not rank high enough on the Index to be improved for many years, while other crossings, such as Virginia St., have the current state of the art protection.

Many of the low volume crossings could be closed, with little impact on the neighboring crossing and streets, which could absorb the added traffic volume. This would make possible fewer but safer crossings. It would also open the possibility of grade separating some of the crossings, which is the safest alternative. Crossing closures can win the sympathy and support of the railroad and perhaps encourage them to financially participate in mitigating the impact of additional rail traffic in Reno. If streets are closed and others are grade separated, trains would not be required to blow their whistles for these crossings, thus decreasing the noise nuisance in the downtown area.

We hope this information is of help to you. Please contact Charlie Case or Anita Boucher of the Railroad Safety Section, at 687-4010, if you need additional details on the Railroad Safety Program or the enclosed data.

Sincerely,

Robert E. Hilderbrand
Chief Safety Engineer

REH:AB:dmg
Encl.

cc: L. Hastings, Chief Transportation Planning - NDOT
S. Varella, City Engineer - City of Reno
M. Einweck, Traffic Design Engineer - City of Reno

STB FD 32760 3-29-96 D 62298 2/2

RAILROAD GRADE CROSSING COLLISIONS 1976 - 1995
SOUTHERN PACIFIC RAILROAD MAINLINE IN DOWNTOWN RENO

STREET NAME	DOT NO.	RR MP	RR ADT	HWY ADT	COLLISIONS: FATAL	COLLISIONS: PROPERTY DAMAGE	COLLISIONS: PERSONAL INJURY
WOODLAND AVE	740-719R	237.98	19.00	1,600	2	1	2
DEL CURTO AVE	740-722Y	240.62	19.00	130	0	0	0
KEYSTONE AVE	740-724M	242.10	23.00	20,800	0	8	4
VINE ST	740-725U	242.21	23.00	3,600	0	1	0
WASHINGTON ST	740-726B	242.30	25.00	1,700	0	0	0
RALSTON ST	740-727H	242.45	25.00	4,000	0	1	0
ARLINGTON AVE	740-728P	242.60	25.00	12,723	0	3	4
WEST ST	740-729W	242.70	25.00	4,700	0	0	0
SIERRA ST	740-730R	242.75	25.00	11,320	0	2	0
VIRGINIA ST	740-731X	242.80	25.00	16,300	1	10	3
CENTER ST	740-732E	242.90	25.00	13,761	0	4	0
LAKE ST	740-733L	242.95	25.00	10,700	0	6	1
MORRILL AVE	740-736G	243.50	25.00	500	0	1	0
SUTRO ST	762-098J	243.70	25.00	13,000	0	0	1
SAGE ST	758-815F	243.91	24.00	1,600	0	3	2
GALLETTI WAY	740-740W	244.65	27.00	8,119	0	1	1

NOTE: THIS COLLISION DATA INVOLVES MOTOR VEHICLE INCIDENTS ONLY. PEDESTRIAN V.S. TRAIN COLLISIONS ARE NOT INCLUDED AS THE DATA IS NOT REPORTED TO NDOT OR DMV.

PEDESTRIAN INCIDENTS AT RAILROAD CROSSINGS IN DOWNTOWN RENO
SOUTHERN PACIFIC MAINLINE
1970 THRU 1995

STREET NAME	INJURY ACCIDENT	NUMBER INJURIES	FATAL ACCIDENT	NUMBER FATALITIES
WOODLAND AVE				
DEL CURTO AVE				
KEYSTONE AVE				
VINE ST				
WASHINGTON ST				
RALSTON ST			1	1
ARLINGTON AVE				
WEST ST				
SIERRA ST				
VIRGINIA ST			1	1
CENTER ST	1	1		
LAKE ST			1	1
MORRILL AVE				
SUTRO ST	1	1		
SAGE ST				
GALLETTI WAY	___	___	___	___
TOTALS	2	2	3	3

NOTE: NDOT DOES NOT AUTOMATICALLY RECEIVE REPORTS OF TRAIN VS PEDESTRIAN COLLISIONS, THEREFORE THIS DATA ONLY REPRESENTS THOSE REPORTS THAT BEEN SECURED WHEN INCIDENTS HAVE COME TO THE ATTENTION OF NDOT AND IS NOT NECESSARILY COMPLETE.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.

Finance Docket No. 32760

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

COMMENTS AND REQUEST FOR CONDITIONS OF PUBLIC SERVICE COMMISSION OF NEVADA

The Public Service Commission of Nevada (PSCN), submits these comments and requests for conditions. Public meetings were conducted by the Commission throughout Nevada in order to ascertain information useful to the Surface Transportation Board in evaluating the merger. The public meetings[1] elicited comments specific to Nevada but useful under the broad criteria specified in 49 C.F.R. § 1180, specifically:

1 The effect on the adequacy of transportation to the public;

2. The effect of including or failing to include, other rail carriers in the area involved in the proposed transaction;

3. The total fixed charges that result from the proposed transaction;

4. The interest of the rail carrier employees affected by the proposed transaction; and

5. Whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

General Comments

The State of Nevada has an historic relationship with the development of the rail transportation system in the West. Nevada's development in the late 19th Century was largely associated with its proximity to the transcontinental

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[1] Public meetings were held in Nevada for this purpose: in Reno on February 12, 1996; in Lovelock on February 13, 1996; in Winnemucca on February 14, 1996; in Las Vegas on February 15, 1996; and in Elko on February 29, 1996.

railroad corridors and the cities which developed along the rail routes. Between 1907 and 1919, the PSCN's predecessor agency, the Railroad Commission, actively participated in proceedings to ensure that Nevada shippers were not captive to the monopolistic power of the railroads. Since its creation in 1919, the PSCN has assumed the responsibilities of railroad oversight.

Nevada's economic development today continues to rely on rail access for origination and termination of shipments. Significant portions of Nevada's economy and commerce are dependent on rail transportation. Agricultural, warehousing, distribution, mining, automotive, manufacturing and industrial businesses rely on transport by rail in order to access both suppliers and markets. Utilities in northern and southern Nevada depend on the delivery of coal by rail to base load electrical generating facilities.

The PSCN is especially concerned about the impact of rail operations on the safety of the general public. The anticipated increase in the number of trains along the Central Corridor through northern Nevada may have a direct and detrimental impact on public transit, emergency response and other local services for the general public in several communities,[2] unless appropriate mitigation measures are provided.

These public meetings formed the basis for the following comments and recommendations which are made with regard to the public interest standard to be utilized by the Board in its decision. The PSCN believes that if the Board approves the merger, it should also impose mitigating conditions to ensure the benefits expected to flow from the merger will accrue not only to the merged railroads, but also to the shippers and the general public in the communities affected.

I. Competition-Coal

A. General

The importance of maintaining competitive rail alternatives is emphasized in the **RAILROAD MERGER APPLICATION** at page 17. Indeed, the **APPLICATION** and supporting testimony imply that the "UP/SP merger, together with the trackage

[2] For train counts, see **APPLICATION**, Volume 3, pages 384-385; see also Exhibit BN/SF-1, Owen, pages 7-10.

rights agreement with the BN/Santa Fe, will greatly intensify rail competition in the West." "Expanded single-line service" is one of the alleged benefits of the proposed merger and associated agreement with the BN/Santa Fe.[3]

B. Sierra Pacific Power Company's and Idaho Power Company's North Valmy Station

Many of the claimed benefits related to projected increased competition in coal shipments between the UP/SP and the BN/Santa Fe appear to be related to service between origination and termination points located in other states. These benefits may result in increased profits to the railroad, but may not benefit individual shippers who now enjoy competitive access to two railroads. An example of this disparity is the North Valmy Generation Station (Valmy Plant), owned jointly by Sierra Pacific Power Company (SPPCo) and Idaho Power Company (IPC), and located near Battle Mountain, Nevada, on the paired track between Alazon and Weso. Both SPPCo and IPC provide electricity to northern Nevada customers.

Mr. Peterson states that "[T]he substantial numbers of '2-to-1' shippers . . . on the UP-SP paired track between Weso (near Winnemucca) and Alazon (near Wells), Nevada, will have service from two stronger, broader rail networks than they have today."[4] SPPCo's and IPC's Valmy Plant is categorized as a "2-to-1" shipper. Mr. Sharp also states that "[A] principal benefit of the proposed merger is the expansion of efficient, single-line routings . . . ," that coal consumers' choices will be broadened by single-line or improved access to a broader range of coal producers, and that "[C]oal producers will likewise gain single-line or improved access to an expanded array of potential coal customers" may not be true from a Nevada perspective. His claim that the Valmy Plant will retain single-line access to SP coal origins via the merged system is not supported by the facts available to the PSCN.[5] What actually occurs under the merger as presented is that the Valmy Plant loses competitive access to single-line service from the Utah coal sources for which the plant was designed. This

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[3] **APPLICATION**, Volume 1, SECTION 1180.6(a)(2)(I), page 17.

[4] Peterson **APPLICATION**, Volume 2, page 88.

[5] Sharp, **APPLICATION**, Volume 2, pages 670-672.

generating facility operates efficiently only if it is supplied with coal appropriate for the design of the plant.

Mr. Sharp rationalizes this loss by suggesting that the Valmy Plant has never accessed any other than UP-sourced coal and that it could benefit in the future from competition by gaining single-line access to Wyoming's Powder River Basin.[6] With this rationalization, even though he recognizes the wide diversity in coal quality between Utah and Wyoming coal, Mr. Sharp ignores that the coal quality issue is critical to efficient, economic and environmentally-acceptable operation of the Valmy Plant.[7]

With the merger, the Valmy plant will lose access to one of two railroads (the SP) which is now able to provide competitive, single-line, unit train service from several Utah coal mines, which produce coal meeting the specifications for the Valmy Plant. This result contradicts the claims made by Mr. Peterson in his verified statement about "Expanded Single-Line Service."[8] Under the conditions imposed by the BN/Santa Fe and the Utah Railway agreements, the Valmy Plant would continue to be served via single-line access from Utah mines by UP/SP, but competing service from Utah coal mines by the BN/Santa Fe would require the Utah Railway to originate shipment and BN/SF to terminate the shipment. In the latter case, as recognized by Mr. Gray, shipments of coal would result in delay and extra costs.[9] This noncompetitive aspect of the merger could raise SPPCo's electric utility rates and adversely impact ratepayers due to the higher non-competitive costs of transporting coal.

Utilities, not the railroad, should have the opportunity to choose the appropriate, competitive, coal sources for their generating plants. This choice will become even more critical in a restructured utility environment, where competitive market forces will drive utility customer choice and consequent utility generating resource response.

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[6] Sharp, **APPLICATION**, Volume 2, page 686-687.

[7] Sharp, **APPLICATION**, Volume 2, page 681.

[8] **APPLICATION**, Volume 2, pages 41-43.

[9] See Verified Statement of Gray, **APPLICATION**, Volume 1, page 200-202.

The **APPLICATION** does not demonstrate that restricting single-line access through only the merged UP/SP rail system to Utah coal sources is in the economic interests of SPPCo, IPC, or their northern Nevada ratepayers. The **APPLICATION** and supporting testimony provide no analysis that demonstrates that this restriction enhances competition or is even a viable option for SPPCo and IPC at the Valmy Plant.

C. Other Nevada Utility Coal-Fired Plants

The merger and the associated trackage rights agreements produce no competitive benefits or opportunities for Nevada Power Company (NPC), which has coal-fired plants now served by the UP in southern Nevada. Furthermore, the new coal-fired, Piñon Pine Power Plant, which is a Department of Energy Clean Coal Demonstration Project located east of Reno, Nevada, will have access only to the combined UP/SP system, even though the BN/Santa Fe will operate in close proximity to the Piñon Pine Power Plant's rail siding under the BN/Santa Fe's trackage rights agreement. The claim that "Utah coal producers served by the SP will gain...single line access to new destinations all across the UP system,"[10] is simply not factually supportable with respect to Nevada's utilities. The exclusionary and discriminatory provisions of the merger and associated trackage agreements which prevent competitive access to these utility facilities are not in the public interest of Nevada's utilities or its utility ratepayers.

D. Coal Stockpiles

Mr. Davidson claims that the more reliable rail industry may result in reduction of coal stockpiles in the utility industry.[11] The PSCN disagrees, especially for Nevada utilities. Coal stockpiles are just one aspect of a power plant's reliability; many other factors (such as potential labor disruptions at a mine or with a railroad, inclement weather, accidents, etc.) enter into a utility's determination as to how large a coal stockpile to maintain. Only a utility, not a railroad, can appropriately make that determination.

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[10] Peterson, **APPLICATION**, Volume 2, page 88.

[11] Davidson, Vol. 1, page 204.

If Nevada's utilities are prevented from exploring and maximizing the economic and practical efficiencies of coal shipment competition among railroads from their own perspectives, then it is unlikely that Mr. Davidson's views will prove accurate.

E. Recommendations

One method to address these concerns is for the Surface Transportation Board to condition the UP/SP merger to allow third-party, competing railroad operators, such as the Utah Railway, to obtain nondiscriminatory trackage rights from the UP/SP. These competing operators would then have an opportunity to serve existing or new utility power stations on a single-line basis from competing coal producers. The comments filed by Mr. Ice of the BN/Santa Fe suggest that the use of trackage rights agreements is a viable option to promote competition.[12] Such conditions to eliminate anti-competitive conditions were explicitly authorized by Congress for the Board in the ICC Termination Act of 1995.[13]

Such a requirement should ensure that a competitive railroad operating under a fair trackage rights agreement is not paying charges in excess of what the UP/SP would charge itself for the same service. This would allow the utility to conduct a bidding process and encourage competition for its coal business. This should promote competition not only among railroad operators and but also mine operators. The UP/SP should be made whole from a cost perspective since its costs would be recovered through trackage rights fees.

Similar "open access" provisions have been implemented by the Federal Energy Regulatory Commission in the gas and electric industry, and by the Federal Communications Commission in the telecommunications industry. Allowing competition of this nature is in concert with the competitive market policies outlined for other utility industries by Congress and such a policy recognizes the benefits that competition produce in a restructured and deregulated industry environment.

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12 BN/Santa Fe's Comments on the Primary Application; Ice, pages 3-4, 11-13; See Exhibit BN/SF-1.

13 See Conference Report on HR 2539, Sec. 11324, page 191.

II. Competition-Other

A. Nevada Northern

Mr. Rebensdorf expressly recognizes that the Nevada Northern Railway will receive the right to interchange with the UP/SP or BN/Santa Fe near Shafter.[14] The PSCN believes that the "open access" comments offered above should also apply to the Nevada Northern in that the Board should ensure that UP/SP charges to the BN/Santa Fe for trackage rights do not inhibit competition for the interchange traffic (estimated at 5,000-8,000 carloads annually). Requiring comparable access for the Nevada Northern interchange at Shafter should be a condition of any approval so that the balancing test regarding competition is adequately addressed.[15]

B. Shippers

Other than intermodal and automotive service to the Reno/Sparks area, the proposed merger does not open up new opportunities for shippers to obtain competing service from the UP/SP and the BN/Santa Fe. For instance, a shipper in Winnemucca observed that the benefits of competition derived from the merger accrue, not to individual shippers along the line, but rather to the railroad because the railroad is able to compete on an interstate basis with another railroad. The PSCN suggests that this would amount to a windfall profit to the railroad with little benefit to shippers.

The PSCN believes that Nevada shippers on rail lines served by both the UP/SP and the BN/Santa Fe should have the opportunity to access either railroad and not be frozen out of competitive access for the foreseeable future. Competition by shippers should be enhanced, not restricted by the merger. For that reason, the PSCN suggests that, after operating experience is gained with the BN/Santa Fe agreement, but in no more than three years, the competitive access issue be examined by the Board to ascertain the level of shipper interest and evaluate the prospect of expanding competitive opportunities for shippers

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14 Rebensdorf, **APPLICATION**, Volume 1, page 297; See also page 2 of Agreement; **APPLICATION**, Volume 1, page 319.

15 49 C.F.R. § 1180.1(c)

through trackage rights agreements. This could provide guidance in other proceedings considering competitive rail access.

III. Mitigation of Increased Rail Traffic Through Northern Nevada

As indicated earlier, the PSCN held public meetings on the impacts of the merger in Reno, Lovelock, Winnemucca, Elko and Las Vegas. A primary concern of local government expressed at these public meetings was the anticipated effect of increased rail traffic through the cities of Reno, Lovelock, Winnemucca, Carlin, Elko and Wells, Nevada. These concerns have been acknowledged by both UP and SP railroad officials. Despite identifying these issues, however, no specific mitigation measures have been proposed by the Applicants to address the environmental, traffic congestion, safety and emergency response problems that are likely to result from the merger due to greater rail traffic along the corridor.

A. Reno

The impacts of the merger on Reno may be the greatest on any city affected by the merged railroad operations. This results from the proximity of the SP railroad tracks to downtown Reno and the fact that Reno's tourism-based economy make it a destination for millions of visitors each year. Reno is a 24-hour-a-day resort area, and the area adjacent to the railroad is a significant business center with heavy vehicular, public transit and pedestrian traffic at all hours.

The PSCN understands that the City of Reno is an intervenor in Finance Docket 32760 and that issues specific to Reno are being evaluated by experts from the City of Reno, the UP and SP. The concerns of the City of Reno, have also been publicly stated by Nevada Governor Bob Miller, U.S. Senator Harry Reid, U.S. Senator Richard H. Bryan, and Congresswoman Barbara Vucanovich. These elected officials are concerned with the public safety and economic impact the merger, if approved, will have on Nevada's second largest city. As the state agency having jurisdiction over railroad crossings and acting under certification for the Federal Railroad Administration for railroad safety issues, it is the express request of the PSCN that Reno's unique situation be recognized by the Board and that conditions to mitigate the impact of substantially increased rail traffic be required in any order approving the merger. Recognizing that local government expertise is best able to suggest sol[illegible] to the variety of problems increased traffic will engender, the PSCN defers to the City of Reno's comments to advise the Board as to which mitigation measures are the most feasible and appropriate.

B. Rural Communities--Lovelock, Winnemucca, Carlin, Wells

There are railroad-related impacts to some of Nevada's rural communities which are as significant to the residents of those communities as the impacts of the merger are to the Reno urban area. The City of Winnemucca has intervened in this proceeding. Lovelock, Winnemucca, Carlin and Wells are all adversely affected because railroad tracks bisect these communities, requiring at-grade crossings. Some city services, such as fire and police services, are located on one side of the tracks while hospitals and emergency care facilities are located on the other. Rail operations often cause substantial delays to vehicular and pedestrian traffic and interfere with the cities' emergency and police response capabilities.

In Winnemucca, it was suggested that the railroads realign the SP mainline track west of town near Rose Creek to connect to the UP mainline right-of-way, double-track the UP main line through Winnemucca as needed, then realign the SP track east of Winnemucca to complete a bypass of the downtown area. UP's tracks and yard do not go through the downtown area and therefore do not create the conflicts with the community that the SP track alignment causes. Except for rail access to a limited number of shippers, one of which is a major employer in Winnemucca, this alternative would eliminate the conflicts the community has with the railroad's at-grade crossings in downtown Winnemucca.

A similar situation exists in Carlin. Carlin has multiple yard tracks at one crossing, which is in poor condition, and these tracks bisect the city. Linda Bingaman, Mayor of Carlin, indicated that a relocation of the tracks bisecting Carlin would resolve most of Carlin's problems. This option seems to make sense in light of the Applicants expectation that SP's Carlin facilities will be closed and the functions transferred to Elko.[16]

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16 **APPLICATION**, Volume 3, page 173.

At the PSCN's public meetings in both Winnemucca and Elko, railroad representatives indicated an interest in exploring alternatives and suggested that proposals to address these issues might be forthcoming.

C. Recommendations

The PSCN recognizes that without the merger, existing problems are unlikely to be addressed in a comprehensive fashion. However, with the merger, opportunities are presented to eliminate conflicts between the railroad and the local communities, improve overall rail operations, and enhance public safety. Operational efficiencies resulting from merged railroad dispatch may mitigate conflicts in Lovelock and Wells. In Winnemucca and Carlin, some level of capital investment could resolve the conflicts. The railroads have indicated an interest in resolving these conflicts with a possible proposal.

Should such a proposal from the railroad not be made and accepted prior to the time the Board makes its decision on the merger application, the PSCN strongly urges the Board to impose mitigation conditions that require the railroad to evaluate and implement appropriate mitigation measures no later than five years from the date of merger approval.

IV. Local Service and Community Contact

Throughout the public meetings held by the PSCN, a common community concern was that railroad personnel are very difficult, if not impossible, for the general public or local government to contact in order to express complaints, operating problems, hazardous materials, shipper questions or obtain other general information. Local agents have answered that need; but affected citizens must pay for that local attention. For example, in Winnemucca, the UP now charges shippers $50.00 each time the shipper calls the local agent to resolve a problem or obtain an answer that the UP's National Customer Service Center (NCSC) cannot resolve or answer.[17] Shippers should not have to pay for the inability of the railroad to communicate accurate and timely information when questions are asked.

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[17] See Supplement 17 to Union Pacific Railroad Company's Freight Tariff UP 9006-D, Effective October 15, 1994.

Recommendation

The PSCN believes that the railroad should be required to address this problem by improving its communication effectiveness with both its shippers and with the communities it affects so problems can be dealt with in an efficient and timely manner. To this end, the PSCN recommends that the Board require as a condition of any merger approval that the railroads provide personnel and/or points of contact with local or easily accessible phone numbers that would provide timely response to inquiries, not only from shippers, but also from local governments and the general public. This should be implemented within twelve months of the date of any merger approval.

V. Labor

A broad spectrum of labor unions initially opposed the merger. The PSCN understands that an agreement has been reached between the United Transportation Union (UTU) and the UP/SP that ends the UTU's opposition to the merger's approval, and has been informed a similar agreement has been concluded between the Brotherhood of Locomotive Engineers and the UP/SP. If true, then these agreements cover about 39 of the approximately 60 jobs abolished or transferred out of Nevada.

One aspect of the job abolition issue, expressed in public comments and by State Legislators was that a reduction in work force in the maintenance-of-way departments would result in increased track and roadbed problems, thereby potentially contributing to accidents.

The PSCN recognizes and enforces the applicable safety standards promulgated by the Federal Railroad Administration. The PSCN will diligently work with FRA inspectors and administrators to enforce those standards. The PSCN would recommend that if the Board approves the merger it explicitly makes a strong statement that the merger must not result in a relaxed operating or maintenance environment that impairs public safety.

VI. Hazardous Material

A great deal of concern was expressed by speakers at the PSCN's public meetings about the railroads' response to hazardous materials incidents. Recent train accidents and derailments around the country have only highlighted these concerns and make this issue critical for state and local governments. At several of the public meetings conducted by the PSCN, local government officials expressed concern that information was not readily available, and personnel from the railroad could not be contacted. For instance, in Winnemucca, local governmental officials were unaware of the railroads' Emergency Plan for the Winnemucca yard. A railroad supervisor was able to provide, however, an Emergency Operating Plan to local officials at the close of the public meeting.

It is imperative that the railroad share jointly with local government and local emergency response agencies the information and response plans which relate to potential incidents. The Board should require that the railroads provide this type of information to the appropriate local authorities in a timely fashion and on an updated basis.

VII. Comments provided by Nevada State Clearinghouse

The comments regarding environmental issues, dated February 5, 1996, and filed by the Nevada State Clearinghouse should be taken into consideration in any decision rendered by the Board. Of particular note, the Board should seek to mitigate increased emissions from vehicular traffic caused by increased traffic delays along the Central Corridor.

VIII. Conclusion

Nevada provides an appropriate environment for the Board, the railroads and shippers to gain innovative experience in open access operations, especially utilizing the trackage rights agreements. In particular, coal shipments provide an opportunity to spread the benefits resulting from competitive, single-line shipments to a broad category of citizens, electric utility ratepayers.

Competition is recognized as an ideal mechanism to capture economic efficiencies; it should not, however, be a vehicle solely to generate excess profits for the railroads. If the Board accepts the Applicants' premise that the merged railroad enhances competition, then it should also accept its responsibility to ensure that the benefits of enhanced competition actually are achieved. The Board must provide not only the opportunities for private enterprise to operate in an efficient and economic manner, but it should also make sure that the negative effects of those opportunities are mitigated to the greatest extent possible in the communities affected.

The Board's action with regard to this merger should be consistent with the policies espoused by Congress in Public Law 104-88, Sec. 11324, subsection (c) which states that "[T]he Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities." The PSCN believes that the Board should impose appropriate conditions on the merger to mitigate the combination on the general public, consistent with recent deregulatory policies of Congress.

DATED this 28th day of March, 1996.

Respectfully submitted,

Timothy Hay

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GENERAL COUNSEL
PUBLIC SERVICE COMMISSION OF NEVADA
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Telephone: (702) 687-6008

VERIFICATION

I, Galen D. Denio, declare under penalty of perjury that the foregoing is true and correct. Further I declare that I am qualified and authorized to submit this verified statement of Comments and Request For Conditions on behalf of the PSCN.

BY: Galen D. Denio
GALEN D. DENIO, PSCN COMMISSIONER

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1104.12, I certify that I have this day served copies of the document entitled **PUBLIC SERVICE COMMISSION OF NEVADA'S COMMENTS AND REQUEST FOR CONDITIONS** upon parties in this proceeding, by first-class, postage pre-paid U.S. mail.

DATED this 28th day of March, 1996.

Mary K. Dreeson
MARY K. DREESON

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ENTERPRISE

March 28, 1996

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

RECEIVED MAR 29 1996

Re: Finance Docket No. 32760 -- UP/SP Merger

Dear Sirs:

I enclose an original and 20 copies of the Verified Statement of Enterprise Products Company in opposition to the proposed merger. Also enclosed is a diskette containing the statement formated in WordPerfect 5.1.

Please direct all correspondence and service of process in this preceeding to me at the above address. My direct telephone number is 713 / 880-6562.

Sincerely yours,

John E. Smith, II
Assistant General Counsel

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

JES:96-02
Enclosures

cc: Arvid E. Roach, III, Esq.
Paul A. Cunningham, Esq.
The Honorable Janet Reno, Attorney General
The Honorable Federico N. Pena, Secretary of Transportation
The Honorable Phil Gramm -- US Senate
The Honorable Kay Bailey Hutchinson -- US Senate
The Honorable Tom DeLay -- US House of Representatives
The Honorable Stephen E. Stockman -- US House of Representatives

BEFORE THE

U.S. DEPARTMENT OF TRANSPORTATION

SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND	§	
MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER --	§	FINANCE DOCKET NO. 32760
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION	§	
COMPANY, ET AL.	§	

Original

VERIFIED STATEMENT OF

ENTERPRISE PRODUCTS COMPANY

ENTERPRISE PRODUCTS COMPANY
2727 North Loop West
P.O. Box 4324
Houston, TX 77210

John E. Smith, II
Assistant General Counsel
713 / 880-6562

Houston, Texas
March 28, 1996

BEFORE THE

U.S. DEPARTMENT OF TRANSPORTATION

SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND	§	
MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER --	§	FINANCE DOCKET NO. 32760
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION	§	
COMPANY, ET AL.	§	

VERIFIED STATEMENT OF

ENTERPRISE PRODUCTS COMPANY

1. Witness's name, title, responsibilities and credentials.

My name is Rudy A. Nix. I am a vice president of Enterprise Products Company ("Enterprise"). I am responsible for the physical movement of all feedstocks and products utilized and produced by Enterprise. My duties include managing all rail, truck, vessel and pipeline transportation for the company. I have held this position for over ten years. I have a B.S. degree in Industrial Management from Purdue University and a Masters in Business Administration from the University of Houston at Clear Lake City.

2. Description of Enterprise Products Company, its products, facilities, traffic patterns, and use of rail transportation.

Enterprise is an independent, Houston-based energy company that processes, stores, markets and transports a variety of light hydrocarbons and related products. Its partners, suppliers and customers include a broad cross section of major oil and petrochemical companies. Its processing activities involve separating natural gas liquids into ethane, propane, butane and natural gasoline by a process called fractionation; converting normal butane into isobutane by a process called isomerization; producing of high-purity propylene by fractionation; and manufacturing methyl tertiary butyl ether (MTBE), a clean-fuel motor gasoline additive, at facilities in Mont Belvieu, Chambers County, Texas. These facilities, located approximately 35 miles east of Houston, can produce approximately 100 million barrels of hydrocarbon products annually, and the company's associated underground storage caverns in the Barbers Hill Salt Dome have a capacity of more than 23 million barrels of feedstocks and products.

With such large quantities of materials being utilized and produced by Enterprise, efficient, flexible and reliable transportation is critically important to the company. It does no good to build these plants and enter into feedstock supply, processing service or product marketing agreements if the actual materials cannot be obtained, moved and delivered in response to business requirements. Rail transportation is an essential component of these physical distribution functions.

Enterprise's major production and storage facilities are at Mont Belvieu. Enterprise pipeline systems connect from there to both sides of the Houston Ship Channel and reach other facilities along the Texas and Louisiana Gulf Coast. Other pipeline, processing and storage facilities are located at Petal, Mississippi, and the company has storage and pipeline facilities serving the Mississippi River industrial corridor in south Louisiana. The company also operates a bulk motor carrier with over 300 tractors and 450 trailers hauling liquid petroleum products and petrochemicals throughout the country from eight terminals in Texas, Louisiana, Mississippi and West Virginia.

While a sizable portion of Enterprise's transportation requirements are met by trucks and pipelines, rail service will always be indispensable for much of its business. The availability of feedstocks and demand for products are affected by countless short- and long-term physical factors, economic conditions, technology shifts and resource allocations that constantly ripple across the entire US and international economies. As a consequence intramodal and intermodal transportation flexibility -- and the rail component of this flexibility -- is central to successful distribution management.[1]

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[1] Although pipelines are generally recognized as providing the lowest unit-cost transportation for liquid hydrocarbons, every supplier and customer does not have pipeline connections or available pipeline capacity to meet each transportation service requirement that may arise. In the constantly-changing energy and petrochemical industries, rail service is frequently the only means of either obtaining product from a supplier or making delivery to a customer within the existing cost and time constraints. Pipeline connections do not always exist, or -- if they do -- pipeline capacity is not always compatible or available; and new pipeline construction can take years to complete and usually is founded on substantial volume commitments over extended periods of time.

Trucks are extremely flexible in terms of destinations, origins and timing of shipments; however, trucks cannot always satisfy volume requirements of the magnitude that rail shipments can handle, and as distances and quantities increase truck transportation, regardless of its physical flexibility, becomes less and less competitive with rail.

Water transportation can often achieve large cost savings over land-based modes on large-volume movements, but it is usually an unsuitable substitute for rail in terms of flexibility and short-term scheduling and is out of the question when any landlocked origin or destination is involved.

To put it succinctly, Enterprise cannot provide for the entirety of its own physical distribution needs and those of its suppliers and customers without rail service. If those distribution needs are not met, the company cannot survive. The world of distribution is simply too complex and vulnerable to rapid change to do without the unique advantages and benefits afforded by rail.

Therefore, like every other major company in the industry, Enterprise uses rail transportation extensively to move feedstocks and products throughout the United States. From time to time, Enterprise also makes special rail movements from suppliers and to customers in Mexico and Canada. The company leases a fleet of approximately 300 rail cars from leasing companies as well as from other users whose business requirements provide counter-cyclical availability. Suppliers and customers also ship independently to and from Enterprise in their own rail cars.

Enterprise has rail car loading and unloading facilities at Mont Belvieu, Texas, Petal, Mississippi, and Breaux Bridge, Louisiana. Mont Belvieu and Breaux Bridge are served exclusively by SP; Petal is served exclusively by the Norfolk Southern Railroad. Reflecting a continuing upward trend, approximately 5,000 rail car shipments will be made in 1996 to and from Enterprise at Mont Belvieu.[2] Approximately 1,500 cars will move through Petal; and approximately 700 will be handled at Breaux Bridge. Thus, it is clear that the company makes sizeable annual rail freight expenditures, and rate levels and service quality have significant impacts on the company's competitive posture.

Materials are fungible in the markets served by Enterprise, so transportation -- its dependability and cost -- is often the determining factor in dealings between buyers and sellers. Enterprise's ability to purchase a particular feedstock or sell a given product frequently hinges on its ability to negotiate a satisfactory rail rate and obtain reliable service commitments. If the rate and service are adequate, the deal gets done. Without both of these essential components in place, the deal dies, and neither Enterprise nor the railroad does the business.

As the largest rail shipping and receiving point in the Enterprise system, Mont Belvieu has high visibility within Enterprise, and the long history of problems with rail service there has impacted the company's ability to compete in many markets. It is also the location that, for Enterprise, would be most seriously harmed by the proposed merger of the Southern Pacific Railroad ("SP") and the Union Pacific Railroad ("SP").

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[2] Since the start of this decade, the Enterprise Mont Belvieu complex, alone, has seen the construction of more than $500 million in new and expanded facilities, and this growth has been reflected in the volume of materials transported by rail and all other modes.

The importance of and difficulties with rail service at Mont Belvieu must be viewed in the context of several critical factors:

- SP is the only railroad that serves Mont Belvieu.

- Mont Belvieu sits astride the SP's Baytown Branch, a single line, with several sidings and spurs, running south from the 345 car Dayton Yard on SP's Houston-New Orleans main line for approximately 24 miles.

- There are 16 rail shipping sites on the Baytown Branch (most of them concentrated in the southern half of it), and they generate substantial inbound and outbound traffic year round. These sites represent one of the most intensive per-rail-mile concentrations of hydrocarbon/petrochemicals processing, treating and storage facilities in the US and many billions in capital investment. Included are the world's largest liquefied petroleum gas storage site (the Barbers Hill Salt Dome at Mont Belvieu) as well as the very large Exxon Baytown Refinery and Petrochemicals Plant. The precise volume of traffic on the Baytown Branch is not known to Enterprise, but a reasonable estimate might be in the range of 80,000 cars per year.

- All inbound and outbound switches must enter and leave the Baytown Branch at Dayton, so the heavy volume of traffic is almost always congested and subject to continuous bottlenecks along the Baytown Branch as well as in the Dayton Yard.[3] Considering the limited number of cars in individual switches moving an average of more than 200 cars per day, the sheer number of trips up and down the line and the transit time (much less delays for switching to load and unload), it is something of a miracle that anything moves on it at all.

Thus, Mont Belvieu has a twofold rail problem. It is captive to a rail monopoly, and the existing rail facilities are inefficient, overloaded and poorly managed. The solutions are obvious: Mont Belvieu should get more competition, not less; and it should see the addition of new rail facilities, not a perpetuation of the existing inadequacies.

3. <u>Enterprise's Opposition to the SP/UP Merger</u>.

Enterprise strongly opposes the proposed merger of SP with UP, because the merger would maintain the rail monopoly status at Mont Belvieu and would eliminate the prospect of relieving longstanding rail facility deficiencies. The potential harm from it far outweighs the potential benefits contrary to the public interest. The harm will come both through the

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[3] The Baytown Branch's southern terminus has an interchange point with UP, but SP has never extended trackage rights across it.

immediate reduction in competition and the long term detrimental impact on essential services and facilities.

- The elimination of competition is obvious, because the merger's entire purpose is to remove a competitor (SP) from the rail transportation sector.

- The harmful impact on essential services is clear when the public need for additional rail service and facilities at Mont Belvieu is viewed in the context of a monopolistic service history and the limitations of the existing Baytown Branch.

- The merger would be highly detrimental to Enterprise, because it will inevitably stifle recent signs and benefits of competition between SP and UP at Mont Belvieu and because it will ultimately precipitate a reduction in service to the company's facilities and those of its suppliers and customers throughout the US wherever service availability from both UP and SP has made for truly competitive rail transportation.

4. <u>Basis of Enterprise's Opposition.</u>

The SP/UP merger will adversely affect Enterprise's most important shipping point. As proposed by the applicants, the merger of the two railroad will extinguish the recently developed potential for competition between SP and UP at Mont Belvieu and impose a permanent monopoly on rail transportation. This monopoly position will in all likelihood doom the prospects for construction of desperately needed new rail facilities to serve existing and new traffic at Mont Belvieu and reduce congestion on the Baytown Branch.

- For years, SP has provided the only service at Mont Belvieu. Not surprisingly, the result has been a typical non-competitive situation highlighted by lack of responsiveness, high rates and a low general caliber of service. SP apparently did not allocate sufficient capial or management resources to overcome the physical limitations of or the monopoly mindset that attached to the Baytown Branch. Customer dissatisfaction developed, grew and festered without sign of SP concern.

- However -- in a classic competitive response to the situation -- 1995 saw the announcement of UP's intention to construct a new branch into the Mont Belvieu area. This Mont Belvieu Branch, extending 10-½ miles from the UP line at McNair just east of the San Jacinto River, would directly serve major plastics and petrochemicals plants operated by Exxon[4], Amoco and Chevron, each of which is presently on the SP's Baytown Branch. According to press reports, the UP Mont

[4] A separate facility from Exxon's petrochemicals plant and refinery in Baytown.

Belvieu Branch would handle some 12,000 cars a year from the three plants and entail $20 million in right-of-way and construction costs.[5]

● Although the new Mont Belvieu Branch was not proposed to serve Enterprise initially, the Exxon plant it would serve is less than a mile from Enterprise, and Enterprise believes the short extension or spur that would be needed to reach it is entirely logical and could be justified on economic grounds at an early date. Construction of this new Mont Belvieu Branch was seen as placing Enterprise in an ideal position to benefit from true head-to-head competition for its rail traffic. Aside from whatever competitive benefits it would provide, the new branch would also remove a significant number of cars from the Baytown Branch and thereby relieve some of the current congestion and physical limitations impacting all shipping points along it. See Exhibit I for a map showing the UP branch's proposed route and the location of Enterprise in relation to it and the Amoco, Chevron and Exxon plants.

● Following UP's announcement of the Mont Belvieu Branch, an interesting development took place. SP's attitude toward Enterprise's needs appeared to change dramatically; although, it took a meeting between Enterprise representatives and the president of SP to bring about any significant improvements in service. But better freight rates and improved service on the Baytown Branch were forthcoming, and these developments enabled Enterprise to become competitive in new markets involving rail shipments to or from Mont Belvieu. Enterprise has no doubt that the prospect of potential competition from UP was at the heart of SP's new approach to doing business with this heretofore captive Mont Belvieu customer.

● But then the merger was announced, and it signaled -- in Enterprise's view -- the end of this emerging competitive situation. If the merger comes to pass, Enterprise is convinced the Mont Belvieu Branch will never be built. Why would the merged monopoly carrier spend $20 million to serve points that are already on its line? Without this new line and the relief it would bring to Mont Belvieu in terms of price, service and facilities, Enterprise and the other companies located there will be back to one carrier, one service; and the recently opened avenues for rail-based growth into new markets from Mont Belvieu may wither away. Even in the unlikely event the new branch is built and competitive access to the three destination plants is granted to another railroad, there is no assurance that the line would ever be extended by the merged SP/UP to other Mont Belvieu shipping points. In fact SP has stated that, even if the Mont Belvieu Branch is built, no additional service will be allowed to be provided by another railroad to any other shipper on this line; the Amoco, Chevron and Exxon plants will be the exclusive beneficiaries.

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[5] *Traffic World*, Vol. __ No. __, June 26, 1995, at page 35.

If the merger is approved Enterprise believes service at Mont Belvieu will return to its former level. There will be no incentive for the merged SP/UP to build new the Mont Belvieu Branch or improve service on the Baytown Branch, since Mont Belvieu will once again be a monopoly carrier's captive. After a glimmer of hope for better service and new facilities, rail-traffic life will go back to business-as-usual along the Baytown Branch. Also, recent rate improvements may be reversed.

This merger will be detrimental to Mont Belvieu and all of the other shipping points and regions that will be permanently consigned by it to monopoly rail service. It will harm all segments of industry that stand to benefit from a healthy competitive climate in and among all modes of transportation. These adverse impacts will also work against expanding exports from Texas to other countries, particularly the United States' NAFTA partners. There will be one winner -- SP/UP -- and millions of losers at Mont Belvieu, across Texas and throughout the United States.

5. <u>The Board Should Disapprove or Set Conditions for Any Approval of the Merger.</u>

Enterprise Products Company believes the proposed SP/UP consolidation would lessen competition and harm essential services contrary to the public interest and, therefore, the Surface Transportation Board should disapprove it. However, if the Board were not to disapprove the proposed consolidation, Enterprise recommends that any approval be expressly conditioned as follows:

- That SP/UP build the Mont Belvieu Branch as proposed and grant trackage rights upon it to a competing carrier (Burlington Northern/Santa Fe) with no limitations on providing service to additional customers at Mont Belvieu;

or, in the alternative,

- That SP/UP authorize a short line railroad to operate the Baytown Branch and grant trackage rights for multiple railroads to access it at Dayton along the SP Houston-New Orleans main line and through the interchange point with the UP line at the southern terminus..

Enterprise would prefer to see the first condition imposed but believes that either condition would be useful in ameliorating the anticompetitive effects of the consolidation and its harmful effects on essential services. Moreover, such conditions would be appropriate to the circumstances of the SP/UP case and consistent with the Board's *General Policy Statement for Merger or Control of at Least Two Class I Railroads* [49 CFR §1801.1(d)], because they:

- Are related to the impact of the consolidation *(i.e.*, the elimination of rate/service competition and forestalling the construction of essential new rail facilities).

- Are designed to enable shippers at Mont Belvieu to obtain adequate service, because they would secure the construction of the new Mont Belvieu Branch or install a more efficient operator for the Baytown Branch.

- Would not pose unreasonable operating or other problems for the consolidated carrier, because UP already recognizes the economic feasibility of building the Mont Belvieu Branch.

- Would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits of the merger, because Mont Belvieu and the Baytown Branch must be viewed in the context of the combined SP/UP system extending over 37,000 miles and many thousands of shipping points, and the conditions proposed by Enterprise for this one location could have no overall significance to realization of the $750 million annual public benefits estimated by the applicants. In fact these conditions could very well bring about traffic growth and operations efficiencies in the merged SP/UP that could even enhance the value of the estimated public benefits.

6. Conclusion.

For the reasons stated above, Enterprise Products Company urges the Surface Transportation Board to find the proposed SP/UP consolidation would lessen completion and narm essential services contrary to the public interest and, therefore, to enter an order disapproving the merger or, in the alternative, to impose conditions on the merger as suggested in section 5, above.

7. Verification.

I declare under penalty of perjury that the foregoing is true and correct. I certify that I am qualified and authorized to file this statement on behalf of Enterprise Products Company. Executed at Houston, Texas, this 28th day of March, 1996.

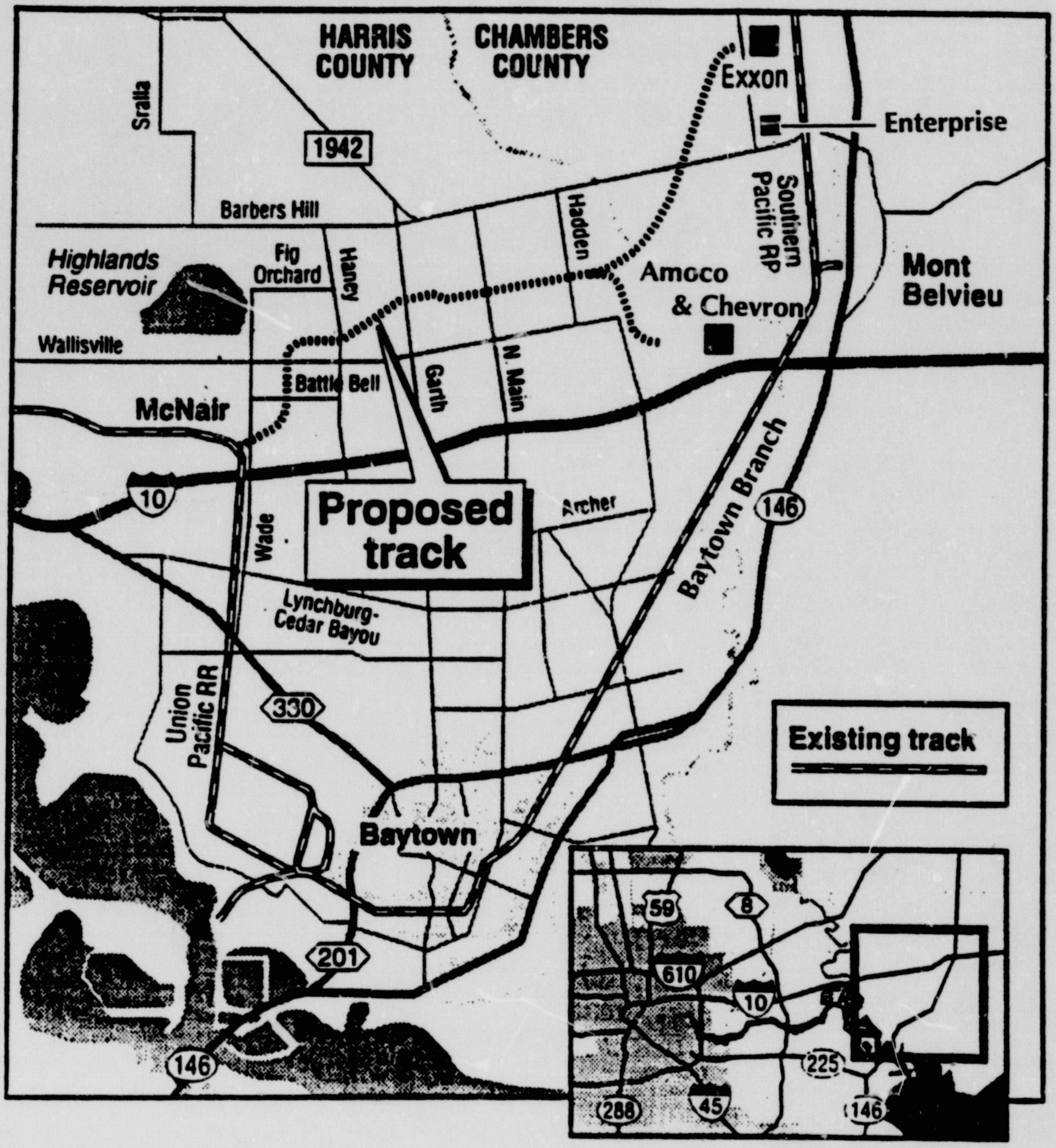
Respectfully submitted,

ENTERPRISE PRODUCTS COMPANY

Rudy A. Nix

Rudy A. Nix
Vice President

EXHIBIT I



B.C. Oren/Chronicle

CERTIFICATE OF SERVICE

I certify that I have this day served by First Class U.S. Mail, postage prepaid, copies of the Verified Statement of Enterprise Products Company upon all persons specified to receive service in Order No. 9 of the Interstate Commerce Commission, 60 Fed. Reg. 66988 (December 27, 1995).

Date: March 28, 1996

John E. Smith, II

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March 22, 1996
P. O. Box 247
North Zulch, Texas 778[illegible]

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

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

Re: Finance Docket 32760

Gentlemen:

Our town came into existance back in 1906 as a result of competition between Trinity and Brazos Valley Railroad and Houston and Texas Central Railroad. There are small Texas towns 8 to 10 miles apart on this Burlington Northern/Santa Fe Railroad. There is lots of traffic today by Hwy 39 which was built on the old roadbed of the H & TC Railroad in the early 40's.

I am against the merger of the Union Pacific and Southern Pacific Railroads and feel that competition and free enterprise should be kept alive in our state's railroads. The quality of life for the people of Texas can best be served by keeping competition alive in our railroad industry.

We will appreciate your keeping the best interest of the people of this state in mind and not allowing this giant merger to take place.

ADVISE OF ALL PROCEEDINGS

Sincerely,

Emma Ruth Sparks

Emma Ruth Sparks

CC: Railroad Commission of Texas

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