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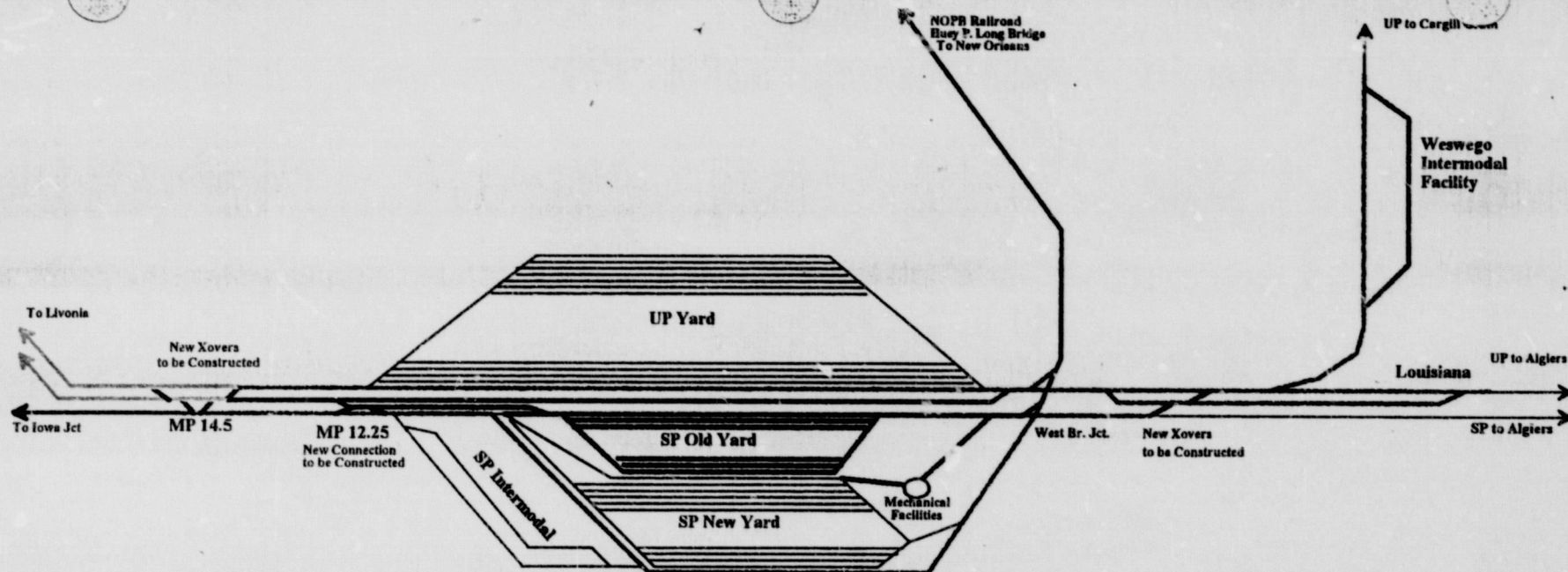
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






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Legend:

-  BNSF Ownership, UP/SP has Trackage Rights
-  UP/SP Ownership, BNSF has Trackage Rights
-  New Connections
-  UP/SP Main Line
-  BNSF Ownership (Yard Tracks)
-  UP/SP Ownership (Yard Tracks)
-  NOPB (New Orleans Public Belt) Trackage

**FIGURE 5 - NEW ORLEANS
TERMINAL OVERVIEW**

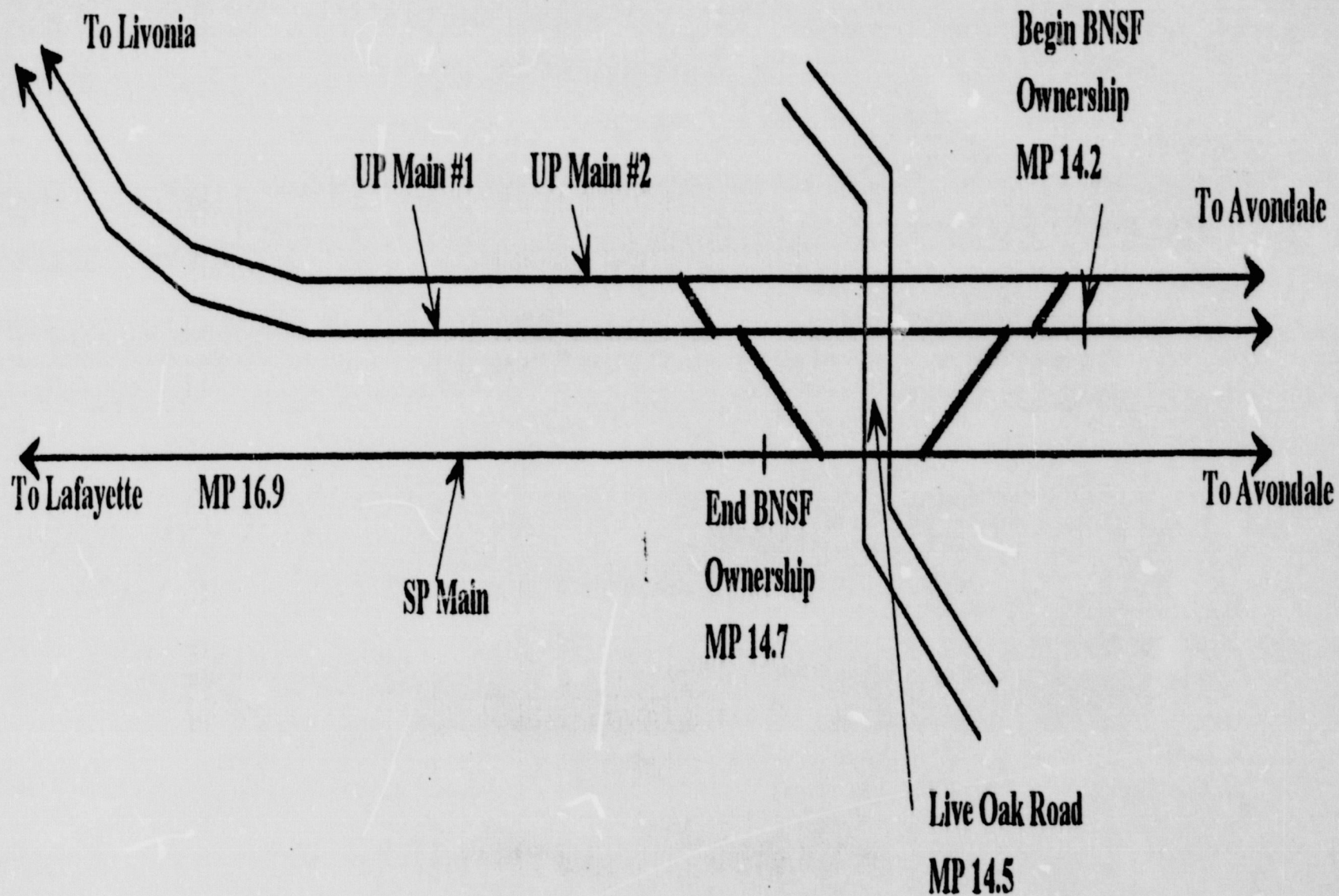
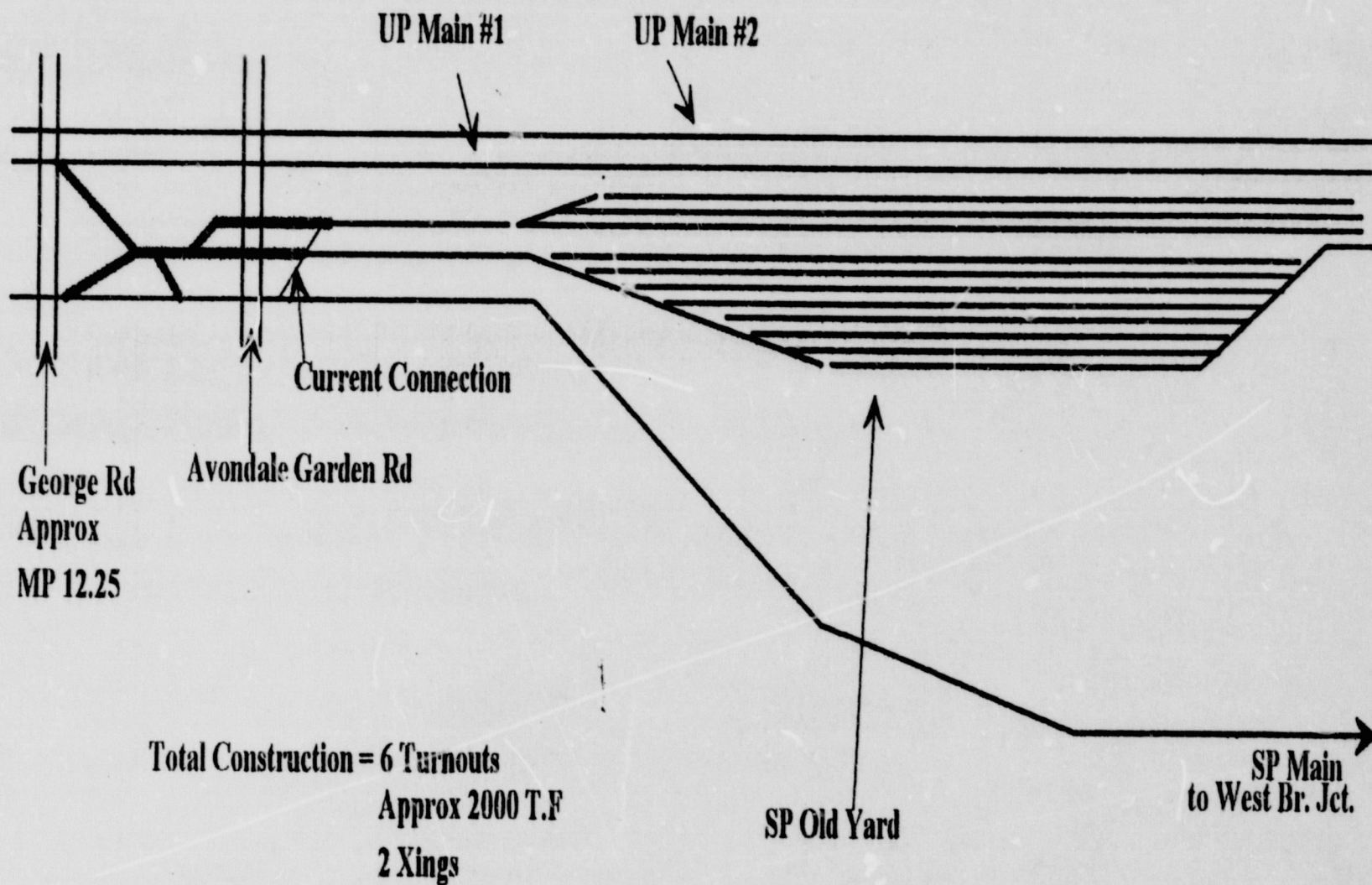


FIGURE 6 - CONNECTIONS AT MP 14.5 AVONDALE, LA



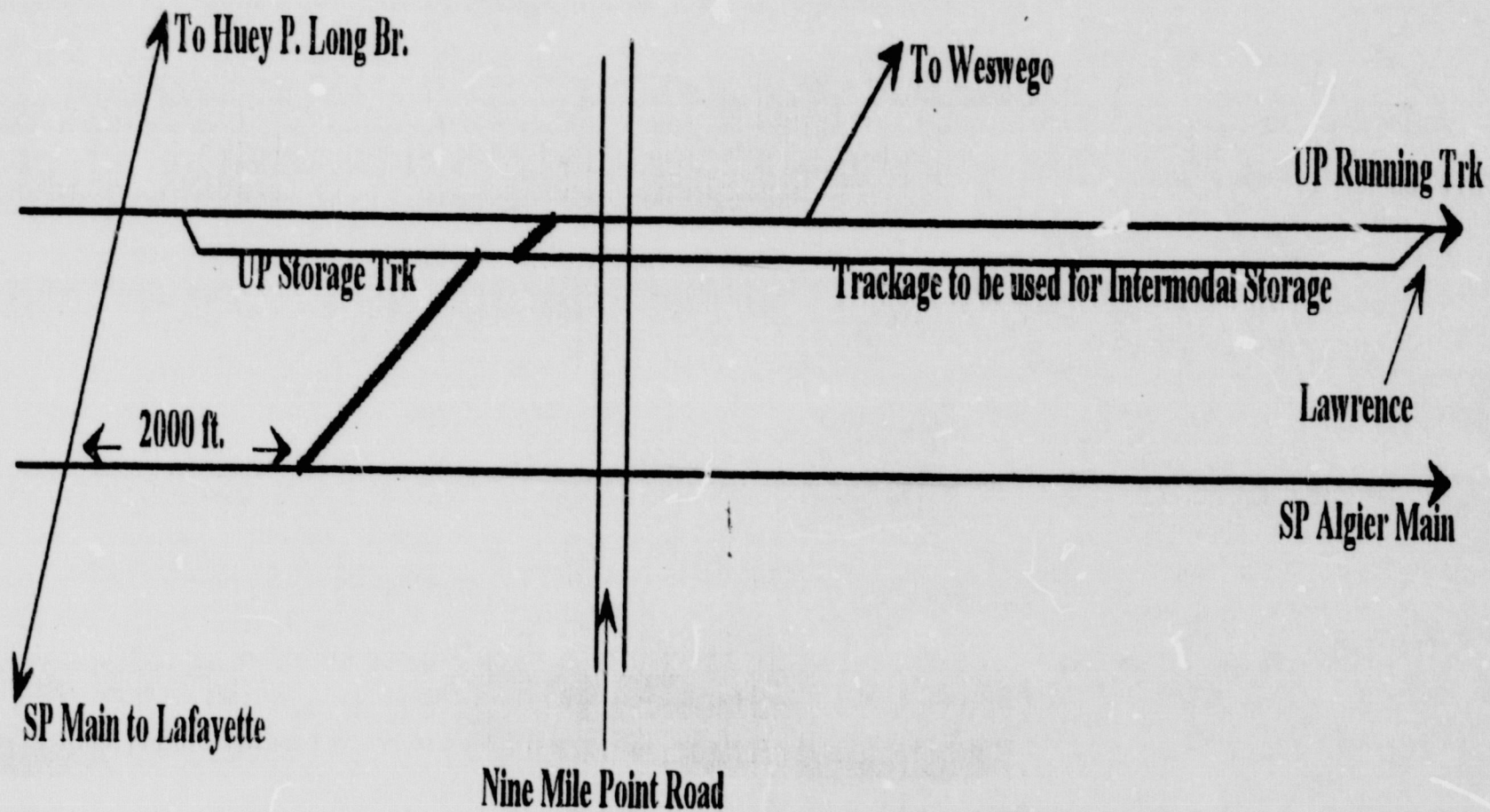
**FIGURE 7 - CONNECTIONS AT MP
12.25 AVONDALE, LA**

- * Two crossovers are planned from the SP Algiers branch to a UP storage track, and thence to the UI Algiers running track. This will permit direct access for BN/Santa Fe movements between the Westwego Intermodal Ramp and the BN/Santa Fe Yard. Figure 8 shows the proposed trackage.

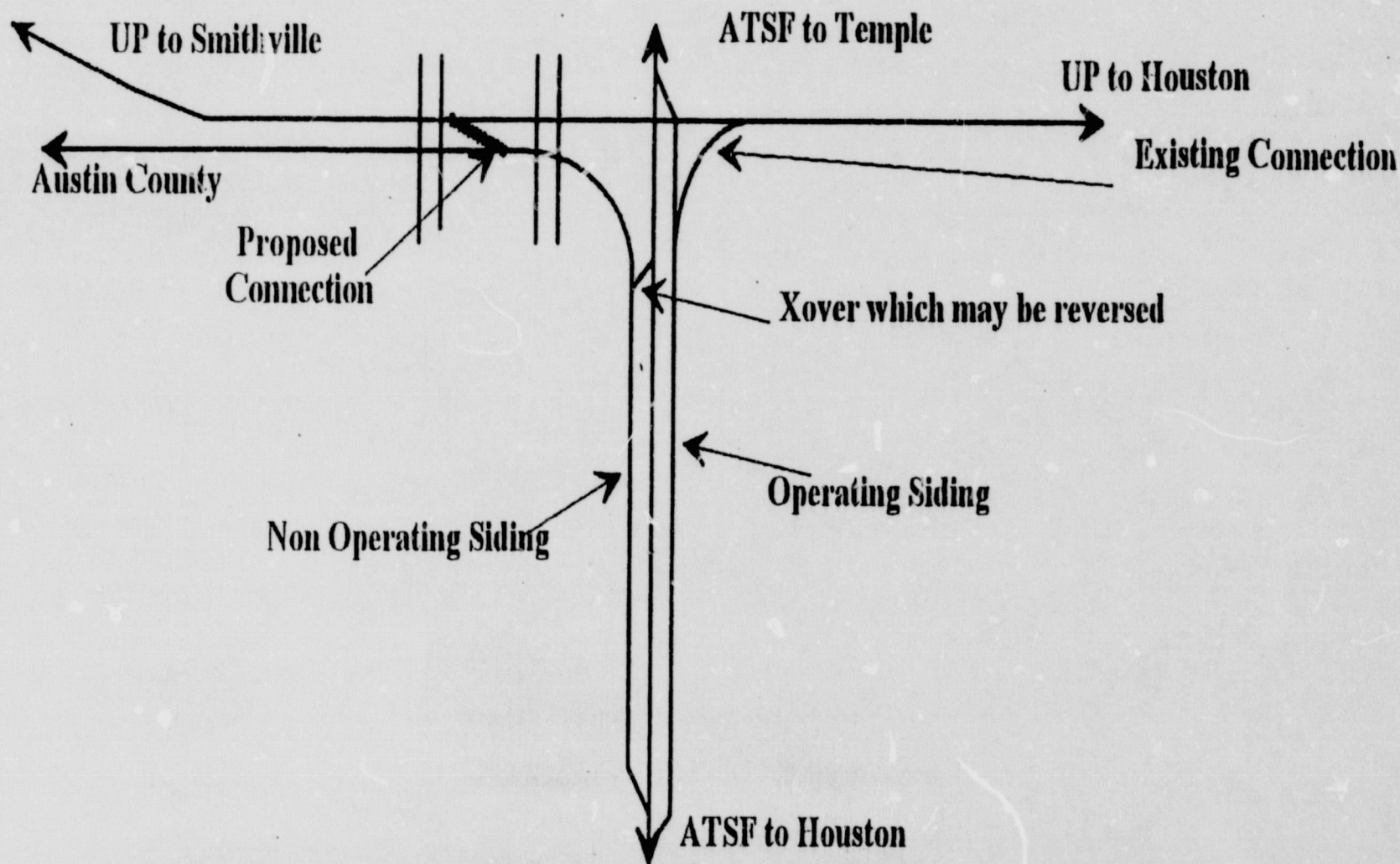
b. Sealy, TX. A new connection will be built between BN/Santa Fe trackage toward Houston and UP/SP's main track toward Smithville. This connection, estimated to cost \$600,000, will allow direct movement of BN/Santa Fe Kerr unit aggregate trains and manifest trains between Houston and Smithville. The connection will be a crossover from Austin County owned trackage to the UP/SP main track. The connection is shown in Figure 9. Construction is planned to start the first week of October 1996.

c. West Memphis, AR. A connection will be reestablished in the southwest quadrant of the BN/Santa Fe-UP/SP crossing at Bridge Jct., AR (see Figure 10). This connection, estimated to cost \$1.8 million, is receiving first priority. Preliminary work began September 16, 1996, and completion is expected prior to initial direct train service on December 16.

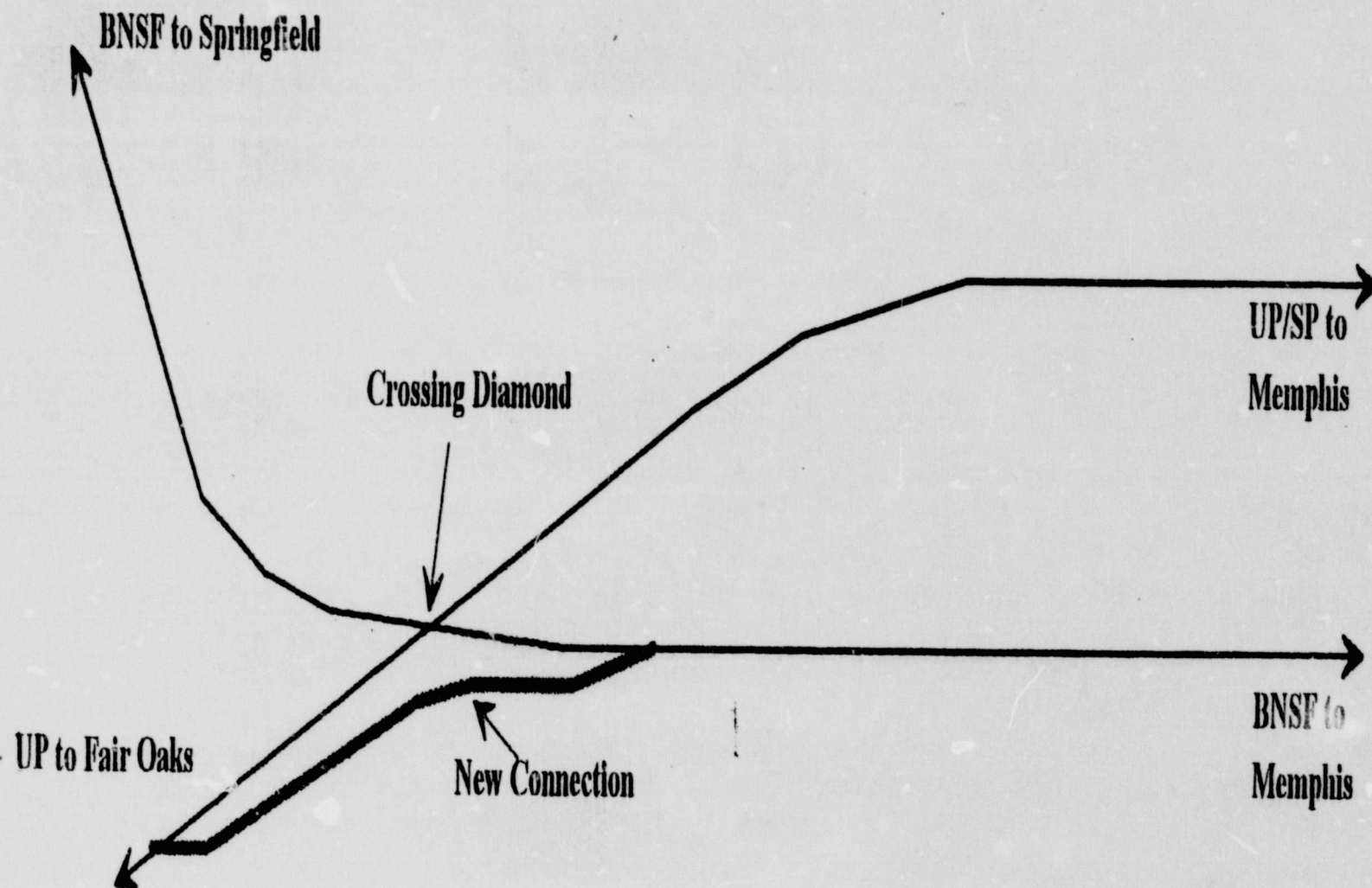
d. Robstown. A new connection to enable direct Houston-Laredo train movements was submitted as part of BN/Santa Fe's original service description. The same, or similar, connection was projected by Texas Mexican's Operating Plan. BN/Santa Fe does not plan to build this connection as part of its Operating Plan. If Tex Mex plans for such a connection go forward, BN/Santa Fe would anticipate entering into negotiation with Tex Mex for mutually satisfactory operating arrangements.



**FIGURE 8 - WESTWEGO, LA
CONNECTIONS**



**FIGURE 9 - CONNECTION AT
SEALY, TX**



**FIGURE 10 - CONNECTION AT
WEST MEMPHIS, AR**

B. CENTRAL REGION

1. Denver-Stockton/Richmond. This corridor and its train crew districts are depicted by Figures 11 and 12.

a. Through Train Service. BN/Santa Fe will begin to serve this corridor with two daily trains, one in each direction, which will be mixed manifest/intermodal trains. As traffic volumes increase, BN/Santa Fe will increase the number of through trains that operate over the Central Corridor. BN/Santa Fe also will run additional grain trains as needed as is further described in the Verified Statement of Richard W. Brown.

- * Trains M-STODEN and M-DENSTO will operate between Stockton and Denver starting on or about October 10, 1996. These trains will carry manifest, automotive and intermodal traffic using UP's route west of Winnemucca, NV via Portola, CA and Keddle. Both will set out and pick up in Portola, Elko, NV and Salt Lake City. UP/SP crews will operate the trains for a period of up to one year between Denver and Salt Lake City, and until further notice between Salt Lake City and Stockton/Richmond.
- * Unit coal trains from the Utah Railway will be operated as needed in either direction from Grand Junction, CO and Provo, UT.

Schedule outlines for the above trains are contained in the Operating Plan Appendix.

b. Local Train Service.

- * UP/SP will provide local service for BN/Santa Fe to and from 2 to 1 stations in Nevada. BN/Santa Fe through trains will set out and pick up this traffic in Elko and Portola.
- * UP/SP will provide local service for BN/Santa Fe to and from Reno, NV. BN/Santa Fe through trains will set out and pick up this traffic in Elko and Stockton.

Figure 11

CENTRAL SP ROUTE

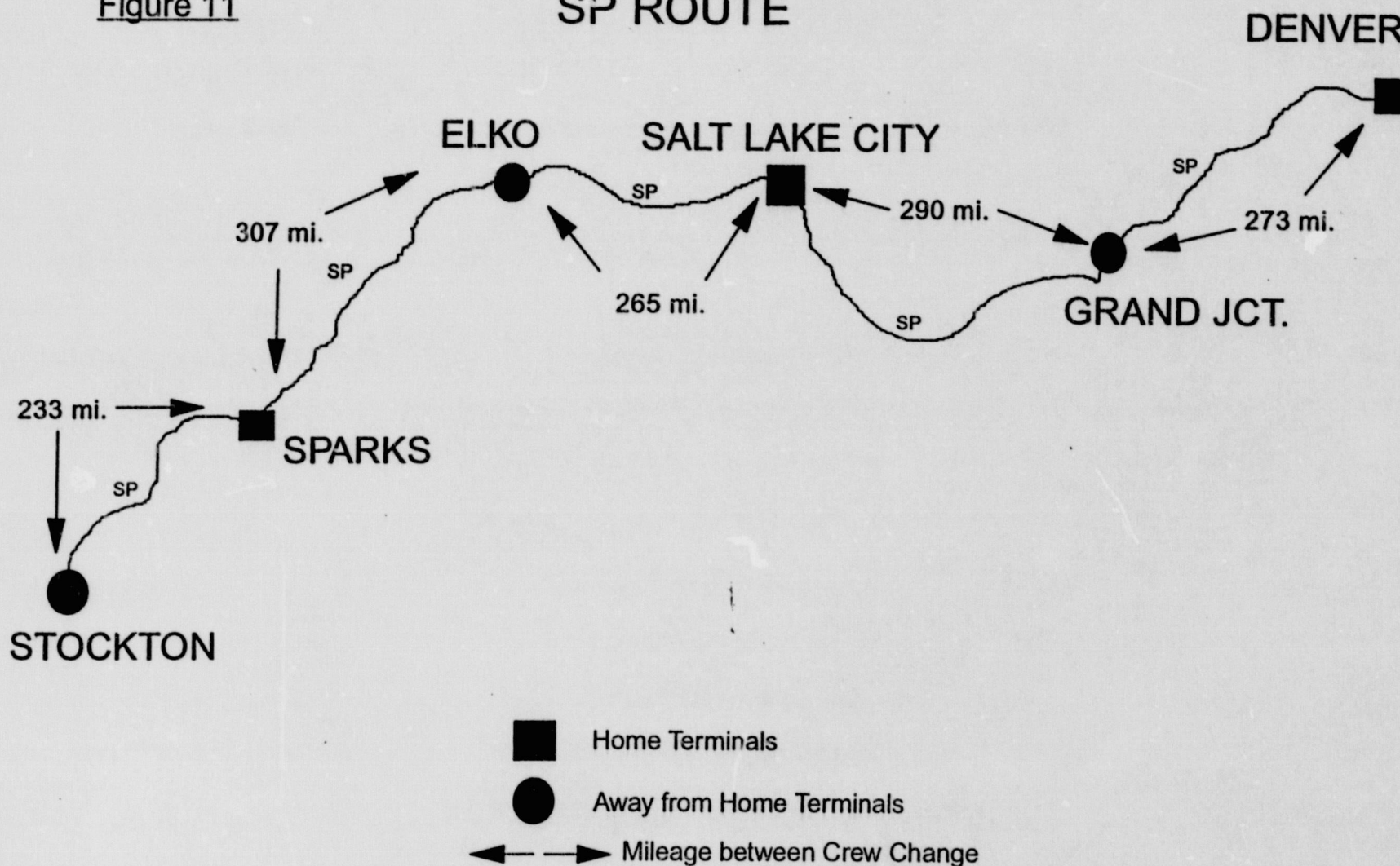
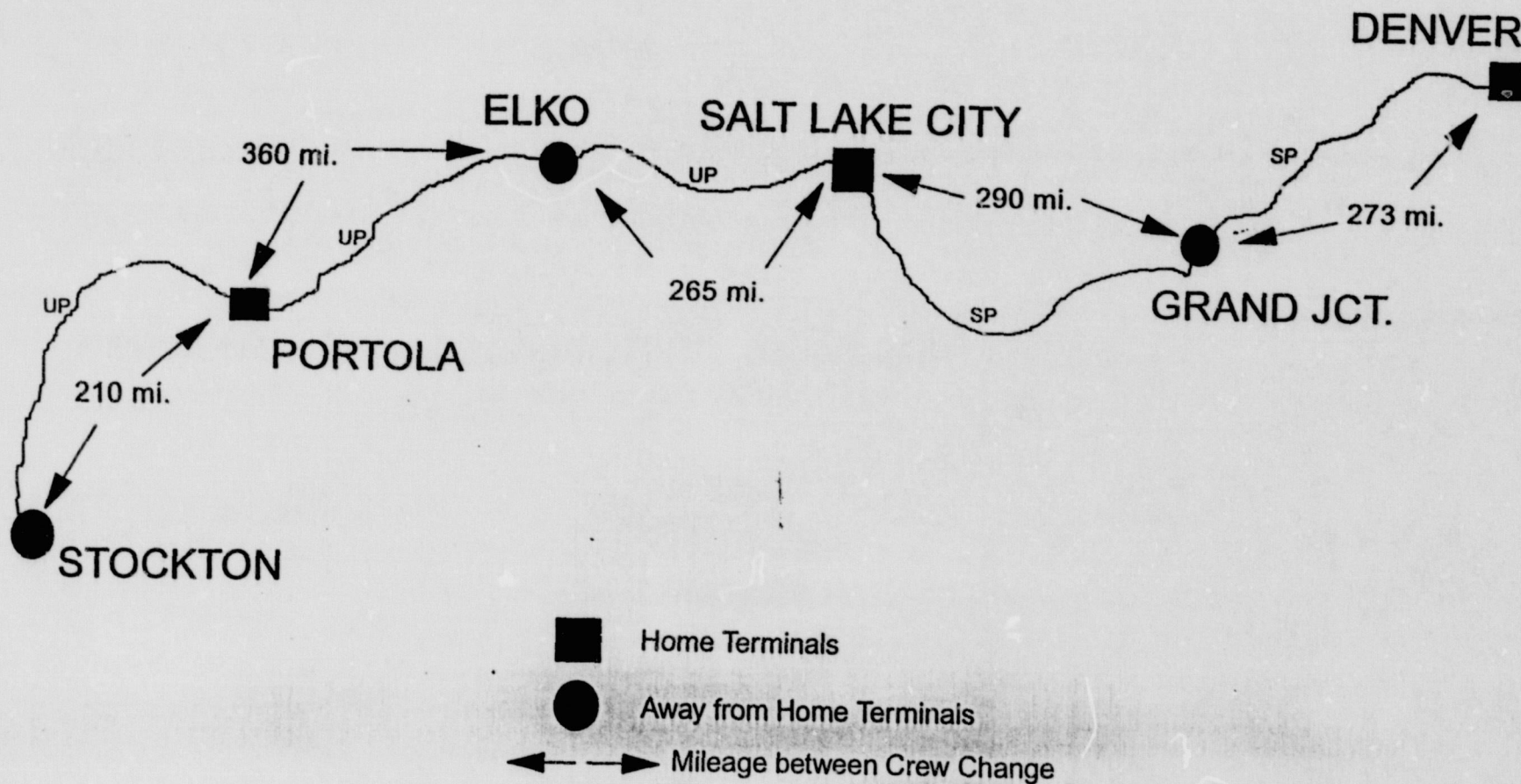


Figure 12

CENTRAL UP ROUTE



- * UP/SP will provide local service for BN/Santa Fe to and from stations in the Ogden/Salt Lake City/Provo corridor. BN/Santa Fe through trains will set out and pick up this traffic in Salt Lake City.

c. Yard Operation.

- * Denver. Trains will originate and terminate at BN/Santa Fe's existing Denver Yard. This yard will block westbound traffic for set out by M-DENSTO and will classify traffic arriving on M-STODEN for all connections.
- * Provo/Grand Junction/Helper. Utah Railway interchange will be handled by BN/Santa Fe road crews.
- * Salt Lake City. UP/SP will switch BN/Santa Fe traffic at Salt Lake City. This includes intermodal traffic which BN/Santa Fe will serve from current SP Roper Yard facilities. UP/SP will handle BN/Santa Fe local traffic to and from the Greater Salt Lake City corridor, including interchange traffic, using SP's Roper Yard for gathering and distribution.
- * Sacramento. UP/SP will switch BN/Santa Fe traffic in the Sacramento area. BN/Santa Fe through trains will set out and pick up at The UP South Sacramento Yard.
- * Stockton. BN/Santa Fe trains will use the existing BN/Santa Fe Mormon Yard. Train M-STODEN will be blocked from Stockton for through movement to Denver.
- * Richmond. BN/Santa Fe trains will use the existing BN/Santa Fe Yard. Central Corridor manifest traffic will move on existing trains to Stockton for placement on Denver trains. Richmond Yard will originate a BN/Santa Fe local hauling traffic for the Oakland-San Jose corridor.

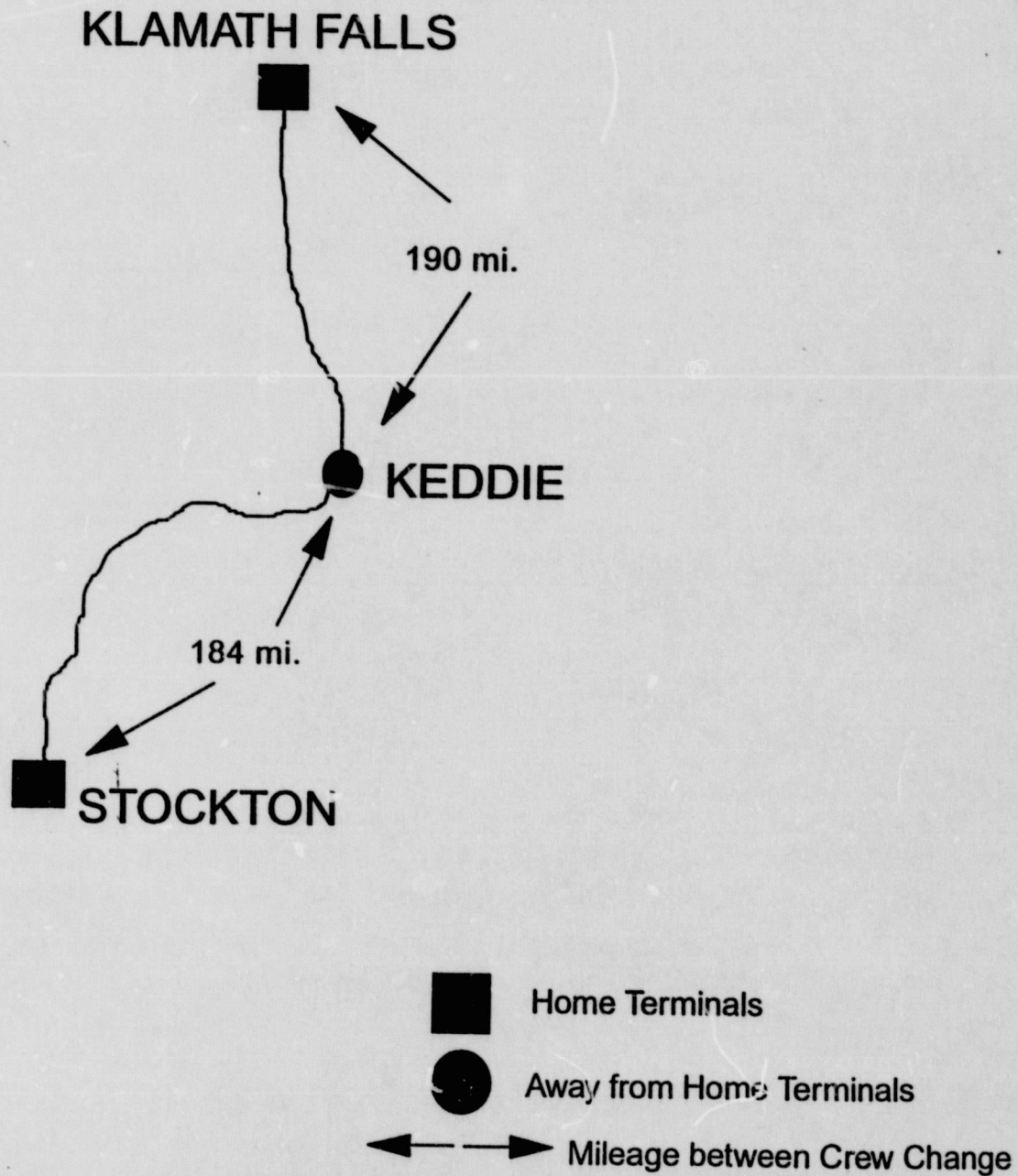
2. Bieber-Stockton/Richmond. This corridor and its train crew districts are depicted by Figure 13.

a. Through Train Service. BN/Santa Fe will serve this corridor with one daily through train, in each direction.

- * Trains M-KLABAR and M-BARKLA will operate between Barstow, CA and Klamath Falls, OR. The start-up date is planned for no later than December 16, 1996. Richmond and San Joaquin Valley connections will be made at Stockton. At Klamath Falls, Pasco, WA and

I-5 Corridor

Figure 13



Vancouver, WA, blocked traffic will also move on connections.

As traffic volumes grow, BN/Santa Fe will introduce new service to this corridor. Schedule outlines for the above trains are contained in the Operating Plan Appendix.

b. Local Train Service.

- * BN/Santa Fe through trains will provide local service on the Lieber to Keddle segment acquired by BN/Santa Fe. There is no local service to be performed on the trackage rights segment between Stockton and Keddle.

c. Yard Operation.

- * Klamath Falls. Trains will originate and terminate at BN/Santa Fe's existing Klamath Falls Yard. This yard will block southbound traffic for M-KLABAR and will classify traffic arriving on M-BARKLA for continuing northward movement. North of Klamath Falls, Seattle-Portland traffic will be handled on existing trains 681-682, and Pasco-Spokane traffic will move on trains 671-672.
- * Sacramento. UP/SP will switch BN/Santa Fe traffic in the Sacramento area. BN/Santa Fe through trains will set out and pick up the UP South Sacramento Yard.
- * Stockton. BN/Santa Fe trains will use the existing BN/Santa Fe Mormon Yard. Train M-BARKLA will be filled and blocked from Stockton for through movement to Klamath Falls.
- * Richmond. BN/Santa Fe trains will use the existing BN/Santa Fe Yard. I-5 Corridor manifest traffic will move on existing trains to Stockton for placement on Klamath Falls trains.

3. Northern California Local. BN/Santa Fe will operate a daily local train between Richmond and Warm Springs, CA. Traffic south of Warm Springs (Milpitas, CA and San Jose, CA) will be switched for BN/Santa Fe by UP/SP with interchange in the Warm Springs

area. The local's schedule appears in the Appendix as train L-RICWAR.

Traffic for 2-to-1 customers at Turlock will be handled by BN/Santa Fe to Empire, CA for interchange to the Modesto & Empire Traction Railroad.

4. Los Angeles Basin. BN/Santa Fe will operate a weekday local between its San Bernardino, CA Yard and Ontario, CA to serve new industries. The local's schedule appears in the Appendix as train L-SANONT.

Traffic for Southgate/Patata will be switched by UP/SP on a reciprocal basis. The same is true for most LaHabra branch traffic. Interchange will be at BN/Santa Fe's Los Angeles Hobart Yard. Some LaHabra branch traffic may be served directly by existing BN/Santa Fe locals based in Pico Rivera, CA, dependent upon volume and actual destination.

5. Two-to-One Stations Not on Trackage Rights. UP/SP will provide haulage/switching service for BN/Santa Fe traffic at 2-to-1 stations not on trackage rights in the Central Region. Interchange will occur at locations providing the most efficient connection, generally the nearest interchange to the 2-to-1 station.

6. Other Operations.

a. Crew Districts and Personnel. BN/Santa Fe will operate the Central Region using the following home terminal locations. The number of employees required to operate new train and engine service, including extra board employees, is estimated for each

location. Denver, Richmond/Stockton and Klamath Falls are existing BN/Santa Fe terminals. Salt Lake City is new to the system.

<u>Home Terminal</u>	<u>Train</u>	<u>Engine</u>
Denver	6	6
Salt Lake City	5	5
Klamath Falls	3	3
Stockton/Richmond ^{2/}	0	0

Train and engine crew districts were depicted on the corridor maps, Figures 11-13.

b. Blocking Plan. Terminals will make new blocks to implement BNSF's Operating Plan as follows:

Denver

Salt Lake City
Nevada Shorts
California Shorts
Stockton/Richmond

Salt Lake City

Denver
Nevada Shorts
California Shorts
Stockton/Richmond

Stockton

Klamath Falls
Denver
Salt Lake City
Nevada Shorts
California Shorts

^{2/} BN/Santa Fe's current train and engine forces are adequate to handle new Central Corridor train service.

Klamath Falls

Barstow
Stockton/Richmond
California Shorts

Barstow

Klamath Falls

c. Mechanical Requirements.

Locomotives. No new facilities are planned. Road locomotives will be fueled and serviced at existing BN/Santa Fe facilities at Denver, Stockton/Richmond and Klamath Falls. UP/SP will provide any needed locomotive servicing at Salt Lake City Roper Yard.

Cars. BN/Santa Fe's existing forces at Richmond/Stockton and Klamath Falls will handle most on-line requirements in California. Existing BN/Santa Fe forces will also handle any needed repairs on trackage rights lines in the Denver area. UP/SP road truck support will be provided for other on-line emergency and minor repairs at elsewhere in the Central Region. UP/SP forces will perform necessary 1000 mile inspections in Roper Yard, Salt Lake City.

d. Interchanges. New interchange locations for BN/Santa Fe include:

Grand Junction/Provo	Utah Railway
Salt Lake City	Garfield & Western
Ogden	Utah Central
Shafter	Nevada Northern
Sacramento	Yolo Shortline

e. Administrative Functions. The line acquired by BN/Santa Fe between Bieber and Keddie will become part of

BN/Santa Fe's Oregon Division headquartered in Vancouver, WA. The segment will be dispatched from Fort Worth.

BN/Santa Fe operations between Denver and Salt Lake City, including the Salt Lake City area, will be supervised by officers of its Colorado Division headquartered in Denver.

West of Salt Lake City to Stockton/Richmond operations will be supervised by BN/Santa Fe's Northern California Division headquartered in Stockton. This includes trackage rights on both former UP and SP lines between Sacramento and Stockton.

BN/Santa Fe will establish a supervisory Trainmaster's position at Salt Lake City.

Central Region Customer Service will be assigned to BN/Santa Fe's Customer Service Center in Topeka.

BN/Santa Fe's TSS computer system will be installed on Central Region lines.

f. Equipment. Operating Plan Central Region train service, as a self-contained operation, requires 34 locomotive units. BN/Santa Fe expects that 4 of these units will come from existing local service between Klamath Falls and Bieber; and by retaining 30 locomotives in its existing leased fleet, otherwise due for return during the last quarter of 1996.

BN/Santa Fe's existing car fleet is adequate for service detailed herein. Normal course-of-business adjustments will be made in fleet size and assignments as business volumes develop on individual Central Region line segments.

7. Capital Requirements.

a. Stockton. A new connection will be constructed in the northeast quadrant of the UP/SP and BN/Santa Fe railroad intersection in Stockton. This will permit direct movement of trains between trackage rights north of Stockton and BN/Santa Fe's trackage to its Mormon Yard at Stockton and continuing eastward toward Barstow. Final engineering for this connection is dependent upon detailed UP/SP planning for route consolidation in the city of Stockton, but, will be high on BN/Santa Fe's priority list. The connection is estimated to cost \$1.0 million. Figure 14 shows the construction as now planned. Until the connection is constructed, BN/Santa Fe trains will use an existing connection in the southeast quadrant.

b. Richmond. A connection will be reestablished between UP/SP and BN/Santa Fe main tracks east of the present grade separated intersection in Richmond. However, construction of this connection will be deferred until such time as direct train service, requiring access to Richmond Yard, begins on UP/SP's Cal-P route west of Sacramento. No construction is needed to implement Richmond-Warm Springs local service.

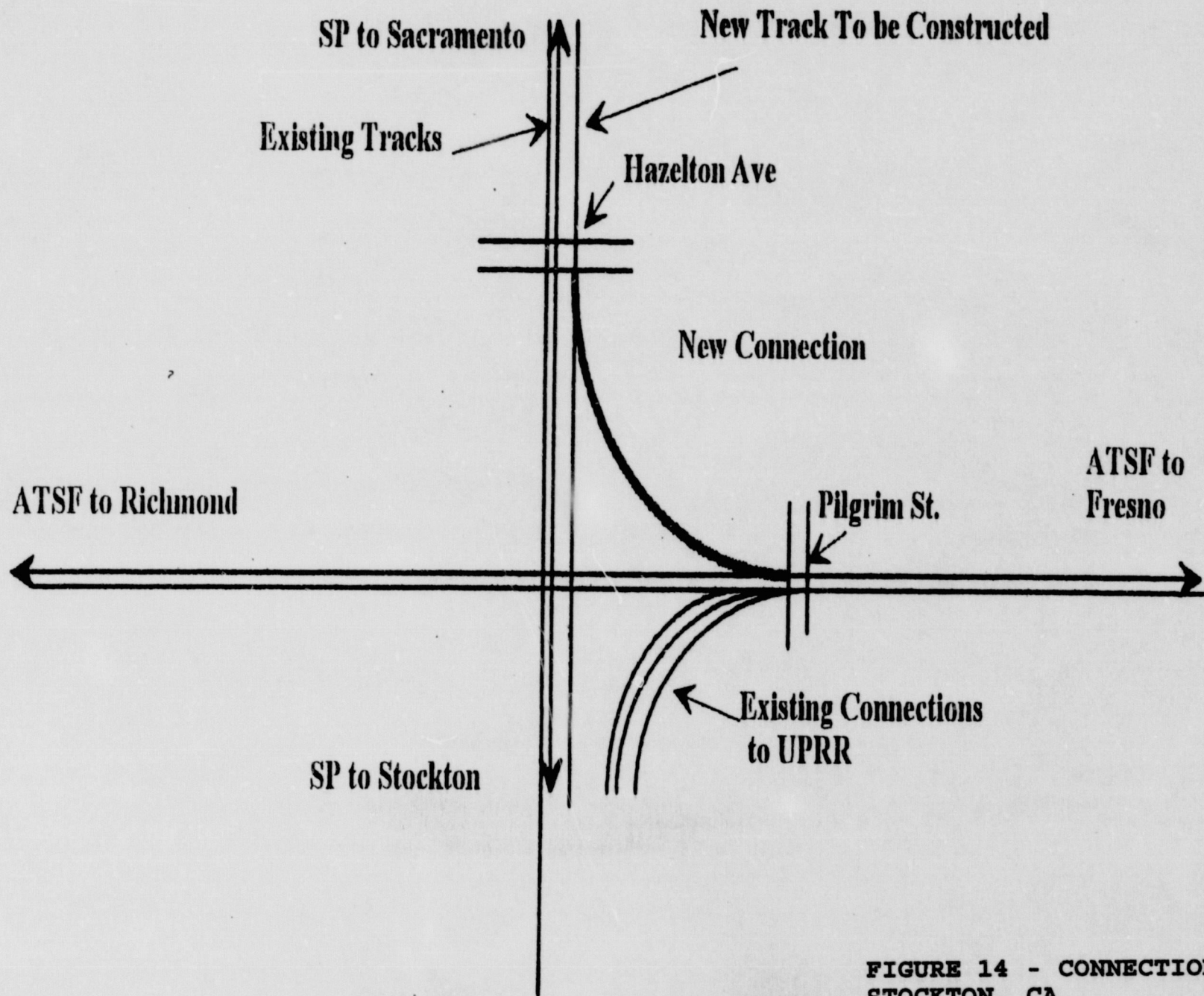


FIGURE 14 - CONNECTION AT STOCKTON, CA

APPENDIX -- THROUGH TRAIN SCHEDULES

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M HOUNEO1 A 1
 M HONE1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 HOUSTON TO NEW ORLEANS

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard HPT	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
HOUSTON	TX	CT	1	ORIG	0600	Y	N	N	1.7					
BEAUMONT	TX		1	0900	0930	N	N	N	1.7			9000	8000	
LAFAYETTE	LA		1	1700	1900	Y	N	N	1.7			9000	8000	
AVONDALE	LA		2	0045	0115	N	N	N	1.7			9000	8000	
NEW ORLEA	LA		2	0245	DEST	Y	N	N	1.7			9000	8000	

Description:
 HOUSTON TO NEW ORLEANS-CSXT MANIFEST TRAIN

Total Run Time 20 hours 45 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M HOUNEO1 A 1

Station	Numb	W	Seq	Blk	Trn	SO	Stn	Description
HOUSTON	10	F	BEAUM	BEAUM	BEAUMONT MANIFEST (INCLUDES ORANGE, LAKE CHARLES)			
	20	F	LAFAY	LAFAY	LAFAYETTE MANIFEST			
	30	F	AVOND	LAFAY	AVONDALE MANIFEST (CONNECTS TO TEMNEO)			
	40	F	NEWOC	NEWOC	NEW ORLEANS CSXT MANIFEST			
BEAUMONT	10	T	LAFAY	LAFAY	LAFAYETTE MANIFEST			
	20	T	AVOND	AVOND	AVONDALE MANIFEST (CONNECTS TO TEMNEO)			
	30	T	NEWOC	NEWOC	NEW ORLEANS CSXT MANIFEST			
LAFAYETTE	10	F	NEWOC	NEWOC	NEW ORLEANS CSXT MANIFEST			
AVONDALE	10	T	NEWOC	NEWOC	NEW ORLEANS CSXT MANIFEST			

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M NEOHOU1 A 1
 M NEHOU1 A 1

Days of Operation Origin Destination Effective 12/16/96
 MO TU WE TH FR SA SU NEW ORLEANS TO HOUSTON Expiration XX/XX/XX
 Service Type M Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
NEW ORLEA	LA	CT	1	ORIG 1600	1730	Y	N	N	1.7					
AVONDALE	LA		1	1730	1800	N	N	N	1.7			9000	8000	
LAFAYETTE	LA		2	2345	0630	Y	N	N	1.7			9000	8000	
BEAUMONT	TX		3	1330	1430	N	N	N	1.7			9000	8000	
HOUSTON	TX		2	1730	DEST	Y	N	N	1.7			9000	8000	

Description:
 NEW ORLEANS (FROM CSXT) TO HOUSTON MANIFEST TRAIN. CLASSIFY AT LAFAYETTE.

Total Run Time 25 hours 30 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M AVOHOU1 A 1

Station	Numb	W	Blk	Seq	Trn	SO	Str	Description

NEW ORLEA 10 F LAFAY LAFAY LAFAYETTE AND BEYOND MANIFEST

LAFAYETTE 10 F HOUST HOUST HOUSTON MANIFEST

BEAUMONT 10 F HOUST HOUST HOUSTON MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M TEMNE01 A 1
 M TENEL A 1

Days of Operation MO TU WE TH FR SA SU
 Service Type M
 Origin TEMPLE TO NEW ORLEANS
 Destination
 Effective 2Q 1997
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	R	U	N	Max	Yard	Road	Cumul	Max	Max	Max
						E	E	S	HPT	Time	Time	Time	Cars	Wght	Lgth
TEMPLE	TX	CT	1	ORIG 1700		Y	N	N	1.7						
BEAUMONT	TX		2	0400 0800		Y	N	N	1.0				9000	8000	
LAFAYETTE	LA		2	1500 2200		Y	N	N	1.0				9000	8000	
AVONDALE	LA		3	0445 0545		N	N	N	1.0				9000	8000	
NEW ORELE	LA		3	0715 DEST		Y	N	N	1.0				9000	8000	

Description:
 TEMPLE TO NEW ORLEANS MANIFEST TRAIN. CLASSIFY AT LAFAYETTE.

Total Run Time 38 hours 15 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M TEMAV01 A 1

Station	Seq	Numb	W	Blk	Trn	SO	Stn	Description
TEMPLE	10	F	BEAUM	BEAUM	BEAUMONT	MANIFEST		
	20	F	LAFAY	LAFAY	LAFAYETTE	MANIFEST		
	30	F	AVOND	AVOND	AVONDALE	MANIFEST		
	40	F	NEWOC	LAFAY	NEW ORLEANS CSXT	MANIFEST (CONNECTS TO HOUNE01)		
BEAUMONT	10	F	LAFAY	LAFAY	LAFAYETTE	MANIFEST		
	20	F	AVOND	AVOND	AVONDALE	MANIFEST		
	30	F	NEWOC	LAFAY	NEW ORLEANS CSXT	MANIFEST (CONNECTS TO HOUNE01)		
LAFAYETTE	10	F	AVOND	AVOND	AVONDALE	MANIFEST		
	20	F	NEOPB	NEOPB	NEW ORLEANS PORT	MANIFEST		
	30	F	NEOIC	NEOIC	NEW ORLEANS ICG	MANIFEST		
	40	F	NEOKC	NEOKC	NEW ORLEANS KCS	MANIFEST		
	50	F	NEONS	NEONS	NEW ORLEANS NS	MANIFEST		
AVONDALE	10	T	NEOPB	NEOPB	NEW ORLEANS PORT	MANIFEST		
	20	T	NEOIC	NEOIC	NEW ORLEANS ICG	MANIFEST		
	30	T	NEOKC	NEOKC	NEW ORLEANS KCS	MANIFEST		
	40	T	NEONS	NEONS	NEW ORLEANS NS	MANIFEST		

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 Q AVOLOS1 A 1
 Q AVLAI A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type Q

Origin Destination
 AVONDALE TO LOS ANGELES

Effective 3Q 1997
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I	R U N	Max Yard	Road	Cumul Time	Max Cars	Max Wght	Max Lgth
AVONDALE	LA	CT	1	ORIG 0700		W L P	Y N N	3.0					
LAFAYETTE	LA		1	1130	1145		Y N N	3.0			6000	7500	
SILSBEE	TX		1	1730	1745		Y N N	3.0			6000	7500	
TEMPLE	TX		2	0145	0315		Y N N	3.0			6000	7500	
SWEETWATE	TX		2	1200	1215		Y N N	3.0			6000	7500	
SLATON	TX		2	1500	1515		Y N N	3.0			6000	7500	
CLOVIS	NM	MT	2	1645	1815		Y N N	3.0			6000	7500	
BELEN	NM		3	0045	0200		Y Y Y	3.0			6000	7500	
WINSLOW	AZ		3	0845	0900		Y N N	3.0			6000	7500	
NEEDLES	CA	PT	3	1515	1530		Y N N	3.0			6000	7500	
BARSTOW	CA		3	2000	2130		Y N N	3.0			6000	7500	
LOS ANGEL	CA		4	0300	DEST		Y N N	3.0			6000	7500	

Description:
 AVONDALE TO LOS ANGELES INTERMODAL TRAIN

Total Run Time 70 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 Q AVOLOS1 A 1

Station	Seq	Trn	SO	Description
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AVONDALE	10	F	LOSAN	LOSAN	LOS ANGELES INTERMODAL
	20	F	SANBE	SANBE	SAN BERNADINO INTERMODAL
CLOVIS	10	F	LOSAN	LOSAN	LOS ANGELES INTERMODAL

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M NEOTEM1 A 1
 M NETE1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 NEW ORLEANS TO TEMPLE

Effective 2Q 1997
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
NEW ORLEA	LA	CT	1	ORIG 1630		Y	N	N	1.0					
AVONDALE	LA	CT	1	1800	1900	N	N	N	1.0			9000	8000	
LAFAYETTE	LA		1	0045	0130	Y	N	N	1.0			9000	8000	
BEAUMONT	TX		1	1430	1530	Y	N	N	1.7			9000	8000	
TEMPLE	TX		2	0230	DEST	Y	N	N	1.7			9000	8000	

Description:
 NEW ORLEANS TO TEMPLE MANIFEST TRAIN. CLASSIFY AT LAFAYETTE.

Total Run Time 34 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M NEOTEM1 A 1

Seq	Trn	SO	Station Numb	W	Blk	Stn	Description
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NEW ORLEA	10	F	LAFAY	LAFAY			LAFAYETTE AND BEYOND MANIFEST
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AVONDALE	10	F	LAFAY	LAFAY			LAFAYETTE AND BEYOND MANIFEST
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LAFAYETTE	10	F	BEAUM	BEAUM			BEAUMONT MANIFEST
	20	F	TEMPL	TEMPL			TEMPLE MANIFEST

BEAUMONT	10	F	TEMPL	TEMPL			TEMPLE MANIFEST
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***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 Q LOSAV01 A 1
 Q LAAV1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type Q

Origin Destination
 LOS ANGELES TO AVONDALE

Effective 3Q 1997
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard Time	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
LOS ANGEL	CA	PT	1	ORIG	2100	Y	N	N	3.0				6000	7500
BARSTOW	CA		2	0230	0400	Y	N	N	3.0				6000	7500
NEEDLES	CA		2	0830	0845	Y	N	N	3.0				6000	7500
WINSLOW	AZ	MT	2	1700	1715	Y	N	N	3.0				6000	7500
BELEN	NM		3	0001	0115	Y	Y	Y	3.0				6000	7500
CLOVIS	NM		3	0745	0915	Y	N	N	3.0				6000	7500
SLATON	TX	CT	3	1245	1300	Y	N	N	3.0				6000	7500
SWEETWATE	TX		3	1545	1600	Y	N	N	3.0				6000	7500
TEMPLE	TX		4	0045	0215	Y	Y	Y	3.0				6000	7500
SILSBEE	TX		4	1015	1030	Y	N	N	3.0				6000	7500
LAFAYETTE	LA		4	1615	1630	Y	N	N	3.0				6000	7500
AVONDALE	LA		4	2100	DEST	Y	N	N	3.0				6000	7500

Description:
 LOS ANGELES TO AVONDALE INTERMODAL TRAIN

Total Run Time 70 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 Q LOSAV01 A 1

Seq	Trn	SO	Description
Station Numb	W	Blk	Stn

LOS ANGEL 10 F AVONT AVONT AVONDALE INTERMODAL

CLOVIS 10 F AVONT AVONT AVONDALE INTERMODAL

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 L BEALKC1 A 1
 L BALK1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type L

Origin Destination
 BEAUMONT-LK. CHARLES-BEAUMONT

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I	R U N	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
BEAUMONT	TX	CT	1	ORIG 1100	Y N N 1.0							9000	8000
ORANGE	TX		1	1300	1400 N N N 1.0							9000	8000
LAKE CHAR	LA		1	1600	1700 N N N 1.0							9000	8000
ORANGE	TX		1	1900	2000 N N N 1.0							9000	8000
BEAUMONT	TX		1	2200	DEST Y N N 1.0							9000	8000

Description:

BEAUMONT TO LAKE CHARLES AND RETURN LOCAL TRAIN

Total Run Time 11 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 L BEALKC1 A 1

Seq Trn SO
 Station Numb W Blk Stn

Description

BEAUMONT 10 F LOCAL	BEAUMONT - LAKE CHARLES SHORTS
LAKE CHAR 10 F LOCAL	LAKE CHARLES - BEAUMONT SHORTS

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 L HOUSJ01 A 1
 L HOSJ1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type L

Origin Destination
 HOUSTON-SJOLANDER-HOUSTON

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	R	U	N	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
HOUSTON	TX	CT	1	ORIG 0315		Y	N	N	1.0					
DAYTON	TX		1	0515 0715		N	N	N	1.0			9000	8000	
SJOLANDER	TX		1	0815 1015		N	N	N	1.0			9000	8000	
DAYTON	TX		1	1115 1315		N	N	N	1.0			9000	8000	
HOUSTON	TX		1	1500 DEST		N	N	N	1.0			9000	8000	

Description:
 HOUSTON TO SJOLANDER AND RETURN LOCAL TRAIN

Total Run Time 11 hours 45 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 L HOUSJ01 A 1

Station Numb	W	Seq	Trn	Blk	SO	Stn	Description
HOUSTON	10	F	LOCAL				HOUSTON TO DAYTON AND SJOLANDER SHORTS
SJOLANDER	10	F	LOCAL				SJOLANDER AND DAYTON TO HOUSTON SHORTS

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M HOUMEM1 A 1
 M HOME1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 HOUSTON TO MEMPHIS (SP2)

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/17/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
HOUSTON	TX	CT	1	ORIG	2200	Y	N	N	2.0					
SHREVEPOR	LA		2	0800	0930	Y	N	N	2.0			9000	7500	
PINE BLUF	AR		2	1730	1900	Y	N	N	1.0			9000	7500	
MEMPHIS	TN		3	0001	DEST	Y	N	N	1.0			9000	7500	

Description:
 HOUSTON TO MEMPHIS MANIFEST TRAIN

Total Run Time 26 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M HOUMEM1 A 1

Seq Trn SO
 Station Numb W Blk S:n

Description

HOUSTON	10 F	PINEB	PINEB	PINE BLUFF MANIFEST (INCLUDES LITTLE ROCK, CAMDEN)
	20 F	MEMPH	MEMPH	MEMPHIS MANIFEST (INCLUDES ST LOUIS PROPER)
	30 F	MEMPI	MEMPI	MEMPHIS ICG INTERCHANGE MANIFEST
SHREVEPOR	10 T	PINEB	PINEB	PINE BLUFF MANIFEST (INCLUDES LITTLE ROCK, CAMDEN)
	20 F	MEMPH	MEMPH	MEMPHIS MANIFEST (INCLUDES ST LOUIS PROPER)
	30 F	MEMPI	MEMPI	MEMPHIS ICG INTERCHANGE MANIFEST
PINEBLUFF	10 F	MEMPH	MEMPH	MEMPHIS MANIFEST (INCLUDES ST LOUIS PROPER)
	20 F	MEMPI	MEMPI	MEMPHIS ICG INTERCHANGE MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M MEMHOU1 A 1
 M MEMH01 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination Effective 12/16/96
 EAST ST LOUIS TO HOUSTON (SP2) Expiration XX/XX/XX
 Last Update 09/17/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Yard	Road	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
MEMPHIS	TN	CT	1	ORIG	2200	Y	N	N	1.0					
PINE BLUF	AR		2	0300	0430	Y	N	N	2.0			9000	7500	
SHREVEPOR	LA		2	1230	1400	Y	N	N	2.0			9000	7500	
HOUSTON	TX		3	0001	DEST	Y	N	N	2.0			9000	7500	

Description:
 MEMPHIS TO HOUSTON MANIFEST TRAIN

Total Run Time 26 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 2
 M MEMHOU1 A 1
 Seq Trn SO
 Station Numb W Blk Stn

				Description
MEMPHIS	10 F	PINEB	PINEB	PINE BLUFF MANIFEST (INCLUDES LITTLE ROCK, CAMDEN)
	20 F	LONGV	SHREV	LONGVIEW MANIFEST
	30 F	HOUST	HOUST	HOUSTON MANIFEST
PINEBLUFF	10 F	LONGV	SHREV	LONGVIEW MANIFEST
	20 F	HOUST	HOUST	HOUSTON MANIFEST
SHREVEPOR	10 T	HOUST	HOUST	HOUSTON MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M HOUMEM2 A 1
 M HOME2 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 HOUSTON TO MEMPHIS

Effective 2Q 1997
 Expiration XX/XX/XX
 Last Update 08/08/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I	R U N	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
HOUSTON	TX	CT	1	ORIG 2200		W L P	Y N N	2.0					
SHREVEPOR	LA		2	0800	0815		Y N N	2.0			9000	7500	
PINE BLUF	AR		2	1615	1630		Y N N	2.0			9000	7500	
MEMPHIS	TN		2	2130	DEST		Y N N	2.0			9000	7500	

Description:HOUSTON TO MEMPHIS ICG MANIFEST TRAIN

Total Run Time 23 hours 30 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M HOUMEM2 A 1

Seq Trn SO
 Station Numb W Blk Stn

Description

HOUSTON	10	F	MEMPI	MEMPI	MEMPHIS - ICG MANIFEST
SHREVEPOR	10	T	MEMPI	MEMPI	MEMPHIS - ICG MANIFEST
PINEBLUFF	10	T	MEMPI	MEMPI	MEMPHIS - ICG MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M MEMHOU2 A 1
 M MEHO2 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 MEMPHIS TO HOUSTON

Effective 2Q 1997
 Expiration XX/XX/XX
 Last Update 09/17/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
MEMPHIS	TN	CT	1	ORIG	2200	Y	N	N	2.0				9000	7500
PINE BLUF	AR		2	0300	0315	Y	N	N	2.0				9000	7500
SHREVEPOR	LA		2	1115	1130	Y	N	N	2.0				9000	7500
HOUSTON	TX		2	2130	DEST	Y	N	N	2.0				9000	7500

Description:
 MEMPHIS - ICG TO HOUSTON MANIFEST TRAIN

Total Run Time 23 hours 30 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M MEMHOU2 A 1

Seq Trn SO
 Station Numb W Blk Stn Description

MEMPHIS 10 F HOUST HOUST HOUSTON MANIFEST
 PINEBLUFF 10 T HOUST HOUST HOUSTON MANIFEST
 SHREVEPOR 10 T HOUST HOUST HOUSTON MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M HOUESL1 A 1
 M HOES1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 HOUSTON TO EAST ST LOUIS

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/17/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
HOUSTON	TX	CT	1	ORIG	2200	Y	N	N	1.5				9000	7200
PALESTINE	TX		2	0530	0545	Y	N	N	1.5				9000	7200
LONGVIEW	TX		2	0815	0945	N	N	N	1.5				9000	7200
TEXARKANA	AR		2	1415	1430	Y	N	N	1.5				9000	7200
LITTLE RO	AR		2	1930	2100	Y	N	N	1.0				9000	7200
HOXIE	AR		3	0001	0100	N	N	N	1.0				9000	7200
POPLAR BL	MO		3	0330	0345	Y	N	N	1.0				9000	7200
EAST ST L	IL		3	1145	DEST	Y	N	N	1.0				9000	7200

Description:

HOUSTON TO EAST ST LOUIS MANIFEST TRAIN
 Total Run Time 37 hours 45 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M HOUESL1 A 1

Station	Numb	W	Blk	Trn	SO	Description
HOUSTON	10	F	LITTL	LITTL		LITTLE ROCK MANIFEST (INCLUDES PINE BLUFF, CAMDEN)
	20	F	MEMPH	HOXIE		MEMPHIS MANIFEST (INCLUDES ST LOUIS PROPER)
	30	F	ESTLO	ESTLO		EAST ST LOUIS MANIFEST
LONGVIEW	10	T	LITTL	LITTL		LITTLE ROCK MANIFEST (INCLUDES PINE BLUFF, CAMDEN)
	20	F	MEMPH	HOXIE		MEMPHIS MANIFEST (INCLUDES ST LOUIS PROPER)
	30	F	ESTLO	ESTLO		EAST ST LOUIS MANIFEST
LITTLE RO	10	F	MEMPH	HOXIE		MEMPHIS MANIFEST (INCLUDES ST LOUIS PROPER)
	20	F	ESTLO	ESTLO		EAST ST LOUIS MANIFEST
HOXIE	10	T	ESTLO	ESTLO		EAST ST LOUIS MANIFEST

**** Train System ****
 - TSP Train Schedule -

Train Sch ID Alt
 M ESLHOU1 A 1
 M ESHOU1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 EAST ST LOUIS TO HOUSTON

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/17/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
EAST ST L	IL	CT	1	ORIG	2200	Y	N	N	1.0				9000	7200
POPLAR BL	MO		2	0600	0615	Y	N	N	1.0				9000	7200
HOXIE	AR		2	0845	0945	N	N	N	1.0				9000	7200
LITTLE RO	AR		2	1245	1415	Y	N	N	1.5				9000	7200
TEXARKANA	AR		2	1915	1930	Y	N	N	1.5				9000	7200
LONGVIEW	TX		3	0001	0230	N	N	N	1.5				9000	7200
PALESTINE	TX		3	0400	0415	Y	N	N	1.5				9000	7200
HOUSTON	TX		3	1145	DEST	Y	N	N	1.5				9000	7200

Description:
 EAST ST LOUIS TO HOUSTON MANIFEST TRAIN VIA UP ROUTE

Total Run Time 37 hours 45 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M ESLHOU1 A 1

Station	Numb	W	Seq	Blk	Trn	SO	Stn	Description
EAST STLO	10	F	LITTL	LITTL	LITTLE ROCK MANIFEST (INCLUDES PINE BLUFF, CAMDEN)			
	20	F	LONGV	LONGV	LONGVIEW MANIFEST			
	30	F	HOUST	HOUST	HOUSTON MANIFEST			
HOXIE	10	F	LITTL	LITTL	LITTLE ROCK MANIFEST (INCLUDES PINE BLUFF, CAMDEN)			
	20	F	HOUST	HOUST	HOUSTON MANIFEST			
	30	F	LONGV	LONGV	LONGVIEW MANIFEST			
	50	T	HOUST	HOUST	HOUSTON MANIFEST			
LITTLE RO	10	F	HOUST	HOUST	HOUSTON MANIFEST			
	20	T	LONGV	LONGV	LONGVIEW MANIFEST			
	30	T	HOUST	HOUST	HOUSTON MANIFEST			
LONGVIEW	10	F	HOUST	HOUST	HOUSTON MANIFEST			

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M HOUESL2 A 1
 M HOES2 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 HOUSTON TO EAST ST LOUIS

Effective 2Q 1997
 Expiration XX/XX/XX
 Last Update 09/17/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
HOUSTON	TX	CT	1	ORIG	2200	Y	N	N	1.5				9000	7200
PALESTINE	TX		2	0530	0545	Y	N	N	1.5				9000	7200
LONGVIEW	TX		2	0815	0815	N	N	N	1.5				9000	7200
TEXARKANA	AR		2	1245	1300	Y	N	N	1.5				9000	7200
LITTLE RO	AR		2	1800	1815	Y	N	N	1.5				9000	7200
HOXIE	AR		2	2115	2115	N	N	N	1.5				9000	7200
POPLAR BL	MO		3	2345	0001	Y	N	N	1.5				9000	7200
EAST ST L IL			3	0800	DEST	Y	N	N	1.5				9000	7200

Description:
 HOUSTON TO EAST ST LOUIS INTERCHANGE MANIFEST TRAIN
 Total Run Time 34 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M HOUESL2 A 1

Station	Seq Numb	W	Trn Blk	SO Stn	Description
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HOUSTON	10	F	ESTLO	ESTLO	EAST ST LOUIS INTERCHANGE MANIFEST
LONGVIEW	10	T	ESTLO	ESTLO	EAST ST LOUIS INTERCHANGE MANIFEST
LITTLE RO	10	T	ESTLO	ESTLO	EAST ST LOUIS INTERCHANGE MANIFEST
HOXIE	10	T	ESTLO	ESTLO	EAST ST LOUIS INTERCHANGE MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M ESLHOU2 A 1
 M ESHO2 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 EAST ST LOUIS TO HOUSTON

Effective 2Q 1997
 Expiration XX/XX/XX
 Last Update 09/17/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I	R U N	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth	
						W L P								
EAST ST L IL	CT	1		ORIG 2200		Y N N	1.5					9000	7200	
POPLAR BL	MO	2		0600 0615		Y N N	1.5					9000	7200	
HOKIE	AR	2		0845 0845		N N N	1.5					9000	7200	
LITTLE RO	AR	2		1145 1200		Y N N	1.5					9000	7200	
TEXARKANA	AR	2		1700 1715		Y N N	1.5					9000	7200	
LONGVIEW	TX	2		2145 2145		N N N	1.5					9000	7200	
PALESTINE	TX	3		0015 0030		Y N N	1.5					9000	7200	
HOUSTON	TX	3		0800 DEST		Y N N	1.5					9000	7200	

Description:

EAST ST LOUIS INTERCHANGE TO HOUSTON MANIFEST TRAIN

Total Run Time 34 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M ESLHOU2 A 1

Seq	Trn	SO	Station Numb	W	Blk	Stn	Description
			EAST STLO	10	F	HOUST HOUST	HOUSTON MANIFEST
			HOKIE	10	T	HOUST HOUST	HOUSTON MANIFEST
			LITTLE RO	10	T	HOUST HOUST	HOUSTON MANIFEST
			LONGVIEW	10	F	HOUST HOUST	HOUSTON MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M TEMEAG1 A 1
 M TEEA1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 TEMPLE TO EAGLE PASS

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
TEMPLE	TX	CT	1	ORIG 2200	2200	Y	N	N	1.5				9000	8000
SMITHVILL	TX		2	0300	0300	N	N	N	1.5				9000	8000
SAN ANTON	TX		2	0900	1100	Y	Y	Y	1.5				9000	8000
EAGLE PAS	TX		2	1800	DEST	Y	N	N	1.5				9000	8000

Description:

TEMPLE TO EAGLE PASS MANIFEST TRAIN, SAN ANTONIO SET OUT AND PICKUP IS AT UP ADAMS YARD

Total Run Time 20 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M TEMEAG1 A 1
 Seq Trn SO
 Station Numb W Blk Stn

Description

TEMPLE 10 F SANAN SANAN SAN ANTONIO MANIFEST
 20 F EAGLE EAGLE EAGLE PASS MANIFEST
 SAN ANTON 10 F EAGLE EAGLE EAGLE PASS MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M EAGTEM1 A 1
 M EATE1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 EAGLE PASS TO TEMPLE

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
EAGLE PAS	TX	CT	1	0800	0800	Y	N	N	1.5					
SAN ANTON	TX		2	1500	1700	Y	N	N	1.5			9000	8000	
SMITHVILL	TX		2	2300	2300	N	N	N	1.5			9000	8000	
TEMPLE	TX		4	0400	DEST	Y	N	N	1.5			9000	8000	

Description:

EAGLE PASS TO TEMPLE MANIFEST TRAIN, SAN ANTONIO SET OUT AND PICKUP IS AT UP ADAMS YARD

Total Run Time 20 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M EAGTEM1 A 1

Seq Trn SO
 Station Numb W Blk Stn

Description

EAGLE PAS 10 F SANAN SANAN SAN ANTONIO MANIFEST
 20 F TEMPL TEMPL TEMPLE MANIFEST
 SAN ANTON 10 F TEMPL TEMPL TEMPLE MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M HOUKER1 A 1
 M HOKEL A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 HOUSTON TO KERR

Effective 10/08/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
HOUSTON	TX	CT	1	ORIG 1600	1600	Y	N	N	1.7				9000	7000
SEALY	TX		1	1900	1900	N	N	N	1.7				9000	7000
SIMTHVILL	TX		1	2200	2200	N	N	N	1.7				9000	7000
KERR	TX		2	0300	DEST	Y	N	N	1.7				9000	7000

Description:
 HOUSTON TO KERR MANIFEST TRAIN

Total Run Time 11 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M HOUKER1 A 1

Seq	Trn	SO
Station Numb	W	Blk
Stn		

HOUSTON 10 F KERR KERR KERR MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M CORHOU1 A 1
 M COH01 A 1

Days of Operation MO TU WE TH FR SA SU
 Service Type M
 Origin CORPUS CHRISTI
 Destination TO HOUSTON
 Effective 10/08/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I	R	U	N	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
				W	L	P									
CORPUS CH	TX	CT	1	ORIG 0900		Y	N	N	N	1.0				9000	7000
ALGOA	TX		1	1900 DEST		N	N	N	N	1.0				9000	7000
HOUSTON	TX		1	2000 DEST		Y	N	N	N	1.0				9000	7000

Description:
 CORPUS CHRISTI TO HOUSTON MANIFEST TRAIN

Total Run Time 11 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M CORHOU1 A 1

Seq	Trn	SO	Station Numb	W	Blk	Stn	Description
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CORPUS CH 10 F HOUST HOUST HOUSTON MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M KERHOU1 A 1
 M KEH01 A 1

Days of Operation MO TU WE TH FR SA SU
 Service Type M

Origin KERR TO HOUSTON

Effective 10/08/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I	R U N	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
KERR	TX	CT	1	ORIG 1500		W L P	Y N N	1.7				9000	7000
SMITHVILL	TX		1	2000	2000	N N N	N N N	1.7				9000	7000
SEALY	TX		1	2300	2300	N N N	N N N	1.7				9000	7000
HOUSTON	TX		2	0200	DEST	Y N N	N N N	1.7				9000	7000

Description:
 KERR TO HOUSTON MANIFEST TRAIN

Total Run Time 11 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M KERHOU1 A 1

Station	Seq Numb	W	Trn Blk	SO Stn	Description
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KERR 10 F HOUST HOUST HOUSTON MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M HOU COR1 A 1
 M HOCOR1 A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 HOUSTON TO CORPUS CHRISTI

Effective 10/08/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I	W L P	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
HOUSTON	TX	CT	1	ORIG 1500	Y N N	1.0						9000	7000
ALGOA	TX		1	1600	N N N	1.0						9000	7000
CORPUS CH	TX		2	0100	DEST Y N N	1.0						9000	7000

Description:
 HOUSTON TO CORPUS CHRISTI MANIFEST TRAIN

Total Run Time 10 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M HOU COR1 A 1

Station	Seq Numb	W	Trn Blk	SO Stn	Description
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HOUSTON	10	F	CORPU	CORPU	CORPUS CHRISTI MANIFEST
	20	F	LARED	CORPU	LAREDO MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M STODENI A 1
 M STDEI A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 STOCKTON TO DENVER

Effective 10/08/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	R	C	F	I	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
STOCKTON	CA	PT	1	ORIG 1730		Y	N	N	1.5						
PORTOLA	CA		2	0200 0300		Y	N	N	1.5				9000	6000	
ELKO	NV		2	1200 1300		Y	N	N	1.5				9000	6000	
SALT LAKE	UT	MT	3	2230 0130		Y	Y	Y	2.0				9000	6000	
GRAND JCT	CO		3	1230 1245		Y	N	N	2.0				5500	6000	
DENVER	CO		4	2345 DEST		Y	N	N	2.0				5500	6000	

Description:
 STOCKTON TO DENVER MANIFEST TRAIN

Total Run Time 53 hours 15 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M DENSTOI A 1

Station	Numb	W	Seq	Trn	Blk	Stn	SO	Description
STOCKTON	10	F	PORTO	PORTO				PORTOLA MANIFEST (HERLONG)
	20	F	ELKO	ELKO				ELKO MANIFEST (WINNEMUCCA-ELKO)
	30	F	SALT/L	SALT/L				SALT LAKE CITY MANIFEST
	40	F	DENVE	DENVE				DENVER MANIFEST
PORTOLA	10	F	ELKO	ELKO				ELKO MANIFEST (WINNEMUCCA-ELKO)
	20	F	DENVE	DENVE				DENVER MANIFEST
	30	F	SALT/L	SALT/L				SALT LAKE CITY MANIFEST
	40	T	DENVE	DENVE				DENVER MANIFEST
ELKO	10	F	DENVE	DENVE				DENVER MANIFEST
	20	F	SALT/L	SALT/L				SALT LAKE CITY MANIFEST
	30	T	DENVE	DENVE				DENVER MANIFEST
SALT LAKE	10	F	DENVE	DENVE				DENVER MANIFEST

- TSP Train Schedule -

Train Sch ID Alt
M DENST01 A 1
M DEST1 A 1

Days of Operation
MO TU WE TH FR SA SU
Service Type M

Origin Destination
DENVER TO STOCKTON

Effective 10/08/96
Expiration XX/XX/XX
Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I	R U N	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
DENVER	CO	MT	1	ORIG 1445		Y N N	2.0					4500	6000
GRAND JCT	CO		2	0145	0200	Y N N	2.0					4500	6000
SALT LAKE	UT		2	1300	1600	Y Y Y	1.5					9000	6000
ELKO	NV	PT	3	2330	0030	Y N N	1.5					9000	6000
PORTOLA	CA		3	0930	1030	Y N N	1.5					9000	6000
STOCKTON	CA		4	1900	DEST	Y N N	1.5					9000	6000

Description:

DENVER TO STOCKTON MANIFEST TRAIN

Total Run Time 53 hours 15 mins
***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
M DENST01 A 1

Station Numb	Seq	W	Trn Blk	SO Stn	Description
DENVER	10	F	SALT	SALT	SALT LAKE CITY MANIFEST
	20	F	ELKO	ELKO	ELKO MANIFEST (ELKO-WINNEMUCCA, HERLONG, RENO TCF)
	30	F	STOCK	STOCK	STOCKTON MANIFEST
SALT LAKE	10	F	STOCK	STOCK	STOCKTON MANIFEST
	20	F	ELKO	ELKO	ELKO MANIFEST (ELKO-WINNEMUCCA, HERLONG, RENO TCF)
	30	T	STOCK	STOCK	STOCKTON MANIFEST
ELKO	10	F	PORTO	PORTO	PORTOLA MANIFEST (HERLONG)
	20	F	STOCK	STOCK	STOCKTON MANIFEST
PORTOLA	10	F	STOCK	STOCK	STOCKTON MANIFEST

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M KLABAR1 A 1
 M KLBAL A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type M

Origin Destination
 KLAMATH FALLS TO BARSTOW

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/18/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I R U N E E S W L P	Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
KLAMATH F	OR	PT	1	ORIG	0445	Y N N	2.5				5000	6000
KEDDIE	CA		1	1545	1600	Y N N	2.5				5000	6000
SACRAMENT	CA		1	2100	2200	N N N	2.5				9000	6000
STOCKTON	CA		2	0100	0300	Y N N	3.5				8450	7000
FRESNO	CA		2	0700	0715	Y N N	3.5				8450	7000
BAKERSFIE	CA		2	1045	1100	Y N N	3.5				8450	7000
BARSTOW	CA		2	1830	DEST	Y N N	3.5				8450	7000

Description:
 KLAMATH FALLS TO BARSTOW MANIFEST TRAIN

Total Run Time 37 hours 45 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M KLABAR1 A 1

Station	Numb	W	Blk	Trn	SO	Stn	Description
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KLAMATH F	10	F	LOCAL				KLAMATH FALLS TO KEDDIE SHORTS
	20	F	STOCK	STOCKT			STOCKTON MANIFEST
	30	F	BRSTW	BARSTO			BARSTOW MANIFEST

KEDDIE	10	T	STOCK	STOCKT			STOCKTON MANIFEST
	20	T	BRSTW	BARSTO			BARSTOW MANIFEST

STOCKTON	10	F	BRSTW	BARSTO			BARSTOW MANIFEST
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***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 M BARKLAL A 1
 M BAKL1 A 1

Days of Operation Origin Destination Effective 12/16/96
 MO TU WE TH FR SA SU BARSTOWN TO KLAMATH FALLS Expiration XX/XX/XX
 Service Type M Last Update 09/18/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
BARSTOW	CA	PT	1	ORIG 0530	Y N N	3.0						7000	7000	
BAKERSFIE	CA		1	1300 1315	Y N N	3.0						7000	7000	
FRESNO	CA		1	1645 1700	Y N N	3.0						7000	7000	
STOCKTON	CA		1	2100 2300	Y N N	2.5						9000	6000	
SACRAMENT	CA		2	0200 0300	N N N	2.5						3800	6000	
KEDDIE	CA		2	0800 0815	Y N N	2.5						3800	6000	
KLAMATH F	OR		2	1015 DEST	Y N N	2.5						3800	6000	

Description:

BARSTOW TO KLAMATH FALLS MANIFEST TRAIN. MAX WEIGHT DEPARTING SACRAMENTO MAY INCREASE TO 4300 TONS FROM APRIL TO OCTOBER

Total Run Time 37 hours 45 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 M BA.KLF A 1

Seq	Trn	SO	Station Numb	W	Blk	Stn	Description
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BARSTO	10 F	STOCK	STOKTO	STOCKTON	MANIFEST		
	20 F	KLAMA	KLAMAT	KLAMATH FALLS	MANIFEST		

STOCKTON	10 F	LOCAL	KEDDIE	- KLAMATH FALLS SHORTS			
KLAMA	KLAMAT	KLAMATH	FALLS	MANIFEST			

20 F

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 L RICWAR1 A 1
 L RIWA A 1

Days of Operation
 MO TU WE TH FR SA SU
 Service Type L

Origin Destination
 RICHMOND-WARM SPRINGS-RICHMOND

Effective 12/16/97
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
RICHMOND	CA	PT	1	0100	0100	Y	N	N	1.0					
WARM SPRI	CA		2	0430	0600	N	N	N	1.0			9000	8000	
RICHMOND	CA		2	0900	DEST	Y	N	N	1.0			9000	8000	

Description:

RICHMOND TO WARM SPRINGS AND RETURN LOCAL TRAIN, MAY TURN AT MILPITAS IF TRACKS OCCUPIED AT WARM SPRINGS

Total Run Time 8 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 L RICWAR1 A 1

Station Numb	Seq	W	Blk	Trn	SO	Stn	Description
RICHMOND	10	F	LOCAL				RICHMOND TO WARM SPRINGS SHORTS
	20	F	SANJO WARMS				SAN JOSE MANIFEST (DELIVER TO SP)
WARM SPR	10	F	LOCAL				WARM SPRINGS TO RICHMOND SHORTS

***** Train System *****
 - TSP Train Schedule -

Train Sch ID Alt
 L SANONT1 A 1
 L SAON1 A 1

Days of Operation
 MO TU WE TH FR
 Service Type L

Origin Destination
 SAN BERNADINO TO ONTARIO

Effective 12/16/96
 Expiration XX/XX/XX
 Last Update 09/16/96

Station	St	TZ	Day	Arr Time	Dpt Time	C F I			Max Yard	Road Time	Cumul Time	Max Cars	Max Wght	Max Lgth
						R	U	N						
SAN BERNA	CA	PT	1	ORIG 0700		Y	N	N	1.0				9000	6000
RIVERSIDE	CA		1	0830	0830	N	N	N	1.0				9000	6000
ONTARIO	CA		1	1000	1400	N	N	N	1.0				9000	6000
RIVERSIDE	CA		2	1530	1530	N	N	N	1.0				9000	6000
SAN BERNA	CA		2	1700	DEST	Y	N	N	1.0				9000	6000

Description:
 SAN BERNADINO TO ONTARIO AND RETURN LOCAL TRAIN

Total Run Time 10 hours 00 mins
 ***** End of Data *****

- TSP Train Block Information -

Train Sch ID Alt - Blocking Alt 1
 L SANONT1 A 1

Station	Seq	W	Trn	SO	Description
Numb	Blk	Stn			
SAN BERNA	10	F	LOCAL		SAN BERNADINO TO ONTARIO SHORTS
ONTARIO	10	F	LOCAL		ONTARIO TO SAN BERNADINO SHORTS

VERIFIED STATEMENT
OF
FRANK D. CLIFTON

My name is Frank D. Clifton. I am Assistant Vice President Operations of the Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively, "BN/Santa Fe") at the address of 2600 Lou Menk Drive, Fort Worth, Texas 76131.

I began my railroad career in 1973 as a trainman for the St. Louis San Francisco Railway Company prior to its merger with BN and have held various positions in the Operating and Marketing Departments of BN. These positions have included Assistant Trainmaster, Terminal Trainmaster, Division Trainmaster, Terminal Superintendent, Director of Service, Division Superintendent, and General Superintendent. I assumed my present position in March of 1996.

I am the person with overall responsibility for the Progress Report and the Operating Plan which is being filed today with the Board. These documents describe in detail the operations, as implemented to date and as will be implemented, of BN and Santa Fe pursuant to the Board's Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996).1/

1/ On April 29, 1996, I previously testified in Finance Docket No. 32760 as the leader of a team of BN/Santa Fe personnel. In that statement, I described the process the implementation team had been following to date, including its mission, accomplishments, and ongoing efforts. I also described specific decisions the team had made as to proposed BN/Santa Fe customer service and train operations assuming the Surface Transportation Board were to approve UP/SP's application conditioned on the various settlement agreements.

As leader of the BN/Santa Fe implementation team, I have worked full-time since March 1996 on the plans for implementation of operations over the lines to which BN/Santa Fe has been granted access. The methodology used to develop the Operating Plan is a continuation of the many efforts described in my earlier verified statement. I, together with a comprehensive multi-disciplinary team of individuals from various BN/Santa Fe departments,^{2/} identified and completed, among others, the following items for inclusion in the Operating Plan: schedule and details associated with the line purchases, coordination and timing of dispatching control on line purchase segments, preparations for direct BN/Santa service, preparations for interim haulage, and plans for direct train service start-up on each of the lines over which BN/Santa Fe was granted trackage rights.

There are a myriad of issues which must be considered in creating an Operating Plan such as this. For example, BN/Santa Fe's plans for direct BN/Santa Fe train service are based in part on information I learned from individuals in the marketing department who have been assigned to the implementation team and who have contacted the two-to-one stations and shippers. These marketing efforts are more fully described in the Verified Statement of Richard W. Brown. Another area of importance to

^{2/} The departments involved in contributing to the Operating Plan include contracts, customer service, engineering, finance, interline, labor relations, law, marketing, mechanical, network planning, and operating departments.

being able to provide direct train service to shippers is the process of qualifying supervisory personnel through trips over purchased and trackage rights lines. Those trips, which will enable operating supervisors to train and qualify train and engine personnel for each route, have already been completed on all trackage rights lines except the Central and I-5 Corridors.

In my view, the Operating Plan being filed today, which details train service BN/Santa Fe plans to operate by the end of the first full year following consummation of the UP/SP merger, is feasible and highly efficient. Most importantly, with respect to trackage rights operations over the key corridors previously identified by the Board -- between Houston and New Orleans, between Houston and Memphis and in the Central Corridor -- BN/Santa Fe's Operating Plan shows that such operations are planned to be in place by December 16, 1996, just over three months' time from the effective date of Decision No. 44.

BN/Santa Fe intends to compete so vigorously for the traffic opened up to it that it has even sought even to maximize other possible alternatives by engaging in ongoing negotiations to route Conrail and Norfolk Southern interchange traffic via Effingham and Centralia, IL via Illinois Central ("IC"), on a direct Memphis connection.^{3/} If such an alternative is not

^{3/} On September 19, 1996, BN/Santa Fe and IC signed a letter of intent acknowledging their commitment to continue their negotiations to finalize an agreement which would permit such movement of interchange traffic. While these negotiations are ongoing, BN/Santa Fe is optimistic that an agreement will be reached in the near future. Accordingly, the Operating Plan
(continued...)

accomplished, BN/Santa Fe intends to use its trackage rights on the UP/SP over the entire Houston-Memphis/East St. Louis route.

As mentioned earlier, the Operating Plan details service BN/Santa Fe plans to operate by the end of the first full year following implementation of the UP/SP merger. As volumes grow and traffic develops, additional train service beyond that reflected in the Operating Plan will be made available to shippers on each of the corridors. Further, as demonstrated by the through train schedules contained in the Appendix to the Operating Plan, BN/Santa Fe direct train service as implemented will offer competitive schedules on each of the new routes.

To summarize, I believe that the Operating Plan is practical, will enable BN/Santa Fe to compete effectively with UP/SP, and can be implemented by BN/Santa Fe in the phases and time schedules described therein.

3/(...continued)

discusses in detail plans for the routing of such traffic via the IC as an alternative to the plans to use the UP/SP trackage rights north of Memphis. See BN/Santa Fe press release dated September 30, 1996, attached hereto as Attachment 1.

BNSF



Attachment 1

NEWS

Contacts: Richard Russack (BNSF)
(817) 352-6425

Ann Thoma (IC)
(312) 755-7591

Burlington Northern Santa Fe and Illinois Central Sign Haulage Letter of Intent

FORT WORTH, Texas, and CHICAGO, Ill., September 30, 1996 -- Burlington Northern Santa Fe Corporation (NYSE:BNI) (BNSF) and Illinois Central Corporation (NYSE:IC) have signed a letter of intent for a long-term haulage agreement between Memphis, Tenn., and Effingham, Illinois. Under the terms of the agreement, IC provides power, fuel and crews in return for a per-car fee from BNSF.

In addition, the agreement will include volume-based haulage between New Orleans and Memphis and between Memphis and Chicago, as well as switching agreements at Chicago and New Orleans.

Further, the agreement provides overhead trackage rights for BNSF over IC track between Portage, Ill., and Chicago, as well as allowing BNSF to move cars over IC's connection between BNSF's Corwith and Cicero yards.

"With this agreement, we can provide improved levels of service -- both consistency and shorter transit times -- between the Texas Gulf and the Northeast region, adding to our competitiveness," said Matthew Rose, BNSF senior vice president, Merchandise Business Unit.

"This is another example of cooperative agreements Illinois Central has developed with major railroads," said IC senior vice president Donald H. Skelton. "This agreement allows BNSF to take advantage of Illinois Central's superior service offering and the fact that IC has the most efficient, and therefore the most cost-effective, route between the Great Lakes and the Louisiana Gulf. Cooperative agreements of this sort among railroads benefit the shipping public by reducing transit time and making better overall use of the rail network."

The agreement is expected to become effective during the fourth quarter 1996 upon completion of a definitive agreement.

more . . .

BNSF, IC SIGN AGREEMENT / Page Two

Burlington Northern Santa Fe owns one of the largest rail networks in the United States, with more than 31,000 route miles covering 27 states and two Canadian provinces.

Illinois Central Corporation is a holding company whose principal subsidiaries are the Illinois Central and the Chicago Central railroads. Illinois Central operates a 2,600-mile freight system from Chicago south to the Gulf of Mexico. Chicago Central operates an 850-mile freight system from Chicago west through Iowa.

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VERIFIED STATEMENT
OF
RICHARD W. BROWN

My name is Richard W. Brown, and I am General Director of the Chemicals Business Unit of Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively, "BN/Santa Fe"). I have been working for either Santa Fe or BN/Santa Fe continuously since 1971, when I joined the Pricing Department at Santa Fe. From 1993 until the merger of BN and Santa Fe in 1995, I was Assistant Vice President of the Carload Business Unit of Santa Fe, with responsibility for strategic planning and development for the carload business, including chemicals, plastics, metals, forest products, and consumer goods. In that position I also had responsibility for Santa Fe's transload program. From 1988 to 1993, I was Assistant Vice President Chemicals for Santa Fe. I received a B.S. degree in economics from Syracuse University in 1967 and an M.B.A. from Northwestern University in 1971.

As General Director of the Chemicals Business Unit of BN/Santa Fe I am responsible for strategic planning and new business development for chemicals. Currently, however, I am on special assignment with responsibility for all commercial activities with respect to implementation of BN/Santa Fe's settlement agreement with UP and SP in connection with their merger, including implementation of the conditions that the Board imposed to augment that settlement agreement.

The purpose of this Verified Statement is to explain the steps that BN/Santa Fe has taken, at this early stage, to make

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itself competitive with UP/SP using the trackage rights and other rights it was granted in the UP/SP merger case (by settlement agreement or otherwise). We have already had remarkable success attracting business in the very first days of operation under our rights.

Furthermore, as I will discuss more fully below, we have made extensive contact with 2-to-1 customers to which BN/Santa Fe was granted access. As we work toward generating business from those customers, we are building our density on the trackage rights operations and proving that we can be successful by using the rights to provide new service to existing customers. I will give several examples of movements that have already occurred on BN/Santa Fe just in the three weeks since the UP/SP merger was consummated, or are scheduled to begin in the very near future.

At the same time that we are achieving some remarkable successes, we face some obstacles. Other carriers have filed with this Board petitions to alter or "clarify" the Board's decision in ways that would substantially lessen BN/Santa Fe's rights and substantially impair its competitiveness. The very fact that those petitions are pending has caused uncertainty among shippers and, at least temporarily, has made it difficult or impossible to sign contracts with those shippers until the uncertainty is removed. In addition, negotiations with UP/SP concerning the I-5 Corridor and with Tex Mex concerning service over Laredo have not progressed to the point where we are able to finalize plans to provide the kind of competitive service we hope

and expect to provide in those regions. The positions that UP/SP has taken before this Board concerning transloads, new facilities, and the reopening of contracts, and its intransigence in negotiations concerning the I-5 Corridor, give us particular concern.

Where we do not face such obstacles, we are already experiencing great success. The UP/SP merger was consummated -- and most of BN/Santa Fe's rights therefore became effective -- on September 11, 1996. As early as September 13, 1996, we were using our new rights to ship a significant volume of liquefied petroleum gas (LPG) from Borger, TX, to Salt Lake City, UT, a point we did not reach before the UP/SP merger. Our movement of LPG to Salt Lake City is ongoing. At present, we are approximating single-line service by giving the traffic to SP at Denver to carry to Salt Lake City under the interim haulage arrangement that will exist until our trackage rights become fully effective. We anticipate being able to carry this traffic in full single-line service in the future.

The Borger movement is instructive in showing BN/Santa Fe's capabilities under its new rights. The LPG that is now moving in BN/Santa Fe service to Salt Lake City once moved in joint-line Santa Fe-SP service. The shipper, however, found the service (particularly the car utilization) unacceptable and began to move this product by a combination of truck and pipeline rather than by rail. Now that BN/Santa Fe can provide single-line service (which will only get better when our interim haulage rights soon

become full trackage rights), however, the shipper has rapidly determined that rail is once again an efficient and cost-effective -- indeed, the best -- mode of transportation for this product. Our rapid success in diverting traffic back to the railroad from trucks and pipelines shows what we are capable of doing and should help us to sell our services to 2-to-1 shippers who have not previously used BN/Santa Fe.

Another commodity as to which rates are already in place, and which we have begun moving, is crushed stone. This product moves from Kerr, TX, to various points in Texas. By taking the traffic over trackage rights (or, for the time being, interim haulage) north to Temple, TX, where it moves onto BN/Santa Fe's own lines, BN/Santa Fe can deliver this traffic to destinations that it could not previously reach in single-line service.

Another customer that has agreed to ship substantial freight -- 500 cars a month -- via BN/Santa Fe as a result of our new rights is located in Cheek, TX. Previously, BN/Santa Fe has carried this customer's traffic to Beaumont, TX, and interchanged it there with SP for delivery to New Orleans. Now that we can serve New Orleans in single-line service, this customer has agreed to ship substantial volume using that service, effective October 1, 1996.

Our Agricultural Commodities Unit has booked, and in some instances carried, substantial numbers of carloads going to various destinations that BN/Santa Fe did not serve before the UP/SP merger. A grain company originating traffic at Salina, KS,

Hutchinson, KS, Topeka, KS, and Amarillo, TX, moved more than 350 cars of wheat to Corpus Christi for export on the BN/Santa Fe system in September. This traffic had been scheduled for movement in October and November, but BN/Santa Fe quoted the customer a favorable rate that caused the traffic to move early.

BN/Santa Fe has also put into effect very competitive rates to move wheat from Nebraska and Kansas origins to Salt Lake/Ogden, UT. For example, for movements from Sidney, NE, the rate (which is contained in published tariffs) is \$1500/carload, exactly the same as UP's rate. For wheat from Hastings, NE, the rate is \$1850/carload, less than UP's \$1885 rate. We anticipate that traffic will begin moving on these routes very soon.

Grain (barley, meal, or corn) will be able to move over BN/Santa Fe's Central Corridor rights to the San Joaquin Valley in California, and we have published tariffs with rates for such movements that are competitive with UP's published rates.

Already, 100 cars per week of corn are moving over the Central Corridor on BN/Santa Fe, and we expect this traffic to grow, especially once our interim haulage rights convert to trackage rights. We also expect to be moving corn in 75-car trains to Ontario, CA (using the trackage rights from Riverside, CA, to Ontario), once the corn harvest occurs at the end of October. We have also published competitive rates to move corn and grain sorghum to Brownsville, TX, and Eagle Pass, TX.

Similarly, because we have put in place (in tariff ICC-BN-4022-1, issued September 10 and effective September 12 and 13,

1996) rates that are highly competitive with UP, we are optimistic that when soybeans are harvested in early October we will move substantial volumes from Nebraska, Iowa, South Dakota, and Minnesota, and other states to export points in Texas (including Laredo, Eagle Pass, Brownsville, and Corpus Christi) using our interim haulage rights and soon our trackage rights.

Malted barley is moving to export points in Texas via trackage rights as well. In particular, we moved a 26-car malted barley train to Eagle Pass the week of September 16, just after the UP/SP merger occurred, and we expect to move 50-75 cars a week of this commodity to Eagle Pass in the near future.

These short-term successes are remarkable in light of the limited time we have had to achieve them and the start-up nature of our new operations. But they are extremely modest compared to what we expect to be able to do with our trackage rights (and other rights) as we gain business from 2-to-1 customers who have not previously used our services. And we are already well along in the process of marketing our services to those customers.

In the course of the implementation process -- which was ongoing during the merger case before the Board and has continued since the Board's decision -- we received from UP a list of almost 600 2-to-1 customers. We have contacted more than 400 of those customers. BN/Santa Fe has made offerings or bids to the customers who actually control substantially more than half of the total traffic of this group (more than 150,000 carloads/year). I am optimistic that, given the success story we

can already tell about movements to new points in just the first weeks of operation under our new rights, many of these customers will recognize that we can compete using our new rights and will garner substantial business.

BN/Santa Fe is already building its density on the trackage rights lines. With the whole BN/Santa Fe network behind us, and with the traffic that we are carrying already, we will be a formidable competitor, and I anticipate that 2-to-1 customers will use our services.

We have taken other steps, besides carrying traffic, in the first three weeks since the merger to build our traffic base and market our new services. BN/Santa Fe has hired a marketing representative in Salt Lake City, which is a new market for our railroad. We have published hundreds of rate authorities covering new routes made possible by the conditions on the UP/SP merger, including grain rates from all BN/Santa Fe territory into the 2-to-1 areas. These rate authorities are most important for carrying agricultural traffic, but they are important for other commodities as well. In forest products, for example, our new rate authorities are so important and so numerous that a new employee has been hired for the sole purpose of updating our rate authorities to add the 2-to-1 points and our new routes.

None of this is to say that we do not face obstacles to competing effectively with UP/SP. One serious obstacle at this early stage -- although I expect it to be temporary -- is simple shipper uncertainty. Because our ability to serve the Lake

Charles area of Louisiana has been called into question by a KCS filing before this Board, for example, shippers in that area understandably are reluctant to commit business to us before the Board resolves the issue, and we are in no position to commit to provide service if our right to do so could be abrogated in the near future. In addition, if the Board's contract reopener condition does not apply to UP/SP contracts with shippers in the Lake Charles area, our ability to compete there will be seriously impaired.

Service to Mexico is another area of present uncertainty, although we hope to resolve the uncertainty soon. We are eager to provide service to shippers over Laredo, but doing so requires agreement with Tex Mex. We are working hard to achieve agreement with Tex Mex on the terms on which we would serve shippers desiring service over Laredo, but the negotiations have not yet been concluded. Shippers' choices between an Eagle Pass routing into Mexico and a Laredo routing into Mexico will depend in large part on what terms we are able to negotiate with Tex Mex, and final decisions therefore must await the conclusion of negotiations, which we are trying to expedite.

Yet another present uncertainty pertains to whether certain shippers are or are not 2-to-1 shippers covered by the settlement agreements between UP/SP and BN/Santa Fe and the Board's decision. For example, Intermod Industries at Stockton, California, is served by UP on one side of the plant and SP on the other. It seems clear to us that Intermod is a 2-to-1 point

to which BN/Santa Fe receives access, but we are unable to do business with Intermod (and other shippers whose 2-to-1 status is uncertain for any reason) unless and until we receive either agreement from UP/SP or clarification from the Board, which we will have to seek . . . we cannot resolve the question with UP/SP.

There are additional obstacles potentially in our path aside from temporary uncertainty. I understand that the Board has already been made aware of BN/Santa Fe's concerns about the possible ineffectiveness -- depending on how it is interpreted -- of the Board's condition opening up at least 50% of the volume at 2-to-1 points. I understand that the Board also has been made aware of UP/SP's position that BN/Santa Fe's ability to serve new transload and other facilities should be severely circumscribed, in a way that would harm BN/Santa Fe's competitiveness. UP/SP's position is already causing uncertainty in the marketplace, to the detriment of BN/Santa Fe's competitiveness, and will have a longer lasting detrimental effect if the Board accepts UP/SP's invitation to cut back on the literal terms of its decision.

Finally, although I will not provide details in this Verified Statement because the negotiations are ongoing, there are potential obstacles to BN/Santa Fe's competitiveness as a result of positions that other carriers have taken in negotiations. UP/SP has taken positions in negotiations with respect to the I-5 Corridor on the West Coast that seriously threaten BN/Santa Fe's competitiveness there. In addition, since negotiation with Tex Mex to determine the basis on which traffic

will be handled to Laredo are not yet finalized, there remain uncertainties about BN/Santa Fe's ability to compete to Mexico over Laredo.

All of these obstacles may, depending on actions by the Board and by other railroads, hurt -- perhaps severely -- BN/Santa Fe's ability to carry out the promise of full competitiveness that it has made to shippers and that the Board itself made when it approved the UP/SP merger in heavy reliance on BN/Santa Fe's ability to compete vigorously against UP/SP throughout the West.

Once those obstacles are overcome, however, I am convinced that nothing stands in the way of BN/Santa Fe's ability to grow its traffic base using the rights it was granted, to satisfy existing customers that it can take their traffic to new destinations efficiently and reliably at competitive rates, and over time to satisfy new customers that they will benefit greatly from the competition that BN/Santa Fe provides.

VERIFICATION

THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

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

Richard W. Brown
Richard W. Brown

Subscribed and sworn to before me on this 26th day of September, 1996.

Lynna M. Young
Notary Public

My Commission Expires: 09/30/96

STB

FD

32760

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6-28-98
845-39
COVINGTON & BURLING

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BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

June 28, 1996

BY HAND

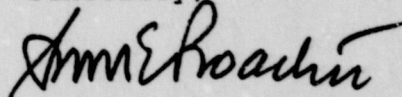
Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Twelfth Street and Constitution Ave., N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

In our filing earlier today, Applicants' Submission of Final Settlement Agreement and Implementing Agreements with BN/Santa Fe (UP/SP-266), a superseded version of "Exhibit B -- General Conditions" was inadvertently attached to each of the trackage rights agreements. We are enclosing a copy of the corrected "Exhibit B" that should have been attached to the trackage rights agreements. We are also enclosing the Certificate of Service for UP/SP-266, which was not included along with the earlier filing.

Sincerely,



Arvid E. Roach II

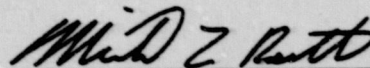
cc: All Parties of Record

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 28th day of June, 1996, I caused a copy of the foregoing document, Applicants' Submission of Final Settlement Agreement and Implementing Agreements with BN/Santa Fe (UP/SP-266), to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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

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



Michael L. Rosenthal

EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated June 1, 1996 to which this Exhibit "B" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "Car" shall mean one (1) rail car, provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.4 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.

1.5 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

1.6 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.7 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.8 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.9 "Mill" shall mean one-tenth of a cent (\$0.001 US).

1.10 "Owner" shall have the meaning given to it in the Agreement.

1.11 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.12 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.13 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Agreement. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make

such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the BNSF-UP/SP Dispatching Protocols attached hereto as Attachment 1. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet on a regular basis, but not less often than every three (3) months during the first year of operation under this Agreement, and thereafter when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use

of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work on the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Agreement.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.7 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.9 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.10 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding

any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. During the initial start-up period, User shall allow Owner's pilot, at User's sole cost and expense, to accompany User over the Joint Trackage as Owner may in its reasonable judgment deem necessary. Should Owner ever require a pilot on User's Equipment after the initial start-up period on a frequent basis, that matter shall be referred to the Committee for resolution.

2.11 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.12 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in

accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running times of trains of Owner or

third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.16 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under this Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water

on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint

Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 Definitions and Covenants. The parties agree that for the purposes of this Section 5:

- (a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;
- (b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;
- (c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;
- (d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;
- (e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits,

demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages as specified in the next following sentence. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties;

- (f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;
- (g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;
- (h) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;
- (i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint

Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

- (a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;
- (b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;
- (c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;
- (d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

- (e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.
- (f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;
- (g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have

been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

- (a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.
- (b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:
 - (i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.
 - (ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than 1 percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned equally between the parties, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

- (c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other

procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6. The parties acknowledge that other procedures have been agreed to for resolution of disputes concerning compliance with the BNSF-UP/SP Dispatching Protocols (attached hereto as Attachment 1) which procedures are set forth in Paragraph 13 thereof.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice. "Net

Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Trackage or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently make application for all necessary governmental authority for abandonment of its right to operate over such Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

9.1 The Agreement shall be effective upon execution for a term of ninety-nine (99) years, provided, however, the trackage rights granted to User pursuant to the Agreement shall not become effective until the acquisition of control of SP by UP pursuant to STB Finance Docket No. 32760, and provided also that in the event the acquisition by UP of control of SP is finally disapproved by the STB and the time for any appeal has passed or, if the disapproval was appealed, the disapproval was affirmed on appeal, the trackage rights granted pursuant to the Agreement shall be of no force and effect and the Agreement shall terminate. User shall have the right to terminate the Agreement upon twelve (12) months' prior written notice to Owner. Liabilities created under this Agreement, if it becomes effective and is later terminated, shall survive such termination.

9.2 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

Except as provided in Section 3.5 and in the sentence immediately following, the Agreement and any rights granted hereunder may not be assigned in whole or in part by Owner or User without the prior written consent of the other. The Agreement may be assigned by Owner or User without the prior written consent of the other only (i) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (ii) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled,

controlling or under common control with the assigning party. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

12.2 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

END OF EXHIBIT "B"

April 24, 1996

BNSF - UP/SP DISPATCHING PROTOCOLS

As agreed: Dave Cifton - BNSF
 Hank Jay - SP
 Steve Bartley - UP

1. **Scope:** These protocols apply on all rail line segments where Burlington Northern Railroad Company or The Atchison, Topeka & Santa Fe Railway Company (which will be referred to jointly or individually as "BNSF") has trackage rights over tracks of the entity or entities resulting from the merger of the rail affiliates of Union Pacific Corporation and Southern Pacific Rail Corporation (which will be referred to jointly or individually as "UP/SP") and on all rail line segments where UP/SP has trackage rights over tracks of BNSF. All such rail lines will be referred to as "joint trackage and will include all current joint line trackage rights."
2. **Purpose:** To ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track.
3. **General Instructions:** BNSF and UP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on joint trackage that trains of the tenant are to be dispatched exactly as if they were trains of the same class of the owner and given equal treatment with trains of the owner. These instructions will be issued at agreed intervals or at the request of either party.
4. **Monitoring Systems:** At the request and expense of the tenant, the owner will make available computer terminals, facilities or capabilities comparable to those available to its own dispatchers showing joint trackage it dispatches so that the tenant can monitor the handling of its trains by the owner.
5. **Train Information:** The tenant will provide to the owner, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over joint trackage, preferably using electronic data interchange. Parties will establish run time standards by train category based on expected train volumes for each line segment. If train volumes are different than expected then adjustments to run time standards will be made by mutual agreement. The tenant will provide reliable and current information about trains approaching joint trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching joint trackage, sufficiently in advance to allow dispatchers to plan for them. The owner will provide to the tenant advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions. BNSF and UP/SP will cooperate to develop a process for discussing maintenance windows in advance and agree upon so as not to adversely affect schedules of one carrier more than the other.

6. **Specific Instructions:** The owner will permit the tenant to transmit instructions regarding the requirements of specific trains and shipments to designated dispatching ~~center~~ employees responsible for handling those trains.
7. **Train Priorities/Run Time Standards:** BNSF and UP/SP will at all times provide to each other current procedures for assigning dispatching priorities or rankings to their trains and information sufficient to show how those procedures are applied to their own trains. The tenant will assign priorities or rankings to its trains operating on joint trackage using the owner's procedures, and the owner will dispatch tenant trains in accordance with those priorities or rankings. It is understood that technological advances in computer aided dispatching might result in changes to priority assignment methodologies. The parties agree to discuss technological changes which might affect priority assignment methodologies prior to implementation. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads. It is agreed that a three member panel from each carrier will make up the Joint Service Committee. Suggestions for three member panel are representatives from Joint Facilities, VP Transportation, and Joint Trackage Rights Operations.
8. **Entry to Joint Trackage:** At points where tenant trains enter joint trackage, entry will be provided by the owner on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. [If operating circumstances make strict application of this principle difficult or uncertain, BNSF and UP/SP may jointly establish standards for determining sequence of entry to joint trackage.] Parties will communicate daily on any conflicts concerning entry to joint trackage to gain resolution.
9. **Communications:** BNSF and UP/SP will provide to each other, and keep current, lists of dispatching personnel responsible for dispatching each segment of joint trackage and contact numbers. For each segment, BNSF and UP/SP will designate supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.
10. **Access to Dispatching Centers:** Appropriate officials of either railroad will be admitted at any time to dispatching facilities and personnel responsible for dispatching joint trackage to review the handling of trains on joint trackage and will be provided an office in the other railroad's dispatching center (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to that review). In order to support BNSF operations over UP/SP trackage rights granted in connection with the UP/SP merger, UP/SP will pay BNSF an amount equal to the reasonable and conventional salary of one supervisory employee to be placed by BNSF at UP/SP's Harriman dispatching center. It is understood that management and supervision of dispatching operations is the responsibility of the owning carrier.

11. **Performance Measurement:** BNSF and UP/SP will cooperate to develop train performance evaluation methods under which train performance of tenant trains on joint trackage segments can be compared to train performance of the owner's trains on the same segments for the same train category and priority.
12. **Personnel Incentives and Evaluation:** In evaluating the performance of employees and supervisors responsible for dispatching joint trackage, both BNSF and UP/SP will consider train performance of tenant trains and effectiveness in cooperating with tenant personnel and meeting tenant service requirements in the same manner as such factors are considered with respect to the owner's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of the owner's trains, performance of the tenant's trains shall be considered on the same basis to the extent feasible.
13. **Disagreements:** The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee, the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.
14. **Modifications:** As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of both railroads on joint trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.

STB FD

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**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

Assistant Secretary
for Budget and Programs

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

May 24, 1996

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



Re: Finance Docket No. 32760 Oral Argument

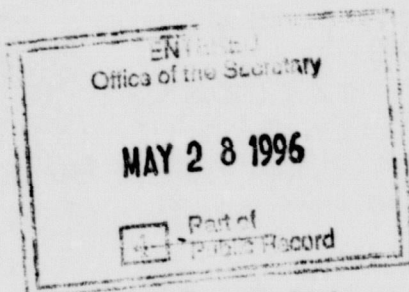
Dear Mr. Williams:

Pursuant to Decision No. 36 in the above-referenced proceeding, the U.S. Department of Transportation ("DOT") hereby gives notice of its intent to participate in oral argument in this proceeding. DOT requests fifteen (15) minutes of speaking time, during which the undersigned will address the effects of the merger on competition. We would also propose to discuss whether conditions on the merger related to these subjects would be appropriate.

Contrary to the historical procedural sequence in most past rail merger cases, Decision No. 36 has called for parties to state their positions on the various applications and conditions requested prior to the submission of their briefs. At this time DOT has not yet adopted a final position on all aspects of the merger, but will do so in its brief, which is scheduled to be filed on June 3, 1996.

Respectfully submitted,

Paul Samuel Smith
Senior Trial Attorney



cc: Hon. Jerome Nelson
All Parties of Record

STB FD

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5-24-96

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83785

UP/SP-254

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

MAY 28 1996

Office of the Secretary

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

-- CONTROL AND MERGER --

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

APPLICANTS' REPLY TO KCS' "SUPPLEMENT" TO MOTION TO STRIKE

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May 24, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' REPLY TO KCS' "SUPPLEMENT" TO MOTION TO STRIKE

Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"),^{1/} 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"),^{2/} collectively, "Applicants," submit this reply to the "Supplement to The Kansas City Southern Railway Company's Motion to Strike" (KCS-54).

In its "Supplement," KCS renews its meritless effort to have removed from the record an important study performed by Professor B. Douglas Bernheim, which found that rates are no lower on routes where three railroads (including SP) are

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

present than on routes where only two railroads (not including SP) compete. UP/SP-231, Bernheim, pp. 13-21. The Board has already rejected KCS' motion to strike this study. Decision No. 37, served May 22, 1996.

In its new "Supplement" to that motion, filed after KCS tried but failed to undermine the study during a six-hour deposition of Professor Bernheim,^{3/} KCS is again trying to have the study removed from the record in this case. KCS' new argument, however, proceeds from an erroneous factual premise, and the Board should reject it out of hand. Specifically, KCS assumes that 54 pages of documents produced on May 20 were workpapers underlying Dr. Bernheim's April 29 statement and were "presumably relied upon by Dr. Bernheim in preparing his Rebuttal Verified Statement." KCS-54, p. 1. KCS never bothered to ask Applicants about these documents, and KCS is simply wrong about the nature of them. KCS' attempt to support its motion to strike based on the production of these documents is entirely unfounded.

KCS' Supplement attempts to obfuscate the key fact: by the time Professor Bernheim was deposed by KCS on May 15, KCS had been in possession of 100% of the workpapers

^{3/} Underscoring that KCS failed to undermine the conclusions of Professor Bernheim's study during his deposition, KCS has asked that Professor Bernheim's deposition testimony about the study -- elicited by KCS itself as well as other opponents -- also be stricken from the record. KCS-54, p. 3. It is quite remarkable that KCS would seek to strike deposition testimony elicited by the Department of Justice and Conrail.

underlying Professor Bernheim's study for more than one week. Indeed, Applicants rescheduled Professor Bernheim's deposition at KCS' request in order to provide KCS counsel with the additional time they asserted they needed to review Professor Bernheim's workpapers prior to the deposition.^{4/} There is absolutely no merit to KCS' renewed attempt to have Professor Bernheim's important study stricken.

KCS does not seem to recognize that the documents that were produced on May 20 related not to Professor Bernheim's initial study but to minor errata that were filed on May 21. See UP/SP-253. As Professor Bernheim explained to KCS' counsel at his deposition, Professor Bernheim made minor corrections to the data for one unimportant variable used in his regressions, and confirmed that "nothing substantive in the analysis was affected" by those corrections. See Bernheim Dep., Tr., pp. 180-82 (emphasis added). Those corrections were not made until the morning of May 15 because Professor Bernheim did not realize the need for them until the previous

^{4/} KCS suggests that it was "prejudiced" by having to take Professor Bernheim's deposition by telephone. KCS-54, p. 3. This claim is a complete fabrication. KCS was welcome to attend the deposition in person. Moreover, the telephonic procedure did not hamper in any way KCS' ability to have its questions answered by Professor Bernheim, and KCS counsel expressly agreed to this procedure to spare themselves the effort of traveling to California. Not once did KCS' counsel express any concern that the telephonic procedure was "prejudicing" their ability to conduct Professor Bernheim's deposition.

evening.^{5/} The documents produced on May 20 were prepared over the next few days and reflect the supporting detail for these corrected regression runs. They were essentially duplicates of workpapers previously produced, with minor changes reflecting the corrections Professor Bernheim described at his deposition. The documents produced on May 20 thus did not relate to Professor Bernheim's original study and were not even in existence at the time of Professor Bernheim's deposition on May 15. Accordingly, KCS' argument that the production of these documents is a ground for striking Professor Bernheim's original study is wholly without merit.

KCS' Supplement also seeks a further opportunity to depose Professor Bernheim. See Supplement, pp. 4-5. Applicants do not believe there is any need for a further deposition of Professor Bernheim concerning the errata or May 20 documents. The errata and documents reflect very minor corrections to the data for an unimportant variable in Professor Bernheim's regressions. No changes to the body of Professor Bernheim's statement were necessitated by the corrections, and Professor Bernheim has already testified at his deposition that the corrections had no substantive effect on his conclusions. Moreover, KCS has already had ample

^{5/} Professor Bernheim did not become aware of the need to make these corrections until the evening of May 14, when Tex Mex filed testimony of witness Ellebracht calling to Professor Bernheim's attention possible inconsistencies in the coding of a "port" variable. See TM-34, Ellebracht, p. 12.

opportunity to question Professor Bernheim about the errata to which the documents relate. Professor Bernheim explained at his deposition what corrections he made and their effect, and KCS' counsel chose to ask no questions about these corrections. Tr., pp. 180-82. Nevertheless, if KCS sincerely does have questions about the errata or documents, Applicants will be happy to respond to them; the burden of a further deposition to address this matter is not warranted.^{6/}

^{6/} Even if a further deposition were required, it would of course need to be limited to the errata and supporting documentation produced on May 20. Applicants believe that the most efficient procedure would be to conduct such a session, which would undoubtedly be quite brief if it is warranted at all, by telephone rather than requiring Professor Bernheim to travel all the way to Washington from California. And it clearly would not be appropriate for Applicants to bear the cost of KCS' attorney and consultant time.

Respectfully submitted,

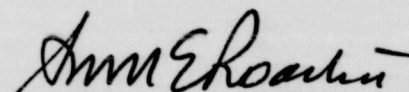
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Pacific Railroad Company

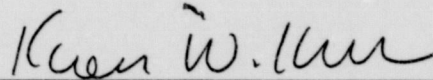
May 24, 1996

CERTIFICATE OF SERVICE

I, Karen W. Kramer, certify that, on this 24th day of May, 1996, I caused a copy of the foregoing document to be served by first-class mail postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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

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



Karen W. Kramer

1 BEFORE THE SURFACE TRANSPORTATION BOARD

2
3 PACIFIC CORPORATION,
4 UNION PACIFIC RAILROAD COMPANY
5 AND MISSOURI PACIFIC RAILROAD COMPANY

6 -- CONTROL AND MERGER --

7 SOUTHERN PACIFIC RAIL CORPORATION,
8 SOUTHERN PACIFIC TRANSPORTATION COMPANY,
9 ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
10 SPCSL CORP. AND THE DENVER AND RIO GRANDE
11 WESTERN RAILROAD COMPANY
12
13
14

15 TELEPHONIC DEPOSITION OF
16 B. DOUGLAS BERNHEIM, Ph.D.
17 Menlo Park, California
18 Wednesday, May 15, 1996
19
20
21
22
23
24

25 Reported by: Tina Marie Velasquez, CSR No. 10072

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 systematically higher than situations in which you
2 have fewer than three western bidders controlling
3 for other characteristics of the movement and the
4 origin and the destination.

5 And, therefore, it's very clear that if
6 this data has anything to say about the 3-versus-2
7 issue, which Mr. Ploth really did not use it to
8 address that issue in any meaningful way, but if
9 his data has anything at all meaningful to say
10 about that 3-versus-2 issue, it is that prices are
11 systematically higher in those situations in the
12 data where there were three western bidders rather
13 than two.

14 Q. Earlier this afternoon, you were asked
15 about Errata, and I believe you answered that
16 there were Errata.

17 What Errata were you referring to?

18 A. Well, we discovered that there was for
19 the first -- uh-oh. Our lights are going off.
20 They came back on.

21 We discovered that for the first portion
22 of my analysis, the portion that used the UP
23 traffic data, there was an error in the coding of
24 the port variable. There were basically two
25 problems with the coding of the port variable.

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1 One was that some port originations had
2 been coded inconsistently. The other related
3 problem was that Oakland, California was not coded
4 as a port even though it probably did function as
5 a port for the purpose of many of these movements
6 originating in Oakland or may have served as an
7 originating port for those shipments.

8 So we made those corrections of the
9 coding of the port variable and discovered that
10 nothing substantive in the analysis was affected.
11 The port coefficient changed sign and became
12 negative, indicating that prices tended to be
13 lower when you have port originations, and that's
14 consistent with the notion that there is
15 competition between ports for inflows of
16 automobiles from abroad. So that makes some
17 sense.

18 But the coefficients which measure the
19 effect of having situations with two railroads,
20 including SP, two railroads not including SP,
21 three railroads with and without SP, those
22 coefficients were essentially unchanged.

23 So the original error had practically no
24 effect on any of the conclusions, either
25 qualitatively or quantitatively. So having made

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1 that correction, the original conclusion stands.

2 MR. MEYER: Mr. Herzog, do you have any
3 questions?

4 MR. HERZOG: No, I don't. Thank you.

5 MR. MEYER: Do you have anything, too,
6 in the way of recross?

7 MR. FOSHEE: No, I don't.

8 MR. MEYER: Is there anyone else on the
9 line?

10 MR. FOSHEE: Professor, thanks a lot.

11 THE WITNESS: Thank you.

12 (Whereupon, at 7:00 p.m., the taking of
13 the instant deposition ceased.)

14

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Signature of Witness

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5/24/96

83742

COALITION FOR COMPETITIVE RAIL TRANSPORTATION

MOBILIZATION OFFICE

1029 North Royal Street

Suite 400

Alexandria, Va. 22314

Office: (800) 814-3531

Fax: (800) 641-2255

May 24, 1996

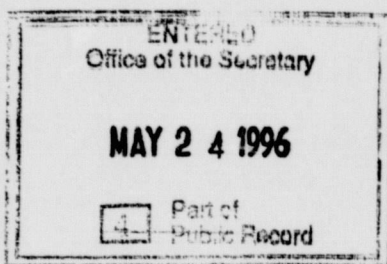
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SURFACE TRANSPORTATION
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MAY 24 1 36 PM '96
ICC
OFFICE OF SECRETARY

Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, NW
Washington, DC 20423

Re: Finance Docket No. 32760 oral argument

Dear Mr. Williams:

The Coalition for Competitive Rail Transportation opposes the primary application in the above captioned matter, as filed, and as subsequently amended. We support certain conditions requested by other parties and would address in oral argument the basic issue of the broad scope of anti competitive harm the merger will place on shippers and on others. We respectfully request five minutes for oral argument.



Respectfully submitted,

John T. Estes
Attorney and Executive Director

Item No. _____

Page Count _____

May, 1996 #174

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5-22-96

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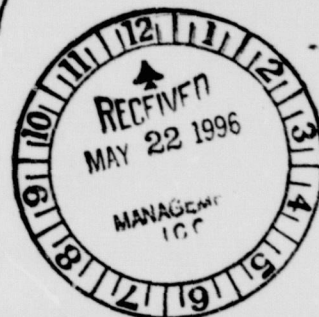
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Item No. _____

Page Count 2

May, 1996 # 127

83671



BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

FINANCE DOCKET No. 32760

(Proposed Merger-Southern Pacific Transportation Co. & Union Pacific Railroad Co.)

DOCKET No. AB-3 (SUB-No. 130) & DOCKET No. AB-8 (SUB-No. 38)
(Towner to NA Jct., CO)

DOCKET No. AB-3 (SUB-No. 131) & DOCKET No. AB-8 (SUB-No. 37)
(Hope to Bridgeport, KS)

DOCKET No. AB-8 (SUB-No. 36x) & DOCKET No. AB-12 (SUB-No. 189x)
(Sage to Leadville, CO)

DOCKET No. AB-8 (SUB-No. 39) & DOCKET No. AB-12 (SUB-No. 188)
(Malta to Canon City, CO)

E. W. WOTIPKA

CORRECTION OF FACTUAL ERROR
CONTAINED IN VOL. 3, APPLICANTS' REBUTTAL

May 15, 1996

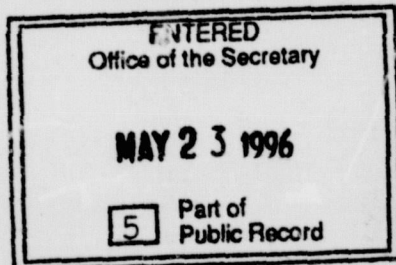
Copies:

Michael D. Billiel, US Department of Justice
Jared Boigon, State of Colorado
Janice G. Barber, Burlington Northern RR Co.
Janet H. Gilbert, Wisconsin Central Ltd.
James J. Irlandi, Kansas Shippers Assn., et. al.
Kenneth C. Johnsen, Geneva Steel Company
Alexander H. Jordan, Western Shippers' Coalition
Robert S. Kornpanty, DOD, USMTMCTEA
Anthony M. Marquez, CO Public Utility Comm.
Jeffrey R. Moreland, Santa Fe Pacific Corp., et. al.
William A. Mullins, Kansas City Southern Rwy., et. al.

Robert T. Opal, Union Pacific RR Co.
Reed M. Richards, State of Utah
Mark H. Sidman, Montana Rail Link, Inc.
J. Fred Simpson, Montana Rail Link, Inc.
Paul Samuel Smith, US Dept. of Transportation
Junior Strecker, MTN/Plains Comm. & Shippers
Thomas Zwica, LSBC Holdings, Inc.
Myles L. Tobin, Illinois Central Railroad
James P. Gatlin, Southern Pacific Transportation Co.
Gary A. Lasko, Southern Pacific Transportation Co.
Texas Mexican Railway Co.

Certificate of Service

The undersigned hereby certifies that a copy of this statement was served upon the above-named individuals by first class postage on May 16, 1996, 1996.




E. W. Wotipka
6388 Terrace Lane
Salida, CO 81201

My name is E. W. Wotipka. I previously submitted Comments to the Surface Transportation Board dated January 24, 1996 and March 18, 1996 protesting the proposed subject abandonments. I am writing to correct a factual error contained in remarks made by Mr. Michael D. Ongerth in his statements in Vol. 3-B of Applicants' Rebuttal of April 29 in response to my Comments.

On page 48, Mr. Ongerth states that "... the geographic destination zone for coal originating west of the Tennessee Pass line for which the Tennessee Pass line would be the shorter post-merger route, is basically limited to West Texas, New Mexico and Arizona." He further states that "All other coal trains through Colorado will have a shorter route if they avoid Pueblo."

While it is true that Colorado and Utah traffic moving to mid-western and eastern destinations would have a slightly shorter route (about 5 miles) by using UP's Kansas Pacific line to Kansas City in lieu of the Tennessee Pass-Pueblo route to that destination, the same cannot be said for such traffic destined for what I have termed the "Mid South" markets, i.e., all of Texas, Louisiana and Mexico.

From my observation, the closest point at which trains can begin moving south from the Kansas Pacific line toward Ft. Worth (the obvious gateway to the Mid South from western markets) is Salina, Kansas. Using, then, an easterly extension of the mileage triangle illustrated in my January 24 Comment, with Dotsero at the west angle, Salina at the east or right angle, and Ft. Worth at the south angle, I have determined the distance between Dotsero and Salina, via Denver, is 618.4 miles, the distance between Salina and Ft. Worth, via Wichita and the OKT line, is 463.7 miles, for a combined distance, Dotsero to Ft. Worth, of 1082.1 miles. On the other hand, distance along the hypotenuse between Dotsero and Ft. Worth via Tennessee Pass, Pueblo, LaJunta, Stafford and Dalhart is 902.9 miles or a difference of 179.2 miles favoring the Tennessee Pass line.¹ Even for coal moving off the Craig Branch and reversing direction to Dotsero from Bond, the mileage advantage is over 100 miles favoring the Tennessee Pass line.



E.W. Wotipka

May 16, 1996

¹All mileages were computed using railroad timetable miles.

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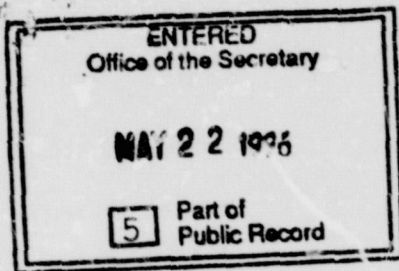
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Item No. _____
Page Count 8
may, 1996 # 116

8 3624

UP/SP-253

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

SUPPLEMENTAL ERRATA TO REBUTTAL FILING

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Southern Pacific Transportation
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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

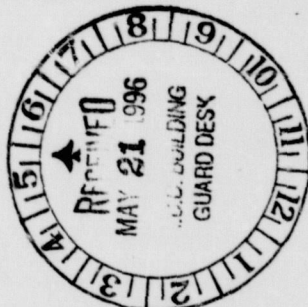
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May 21, 1996



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

SUPPLEMENTAL ERRATA TO REBUTTAL FILING

<u>Page</u>	<u>Line</u>	<u>Change</u>
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Volume 1 (UP/SP-230)

9	15	Change "over 50 shortlines." to "over 100 railroads."
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Volume 2 (UP/SP-231)

Part A

Rebuttal Verified Statement of B. Douglas Bernheim

Table 2 following
statement

Replace Table 2 with the revised Table 2
following these errata. (The reason for
the change was addressed at Professor
Bernheim's deposition. Bernheim Dep.,
May 15, 1996, pp. 180-181.)

Rebuttal Verified Statement of John T. Gray and James A. Shattuck

2	n.1 line 5	Change "many other railroads, including 51 short-line railroads" to "more than 100 railroads"
---	---------------	---

Respectfully submitted,

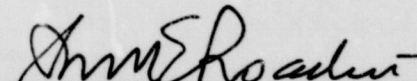
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May 21, 1996

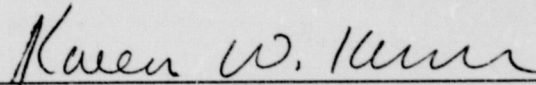
CERTIFICATE OF SERVICE

Copies of Applicants' Supplemental Errata to Rebuttal Filing have been served this 21st day of May, 1996, by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all persons designated by the Board as parties of record in Finance Docket No. 32760.

Copies of Applicants' Supplemental Errata to Rebuttal Filing have today been served by first-class mail, postage prepaid on:

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

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



Karen W. Kramer

Table 2: Regression Results
Dependent Variable: Log of Revenue per Net Ton-Mile

VARIABLE	(1)	(2)	(3)
Intercept	6.216 (0.675)	5.719 (0.721)	-23.301 (6.982)
UP and two non-SP competitors	-0.246 (0.096)	-0.248 (0.096)	-0.242 (0.093)
UP, SP and competitor	0.054 (0.052)	0.027 (0.053)	0.066 (0.052)
Log Net Tons	-0.561 (0.157)	-0.517 (0.159)	19.649 (4.247)
Log Net Tons Squared			-3.227 (0.679)
Log Miles	-0.344 (0.056)	-0.320 (0.057)	-0.905 (0.844)
Log Miles Squared			0.044 (0.061)
East to West Route		-0.135 (0.109)	-0.202 (0.106)
West to East Route		-0.044 (0.113)	0.033 (0.110)
Foreign Car		0.433 (0.198)	-0.138 (0.227)
Received at a Seaport		-0.120 (0.137)	-0.257 (0.135)
R-Square	0.184	0.211	0.274
Number of observations	272	272	272

1 BEFORE THE SURFACE TRANSPORTATION BOARD

2

3

PACIFIC CORPORATION,

4

UNION PACIFIC RAILROAD COMPANY

5

AND MISSOURI PACIFIC RAILROAD COMPANY

6

-- CONTROL AND MERGER --

7

SOUTHERN PACIFIC RAIL CORPORATION,

8

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

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ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

10

SPCSL CORP. AND THE DENVER AND RIO GRANDE

11

WESTERN RAILROAD COMPANY

12

13

14

15

TELEPHONIC DEPOSITION OF

16

B. DOUGLAS BERNHEIM, Ph.D.

17

Menlo Park, California

18

Wednesday, May 15, 1996

19

20

21

22

23

24

25 Reported by: Tina Marie Velasquez, CSR No. 10072

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO

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2 have fewer than three western bidders controlling
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4 origin and the destination.

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15 about Errata, and I believe you answered that
16 there were Errata.

17 What Errata were you referring to?

18 A. Well, we discovered that there was for
19 the first -- uh-oh. Our lights are going off.
20 They came back on.

21 We discovered that for the first portion
22 of my analysis, the portion that used the UP
23 traffic data, there was an error in the coding of
24 the port variable. There were basically two
25 problems with the coding of the port variable.

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 One was that some port originations had
2 been coded inconsistently. The other related
3 problem was that Oakland, California was not coded
4 as a port even though it probably did function as
5 a port for the purpose of many of these movements
6 originating in Oakland or may have served as an
7 originating port for those shipments.

8 So we made those corrections of the
9 coding of the port variable and discovered that
10 nothing substantive in the analysis was affected.
11 The port coefficient changed sign and became
12 negative, indicating that prices tended to be
13 lower when you have port originations, and that's
14 consistent with the notion that there is
15 competition between ports for inflows of
16 automobiles from abroad. So that makes some
17 sense.

18 But the coefficients which measure the
19 effect of having situations with two railroads,
20 including SP, two railroads not including SP,
21 three railroads with and without SP, those
22 coefficients were essentially unchanged.

23 So the original error had practically no
24 effect on any of the conclusions, either
25 qualitatively or quantitatively. So having made

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83593

WEINER, BRODSKY, SIDMAN & KIDER

ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800

WASHINGTON, D.C. 20005-4797

(202) 628-2000

TELECOPIER (202) 628-2011

Item No. _____

Page Count 7May, 1996 # 108

May 20, 1996

RICHARD J. ANDREANO, JR.
 JAMES A. BRODSKY
 JO A. DeROCHE
 CYNTHIA L. GILMAN
 ELLEN A. GOLDSTEIN*
 DON J. HALPERN
 CHRISTOPHER E. KACZMAREK*
 MITCHEL H. KIDER
 SHERRI L. LEDNER
 PAUL C. OAKLEY*
 BRUCE E. PRIDDY*
 MARK H. SIDMAN
 RUGENIA SILVER
 HARVEY E. WEINER
 JOSEPH F. YENOUSKAS

*NOT ADMITTED IN D.C.

BY HAND DELIVERY

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

**MRL-23**

Re: 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

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an
 original and 20 copies of Errata to Montana Rail Link, Inc.'s
 Rebuttal in Support of Responsive Application (MRL-23).

Please acknowledge receipt of this letter by date-stamping
 the enclosed acknowledgement copy and returning it to our
 messenger.

Very truly yours,

Paul C. Oakley
 Paul C. Oakley

Enclosure

ENTERED	
Office of the Secretary	
MAY 21 1996	
5	Part of Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

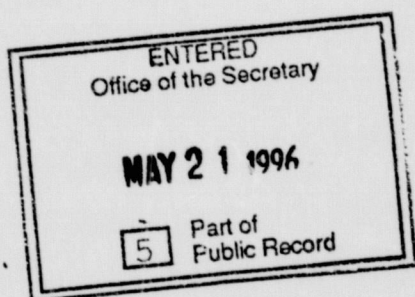
FINANCE DOCKET NO. 32760

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

-- CONTROL AND MERGER --

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

ERRATA TO MONTANA RAIL LINK INC.'S REBUTTAL
IN SUPPORT OF RESPONSIVE APPLICATION



Mark H. Sidman
Paul C. Oakley
Weiner, Brodsky, Sidman &
Kider, P.C.
1350 New York Avenue, N.W.
Suite 800
Washington, D.C. 20005
(202) 628-2000

ATTORNEYS FOR
MONTANA RAIL LINK, INC.

Dated: May 20, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

-- CONTROL AND MERGER --

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

**ERRATA TO MONTANA RAIL LINK INC.'S REBUTTAL
IN SUPPORT OF RESPONSIVE APPLICATION**

Montana Rail Link, Inc. submit the following errata to its Rebuttal in Support of Responsive Application, filed with the Surface Transportation Board on May 14, 1996. Also, attached hereto is Attachment 1 to the rebuttal verified statement of William H. Brodsky, which was mistakenly excluded.

<u>Page</u>	<u>Line</u>	<u>Change</u>
-------------	-------------	---------------

Main Text:

13	8	Change "To assure" to "To ensure"
14	26	Change "acquisition company's" to "Acquisition Company's"
16	20	Change "class I's" to "class Is"
18	20	Change "single line" to "single-line"
25	16	Should read "claimed state support"
26	20	Change "ex ante" to " <u>ex ante</u> "
28	12	Change "high bituminous" to "high-Btu bituminous"
37	18	Add a semicolon after "preference"

Page Line Change

Verified Statement of John Hall:

3 7 Change "Kalt V.S." to "VS Kalt"

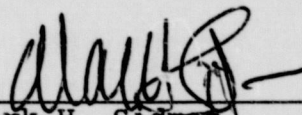
Rebuttal Verified Statement of William H. Brodsky:

3 13 Should read "railroad mainline"

4 17 Change "transit time" to "transit times"

7 3 Change "Attachment 2" to "Attachment 1"

Respectfully submitted,



Mark H. Sidman
Paul C. Oakley
Weiner, Brodsky, Sidman &
Kider, P.C.
1350 New York Avenue, N.W.
Suite 800
Washington, D.C. 20005
(202) 628-2000

**ATTORNEYS FOR
MONTANA RAIL LINK, INC.**

Dated: May 20, 1996

In heavy construction, long out of favor, Dennis Washington has built a mighty empire. Will Morrison Knudsen become his newest province?

A tycoon in the old mold

By Stephen S. Johnson

DENNIS WASHINGTON has come a long way since he borrowed \$30,000 and leased a bulldozer in 1967. Today, long out of day-to-day operations, spending his time between Palm Springs and Missoula, Mont., he would rather tell you about the 143-foot motor yacht he just bought from Ray Kroc's widow than discuss his vast business operations.

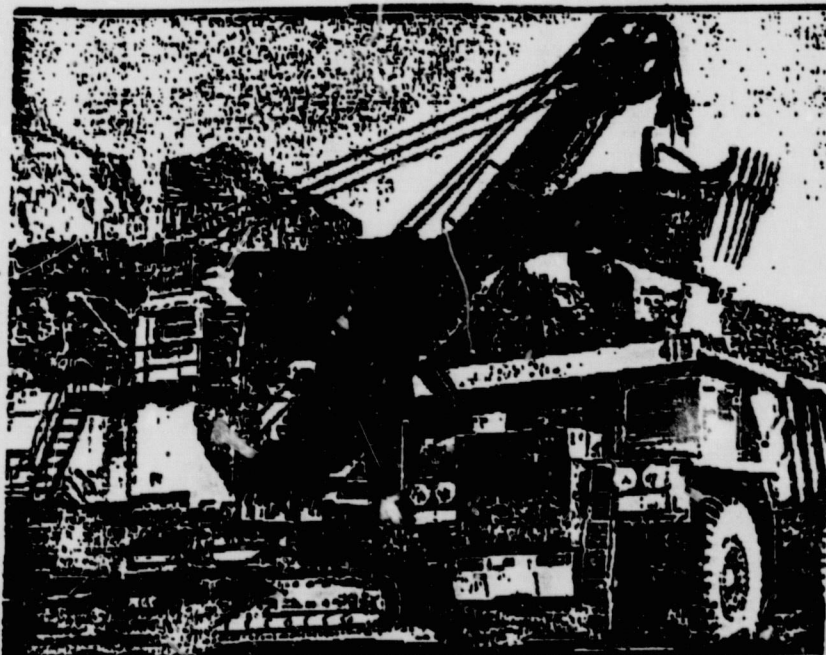
Don't be fooled. The Montana billionaire, now 61, may be on the verge of adding what is left of ailing construction giant Morrison Knudsen to his business empire, which already includes the old Anaconda Copper

Mine, bridge and highway construction, railroads and shipping.

It's no secret that he would like to become a serious rival to the likes of Fluor Corp., Bechtel and Peter Kiewit Sons'. With MK he could achieve this.

In mid-April MK's board approved a prepackaged bankruptcy plan—now being reviewed by some 75 creditors. The plan would include a swap of MK's \$250 million in short-term debt and liabilities for about \$135 million in new MK stock. When and if that stock comes on the market, Washington is very much a prospective buyer.

Under Chairman Robert Miller,



Washington's specialty—heavy equipment at the Anaconda Copper Mine. He paid \$1.5 million for it in 1988. Today its pretax earnings are \$85 million.



Montana's billion-
aire construction
magnate Dennis
Washington
Expanding into
rail and marine
transportation,
he may have his
eye on selling
Morrison Knudsen.

MK has come a long way in the past year. It is still stuck with its ailing MK Rail unit, but on revenues of \$1.7 billion the company made an operating profit of \$19 million last year. Its mining and environmental units—about \$1 billion in combined revenues—remain healthy, and new contracts are being won by its heavy construction arm.

Not only is Morrison Knudsen a prestigious old name, it also has a New York Stock Exchange listing, which would propel Washington into the arena of public companies in a big way.

In mid-1992 he tried to take his construction company, Washington Contractors Group, public in a \$59 million stock offering, but the deal didn't fly. He was asking too much, the prospective underwriters thought. But a lot of money has flowed into his coffers since then, and he's gained ground over rivals.

His Washington Contractors Group, which does the heavy dirt-moving for public and private infrastructure projects, has revenues of

\$230 million and order backlogs of \$400 million. The company is the leader in the California market, where it has built more major roads and bridges than anyone else. It is currently working on a \$135 million dam-building project in southern California and recently won a bid for a \$57 million airport project in Las Vegas.

Washington's Montana Resources owns the famed Anaconda Copper Mine, which he bought and reopened for \$18 million in 1988. It earned \$85 million pretax on revenues of \$200 million last year. His Montana Rail Link—bought from Burlington Northern in 1987—earned \$54 million pretax on revenues of \$188 mil-

lion, and more acquisitions are on the horizon.

Not satisfied with his success in mining and heavy construction, Washington is expanding his transportation ventures beyond railroad-ing. In 1992 he bought Vancouver, Canada-based C.H. Ceres & Sons tugboat company, giving him a near monopoly on the Port of Vancouver's towing business. He also bought Canada's largest tug and barge company, Seaspan International, and ocean shipper Norsk Pacific Steamship, totaling nearly \$200 million.

Heavy construction is somewhat out of favor these days—which perhaps explains why Washington is concentrating there. To round out his construction activities, MK would make a splendid fit. What Washington lacks is the design and engineering experience that MK has. Together the two could bid on the largest projects in the U.S. Fluor Corp. just announced a \$250 million contract with MK to build a toll road in Virginia. Under the MK banner, Washington could do the project alone.

Washington needs the design and engineering experience that Morrison Knudsen has. Together the two would be a strong force in the U.S. construction industry.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 1996, a copy of the foregoing Errata to Montana Rail Link's Rebuttal in Support of Responsive Application was served by hand delivery upon:

Arvid E. Roach, II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and by first class mail upon:

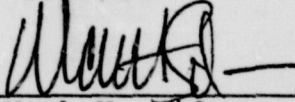
Hon. Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
825 North Capitol Street, N.W.
Washington, D.C. 20426

Carl W. Von Bernuth, Esq.
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018

James V. Dolan, Esq.
Law Department
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Cannon Y. Harvey, Esq.
Southern Pacific Transportation Company
One Market Plaza
San Francisco, California 94105

and all other known parties of record.



Mark H. Sidman, Esq.

STB FD

32760

5-17-96

83534

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Item No. _____

Page Count 1
May 1996 # 100

83534

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McFARLAND & HERMAN
20 NORTH WACKER DRIVE-SUITE 1330
CHICAGO, ILLINOIS 60606-2902
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THOMAS F. McFARLAND, JR.

STEPHEN C. HERMAN

May 16, 1996

By UPS Overnight Mail

Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation, Rm. 1324
12th & Constitution Avenue, NW
Washington, DC 20423



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

Finance Docket No. 32760 (Sub-No. 16), *Responsive Application -- Wisconsin Electric Power Company*

Dear Mr. Williams:

Enclosed please find a 3.5" diskette formatted for Word Perfect 5.1 of Wisconsin Electric Power Company's Rebuttal In Support Of Responsive Application (WEPC-3), filed with the Board on May 14, 1996.

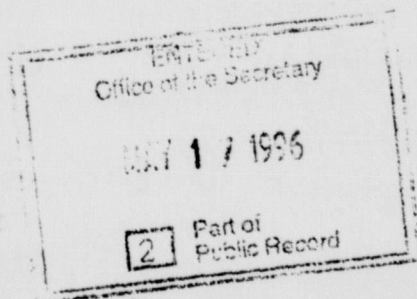
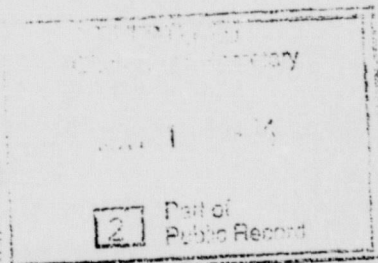
Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
Attorney for Wisconsin Electric Power Company

TMCF:kl:521

Enclosure



STB FD

32760

5-15-96

83484

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Item No. _____

Page Count 6

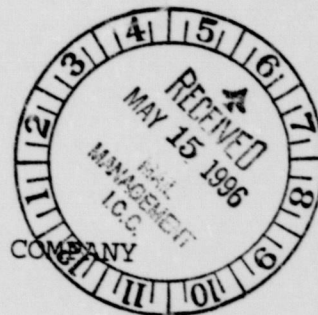
May # 94

UP/SP-248

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 CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

APPLICANTS' RESPONSE TO MOTION TO ACCEPT NEW EVIDENCE

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

May 15, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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



APPLICANTS' RESPONSE TO MOTION TO ACCEPT NEW EVIDENCE

Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"),^{1/} 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"),^{2/} collectively, "Applicants," hereby respond to the joint motion of the Kansas, Colorado and Oklahoma Shippers Association and the Enid Board of Trade to file new evidence, dated May 10, 1996.^{3/}

In Decision No. 6, served October 19, 1995, the ICC issued the final procedural schedule for this proceeding. The Commission affirmed that procedural schedule in Decision

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

^{3/} This paper was served on Applicants and other parties by KCS' law firm.

No. 9, served December 27, 1995. Under the schedule, comments, protests, requests for conditions, and any other opposition evidence and argument regarding the merger were due no later than March 29, 1996. There is no reason for the Board to depart from the schedule.

The Kansas, Colorado and Oklahoma Shippers Association and the Enid Board of Trade have had the opportunity to submit evidence and argument regarding the impact of the merger on competition for grain shipments, and they have taken advantage of that opportunity. Both parties filed statements in opposition to the merger on March 26. In those filings, both parties referred to the role of shortline railroads in grain shipments and presented statements from shippers discussing the issue. See Kansas, Colorado and Oklahoma Shippers Association Opposition to the UP-SP Merger, pp. 17-18; Statement of the Enid Board of Trade in Opposition to the UP-SP Merger, p. 4. The evidence that these parties now seek to submit is, at best, cumulative. There is no reason for the Board depart from the procedural schedule to provide these parties an additional opportunity to submit evidence.

Moreover, the evidence that the Kansas, Colorado and Oklahoma Shippers Association and the Enid Board of Trade seek to submit -- a Central Kansas Railway tariff -- has no probative value. The tariff involves shipments of local traffic. The fact that the Central Kansas Railway has published a tariff for movements of local traffic is not

probative of anything with respect to the impact of this merger. The tariff has nothing to do with traffic that would be moving to long haul destinations via the merged UP/SP or BN/Santa Fe.

Finally, the tariff is no more than a periodic update of previously existing tariffs. There is no reason that these parties could not have submitted the previously existing tariffs on a timely basis.

Respectfully submitted,

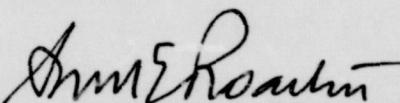
CANNON Y. HARVEY
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Railway Company, SPCSL Corp.
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

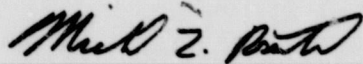
May 15, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 15th day of May, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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

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



Michael L. Rosenthal

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Item No. _____

Page Count 4

May # 98

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LAW OFFICES

RT, SCOUTT & RASENBERGER, L.L.P.

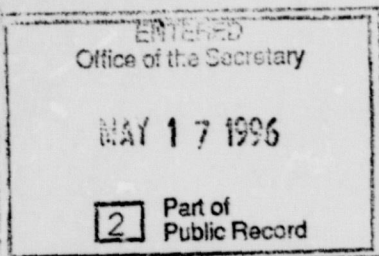
888 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-3939

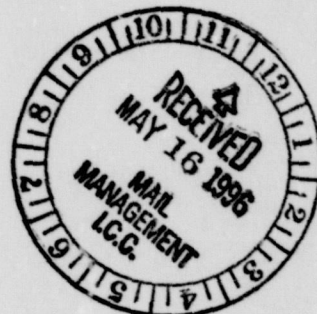
TELEPHONE : (202) 298-8660

FACSIMILES: (202) 342-0683

(202) 342-1316



May 16, 1996



Via Hand Delivery

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

Re: Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transp. Co., St. Louis Southwestern Rv. Co., SPCSL Corp. and The Denver and Rio Grande Western RR Co.,
Finance Docket No. 32760

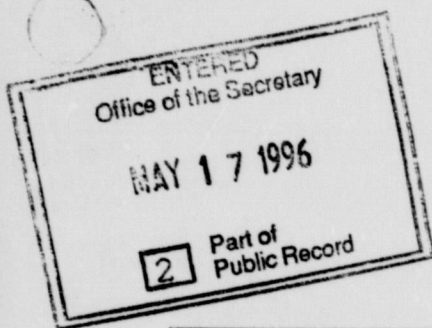
Dear Secretary Williams:

Enclosed for filing are an original and twenty copies of TM-35, Errata by way of Clarification to the Rebuttal Statement in Support of the Responsive Application of the Texas Mexican Railway Company. Also enclosed is a 3.5" floppy computer disc containing a copy of the filing in Wordperfect 5.1 format.

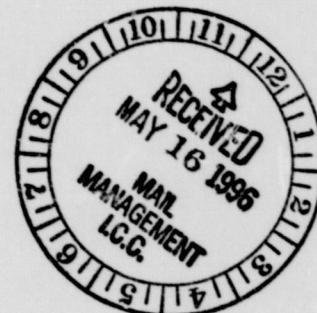
Sincerely,

Richard A. Allen

Enclosures



BEFORE THE
SURFACE TRANSPORTATION BOARD



Union Pacific Corp., Union Pacific)
RR. Co. and Missouri Pacific RR Co.)
-- Control and Merger -- Southern)
Pacific Rail Corp., Southern)
Pacific Trans. Co., St. Louis)
Southwestern Rw. Co., SPCSL Corp.)
and The Denver and Rio Grande)
Western Corp.)

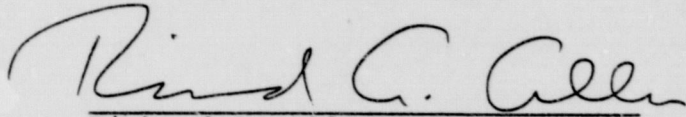
Finance Docket No. 32760

ERRATA BY WAY OF CLARIFICATION TO THE
REBUTTAL STATEMENT IN SUPPORT OF THE RESPONSIVE
APPLICATION OF THE TEXAS MEXICAN RAILWAY COMPANY

The Texas Mexican Railway Company ("Tex Mex") has reason to believe that some parties may be misconstruing and may misrepresent statements made on page 7 of TM-34, Rebuttal In Support of the Responsive Application of Texas Mexican Railway Company, concerning certain traffic between Houston, Texas and Beaumont, Texas. Accordingly, Tex Mex is filing this errata by way of clarification to make clear that it has made no concessions or amendments to its responsive application, and does not support or endorse any limitation of the trackage rights

sought in that application.

Respectfully submitted,



Richard A. Allen

Andrew R. Plump

John V. Edwards

ZUCKERT, SCOUTT & RASENBERGER, LLP

888 Seventeenth Street, NW

Suite 600

Washington, DC 20006-3939

202/298-8660

Attorneys for Texas Mexican Railway

Dated: May 16, 1996

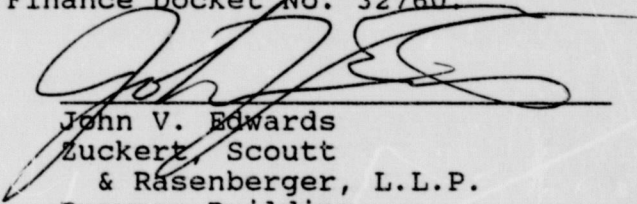
CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served the foregoing TM-35, "Errata by way of Clarification to the Rebuttal Statement in Support of the Responsive Application of the Texas Mexican Railway Company," by hand delivery upon the following persons:

Arvid E. Roach II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566

Paul A. Cunningham
Richard B. Herzog
James M. Guinavan
Harkins Cunningham
Suite 600
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

I have also caused to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery, all persons on the official service list in Finance Docket No. 32760.



John V. Edwards
Zuckert, Scoutt
& Rasenberger, L.L.P.
Brawner Building
888 17th Street, N.W.
Washington, D.C. 20006-3959
(202) 298-8660

Dated: May 16, 1996

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32760

5-14-96

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1/3

EDACTED - To be filed on the public record

TM-34

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760



**UNION PACIFIC CORP., UNION PACIFIC RR. CO. AND
MISSOURI PACIFIC RR. CO.
- CONTROL AND MERGER -
SOUTHERN PACIFIC RAIL CORP., SOUTHERN PACIFIC
TRANS. CO., ST. LOUIS SOUTHWESTERN RW. CO.,
SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN CORP.**

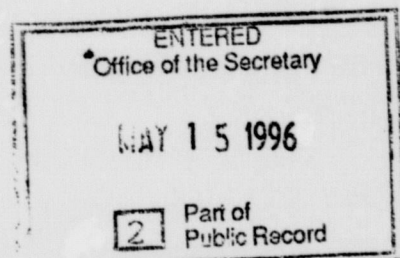
Finance Docket No. 32760, Sub No. 13

**THE TEXAS MEXICAN RAILWAY CO.
- TRACKAGE RIGHTS OVER LINES OF
THE UNION PACIFIC RR. CO. AND SOUTHERN PACIFIC TRANS. CO.**

Finance Docket No. 32760, Sub No. 14

**THE TEXAS MEXICAN RAILWAY COMPANY
- TERMINAL TRACKAGE RIGHTS OVER LINES OF
THE HOUSTON BELT & TERMINAL RAILWAY CO.**

**REBUTTAL IN SUPPORT OF THE RESPONSIVE APPLICATION OF
THE TEXAS MEXICAN RAILWAY COMPANY**



May 14, 1996

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760

**UNION PACIFIC CORP., UNION PACIFIC RR. CO. AND
MISSOURI PACIFIC RR CO.
- CONTROL AND MERGER -
SOUTHERN PACIFIC RAIL CORP., SOUTHERN PACIFIC
TRANS. CO., ST. LOUIS SOUTHWESTERN RW. CO.,
SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN CORP.**

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-- Control and Merger -- Southern
Pacific Rail Corp., Southern
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and The Denver and Rio Grande
Western Corp.

Finance Docket No. 32760

REBUTTAL STATEMENT
OF
THE TEXAS MEXICAN RAILWAY COMPANY

Introduction and Summary

On March 29, 1995 Tex Mex filed a responsive application requesting that any approval of the UP/SP merger be conditioned on granting Tex Mex trackage rights between Robstown, Texas and Houston, Texas and between Houston and a connection with the KCS in Beaumont, Texas. This request is based on Tex Mex's submission that the merger, even conditioned on the settlement agreement between the Applicants and the BN/Santa Fe, will greatly reduce the level of competition in the transportation markets served by Tex Mex. The testimony and other evidence submitted with Tex Mex's responsive applications shows that the BN/Santa Fe Settlement will not make BN/Santa Fe an acceptable competitive substitute for an independent SP in those markets, and that, even if it did, the resulting

reduction in the number of Class I railroads serving the U.S.-Mexico market from three to two would still reduce competition in that market to an unacceptable degree.

Tex Mex therefore seeks trackage rights from Robstown through Houston to Beaumont as a supplement to the trackage rights granted to BN/Santa Fe in its settlement with Applicants.^{1/} Tex Mex seeks these rights for two reasons: (1) to preserve for shippers of goods between the United States and Mexico a third independent route for that transportation, and (2) to free Tex Mex and its shippers from having to depend entirely on a doubtful connection with BN/Santa Fe at Robstown.

Tex Mex is not alone in believing that the merger as proposed by the Applicants will have extremely anticompetitive consequences in the markets served by Tex Mex, particularly the market for U.S.-Mexico rail transportation. Most importantly, the submission of the United States Department of Justice provides compelling evidence of the unprecedented degree of harm to competition that the merger will cause, which will not be alleviated by the BN/Santa Fe Settlement. With respect specifically to U.S.-Mexico transportation, the Department of Agriculture is also urging the Board to ensure the preservation of a third alternative to a merged UPSP and BN/Santa Fe in that market for U.S. agricultural shippers. These views are echoed by the Texas Railroad Commission, which specifically supports the conditions requested by Tex Mex, and by the Texas Department of Transportation and the

^{1/} Contrary to the apparent belief of some of Applicants' rebuttal witnesses, Tex Mex is not contending for these rights in lieu of BN/Santa Fe's rights under the BN/Santa Fe Settlement, but in addition to them. Although Tex Mex submits that the BN/Santa Fe Settlement falls far short of restoring the competition that will be lost from the merger, Tex Mex does not oppose the BN/Santa Fe Settlement. Tex Mex merely contends that additional competitive alternatives are needed -- specifically those sought in its responsive application -- in order to come close to preserving the competition that currently exists.

Texas Attorney General. In addition, many shippers and shippers associations, including the National Industrial Transportation League, are urging the Board to disapprove the merger as too anticompetitive or to impose conditions to mitigate its anticompetitive effects.

In their Rebuttal, Applicants make a number of arguments in response to Tex Mex's contentions. Their two main arguments are: (1) BN/Santa Fe will be a much stronger competitor to a merged UP/SP than Tex Mex, DOJ, the Texas Railroad Commission and other parties believe and than the SP is today, and (2) the rights requested by Tex Mex are over a route that will be slower and longer than the route BN/Santa Fe will be getting from Houston to Robstown.

We believe that these arguments and others made by Applicants in their Rebuttal are incorrect for reasons that will be discussed in greater detail below and in the accompanying rebuttal verified statements. We wish to make two general points about these arguments at the outset that we believe are important.

First, Applicants' arguments are inherently implausible. If Applicants were correct that BN/Santa Fe will be a much more effective competitor to a merged UPSP for U.S.-Mexican traffic than Tex Mex, DOJ, DOA, the Texas Railroad Commission and other parties believe, and that the route Tex Mex seeks will be much worse than the route between Houston and Robstown that BN/Santa Fe will get, Applicants would have no reason to oppose so vehemently the rights Tex Mex seeks. If Applicants were right, little traffic would move over Tex Mex's trackage rights. Instead, most of it would move to Robstown via BN/Santa Fe anyway, and granting those rights to Tex Mex would have little impact on Applicants or BN/Santa Fe. The fact that Applicants are so strongly opposed to Tex Mex

and are striving so hard to keep BN/Santa Fe as their only competitor in this market clearly indicates Applicants' awareness that BN/Santa Fe will not be as effective a competitor as Applicants portray, nor would Tex Mex be as weak a competitor as they would have the Board believe.

Second, any uncertainties should be resolved by the Board in favor of Tex Mex. As noted if Applicants' arguments are correct, granting the rights Tex Mex seeks would have minimal impact on Applicants and BN/Santa Fe. If Applicants are not correct, however, and if Tex Mex, DOJ, TRC and others are right about the major anticompetitive effects of the merger with the BN/Santa Fe Settlement, then not granting the rights sought by Tex Mex would have very serious consequences for competition. It would deprive shippers of an important competitive alternative to a merged UPSP. That alternative, even if a shipper did not use it, would serve as a significant restraint on UPSP's rates and a spur to UPSP to maintain or increase the quality of its service.

We believe the Applicants are wrong and the Tex Mex, DOJ, DOA and others are right in their respective predictions about the post-merger competitive effectiveness of BN/Santa Fe and Tex Mex. As the ICC frequently observed, however, it is not possible to make predictions of this sort with a high degree of certainty. In this case, the Board should resolve any doubts it may have in favor of the conditions sought by Tex Mex in view of the minimal consequences to Applicants of granting those conditions if Applicants' contentions are correct and the major harm to competition of denying them if Applicants are wrong.

Resolving any predictive uncertainties in favor of Tex Mex's requested conditions, moreover, is particularly appropriate when not just the railroad seeking conditions but also

the federal and state agencies with primary responsibility for protecting competition have concluded that the merger as proposed by the Applicants will have profound anticompetitive consequences. This Board may not be bound by the views of the Department of Justice, the Department of Agriculture and all of the pertinent agencies of the State of Texas, but the Board should respect the important responsibilities of those agencies and for that reason should give their views the most careful consideration. Conditions designed to mitigate the anticompetitive effects found by those agencies should not be rejected by this Board unless there is compelling evidence that they are wrong or that the requested conditions will substantially harm Applicants or significantly reduce the public benefits of the transaction. There is no such evidence in this case.

I. TEX MEX'S MOTIVATIONS ARE NO SECRET.

Applicants and their witnesses have argued that Tex Mex's real motives are not to preserve competition in the markets Tex Mex serves but are simply to enrich KCS and "give KCS the general access to Houston that it has long desired." UP/SP-230 at 305-306; see also, UP/SP-231, Peterson RVS at 115-120. This claim is completely unfounded.

Tex Mex's motivations are no secret. As Tex Mex made clear in its responsive application, Tex Mex's principal objective is to preserve for shippers of goods between the United States and Mexico an effective third competitive rail alternative to a merged UPSP and BN/Santa Fe. The most logical means of achieving this objective, which also has the least impact on Applicants, is for Tex Mex to obtain trackage rights enabling it to connect directly with KCS at Beaumont. This remedy is needed and justified because the remedy the

Applicants have proffered -- BN/Santa Fe trackage and haulage rights -- is not by itself sufficient to remedy the loss of competition that will result from the loss of SP as an independent competitor.

Tex Mex also made clear that the remedy it seeks would also further a related objective -- the effort of TMM and KCSI^{2/} to establish an effective and competitive rail service between the midwestern United States and central Mexico by obtaining one or more rail concessions in Mexico in the upcoming privatization of Mexico's rail lines. Such a service would further the policies of NAFTA as well as Mexico's efforts to introduce efficiency and competition to Mexico's rail system. The trackage rights Tex Mex seeks and the direct connection to KCS will greatly strengthen the competitiveness and efficiency of that service.

Applicant's suggestion that Tex Mex's real object is to give KCS access to Houston shippers is absurd. KCS already has direct access to Houston for grain traffic via a haulage rights agreement with UP, and KCS can also serve shippers in Houston via interline service with UP, SP, HBT and PTRR. Tex Mex's responsive application seeks the right for Tex Mex to carry overhead traffic on the lines on which it requests trackage rights, the right to interchange with other railroads at any interchange point on those lines and the right to serve shippers currently capable of receiving service from both UP and SP directly or through reciprocal switching. Tex Mex is not seeking the right to serve any shippers on those lines that are currently served only by UP or SP.

^{2/} TMM and KCSI are the corporate parents of Tex Mex. KCS is also a subsidiary of KCSI. TMM has no corporate affiliation with KCS.

The justification for Tex Mex being able to serve 2-to-1 shippers in Houston and the shippers served by the Houston terminal railroads, HBT and PTRR, via interchange with those railroads is the same as for its being able to carry overhead traffic to Beaumont. For shipments through Laredo, those shippers, like shippers beyond Beaumont, will lose an important competitive alternative -- service by an independent SP -- as a result of the merger. BN/Santa Fe service via the BN/Santa Fe Settlement will not be an adequate competitive replacement for those shippers.

An incidental competitive benefit of granting the rights Tex Mex seeks is that Tex Mex could carry some shipments between Beaumont and Houston that had no prior or subsequent rail movement south of Houston. This, however, would be a relatively minor benefit, and it was certainly not a central purpose of the application. Tex Mex submits that there is no reason to deny a remedy that is appropriate to mitigate anticompetitive effects of a merger merely because the remedy has other incidental competitive benefits, or to perform some Procrustean operation on that remedy just to prevent it from being too beneficial. However, if the Board concludes that providing those shippers with this modicum of additional competition is not competitively justified, it could limit the rights granted to exclude Tex Mex from carrying shipments between Houston and Beaumont that have no prior or subsequent movement by rail south of Houston. Such a limitation would not undermine the purposes for which the rights are being sought. Nor would it significantly affect Tex Mex's ability to provide essential services for customers local to its line.

In sum, there is no basis for Applicants' suggestion that Tex Mex's application is driven by undisclosed objectives unrelated to the competitive impacts of the merger.

II. IT IS THE APPLICANTS' MOTIVES, NOT TEX MEX'S, THAT ARE SUSPECT.

On the other hand, since UP intends to be a major bidder against TMM/KCSI for rail concessions in Mexico, there is good reason to believe that Applicants' real motives in refusing to give Tex Mex rights that would enable it to connect with KCS, and in insisting instead on providing only the rights granted to BN/Santa Fe under the settlement, is to ensure that there will be no effective competition to a merged UPSP and its Mexican rail affiliate for U.S.-Mexican rail traffic. Documents obtained from Applicants in discovery show that shortly before the BN/Santa Fe Settlement agreement was concluded on September 25, 1995, UP personnel were analyzing and comparing the impact on UP/SP of either KCS or BN/Santa Fe obtaining a direct connection to Tex Mex and were comparing the different impacts of both of those outcomes under alternative scenarios in which UP, the KCS/TMM joint venture or BN/Santa Fe obtain ownership or trackage rights over the two Mexican lines that connect to U.S.-Mexican gateways. See documents numbered HC32-000052 to HC32-000054 and HC32-000247 to HC32-000250, set forth in Appendix G, below. These documents show that UP carefully considered the competitive effect on UP/SP of granting KCS access to Tex Mex in the event KCSI and TMM obtained ownership of or trackage rights over one or both of the Mexican lines before UP/SP decided to deny that access to KCS and to give it instead to BN/Santa Fe.

It is clear, therefore, that UP/SP views the KCSI/TMM partnership as a serious competitive threat to UP/SP's anticipated control of U.S.-Mexican rail traffic. UP/SP has decided to check that threat by precluding any linkage (via Tex Mex) between the KCS system and any possible TMM/KCSI rail system in Mexico, and by giving the Tex Mex

connection instead to BN/Santa Fe, a carrier that indicated no interest in participating in the Mexican privatization process.^{3/} This conclusion is reinforced by the fact that UP/SP rejected BN/Santa Fe's proposal that BN/Santa Fe use another railroad as an agent for its operations south of Houston because it would put UP/SP at a "competitive disadvantage."^{4/}

In short, if anyone's motives are suspect in this case, they are Applicants', not Tex Mex's.

III. THERE IS NO MERIT TO APPLICANTS' ARGUMENTS THAT REDUCING THE CLASS I RAILROADS SERVING MEXICAN GATEWAYS FROM THREE TO TWO WILL NOT SUBSTANTIALLY REDUCE COMPETITION IN THAT MARKET.

Applicants argue that BN/Santa Fe will be a better connection for Tex Mex at Robstown than SP is now and that BN/Santa Fe and Tex Mex together will provide stronger competition to a merged UPSP for U.S.-Mexico traffic through Laredo than SP and Tex Mex provide to UP now. Even if those arguments were correct (but see Point V, below), the more fundamental problem would remain -- shippers in this market will lose one of the three Class I carriers serving the U.S.-Mexico market. The substantial reduction in competition

^{3/} Rollin Bredenberg, BN/Santa Fe's principal officer with responsibilities for Mexico, acknowledged in his deposition that BN/Santa Fe had not decided to participate in the Mexican privatization process. Bredenberg Dep. of 3/8/96 at 92-93.

^{4/} Deposition of Carl Ice, BN/Santa Fe's chief negotiator, 3/4/96 Tr. at 583. Mr. Ice testified that BN/Santa Fe was considering using Tex Mex for this purpose, but that UP/SP told him that the trackage rights UP/SP was offering BN/Santa Fe were a "package deal." Id. at 483, 485 and 581.

that is likely to result from that loss is amply demonstrated by the Department of Justice and the Texas Railroad Commission as well as by the witnesses for Tex Mex, KCS and other parties in their filings on March 29, 1996 and April 12, 1996.

Applicants do not dispute that the merger with the BN/Santa Fe Settlement will reduce the Class I railroads serving the U.S.-Mexico market from three to two.^{5/} Applicants, however, reiterate the contention made in their application to the effect that such a reduction will not diminish competition, either as a general matter or in this particular market.

As discussed in the rebuttal verified statement of Professor Curtis Grimm, Applicants' rebuttal arguments on this issue largely reiterate the arguments submitted with their original application and add little new to the debate. Applicants do proffer some traffic analyses to support the proposition that competition from SP is not a significant factor in the market. In his rebuttal verified statement, Joseph Ellebracht identifies some serious errors in those analyses.

The extent to which a reduction from three railroads to two railroad reduces competition is obviously a critical issue in this case that the Board needs to consider very carefully. Tex Mex submits that its witnesses and those of the Department of Justice and other parties have shown persuasively that the loss of competition will be very substantial and irreversible and Applicants have not refuted that showing.

^{5/} BN/Santa Fe, but not Applicants, contend that the only relevant market for purposes of Tex Mex's application is rail transportation through the Laredo gateway. We show in Point IV why this contention has no merit.

IV. THERE IS NO MERIT TO BN/SANTA FE'S CLAIM (WHICH APPLICANTS DO NOT MAKE) THAT THE ONLY RELEVANT MARKET FOR U.S-MEXICO RAIL TRAFFIC IS LAREDO.

BN/Santa Fe disputes Tex Mex's concerns about loss of a third competitor in the market served by Tex Mex on the additional ground -- not addressed by Applicants -- that the relevant market served by Tex Mex consists solely of rail transportation through Laredo.

Relying on its witness Joseph Kalt and citing Mr. Ellebracht, BN/Santa Fe states:

[I]t is not accurate to view all Mexican gateways as being in the same market. Rather the advantages of the Laredo gateway are so great that it constitutes a relevant market unto itself. It is therefore the diminution and restoration of competition at Laredo -- not for all Mexico-bound traffic -- that requires analysis.

BN/SF-54 at 28 (footnotes omitted.) BN/Santa Fe appears to argue that BN/Santa Fe's transportation through other Mexican gateways does not compete with UP's and SP's transportation through Laredo and should not be considered in the competitive analysis.

There is no merit to BN/Santa Fe's contention. As Mr. Ellebracht states in his rebuttal verified statement:

Neither I in my deposition testimony nor Dr. Kalt in his verified statement suggested that Laredo constituted a "relevant market unto itself." In fact, it seems obvious to me that relevant transportation markets are properly defined by commodity types and origins and destinations, not by where particular rail lines cross the border.

Ellebracht RVS at 5. Mr. Ellebracht's view of the proper way to define transportation markets is shared by Applicants' witness Robert Willig^{6/} as well as Tex Mex's Dr. Grimm (Grimm RVS at 3.)

Mr. Ellebracht also explains that, although Laredo is certainly the principal rail gateway to Mexico and has significant advantages over other gateways, there "is substantial evidence that for many traffic flows transportation served by BNSF, particularly Eagle Pass and, to a lesser extent, El Paso, provides important competition for transportation through Laredo." Ellebracht RVS at 5-6. Among other evidence, Mr. Ellebracht cites statements by Dr. Kalt and by Rollin Bredenberg, BN/Santa Fe's Vice President for Transportation showing that BN/Santa Fe views itself as an important competitor over its El Paso and Eagle Pass gateways, and statements by UP's witness Richard Peterson to the same effect. Id. at 6-7.

Farmland Industries and the Kansas, Colorado and Oklahoma Shippers Association also provide concrete examples of the competition provided by BN/Santa Fe. Frederic Schrod, Vice-President of Transportation for Farmland Industries, explains in his Verified Statement that "Although [Farmland uses] the Laredo gateway to a much greater degree than any other Eastern Mexico gateway, our use of the Burlington Northern Santa Fe through El Paso for the same traffic has increased." Schrod VS at 2. James Irlandi, representative of the Kansas, Colorado and Oklahoma Shippers Association, explains that "The bottom line is

^{6/} Mr. Willig, in discussing the factors that he believes are relevant to evaluating the proposed merger's impact on competition discusses "the possible increase in concentration in some potential markets -- i.e., a reduction in the number of railroads from three to two at some points and in some corridors. . . ." UP/SP-23, Willig VS at 580.

that the grain shippers in the Midwest presently have three alternatives over the Eastern Mexico rail gateways that they can use to move their grain to Monterrey, Mexico City and other destinations within Mexico [and if] the merger is approved, they will only have two. . .
." Irlandi VS at 2.

In sum, as Mr. Ellebracht concludes:

Although BNSF is not and will not be as strong a competitor as SP for many reasons, including the superiority of the Laredo gateway, BNSF's and Applicants' witnesses themselves show that competition from BNSF from other gateways is nevertheless significant for shippers of goods between the United States and Mexico.

Ellebracht RVS at 9-10.

V. APPLICANTS AND BN/SANTA FE HAVE NOT SHOWN THAT BN/SANTA FE WILL BE AS VIGOROUS AND EFFECTIVE A COMPETITOR FOR U.S.-MEXICAN TRAFFIC AS SP IS CURRENTLY.

In their rebuttals, Applicants and BN/Santa Fe dispute the conclusions of Tex Mex witnesses that BN/Santa Fe will not be nearly as effective a competitor for U.S.-Mexican traffic operating over trackage rights between Houston, Robstown and Brownsville as SP has been. These contentions are addressed and refuted in detail in the rebuttal statements of Mr. Ellebracht and Mr. Haley. Those statements show that BN/Santa Fe's operations under the BN/Santa Fe Settlement Agreement will have serious disadvantages compared to SP's current operations. Mr. Ellebracht also reaffirms his conclusion that "BNSF has not shown the commitment or made anywhere near the investment in the difficult Mexico rail market that SP has." Ellebracht RVS at 2.

Applicants and BN/Santa Fe have not rebutted that conclusion with substantial evidence. They have only offered self-serving declarations by BN/Santa Fe executives about their intent to compete vigorously. Predicting future competitive zeal is admittedly not amendable to concrete evidence. In this case, however, there is no serious dispute that the merger without conditions would present massive competitive problems, and the only solution that Applicants are proffering to those problems is service by the only other remaining Class I railroad serving Mexico. In view of the fact that so many disinterested parties, including the Department of Justice, the Department of Agriculture and all of the agencies of the State of Texas, have concluded that BN/Santa Fe will not solve the problem, Tex Mex respectfully submits that Board would be abdicating its responsibility to the public if it found no problem requiring additional conditions.

VI. APPLICANTS' ATTACKS ON TEX MEX'S TRAFFIC STUDY ARE INSUBSTANTIAL.

Applicants' traffic study witness Richard Peterson criticizes Mr. Ellebracht's traffic study on various grounds. These are also addressed and refuted in detail at pages 26-33 of Mr. Ellebracht's rebuttal statement. Among other things, Mr. Ellebracht shows that Mr. Peterson's very rosy forecasts about the additional traffic BN/Santa Fe will supposedly bring to Tex Mex at Robstown are highly improbable on their face.

VII. APPLICANTS' RECENT SETTLEMENT WITH CMA HAS NO SIGNIFICANT EFFECT ON TEX MEX OR THE MARKETS IT SERVES.

Applicants have relied heavily on their recent settlement agreement with the Chemical Manufacturers' Association ("CMA") to respond to the arguments of a number of parties not including Tex Mex. Applicants have not relied on the CMA settlement in their rebuttal of Tex Mex's responsive application, however, for the very good reason that that settlement has no significant effect on Tex Mex or on the problems identified by Tex Mex. The CMA settlement purports to address some asserted operational problems that BN/Santa Fe would experience under the original BN/Santa Fe Settlement on lines north of Houston, but it makes no change to BN/Santa Fe's operations south of Houston or change any of the facts discussed by Tex Mex that will make those operations significantly inferior to SP's operations pre merger.^{2/} Nor does the CMA settlement change the reduction in Class I carriers serving Mexican gateways from three to two.

The CMA settlement does expand BN/Santa Fe's access to some existing shippers, but this is likely to have little effect on the flow of traffic through Laredo. For example, the agreement gives BN/Santa Fe direct access to certain shippers at two stations in Louisiana, Lake Charles and West Lake. As Mr. Ellebracht notes in his rebuttal,

.. Ellebracht RVS at 33.

^{2/} The one provision in the CMA settlement that relates to BN/Santa Fe's access and interchange rights at Corpus Christi was meant to clarify the terms of the original BN/Santa Fe Agreement, not to make any substantive change. See UP/SP-242, Applicants' Responses to the Texas Mexican Railway Company's Fourth Set of Interrogatories to Applicants, at 4.

He concludes that "[i]nclusion of these shipments as potential traffic sources for the BNSF-Tex Mex route would not significantly change the results of the traffic study I conducted."

VIII. APPLICANTS HAVE NOT REBUTTED TEX MEX'S SHOWING THAT THE MERGER WITHOUT TEX MEX'S CONDITIONS WILL RESULT IN THE LOSS OF ESSENTIAL SERVICES TO TEX MEX SHIPPERS.

Applicants' chief response to Tex Mex's "loss of essential services" showing is to attack Tex Mex's diversion study and claim that Tex Mex will be healthier, rather than gravely damaged, by the merger and Applicants' settlement with BN/Santa Fe. Applicants do not directly address Tex Mex's evidence (primarily through witness Patrick Krick) showing that Tex Mex cannot sustain operations with the loss of traffic that Mr. Ellebracht projects that the merger will cause to Tex Mex. Instead of analyzing and rebutting Tex Mex's evidence on this point, Applicants merely assert that there is "no basis whatsoever" for the conclusion of Mr. Krick and other Tex Mex witnesses that Tex Mex's survival will be threatened by the merger. If the Board agrees with Tex Mex that Applicants' attacks on Mr. Ellebracht's diversion study are unfounded, Mr. Krick's analysis of the impact of that traffic loss on Tex Mex's viability is un rebutted.^{8/}

Mr. Peterson also contends that it is unlikely that Tex Mex's route between Corpus Christi and Laredo would be "left to rust" in the event that Tex Mex were to cease

^{8/} Applicants also dispute Mr. Krick's conclusion on the ground that KCSI invested in Tex Mex after both the merger and the Applicants' settlement with BN/Santa Fe were announced, and they ask the Board to draw the inference that KCSI must not have doubted Tex Mex's ability to survive the merger. However, the Board could just as readily infer that KCSI made this investment with the expectation that the anticompetitive effects of the merger, even with the BNSF settlement, were so great that there would be little question but that the Board would grant the conditions sought by Tex Mex.

operations due to lost business resulting from the merger. There is no basis for Mr. Peterson's view. On the contrary, Mr. Krick explained in his original verified statement that Tex Mex is an extremely efficient operator over this line, but he demonstrated that even such an operator at peak efficiency would go out of business if faced with the traffic diversions predicted by Mr. Ellebracht. There is no reason to believe that any other operator of this line could operate it at a profit with the traffic levels projected by Mr. Ellebracht. If sufficient traffic is not there, no carrier, not even UPSP or BN/Santa Fe, could sustain operations over it for long.

Mr. Peterson also asserts that most of Tex Mex's on-line shippers are at points served by other railroads, could be served by new branchline operations, or can use trucks for transporting their goods. Peterson RVS at 134-35. There is no evidentiary support or reasonable basis for Mr. Peterson's supposition that new branchlines would spring up after the demise of the Tex Mex. While a number of Tex Mex's on-line shippers are at or near points served by other railroads, these shippers have made it clear that those other railroads do not in fact represent a viable alternative for their traffic to Mexico. For example, those shippers in Corpus Christi seeking to serve Mexico via the Laredo gateway would have to ship via San Antonio in the absence of the Tex Mex line between Corpus Christi and Laredo, which would double the distance to Laredo and drastically change the economics of their operations.

For example, Applicants have offered no evidence to refute the statement of William E. Bailey, President of Corpus Christi Grain Co., that "The UP has proven over the past 18 years that they are more interested in a \$2400 dollar long haul to Laredo (approximately 900

miles) than a \$700 dollar short haul to Laredo (150 miles). . . . For this reason we feel that we would not be competitive in the Mexican rail market." Nor have applicants refuted the statement of Abel Gonzalez, Jr. of Global Grain Co., that "[t]he only rail alternative available for the South Texas shipper is the Tex Mex Railroad," which is "totally committed in supplying cars from the Corpus Christi-Laredo grain belt area to Mexico," as opposed to UP and SP which, due to the short distance to Mexico relative to their Midwestern shippers, "refuse to service their own line elevators with rail cars during harvest and Mexican peak buying season."

Similarly, Mr. Peterson does not provide any evidence supporting his conclusory statement (Peterson RVS at 135, n. 52) that "well-known marketplace realities" should permit Barr Iron & Metal Co. to truck its scrap steel and other salvage products. By contrast, Barr's owner, Dempsey Barr, who should be in the best position to assess those "realities," has stated that the merger "would probably close our operations down."

IX. TEX MEX'S TERMINAL TRACKAGE RIGHTS APPLICATION IS UNOPPOSED AND SHOULD BE GRANTED.

With its responsive application, Tex Mex also filed an application under former 49 U.S.C. § 11103 for an order permitting it to use two short segments of the Houston Belt & Terminal Railway Company's ("HB&T") terminal trackage in Houston, Texas in order to facilitate Tex Mex's efficient operation through Houston and Tex Mex's interchange with other railroads in Houston. As stated in that application (docketed as Finance Docket No. 32760, Sub. No. 14), HB&T is owned in equal parts by BN/Santa Fe and by Missouri Pacific Railroad Company ("MP"), a subsidiary of UP.

Neither Applicants, BN/Santa Fe nor any other party has opposed this application. Moreover, Applicants and BN/Santa Fe have expressly endorsed Tex Mex's contentions in the Rebuttal Argument in Support of Application for Terminal Trackage Rights (UP/SP-232, Tab F) that they jointly filed in support of their application for an order granting BN/Santa Fe certain terminal trackage rights over KCS in Shreveport.^{2/}

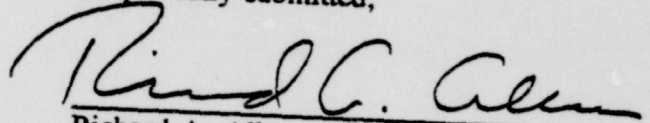
For the reasons stated in Tex Mex's unopposed application, Tex Mex submits that if the Board grants its responsive application for trackage rights over Applicants lines between Robstown, Houston and Beaumont, granting this terminal trackage rights application is also clearly warranted.

^{2/} In addition, in March, 1996, Mr. Allen Haley on behalf of Tex Mex met with Mr. J.B. Mathis, General Manager of HB&T, to discuss Tex Mex's need for trackage rights over HB&T and switching services from HB&T. Mr. Mathis did not indicate that Tex Mex's proposed operations and requested services would present any operational problems for HB&T, and has indicated that HB&T does not intend to submit any response to Tex Mex's application separate from the responses filed by Applicants and BN/Santa Fe.

CONCLUSION

For the reasons stated in this rebuttal and in Tex Mex's responsive application and terminal trackage application, the Board should approve the UP/SP merger only on the condition that Applicants grant trackage rights to Tex Mex over Applicants' lines between Robstown, Texas and Beaumont, Texas, as more fully described in the responsive application, and should grant Tex Mex's application for terminal trackage rights over lines of HB&T, as more fully described in that application.

Respectfully submitted,



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Dated: May 14, 1996

APPENDIX A

REBUTTAL VERIFIED STATEMENT

OF

JOSEPH F. ELLEBRACHT

1. INTRODUCTION

My name is Joseph F. Ellebracht. I am an independent transportation consultant, and I previously submitted a verified statement in support of Tex Mex's responsive application, in TM-23. Two errata statements were also filed in connection with that verified statement. In this statement I will respond to some of the comments made about my verified statement and the Tex Mex responsive application.

2. SUMMARY OF MY PREVIOUS STATEMENT.

My previous statement in TM-23 included the following principal findings and conclusions:

Tex Mex and SP, operating together, have been effective and aggressive competitors to UP for rail traffic to and from Mexico. Shippers of that traffic have benefitted from this competition among U.S. railroads notwithstanding the current state ownership of the rail system in Mexico.

SP has been essential to Tex Mex's ability to serve its international and local markets. Also, the impact of the recent BNSF merger will likely be positive for SP-Tex Mex service, absent a UP/SP merger.

The UP/SP merger as conditioned on the BNSF will result in a substantial loss of competition in the markets Tex Mex serves. First, reducing the number of major U.S. railroads serving Mexican gateways from three to two will significantly lessen competition for U.S.-Mexican traffic. Furthermore, under the BNSF settlement, BNSF will not be nearly as effective a competitor to UP as an independent SP has been for U.S.-Mexican rail traffic generally and through the important Laredo gateway in particular. The many reasons I cited for BNSF's competitive disadvantages compared to SP include the facts that BNSF will be operating via trackage rights for a much larger portion of the hauls, will be operating over routes which in many cases are longer than SP routes and much longer than the merged UPSP's route, and will be operating over a more congested line. Furthermore, BNSF has not shown the commitment or made anywhere near the substantial investment in the difficult Mexico rail market that SP has.

I also concluded that the UP/SP merger, as conditioned on the BNSF settlement, will result in Tex Mex losing approximately 37% of its interline traffic (in terms of carloads adjusted for the effects of developments since 1994, including recent mergers) and 34% of its total revenues (based on 1994 adjusted revenue figures).

Finally, I concluded that granting the trackage rights sought by Tex Mex as a supplement to BNSF's rights under the BNSF settlement will help restore competition in the markets served by Tex Mex to something closer to the level that exists now. In terms of traffic impacts, the UP/SP merger, as conditioned on the BNSF settlement and the conditions sought by Tex Mex, will increase Tex Mex's total revenues over the adjusted base by 3%.

3. UNREBUTTED TESTIMONY

While many comments were made by various parties about my testimony, none of Applicants' witnesses or BNSF's witnesses took issue with the following conclusions that I reached:

- ▶ The SP-Tex Mex route has been an effective competitor to UP for traffic through Laredo.
- ▶ SP has made extraordinary efforts to develop the Mexican market with Tex Mex, by maintaining a substantial sales force in Mexico, by establishing a special marketing group to eliminate barriers to using the SP-Tex Mex route, and by making substantial investments to help the Mexican railway system develop its capabilities.
- ▶ Truck and water competition are not sufficient to constrain significantly rates for rail transportation between the U.S. and Mexico.
- ▶ Shippers of goods by rail between the United States and Mexico have benefitted from competition between U.S. railroads despite the state ownership of the Mexican rail system.
- ▶ Railroad marketing personnel know that there is generally a range of prices that *may* be charged for rail transportation, due to modal and geographic competition, but the price that *will* be charged is a function of the amount and character of rail-to-rail competition. Railroad marketing personnel are acutely aware of the rail-to-rail competition they face when bidding on significant traffic flows. (The testimony of SP's Mr. Gazzetta, in UP-SP - 231, Volume 2, Part A, shows this awareness very clearly.)

- ▶ Many customers at Houston who had two-line rail service to Laredo via SP-Tex Mex will have to use three-line service to ship via BNSF-Tex Mex if the merger is approved as proposed by Applicants, since UPSP will handle their traffic at Houston in reciprocal switch service.
- ▶ Under the merger plan as proposed by the Applicants, BNSF has the option of operating via haulage rights to connect with Tex Mex. Should that happen, the possibility of service competition with UPSP will be eliminated.
- ▶ Mr. Ainsworth and Dr. Roberts, who together and separately analyzed diversions from truckload carriers to rail intermodal service arising from the merger, each erred in their treatment of truck traffic to Mexico.¹

4. POINTS IN MY STATEMENT TO WHICH UP, SP OR BNSF TOOK EXCEPTION

A. There is a Three to Two Reduction in Competition at the Mexican Border Crossings.

BNSF disputes my conclusion that the merger will cause a significant loss of competition in the market for transportation of goods between the United States and Mexico by reducing the major railroads serving that market from three to two. Citing my deposition testimony and its own witness, Joseph Kalt, BNSF asserts that "the advantages of the Laredo

¹ Applicants have also acknowledged the correctness of another defect that I and others identified in the BNSF Settlement Agreement. I noted that the compensation terms contained an escalation provision that does not adjust for future productivity increases, thereby presenting a serious risk that the compensation payable by BNSF would far exceed the costs that its operations imposed on a merged UPSP. Applicants' recent settlement with the Chemical Manufacturers' Association appears to acknowledge this defect by allowing BNSF to base future escalations on UPSP's actual system-wide costs. This amended escalation formula should also be applied to any trackage rights granted to Tex Mex in this proceeding.

are so great that it constitutes a relevant market unto itself." (BN/SF-54 at 28; footnote omitted.) Based on this assertion, BNSF appears to argue that BNSF's transportation through other Mexican gateways does not compete with UP and SP's transportation through Laredo and should not be considered in the competitive analysis.

There is no merit to BNSF's contention. Neither I in my deposition testimony nor Dr. Kalt in his verified statement suggested that Laredo constituted a "relevant market unto itself." In fact, it seems obvious to me that relevant transportation markets are properly defined by commodity types and origins and destinations, not by where particular rail lines cross the border.

I certainly agree, as I and other Tex Mex witnesses have stressed, that Laredo is the principal rail gateway between the U.S. and Mexico. It has a generally superior infrastructure and also is on the shortest route between many U.S. and Mexican origins and destinations. These advantages certainly influence the shippers' choices of routes and carriers. For these reasons, and because UP and SP (with Tex Mex) are the only Class I railroads serving Laredo, the anticompetitive effects of the merger are particularly severe with respect to traffic moving through Laredo.

It is not true, however, and I have never suggested, that transportation by BNSF through other gateways does not provide significant competition for transportation through Laredo. In fact there is substantial evidence that for many traffic flows transportation through other gateways served by BNSF, particularly Eagle Pass and, to a lesser extent, El Paso,

provides important competition for transportation through Laredo.² A prime example of this, which was described in the verified statement of Larry Fields in TM-23, p. 41, occurred when BNSF in 1995, and again this year, imposed a \$300 per car surcharge on all grain cars destined for Laredo, which had the effect of closing that traffic off completely from Laredo and diverting much of it to Eagle Pass via BNSF's haulage rights.

Indeed, Dr. Kalt himself confirms that BNSF is a significant competitor for traffic between the U.S. and Mexico via El Paso and Eagle Pass. He states:

As a component of the BN/Santa Fe merger, BN/ Santa Fe acquired greater access to Mexico via trackage rights on SP. Less than two quarters after the commencement of this expanded access, BN/Santa Fe service over SP, from Vaughn, NM to El Paso, TX, currently operates at four trains per week. BN/ Santa Fe's service via haulage rights to Eagle Pass is running about three trains per a week, including a 100-car unit grain train.

BN/SF-55, Kalt V.S. at 33. BNSF's competitive importance is further supported by the deposition testimony of Rollin Bredenberg, BNSF's Vice President for Transportation, who stated that BNSF "is aggressively increasing its traffic over Eagle Pass" and is actively marketing its services through Eagle Pass to "chemical shippers, metals shippers and especially [shippers of] ag commodities. . . ." Bredenberg Dep. of 3/8/96 at 64. These BN/Santa Fe operations compete with both the UP and the SP operations over each of the Texas gateways.³

² The traffic volumes that moved through the U.S.-Mexico gateways and the market shares of the three Class I carriers involved in those movements in 1994 are set forth at page 77 of my earlier statement and in the errata to that statement.

³ Applicant's proposed new California-Laredo-Mexico City intermodal service will also compete directly with the BN/Santa Fe California intermodal service through El Paso if the merger is approved. See Bredenberg. Dep. Tr. at 64.

Neither Applicants nor their witnesses dispute that BNSF today is a significant competitor for traffic now moving through Laredo. On the contrary, Applicants' witness Richard Peterson argues in his rebuttal verified statement that "with BN/Santa Fe's new haulage rights to Mexico via Eagle Pass, and the difficulties associated with the three-line haul to Laredo via SP and Tex Mex, BN/Santa Fe will be under strong pressure to move this traffic to Eagle Pass, unless it gets a direct connection with Tex Mex that bypasses SP." UP/SP-231, Peterson RVS at 110 (emphasis omitted). See also, id. at 114 (same). Later in his statement, Mr. Peterson again emphasizes the competition between the Texas gateways. See id. at 113 (BN/Santa Fe's haulage rights will be a "quite attractive" alternative to its present interline service through Laredo).⁴

⁴ See also, UP/SP-231, Peterson RVS at 124, 126, 127, and id. at 127-28 (discussing a predicted diversion offset for "BN/Santa Fe's new access to Tex Mex and the other Mexican gateways").

The tables below indicate the competition among the border crossing routes for traffic between major traffic sources in the United States and major destinations in Mexico:

Traffic from the Ten Largest U.S. Rail Origin BEAs for Shipment to Mexico, by Major U.S. Border Crossing (thousands of tons)					
	Laredo	Eagle Pass	Brownsville	El Paso	Sum
El Paso, Tx					
Chicago, IL					
Kansas City, MO/KS					
Abilene, KS					
Lubbock, TX					
Houston, TX					
Midland-Odessa, TX					
St. Louis, MO					
Omaha, NE					
Memphis, TN					
SUM					
% by Gateway					

Source: 1994 Waybill Sample

Traffic to the Five Largest Mexican Rail Import Destinations by Major U.S. Border Crossing (kg)					
	Laredo	Eagle Pass	Brownsville	El Paso	Sum
Pantaco, D.F.					
Monterrey, NL					
Guadalajara, JA					
San Luis Potosi, SL					
Torreon, CU					
SUM					
% by Gateway					

Source: TMM

While origin-to-destination information was not available, the tables show that traffic routing is distributed among the gateways for nearly all of the origins and the destinations. This strongly suggests that there is competition among the gateways for much of the traffic handled.

In short, I believe there is no basis for BNSF's suggestion that only transportation over the Laredo gateway should be considered and that competition provided by BNSF over other gateways is either insignificant or irrelevant to the competitive analysis. Although BNSF is not and will not be as strong a competitor as SP for many reasons, including the superiority of the Laredo gateway, BNSF's and Applicants' witnesses themselves show that

competition from BNSF from other gateways is nevertheless significant and important for shippers of goods between the United States and Mexico.

I also believe that the effect of the merger of reducing the number of Class I railroads serving the U.S.-Mexico gateways from three to two will inevitably reduce competition. I explained in my earlier statement that railroad marketing personnel are more competitive when they have more than one competitor. I also have explained that the structure of the industry can be expected to change when there are generally only two competitors, to a structure with less price competition.

In this regard, I believe it is very instructive to compare the experience and performance of eastern railroads in the United States with that of western railroads in recent years. With the BNSF merger and the UPSP merger we can expect the western railroad competitive milieu to more closely approximate that east of the Mississippi, where there have been generally two or fewer major competitors at key points. UP's Mr. Kauders has used the AAR's Analysis of Class I Railroads to illustrate some of his points. Some of the data in those volumes, however, also shed considerable light on the relative impacts of rail competition in the West compared to the long period of stability and less direct competition in the East. Comparing 1988 data with 1993 data for both the West and the East, for example, shows that the profit margins per ton-mile of the eastern carriers were not only 39% higher than those of the western carriers (\$.39 vs. \$.28) at the beginning of the period but also increased 54% during those five years (from \$.39 to \$.60), while margins for the western carriers did not change at all.

		1988	1993
Eastern Region (cents per ton-mile)	Freight Revenue:	3.51	3.33
	Freight Expense	3.12	2.73
	Margin	0.39	0.60
Western Region (cents per ton-mile)	Freight Revenue:	2.39	2.21
	Freight Expense	2.11	1.93
	Margin	0.28	0.28
Source: lines 739 and 743, Analysis of Class I Railroads, AAR; 1988; 1993			

B. Errors in Applicants' Analyses of the Effect of Reducing Competitors From Three to Two.

In regard to this question about the loss of competition that can be expected from the elimination of SP as an independent competitor, I also believe there are some significant errors in the analysis of UP's witness B. Douglas Bernheim. Dr. Bernheim did some regression equations for UP automobile shipments in 1994, (which were also commented upon by UP's Mr. Peterson) that Dr. Bernheim says show that "price is essentially unaffected by SP's presence." Dr. Bernheim relied upon UP to code the shipments as to the number of competitors.

Looking at his workpapers with the perspective of my 14 years experience marketing rail services for SP, it is obvious to me that whoever did the coding had a inappropriate way of deciding on the amount of competition faced by UP. For example, shipments from Arlington, TX to the Chicago area and to New Jersey were considered to be UP only, when in actuality the potential competition from ATSF, BN, and SP were significant constraints on

UP pricing.⁵ Another example is of traffic coded UP plus a non-SP competitor, for which many of the observations originated in Tacoma WA and terminated at points in the East. This import traffic enjoys some of the lowest rates around, partially because it can be landed at any of several West Coast ports. To consider it as having only two competitors, and to say that SP does not compete for it, is completely wrong, at least when considering the competitive impacts on the rates. Another example is a substantial portion of the UP plus SP coded traffic that originates at Fremont and Warm Springs CA and terminates in the East. The presence of ATSF in the San Francisco Bay area has a very strong impact on the rates that can be charged for this traffic. In addition to these coding problems, the code for port originations is rife with errors; some port locations are treated as not being ports, and others are sometimes treated as ports and sometimes not.

In addition, I believe that Dr. Bernheim's analysis of movements of cases where UP faces two other competitors not including SP and the conclusions he draws from that analysis are quite erroneous (UP/SP-231, Bernheim RVS at 14, n. 3). As Dr. Bernheim himself points out in a footnote (*id.* at 14, n. 3) all but one of the movements analyzed went to a single point, Port Allen, LA near Baton Rouge. Furthermore, in addition to direct competition from KCS and IC, this point is easily served from New Orleans, introducing competition from NS and CSX.

Mr. Peterson also makes some comparisons of UP's revenue per net ton mile for

⁵ The competition would be truck-rail which is frequently used from assembly plants and always considered a serious threat.

UP's automobile traffic.⁶ In these comparisons he makes some of the same sorts of mistakes that I found in the traffic coding on which Dr. Bernheim relied. He calls markets with Northeastern origins and Western destinations such as Denver, Dallas/Fort Worth and Houston three carrier markets. They are now, but in 1994, the year for which he analyzes the data, they were four-carrier markets. He calls Baton Rouge a two-carrier market (Dr. Bernheim called it a three carrier market); however, for automobile traffic Baton Rouge is also susceptible to substantial rail competition via New Orleans and so should be considered a five-carrier market.

In addition, neither Dr. Bernheim nor Mr. Peterson mention one of the most important factors in determining rates for the transportation of set-up autos and trucks, which is the availability of return shipments. Return shipments allow the freight cars to be used in both directions. This is one of the most important factors in determining the level of rates, and is considered closely when bids are computed. This factor is largely independent of how many carriers or which carriers serve the routes. The failure of Dr. Bernheim and Mr. Peterson to consider this factor seriously undermines the reliability of their analyses.

C. Price Signaling is a Likely Method of Price Coordination after the UPSP Merger.

SP's witness John Gray took issue with my view that price signaling would fit well with the two-railroad structure of the western railroad industry should the UPSP merger be approved as proposed by Applicants. (I note that Dr. Majure, testifying for the Department

⁶ UP/SP-231 Vol. 2, Part B. Page 88-90

of Justice, generally concurs with my view.⁷) My example of price signaling involved one of the two carriers announcing a named percentage price increase in its customer newsletter to apply on soybean shipments, to take effect several months in the future. The other carrier finds out quickly through customers or consultants, and decides whether to match the increase or not. If not, then the first carrier withdraws the increase due to "market conditions."

Price signaling gets easier with fewer railroads, and the probability of all competitors matching increases rises rapidly as the number of competitors decreases.⁸ As Dr. Majure puts it "By reducing the number railroads in the West from three to two, the merger reduces the number of firms who have to reach the same understanding of the 'rules of the game.'" Majure VS at 43.

Mr. Gray says he is unconvinced by my newsletter example. He argues, "This method is available whether there are two competitors or 10."⁹ I agree that the method is available, but the probability of success is lower with more competitors, and with only two competitors it starts to work pretty regularly.

Mr. Gray seems to argue that the transmission of the newsletter information by customers to competing railroads is unlikely to harm customers because the customers would

⁷ DOJ-8, page 46.

⁸ As a simple illustration, suppose that there is a 50% chance of any one carrier deciding to match the increase, and that all must concur or else the proponent will not follow through on the increase. With two carriers, the probability of an increase is 50%, with three the probability is 25%, with four the probability is 12.5% and with five the probability is 1 in sixteen.

⁹ UP/SP-231, vol. 2, part A, tab 9, page 69.

not transmit the information unless "the customer sees a benefit to being the messenger"¹⁰ This argument ignores the realities of the marketplace. In the first place, Mr. Gray has overlooked many persons who might receive the newsletter and transmit the information besides customers. For example, a consultant, of which there are many, could be a subscriber to the newsletter and could simply pass the information on to the consultant's other interested clients, one of whom could well be the other railroad. But customers themselves also are very likely to transmit the information without any assurance that doing so will benefit them. The customer, who in this case ships soybeans, has a big question when this newsletter arrives from railroad A. Will railroad B match the increase? If so, bids to buy and sell soybeans in the future have to be recalculated. The customer needs to know what railroad B is going to do so the customer can run his business. It is absurdly unlikely that all of the many soybean shippers in the West that ship by rail will join in a conspiracy to keep mum about railroad A's proposed rate increase, when each individually needs to know what railroad B's response will be in order to operate the soybean business properly. Then there are the customers who get the newsletter, but only ship wheat, or only operate grain loading terminals. They have absolutely no reason to keep any soybean secrets, so even a conspiracy of soybean shippers would be unlikely to keep the information a secret.¹¹

The significant danger of price signaling is directly relevant to Tex Mex's request for

¹⁰ Ibid.

¹¹ Mr. Gray's suggestion that railroads receiving the information cannot be sure of the reliability of the information is also unrealistic in the extreme. Customers most generally transmit information from newsletters by sending xerox copies.

trackage rights. The KCS-Tex Mex route to and from Laredo puts a third competitor back into what would otherwise become a two-competitor market. The introduction of a third competitor, especially one so structurally unlike BNSF and UPSP, makes it much less likely that tacit collusion can be effective. While the KCS-Tex Mex route is not a very direct route to Laredo compared to UPSP's route, it will become more and more of a competitive factor should price coordination between the other two railroads cause profit margins on the traffic to rise. The possibility of increased participation by KCS-Tex Mex would put a limit on how much the other railroads can gain from price coordination, and thus reduce the likelihood of its use.

D. BNSF Will Not Be As Effective A Competitor As SP For Traffic Between the U.S. and Mexico.

In my view, the merger as proposed by Applicants will not only reduce the number of Class I railroads serving the U.S.-Mexico market from three to two, but also proposes to replace the competition now provided by one of those three -- SP service through Laredo and Brownsville -- with a much less competitive service by BNSF. My conclusion that BNSF will not be an adequate competitive replacement for SP, and will therefore be an inferior connection for Tex Mex at Corpus Christi, is based on several facts discussed at length in my earlier statement. These include the facts that BNSF will be operating over trackage rights for a much greater length of the hauls, will be operating over routes that are longer in many cases than SP's routes, and will be operating over a more congested route from Houston to Corpus Christi. Also, BNSF has, in my view, clearly indicated that it is not and will not be as committed to promoting this market as SP has been. For all of these reasons, I believe BNSF will not generate enough traffic and revenues with Tex Mex to keep Tex

Mex a viable competitive alternative to a merged UPSP. My projections of the traffic that can be expected under the merger with the BNSF Settlement are reflected in my traffic studies.

Several witnesses for Applicants and BNSF disagree with the foregoing conclusions and with my traffic projections on several grounds, which I discuss below.

(i) Trackage Rights Operations. Applicants and BNSF do not dispute that the BNSF service Applicants are offering as a replacement for SP's service is via trackage and haulage rights, whereas SP operated mainly over its own tracks and mainly controlled its own dispatching. They argue, however, that trackage rights operations are common and that the ICC often found trackage rights to be an appropriate remedy for competitive harms. UP/SP-230, pp. 101-104. These arguments do not refute the fact, known to most people with experience in the railroad industry, that railroads do not operate as effectively via trackage rights as over their own lines. As I noted in my earlier statement, UP/SP's witness, M.D. Ongerth, testified at length in the UP-CNW merger case, F.D. 32133, to the serious problems SP had in providing competitive service via trackage rights over its principal competitor, UP. Although, not surprisingly, he no longer attributes those problems to UP's deliberate discrimination, his testimony in this case reaffirmed that SP had many problems with its trackage rights over UP. Ongerth Dep. of 2/8/96, pp. 189-197, 346-356.

In short, the well-known disadvantages of trackage rights are certainly one relevant factor to be taken into account together with all the other factors in deciding whether a proposed trackage rights remedy is in fact an adequate corrective for a competitive problem.

Applicants also argue incorrectly that my critique of BNSF's trackage rights is

inconsistent with Tex Mex's proposed trackage rights remedy. On the contrary, I never suggested that Tex Mex's proposed remedy would, by itself, serve as an adequate competitive replacement for SP's service. Although there are important differences in the routes and between Tex Mex's and BNSF's commitment to serve this market, Tex Mex's operations via trackage rights would experience the same general disadvantages as BNSF's. Tex Mex's position is not that its remedy should be imposed in lieu of the BNSF Settlement. Tex Mex's position is that its remedy is a necessary supplement to the BNSF settlement in order to provide a remedy that comes close to preserving the competition that now exists.

(ii) Congestion on the Algoa Route. Applicants and BNSF witnesses also dispute Tex Mex's claim that BNSF's route between Algoa and Robstown is extremely congested and will cause BNSF to provide slow service between Houston and Robstown. Tex Mex's witness Allen Haley is submitting a rebuttal verified statement responding to their criticisms of his analysis. Tex Mex's view is also supported by the deposition testimony of UP's witness John Rebensdorf. Rebensdorf Dep. of 1/22/96 at 243-244.

Applicants and BNSF have also argued that the proposed Tex Mex route to Houston (the current SP route) is in fact inferior to the BNSF route in terms of congestion and circuitry. As I discuss below, for many routes, the BNSF route is substantially longer than the current SP route. In any event, however, this argument again appears to misunderstand Tex Mex's purpose. Tex Mex is not asking for the trackage rights in order to avoid working with BNSF, which would be impossible in any case. Rather, Tex Mex wants to supplement the competition that it can offer for traffic to and from Mexico. If Tex Mex can reach Houston, Tex Mex can restore two-line competition to shippers there, and if Tex Mex can

connect with KCS at Beaumont, shippers who can reach KCS will have a third route option to use to ship to Mexico. If BNSF is not an adequate replacement for SP, as Tex Mex feels and as I have projected, then Tex Mex will have another revenue source to keep it alive and viable so that it can continue to provide competition to UPSP at Laredo. If BNSF chooses to exercise its haulage option, severely reducing competition via the BNSF-Tex Mex route, then Tex Mex will have another way to provide at least some competition to the UPSP route. If Tex Mex is wrong about the BNSF route, and it is as good a route as UPSP and BNSF suggest, then traffic will naturally flow to it and competition will not be harmed.

(iii) Tex Mex's Supposed Influence With Shippers. UP's Mr. Peterson suggests that Tex Mex's influence with Mexican shippers will protect it from losing traffic as a result of the merger. UP/SP-231, Peterson RVS at 105. This claim is incorrect. Although Tex Mex's Larry Field's noted that Tex Mex has "some marketing advantages with Mexican customers,"¹² the traffic evidence makes clear that these advantages do not give it enough influence with customers to provide serious competition to UPSP without a committed partner, or to free Tex Mex from almost total reliance on Tex Mex's U.S. interline partner for overhead traffic. Mr. Peterson identifies carloads of traffic handled by a UP-Tex Mex route to or from Laredo in 1994, as evidence of Tex Mex's traffic influence.

Tex Mex
participated in none of the intermodal units handled by UP to, from or via the

¹²TM-23, pg 42.

Laredo gateway¹³. Most tellingly, Tex Mex's share of northbound traffic via Laredo (where its routing influence should be most apparent) in 1994 was only .¹⁴

Tex Mex has a small sales effort, appropriate for a railroad of its size, in both the United States and Mexico, but nothing remotely resembling the marketing and sales infrastructures of UP and SP. Generally, in arranging shipments for U. S. customers via SP-Tex Mex, SP handles the customer interface, and tells the customers that SP will line up the Tex Mex. What little influence Tex Mex has was vividly demonstrated when BNSF slapped the surcharge on grain via the Tex Mex route, shutting it off completely. Tex Mex's influence did not extend to holding on to this business in the face of higher prices.

(iv) Errors in a Table in my Original Verified Statement. Mr. Peterson's verified statement says that my original verified statement contained a table with numerical errors in it. He is correct, although this was corrected with errata filings served on all of the participants in the case. I apologize for the error, but it does not alter the essential point illustrated by the table.

The correct table is reproduced here. It shows selected mileages to Laredo for the UP or SP (whichever is shorter) before the proposed merger and UPSP after, and compares the SP mileages before the merger with those to of the BNSF after the merger. It shows that in many important cases the BNSF - Tex Mex route would be longer than the SP - Tex Mex route is now.

¹³ UP/SP-231, Vol 2, Part B, tab 17, page 128 and facing chart; chart following page 122.

¹⁴ UP/SP-231, Vol 2, Part B, tab 17, page 113.

	Miles UP or SP (shortest)	New Miles UPSP	% Difference	Miles SP- TexMex	new Miles BNSF - TexMex	% Difference
Wichita KS	808	808	None	963	998	+4%
San Antonio	154	154	None	410	589	+44%
Phoenix	1460	1204	-18%	1460	1908	+31%
Los Angeles	1841	1585	-14%	1841	2222	+21%
Ft. Worth, TX	434	434	None	584	619	+6%
Kansas City	968	968	None	1158 ¹⁵	1163	+0.4%

The table also illustrates how much of a distance advantage UPSP will enjoy over BNSF - Tex Mex after the merger for traffic to Laredo. Here are the proposed BNSF-Tex Mex miles from the above table as a percentage of the UPSP miles:

¹⁵ Mr. Peterson calculates this number to be 1221, the route via the BNSF-Tex Mex to be 1243 and the percentage increase in miles to be 1.8% (UP/SP-231, Vol. 2, Part B page 108). Use of either set of numbers does not change the implications.

	Miles to Laredo via BNSF-Tex Mex as a % of miles via UPSP
Wichita KS	123 %
San Antonio	382 %
Phoenix	159 %
Los Angeles	140 %
Ft. Worth, TX	143 %
Kansas City	120 %

(v) The Loss of a KCS-SP interchange at Shreveport. In my earlier statement, I noted that the merger with the BNSF Settlement will cause shippers served by KCS (those north and east of Shreveport) to lose a competitive alternative via their most direct route to Houston and Laredo, which is now through Shreveport via either UP or SP-Tex Mex. Under the BNSF Settlement, BNSF will not be able to accept those shippers' traffic at Shreveport, but could only accept it at Beaumont, which is more circuitous.

Mr. Peterson argues that my point in this regard is inconsistent with my support of Tex Mex's remedy, which would only give Tex Mex access to those shippers at Beaumont. This is incorrect. Although the Tex Mex proposal for trackage rights to Beaumont will not alleviate the loss of routing choices faced by these KCS shippers, it will add a KCS-

Beaumont-Tex Mex route. The KCS-Beaumont-Tex Mex route will still be relatively circuitous. However, the proposed Tex Mex trackage rights route to Beaumont will allow current and potential future shippers to receive a third bid for their traffic, one that is independent of both UPSP and BNSF. Instead of two independent bids via direct routes, they will have three independent bids, one via a direct route and two via less direct routes. This will substitute more competition for stronger competition.

Mr. Peterson also suggests that KCS could use a Dallas interchange instead of Shreveport,¹⁶ but Dallas is even more circuitous than Beaumont.

(vi) BNSF's Lack of Commitment to the U.S.-Mexico Market. Applicants and BNSF took strong exception to my conclusion that BNSF will not be as effective a competitor as SP has been for U.S.-Mexican traffic for the additional reason that BNSF has not shown the same commitment nor made the same substantial investment in developing that market as BNSF has. BNSF countered my conclusion with solemn protestations by Robert Krebs, BNSF's CEO, and Rollin Bredenberg, BNSF's Vice President - Transportation, to the effect that BNSF intends to become a very aggressive competitor in this market. Applicants have cited and echoed the same statements.

It is important to understand that I have not suggested that I believe that BNSF does not and will not compete in this market. On the contrary, I explained earlier that BNSF is a significant, albeit secondary, competitor through its gateways at Eagle Pass and El Paso. My point, instead, is that BNSF will not, in my view, be nearly as committed to competing in this market as SP has been, and I continue to hold that view.

¹⁶ UP/SP-231, Vol. 2, Part B page 34.

It is difficult to disprove declarations of intended future conduct, but a number of more concrete facts lead me to doubt the predictive value of the declarations of Messrs. Krebs, Bredenberg and others. These include the following:

First, although UPSP predicts that BNSF will handle large volumes of traffic with Tex Mex, BNSF has indicated no plans to acquire equipment to handle this traffic. Mr. Frank D. Clifton of BNSF describes the implementation plans, and names a target startup date of September 1996.¹⁷ Nowhere in his verified statement does he mention any plans to acquire any equipment, either locomotives or freight cars, although he states that the implementation team has responsibility for "identification of areas for capital investment." Much of the traffic handled by the SP-Tex Mex route requires railroad-supplied freight cars¹⁸. Dr. Kalt describes a situation where SP congestion on the SP-Tex Mex route to Mexico this year caused such a shortage of grain cars on BNSF that "other BN/Santa Fe grain business to the Gulf of Mexico goes unserved." If there is a grain car shortage already, what happens when September 1996 arrives in a few months?

Similarly, if BNSF is to replace SP as UP's major competitor to Mexico, who will they have talk to the customers? SP and UP each have large sales forces and marketing organizations dedicated to getting Mexican business. BNSF has not indicated that it will do likewise, or otherwise indicated that it has a better approach. Only one person has been

¹⁷ BNSF-54 at Clifton, page 4.

¹⁸ Mr. Rose of BNSF says he will not need any new freight cars to handle new chemical and plastic traffic from the Gulf Coast (initially 7,500 to 10,000 carloads) because they will be shipped in customer - owned cars, and I am not disagreeing with him. Chemicals and plastics, though, are only minor components of the traffic shipped to Mexico via Laredo. Mr. Rose's comments are in BN/SF-54 at Rose, pages 4 and 5.

publicly assigned to developing Mexico business, Mr. Bredenberg. Mr. Bredenberg at his deposition said that his job as Vice President Transportation of BNSF took all of the time he could give it, and that in that job he was engaged in integrating BN and ATSF operations, which is clearly one of the most important and time-consuming jobs at BNSF for the foreseeable future. That assignment hardly reflects a very high priority for developing Mexico business.

Another fact gives Tex Mex good reason to doubt that BNSF has the patience and commitment necessary to develop a strong customer base in a volatile market like Mexico. In 1995 and 1996, when SP service problems were delaying BNSF grain cars destined for Mexico via SP and Tex Mex, BNSF's reaction was not to find ways to alleviate the problem and move the traffic but instead was to slap a surcharge on grain cars destined for Laredo which had the effect of stopping that traffic altogether, probably diverting much of it to Eagle Pass via their haulage rights on SP. That experience is not one to give Tex Mex enormous confidence in Applicants' and BNSF's declarations about what a strong and reliable connection BNSF will be for Tex Mex at Robstown.

Another fact justifying serious doubts about BNSF's commitment to developing this traffic in partnership with Tex Mex is the fact that the BNSF-UPSP Settlement gives BNSF the option of operating via haulage rights over UPSP to connect with Tex Mex. As SP's Mr. Ongerth explains in his verified statement¹⁹ "a railroad will often prefer haulage rights over either trackage rights or ownership of the line if it expects that the traffic involved will be too small for the railroad to put together whole trains of its own." The existence of the

¹⁹UP/SP-232 tab B, page 24, footnote 2

option to use haulage on this line, amid a very few other lines, strongly suggests that BNSF is very concerned that its traffic with Tex Mex "will be too small for the railroad to put together whole trains of its own." In addition, as I understand it, during negotiations with UP and SP, BNSF wanted UPSP to allow BNSF to have an agent handle the traffic to Tex Mex, which is another tactic to avoid losses on low density lines. BNSF is preparing for very light traffic with Tex Mex.

(vii) My Traffic Study. In the traffic study presented with my earlier statement, I concluded that under the merger with the BNSF Settlement, BNSF will not generate enough traffic and revenue with Tex Mex to keep Tex Mex a viable competitive alternative to UPSP. Mr. Peterson challenges that study and that conclusion on a number of grounds. In contrast, he predicts that the merger with the BNSF Settlement will substantially increase the traffic interchanged to Tex Mex at Corpus Christi and Robstown.

I believe Mr. Peterson's attacks on my study are incorrect for reasons I will explain. Before doing so, however, it is worth noting a few simple facts that should make it apparent that Mr. Peterson's optimistic predictions are highly improbable.

At first glance, BNSF, as a larger system than SP would seem to be a better partner for Tex Mex. However, as my original testimony demonstrated, in 1994 the Tex Mex route already handled destined to
Laredo. In addition, Tex Mex handled in
1994 destined to Laredo. For the sake of demonstration, let us suppose (somewhat improbably) that the Tex Mex route after the UPSP merger gets all of the rest of the BNSF traffic but (much more likely) loses all of the SP traffic. If this happens, the loss of

the SP traffic would far outweigh the gain of the rest of the BN and Santa Fe traffic.

Have events since 1994 increased the prospects of Tex Mex gaining more traffic from BNSF and losing less from SP? On the contrary, SP's access to traffic origins has been strengthened by the settlement agreement it made with BNSF in the BNSF case, making SP a better traffic source. In some cases SP reaches those traffic sources through long stretches of trackage rights, diminishing its potential effectiveness greatly, but even weak access is much better than no access. At the same time, BNSF has strengthened its access to El Paso, which is an indirect competitor to Laredo, and BNSF has gained haulage rights to Eagle Pass, a more direct competitor to Laredo.

On the other hand, the advantages of the Laredo gateway and the relatively high compensation BNSF must pay for haulage tend to lessen the risk that BNSF will use its haulage rights to divert traffic away from Tex Mex and Laredo.²⁰ On balance, therefore, I concluded that the effects of the BNSF merger will be positive for Tex Mex. It should be apparent, however, that those same positive effects will become negative ones for Tex Mex after the UPSP merger; the additional traffic received by Tex Mex from SP as a result of the BNSF merger will be lost and less traffic originated by BNSF will be gained.

Mr. Peterson, in his traffic study, reached the opposite conclusion. He concluded that the BNSF merger would be a net detriment to Tex Mex's traffic, primarily because he posited that large blocks of traffic previously handled at Laredo would move via the haulage

²⁰ Although Mr. Peterson in his traffic study did not specifically consider the compensation terms but merely presumed that they would allow BNSF to be competitive, I did examine them. I found that in many cases they imposed a higher cost on BNSF to use the haulage rights than BNSF would have paid SP to handle the cars in regular interline service.

rights at Eagle Pass. Thus, when I began to look at the impacts of the UPSP merger on Tex Mex, I started with a bigger Tex Mex traffic base, and Mr. Peterson started with a smaller one.²¹

I also made another adjustment to the Tex Mex base that Mr. Peterson disputes. I adjusted the base to add projected intermodal traffic from the Aztec Wind, an SP-Tex Mex intermodal service that designed in early 1995, launched in late 1995, and immediately discontinued.

Contrary to Mr. Peterson's opinion, this adjustment is well founded and entirely reasonable.²² Based upon my conversations with Tex Mex officials, I concluded that the hasty cancellation of this service after the long planning put into it was influenced by this proceeding more than by marketplace challenges. There is plenty of market for the service.

UP handles intermodal traffic to, from and via Laredo, and

²¹ One problem with both my analysis and Mr. Peterson's was that the 1994 data did not include the impact of the peso devaluation, which caused a severe contraction in the Mexican economy and was largely responsible for the subsequent decline in SP-Tex Mex traffic. Traditional diversion studies find such discontinuities extremely difficult to deal with. In the Tex Mex responsive application, Mr. Krick's verified statement dealt with the peso devaluation. His job was to analyze the impact of the merger on the Tex Mex finances. In looking at the future Tex Mex financial picture, he decreased both the diversions from the Tex Mex as a result of the merger, and the traffic gains from the proposed trackage rights to reflect the Tex Mex traffic declines associated with the devaluation. This method allowed a realistic time series approach to forecasting the impacts of the merger on Tex Mex, without exaggeration.

²² Mr. Peterson disparages this adjustment by characterizing it as "inventing" traffic, but such traffic projections are inherent in the methodology used by both Mr. Person and myself and that is commonly used in such traffic studies. My projections are no more "invention" than the many adjustments Mr. Peterson made (e.g., relating to additional traffic he projected for UT and SP as a result of the UP/CNW and BNSF mergers) to derive his adjusted traffic base.

there is an enormous amount of truck traffic across the border.²³ The initial running of the train revealed some service problems and some rate problems. The SP-Tex Mex route has no hope of matching UP for this traffic, but as Dr. Majure points out in DOJ-8, there is a market for slower-than-UP intermodal service. My experience is that SP's new services usually start out with slower-than-expected service, which SP then works to improve. There was no such effort for the Aztec Wind. The service also had rate problems. As SP's Mr. Thruston points out²⁴ after the peso devaluation Mexican trucking rates collapsed, reaching levels that made over-the-road delivery within Mexico the more attractive option. Mexican trucking rates are clearly unsustainable, as the operators are using cash flow pricing to try to keep operating. Reinvestment in trucks is impossible at current prices, and so this problem is self-liquidating over time. In addition, Tex Mex has the option of deramping at the border. In my revenue forecasting, I was aware of this issue and scaled back the Tex Mex revenue per unit and number of units sharply to account for the adjustments to meet this problem.

SP, unencumbered by a pending merger with UP, would work through these problems and adjust the service and pricing as necessary to make it work. SP's paper ramp operation, alluded to by Mr. Thruston, has not (at least through 1994) attracted a significant share of market, and the Aztec Wind service is the way that SP was going to try again. My forecast for the Aztec Wind would give the SP-Tex Mex route a rail intermodal market share less

²³ Dr. Kalt cites statistics identifying that 83%, by value of goods transported, moves by truck for all Mexican gateways. BN/SF-55, at Kalt, page 31.

²⁴ UP/SP-231 Vol. 2, Part C. Tab 24, page 9.

than 15%, well below the SP share in some other markets where it suffers service disabilities.²⁵

Mr. Peterson and I are pretty close to agreement on how much intermodal traffic the BNSF-Tex Mex route would have after the UPSP merger. He says a zero percent share, and I say an insignificant 1% share of the market. These forecasts are not too far apart. Should the Tex Mex receive the trackage rights requested, I have forecast a market share improvement to about 3% for Tex Mex.

Mr. Peterson specifically objects to three items he noted in my workpapers. He says "Mr. Ellebracht gave BN/Santa Fe

, despite the fact that BN/Santa Fe would now compete head-to-head with UP/SP for this movement using its very efficient route."²⁶ While I do have some serious points of difference with Mr. Peterson, these particular ones are phantoms. I did divert to BNSF substantial flows from although it was not evident from the paper Mr. Peterson cites. The diversions were on another workpaper. As to , I did not divert this traffic because of the problem in the Waybill Sample with the rebilling of CNW grain. Making an accurate adjustment is impossible, and unnecessary when calculating the impacts of the merger on Tex Mex. As a surrogate, I allowed the traffic to stand for the traffic from local CNW points rebilled at gateways. With the UP/CNW merger, this traffic

²⁵ In any case, Mr. Krick's financial analysis of the impacts of the merger on Tex Mex were uninfluenced by the Aztec Wind forecast, as he could not accommodate the adjustment in his time - series based model.

²⁶ UP/SP 231, tab 17, page 130.

will no longer be available at the old CNW junctions to carriers other than UP. Instead it will be controlled by UP as UP local traffic. Probably Mr. Peterson knows enough about this traffic to make a more sophisticated adjustment, but it appears he made no adjustment at all.

One of the major differences between my traffic study and Mr. Peterson's, which he acknowledges, is his forecast that the route UPSP-Tex Mex will be used half the time from UPSP local points that were previously SP local points. This will not happen. Instead, these points will be treated just like UP local points after the merger and the shippers will not be offered attractive rates via Tex Mex routes. This is a significant traffic flow and is a major part of the differences between our two studies. With respect to UP local points that will become UPSP local points he and I are in agreement that very, very little traffic will be routed from them via UPSP-Tex Mex to Laredo.

Mr. Peterson states that my traffic study shows a "systematic bias against crediting BN/Santa Fe's competitive capabilities." Correspondingly, I find that he displayed a systematic bias in overstating BN/Santa Fe's capabilities versus the UPSP. For example, at common points like Kansas City, he diverts 40% of the traffic that in 1994 moved via UP direct to Laredo to BNSF. But this does not properly take into account that:

- ▶ even at common points a substantial amount of the traffic is not open to switching²⁷,
- ▶ the BNSF route to Laredo is a two-line haul (although not the BNSF route to Eagle Pass),

²⁷ Truck-rail transfers to reach BNSF at common points are too expensive to use to attain a large market share. Mr. Peterson found in a study he did for this case that at 26 three-to-two points 15% of the "matched" traffic was closed to switching (HC01-008487).

- ▶ the UPSP route has a substantial mileage advantage from most points,
- ▶ UPSP will have a substantial service advantage for most gateway flows,
- ▶ UPSP variable costs will be significantly lower than BNSF's due to the trackage rights for many flows,
- ▶ BNSF trains will be subject to the dispatching control of UPSP for all of the traffic to Laredo, and for many flows for hundreds of additional miles,
- ▶ BNSF will have to offer customers already using UP a reason to switch carriers, and UPSP will nearly always be able to meet and beat any offer from BNSF.

Traffic from the 2 to 1 points is treated separately in Mr. Peterson's study. From 2 to 1 points Mr. Peterson has generally used a 50% diversion factor to BNSF. This is too high. It does not take into account the simple fact that BNSF will have to reach the customers through reciprocal switching, which always results in delays. BNSF will start out with a service disadvantage for all of the carload traffic.

Mr. Peterson admits in his verified statements that traffic handled by UP greatly exceeded UP's estimates in the WP merger and the MKT merger. Also, he seems optimistic that the same will happen with the CNW merger. These statements support my conviction, arising from my participation in the MKT merger and the CNW merger, that Mr. Peterson has a systematic bias. In my opinion he calculates diversions from competitors that are too low. I think he has done it again in this case.

Consequently, I remain convinced that the UPSP transaction will significantly harm Tex Mex's traffic volumes. Mr. Krick has determined that such volume deterioration will threaten Tex Mex's ability to provide the competitive service to UPSP that the public relies

upon. Granting the trackage rights requested in the responsive application will not only preserve Tex Mex as a competitive constraint upon UPSP, but also restore a measure of competition that will otherwise be lost through this merger.

(viii) Effect of the CMA Agreement. Mr. Peterson does not in his traffic study or in his rebuttal critique of my study refer to the recent settlement agreement between UP/SP and CMA. Little in that agreement appears to me likely to have a significant impact on Tex Mex or the competitive issues presented by its responsive application. Although the agreement allows BNSF access to certain shippers in Lake Charles and West Lake, LA, the 1994 waybill sample indicates that

Inclusion of these shipments as potential traffic sources for the BNSF-Tex Mex route would not significantly change the results of the traffic study I conducted.

(ix) Traffic Between Houston and Beaumont. One final point warrants discussion. Mr. Peterson has argued that some of the traffic I projected that Tex Mex would handle under the trackage rights it requests would simply go between Houston and Beaumont and never traverse any part of Tex Mex's existing system. Peterson RVS at 119. From this he argues that Tex Mex's real objective is not to correct anticompetitive harms to U.S.-Mexico traffic but to simply extend KCS's system to Houston.

I believe that was not Tex Mex's objective. Although the trackage rights requested by Tex Mex would enable it to carry such traffic, that is an incidental benefit to shippers in that market of granting rights that are appropriate and fully justified as a remedy to competitive harms to the market for rail transportation between Beaumont and Houston on

the one hand and points south of Houston on the other hand. Furthermore, the traffic I projected of this type represents a fairly small part of the projected Tex Mex revenue because of the short distance between Houston and Beaumont.

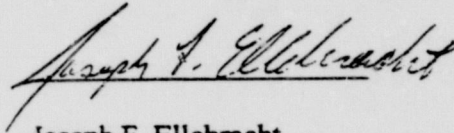
If the Surface Transportation Board were to conclude that any rights granted to Tex Mex should exclude the right to handle traffic between Houston and Beaumont that has no prior or subsequent rail move south of Houston, I have calculated the revenue reduction impact that eliminating this traffic from my diversion projections would have on Tex Mex and have provided them to Mr. Krick. I understand Mr. Krick has reviewed the impact of the revenue reduction and has concluded that it would not impair Tex Mex's viability and thus its ability to provide a competitive alternative via its proposed trackage rights operation.

VERIFICATION

I, Joseph F. Ellebracht, certify under penalty of perjury the foregoing is true and correct. Further

I certify that I am qualified and authorized to file this verified statement.

Executed on May 10, 1996.

A handwritten signature in cursive script, reading "Joseph F. Ellebracht", written over a horizontal line.

Joseph F. Ellebracht

APPENDIX B

REBUTTAL VERIFIED STATEMENT

OF

CURTIS M. GRIMM

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

I. INTRODUCTION AND SUMMARY

My name is Curtis M. Grimm, and I am Professor and Chair of Transportation, Business and Public Policy, College of Business and Management, University of Maryland at College Park. I have previously submitted a statement in this case on behalf of the Texas Mexican Railway Company ("Tex-Mex"), as well as one on behalf of The Kansas City Southern Railway Company; these previous statements provide further details regarding my qualifications.

My previous statement on behalf of Tex Mex had two components. First, I provided my general conclusion that the anticompetitive effects of the merger between the Union Pacific Railroad ("UP") and the Southern Pacific Railroad ("SP") will be unprecedented and are far greater than those of the Southern Pacific-Santa Fe ("SP/SF") proposed merger, which the ICC denied, and that the merger as proposed by the Applicants therefore

should be denied. Second, I discussed specifically what I believe the impact of the proposed UP/SP merger will be on competition in the transportation markets served by Tex Mex, including particularly the transportation of commodities between the United States and Mexico.

Applicants' rebuttal testimony took issue with my findings on both fronts. In this statement, I will first revisit the general issue of market definition. Under a proper market definition, the U.S.-Mexican traffic market is a 3-to-2 that will suffer competitive harms unless conditions are imposed. I will then address the Applicants' general attacks with regard to the 3-to-2 analysis that I and other witnesses conducted. Finally, I will address the specific misguided attacks on my analysis in particular.

II. U.S.-MEXICAN TRAFFIC: A 3-TO-2 COMPETITIVE IMPACT

Without question, the merger as proposed by the Applicants will cause a substantial and unacceptable reduction in competition in the transportation markets served by Tex Mex. Tex Mex, through its connection with SP at Corpus Christi, Texas, and by its presence at the major rail gateway between the United States and Mexico at Laredo provides critical competition to UP and BN/Santa Fe for transportation of freight between the United States and Mexico. The competition provided by the Tex Mex/SP independent alternative will be lost if the merger as proposed is approved.

The Applicants' proposal to give trackage and haulage rights to BN/Santa Fe to connect with Tex Mex at Corpus Christi will not adequately preserve the three railroad competition that now exists for U.S.-Mexican traffic. Preserving vigorous competition in that market is especially important, moreover, if the two countries are to realize the purpose and projected benefits of the North American Free Trade Agreement ("NAFTA").

BN/Santa Fe's witness Kalt mischaracterizes my comments on the U.S.-Mexico market as an assertion regarding market definition. According to Kalt:

Tex Mex witness Grimm asserts, without apparent support, that trade between Mexico and the United States constitutes a market and asserts that UP and SP account for 95% of that market. . . . Be that as it may, Tex Mex witness Grimm elsewhere seems to indicate that looking at U.S.-Mexico trade as a distinct market is too broad a view, asserting that each gateway might be its own market.

Kalt RVS, pp. 25-26. Kalt's mischaracterization demonstrates his misunderstanding of my testimony, markets in general, and the U.S.-Mexican market in particular.

I did not assert either that "trade between Mexico and the United States" nor rail transportation over any one gateway is a reasonable market definition for analysis in this case. As I stated in detail in my previous KCS statement, a properly defined market is an origin-destination pair. My BEA-BEA analysis used for U.S. origin-destination traffic employs such a market definition. Firms compete primarily with regard to movement of traffic between specific origin-destination pairs, not with regard to movement of traffic over particular rail gateways.

To the best of my knowledge, however, origin-destination data for U.S.-Mexico traffic is unavailable. Thus, there is a need to draw inferences regarding the competitive situation in origin-destination pairs based on the data which is available, movements of traffic to specific gateways. Thus, the discussion by Kalt as to whether a specific gateway such as Laredo is a relevant market or not misses the point; the relevant market is the origin-destination pair.

We face another limitation in the data available for analysis: the 1994 data used for this proceeding does not fully reflect the competitive situation at the Texas rail gateways. For U.S.-Mexico traffic, three railroads control the gateways: UP, SP and BN/Santa Fe. UP and SP are dominant with regard to U.S.-Mexico traffic and control the best gateway, Laredo. BN/Santa Fe, however, has gained improved access to Eagle Pass as a result of its recent merger.

Nonetheless, from the data described in Mr. Ellebracht's rebuttal verified statement regarding traffic from the 10 largest U.S. origin BEAs to the five largest Mexican rail import destinations I conclude that all of these market pairs are almost certainly served by three U.S. carriers today. For some specific origin-destination pairs, BN/Santa Fe will be a weaker competitor than their overall average market share of traffic between the U.S. and Mexico would otherwise indicate; of course, for some, they will be stronger. But clearly, an inference that a 3-to-2 situation exists in major U.S.-Mexico markets is warranted.

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Further data on origin-destination pairs would provide additional details about specifics of the 3-to-2 situation in given markets, but will not change the 3-to-2 characterization.

III. COMPETITIVE IMPACTS OF A REDUCTION FROM THREE TO TWO COMPETITORS

Applicants' solution to ameliorating the harm with regard to 3-to-2 U.S.-Mexico traffic is to strengthen the third competitor -- BN/Santa Fe -- through trackage rights as a component of the BNSF settlement. One issue with regard to this proposed solution that remains is the true effectiveness of the post-merger BN/Santa Fe in this market.

A second issue with regard to Applicants' proposed solution is that, regardless of how effective BN/Santa Fe will be in the future, the merger would still have reduced the number of competitors in many markets from three to two. Notwithstanding Applicants' arguments to the contrary, a wealth of evidence has been presented by many different experts regarding such 3-to-2 competitive impacts. The conclusion has been firmly established that reducing shippers' competitive alternatives from three railroads to two railroads will result in a very substantial loss of competition for those shippers.^{1/}

^{1/} Willig argues that "there are contrasting viewpoints expressed by the opposition economists as well." Willig RVS, p. 3. However, these "contrasting viewpoints" reflect only minor differences in definitions of terms (such as for the term "tacit collusion") or perspectives. These economists all strongly agree that the reduction in rail competitors from three to two will have a significant anticompetitive effect.

My previous statement presented my own views in this regard and summarized the position of others with regard to 3-to-2 impacts, including Professor Lawrence White and William Tye. Compelling evidence with regard to the impacts of 3-to-2 competition reduction was provided by a number of other witnesses, including Professor George Borts, Professor William Shepherd, and Professor John Kwoka. Professor Shepherd noted that this merger will reduce competition in substantial markets and increase coordination between the two remaining competitors in 3-to-2 markets. Also, Professor Shepherd identified SP as a "maverick" competitor, and noted that a maverick in the marketplace will constrain the prices of other providers.

Professor Kwoka reviewed twenty studies that covered third firm effects in a variety of industries, ranging from supermarkets to bond underwriting to other railroads. His findings and those of the studies reviewed indicate that market settings that operate with very few competitors diverge from the competitive norm. Price effects of further reduction in numbers, such as 3-to-2 mergers, can be large. Kwoka also noted that rail is not an unusual industry in this regard.

The empirical literature is supported by studies in the railroad industry. KCS' witness MacDonald fully addressed the earlier criticisms offered by Applicants' witness Willig. This study served as the basis of DOJ's Dr. Majure's empirical extension demonstrating strong anticompetitive impacts in 3-to-2 markets, resulting in a rate increase on the order of 11%.

Applicants' principal response to all of the foregoing evidence and studies is contained in the rebuttal verified statement of Applicants' witness Professor Willig.

Willig makes few new specific arguments. Instead he once again argues obliquely that:

The specific empirical railroad studies that are cited by opposition witnesses remain controversial with respect to what they reveal about the data they study, do not address the kind of facts that are critical to assessing this merger, and cannot be validly employed to reach conclusions about this merger.

Willig RVS at 1. These are the same general issues regarding assumptions on market definitions, use of data and measurement of concentration that Willig raised in his previous statement, each of which have been rebutted by MacDonald and myself.

What few specific criticisms Willig does make do not withstand scrutiny. For example, Willig criticizes a study I conducted which utilizes pre-Staggers Act data by claiming that the foundation data alone make the study results inapplicable to a review of the anticompetitive effects of the proposed merger. He fails to recognize, however, that to the extent the study is consistent with others using post-Staggers Act data, it sheds valuable light on the potential anticompetitive consequences of this transaction.

Similarly, Willig continues to argue that my findings regarding the importance of rail competition in the Winston, et al. book are driven by the monopoly cases in the sample. He ignores altogether, however, my explanation that although the number of single-line carriers in each market in the sample are

relatively small, there are also independent routes formed by interline carriers in the sample. Thus there is no basis for his argument that the monopoly routes are driving the results.

I reiterate my main point with regard to the previous methodological criticisms, which went completely unanswered by Applicants: All of these studies were published in highly reputable academic journals or as monographs and went through refereeing procedures designed to address just the types of issues raised by Willig. To believe his criticisms, and the echo of these criticisms now offered by other witnesses, one would have to believe that the refereeing process failed in each of these instances. Also, none of these studies was prepared for any particular case or legal proceeding.

Applicants witness Dr. Bernheim also criticize the Department of Defense data analyzed by KCS Witness Ploth which shows in the most concrete and dramatic fashion the benefits of having three independent railroads -- UP, SP and BN/Santa Fe -- competing for a shipper's traffic, and which shows exactly how much more DOD would have had to pay for rail transportation if SP had not been an independent competitor. Initial review of Dr. Bernheim's analysis of Mr. Ploth's study and Dr. Bernheim's workpapers raises far more questions than they answer. Tex Mex and other parties have not yet been able to explore these questions through deposition of Dr. Bernheim, which is scheduled for May 15, 1996. A more specific response to Dr. Bernheim's points will be made in Tex Mex's brief.

IV. THE COMPETITIVE IMPACT OF THE PROPOSED MERGER: REBUTTAL OF SPECIFIC CRITICISMS

As I stated previously, the proposed merger of UP and SP not only has unprecedented parallel effects that will eliminate rail competition in many western markets, but it also will result in rail transportation in the entire west being dominated by two giant railroads, UP/SP and BN/Santa Fe.^{2/} I have estimated the total 1994 transportation revenue from such shippers to be

, based on the reduction of independent alternatives between BEA pairs. The merger also will cause shippers in many markets throughout the West to go from three railroads to two railroads. The 3-to-2 impacts of this merger are enormous. I quantified those impacts in my KCS statement at

These findings were very consistent with the competitive analysis of the merger by the Department of Justice's economist, W. Robert Majure. According to Dr. Majure, the merger would:

- "create a monopoly in a large number of markets, representing in commerce, where non-rail alternatives are unlikely to provide shippers an economic alternative" (Majure V.S. at 1);

^{2/} As Mr. Robert Krebs, president and chief executive officer of BN/Santa Fe, recently testified that

- "create a duopoly in a much larger set of markets" involving nearly \$5 billion per year (id.);
- "generate a ballpark estimate of over \$800 million of harm to shippers and consumers" (id. at 36); and
- "increase the likelihood and effectiveness of anticompetitive coordination throughout western rail markets" (id. at 41).

I first note that the methodology employed by myself and Dr. Majure was conducted independently, with some varying assumptions, and that we reached very consistent conclusions. Both of us used a corridor analysis, as opposed to the point definition of competition argued by the Applicants. My geographic areas were BEA pairs. Majure used BEA pairs for some commodities, and SPLC4 pairs for others.^{3/} Majure employed a screen and eliminated from consideration certain commodities; I did not use such a screen, but provided a summary table of commodities/distances for both 2-to-1 and 3-to-2 traffic.

^{3/} The use of a BEA is entirely consistent with Commission precedent. SP/SF, 2 I.C.C. 2d at 768 ("[T]he following BEA data conclusively show applicants' dominance of the Southern Corridor for traffic moving to and from the Los Angeles BEA"). Indeed, UP itself, in the SP/SF case, also used rail market shares between specific BEA areas to establish that a merger of the Santa Fe with the Southern Pacific would be anticompetitive. Id. at 767, 769-770. In his Rebuttal Deposition, Mr. Peterson agreed that BEA's have been used in past merger proceedings, including by UP. Peterson Dep. of 5/8/96 at 87-88. The use of a BEA may, in some instances, include rail traffic not affected by changes in the levels of competition, e.g. a shipper may be exclusively served by SP and not benefit in any way from the presence within the BEA of UP; but, as the evidence establishes, for the vast majority of UP or SP shippers, even for those who may not be directly served by both carriers, the mere presence of the other, non-serving carrier within the BEA serves as a form of competitive restraint upon the ability of the serving carrier to raise its rates.

A number of key points raised with regard to the competitive analysis went largely or completely unchallenged:

- The comparison of competitive impacts with the SP/SF.

Regardless of the methodology employed, the competitive impacts are substantially greater than those of the proposed SP/SF merger, which was denied by the ICC as anticompetitive. Witness Barber, in his deposition, agreed with this perspective regarding the anticompetitive effects of SP/SF: "First, there's no question in my mind now or then that SF/SP would have choked off an enormous amount of competition, in extensive testimony I think that was clear and would accept it." Barber Dep. of 5/6/96, p. 46. When one compares the two mergers using identical methodologies, there was \$ of 2-to-1 traffic in SP/SF, compared to the \$ in the instant merger. This comparison went unchallenged by Applicants.

- Rail is the relevant product market. The ample evidence that rail transportation is the appropriate product market includes the Applicants' own de facto competitive analysis. This analysis demonstrates that Applicants recognize competitive problems with the merger that exist regardless of distance between origin and destination and regardless of the commodity transported. Applicants' rebuttal testimony failed to address this very basic but significant point. Instead, Applicants' testimony focused on the BNSF settlement as having solved all the 2-to-1 problems, and argued that 3-to-2's were not a problem.

• Most of Applicants' "competitive analysis" argues that the merger will be "pro-competitive" because it will strengthen UP as a competitor. Such an analysis confuses impacts on competitors with impacts on competition. The ICC has consistently held that simply increasing the strength of a particular competitor is not the same as strengthening competition, and it is the latter that is the proper focus of evaluation. Applicants' arguments are misdirected and have no legitimate role whatsoever in the STB's competitive analysis.

• Applicants' settlement agreement with BN/Santa Fe will only partially ameliorate this harm. Only about \$ of these 2-to-1 shippers will receive access from BN under the settlement.^{4/} Thus, contrary to the Applicants' claims, even with the BNSF settlement, many shippers will go from two railroads to one railroad with respect to their traffic. Where BN/Santa Fe does receive access, serious questions remain with regard to the efficacy of this solution. Thus, the BNSF Settlement provides relief to only a small fraction of the 2-to-1 shippers and does not in any way address the problems of 3-to-2 shippers.

^{4/} Many shippers defined as 2-to-1's by Applicants are not 2-to-1's based on my market definition. As I have noted, however, Applicants' definition of 2-to-1 traffic significantly understates the amount of traffic that benefits from two railroad competition. My analysis was confirmed by other witnesses in this case. KCS has found \$ of 2-to-1 traffic, DOJ has found \$, and shipper's witness Crowley has found \$. Accordingly, even if BNSF were the successful bidder on all of the traffic identified by Applicants as 2-to-1 traffic (according to Peterson RVS at 26), many 2-to-1 shippers would still lose the value of two railroad competition.

Applicants' witnesses, particularly Mr. Peterson, attacked both Dr. Majure's and my analyses with similar arguments. However, rather than engage in a discussion of relevant issues regarding market definition and competitive analysis, Mr. Peterson attempts to dismiss consideration of Dr. Majure and my competitive analyses with the following far-fetched characterization: "KCS' Professor Grimm has concocted what can only be called a crafty scheme to dramatically balloon up the amount of '2-to-1' traffic and '3-to-2' traffic. DOJ's Mr. Majure substantially followed it." Peterson RVS, p. 35.

Contrary to Mr. Peterson's characterization, my competitive analysis, based on BEA-BEA origin-destination flows, is well-grounded in DOJ and ICC precedent, as discussed fully in my original statements. The assumptions of the analysis and the basis for these assumptions are clearly laid out and defended. Indeed, as I show below, the key assumptions of my analysis are strongly endorsed by other Applicants' witnesses, who flatly contradict Mr. Peterson's critique of my analysis.

Mr. Peterson most strongly objects to my consideration of the impact of the merger on the number of independent routings between BEA's. Mr. Peterson argues:

If UP or SP was anywhere in a route that moved traffic in a BEA-pair, it was considered a "bottleneck" carrier. . . . While this approach might have some superficial plausibility to someone unfamiliar with how rail competition actually works, it yields profoundly mistaken results.

Peterson RVS, pp. 35-36. Mr. Peterson further objects to including revenues by Eastern carriers for transcontinental

traffic which, of course, is also subject to the effects of the Western bottleneck monopolies that will arise as a result of this merger:

No party has even remotely suggested that the UP/SP merger will create any competitive problems in the Eastern United States or in Canada. A proper analysis would examine competition and revenues associated with movements west of the major East-West gateways.

Peterson RVS, p. 39.

Mr. Peterson's criticisms are surprising given that Applicants elsewhere use the one-lump theory in their studies.^{5/} The one-lump theory is simply that a monopoly bottleneck over any portion of the route will result in elimination of meaningful competition over the entire route.^{6/}

In contrast to Mr. Peterson's criticisms, Applicants otherwise strongly endorse the one-lump theory: "The 'one lump' analysis, adopted by the ICC in numerous decisions, has also withstood repeated testing and debate, and no party here offers any concrete evidence of an exception to it." Applicants Rebuttal Narrative, p. 207. Far from being a crafty scheme, my

^{5/} In deposition, Mr. Peterson was asked

pp. 82-85.

Peterson Dep. of 5/8/96,

^{6/} As stated by the ICC in its BN-Santa Fe decision: "A carrier with a destination monopoly will likely push the through rate as high as possible and keep the monopoly profits to itself by playing off competing connecting carriers against one another in setting divisions." BN/SF, slip op. at 70.

analysis simply incorporates the powerful role of bottleneck monopolies, a concept that Applicants fully endorse in arguing against competitive impacts from reducing coal source competition.

Perhaps the best way to understand my methodology and its dependence on the Commission-endorsed principle of bottleneck monopolies is to focus on a particular BEA-to-BEA market, the Los Angeles to Houston market for example. Applicants criticize my characterization of this market as a 3-to-2 market (UP, SP, and BN/Santa Fe before the merger to UP/SP and BN/Santa Fe after the merger) and claim that this is really a 2-to-2 market (SP and BN/Santa Fe before the merger to UP/SP and BN/Santa Fe after the merger). However, the 100% traffic tapes,⁷¹ using a consistent methodology, tell a different story. In that market, for traffic originating in the LA BEA and terminating in the Houston BEA, the following routings and market shares were present:

⁷¹ Applicants criticize my use of the data. However, it should be noted that my analysis incorporated the 100% traffic tapes of UP, SP, BN/Santa Fe, and KCS and relied upon the Waybill Sample for the other railroads. In contrast, Applicants' analysis used only 100% traffic tapes for UP and SP and did not use 100% tapes for any other railroad. (Peterson. RVS at 96-100). My analysis is thus a more accurate portrayal of the traffic patterns than that put forth by Applicants.

ROUTINGS	CARLOADS	REVENUES (\$)
LA to Houston		
ATSF		
SP		
UP		
ATSF - SP		
ATSF - UP		
SP - ATSF		
SP - BN		
SP - UP		
TRC - UP		
UP - SP		
VCY - SP		
SP - BN - SP		
TRC - SP - UP		
UP - ATSF - UP		

As can be seen, based upon actual traffic movements, there are three independent routes from the LA BEA to the Houston BEA. By independent routes, I mean there are three routings available where no one carrier appears in all three routings, e.g. there is

an ATSF single-line,^{8/} a SP single-line, and a UP single-line route. All other routings would involve participation by these three carriers. Going in the reverse direction, Houston to LA, there are also three independent routings, with the single-line carloads as follows: UP - , SP - , and ATSF - .

Mr. Peterson objects to my use of a screen that eliminates routings as noncompetitive when they carry 3 or fewer carloads (of all commodities) for the entire year, with the full 100% traffic tapes as a data base.^{9/} This screen is intended to, and does, eliminate routings with negligible traffic, and is fully corroborated by Applicants' Witness Barber.^{10/}

Applicants criticize elimination of routes with a scant 3 carloads during 1994, but, when it suits their purposes in

^{8/} Of course, as a result of the BN/Santa Fe merger that was only recently consummated, this single line route will now belong to BN/Santa Fe.

^{9/} Mr. Peterson's criticisms on this subject provide a clear example of how replete his criticisms are with misstatements, contradictions of his own witness testimony and plain errors of fact.

. I have not. On page 186 of my initial verified statement submitted for KCS (upon which my Tex Mex analysis was based), I clearly provide for an allowable circuitry of 170% in the 1000-2000 mile category.

. (Appendix 2 to that verified statement.) Mr. Peterson's statement has no basis whatsoever.

^{10/} Mr. Barber argues that

. See, Barber RVS at p. 39 ("

")

minimizing the existing competition between UP and SP, they insist that routings with several hundred carloads should be eliminated from consideration.^{11/}

The testimony of other Applicants' witnesses rebut Mr. Peterson's criticisms. For example, when Mr. Barber was questioned during deposition on what procedures he would use to eliminate routings as meaningful competitors, he confirmed that he would employ both a circuitry screen and a minimum carload screen. Barber Dep. of 5/6/96 p. 31. Mr. Barber endorsed the procedures I employed, which sharply contradict Mr. Peterson's.

Of course, the conclusions of my analysis are clearly quite consistent with those of DOJ's Dr. Majure, who employed no circuitry or carload screens.

Mr. Peterson misconstrues the nature of indirect forms of competition between UP and SP when he states that this competition will be preserved by the BNSF settlement, even though both he and Mr. Barber acknowledge that the BNSF settlement addresses only the locations that Applicants narrowly define as 2-to-1 points.^{12/} Peterson RVS at p. 38. Mr. Barber

^{11/} Indeed, as discussed above,

Applicants seek to have this origination-destination pair excluded from analysis based on their 1% market share screen, yet criticize exclusions of origin-destination pairs based on my three carload screen.

^{12/} Applicants attempt to argue against each of the examples I provided to explain the various types of indirect competition that are ignored by the BNSF agreement. As such, they have totally missed the point. Those examples, and other examples found in the testimony provided by many other witnesses including
(continued...)

acknowledged such in his deposition when he reiterated the Applicants' position that shippers not physically served by both UP and SP will not be harmed by the transaction and will not be affected by the settlement:

So it could be at location X, wherever that is, and UP serves it, no other railroad served that location. The settlement - neither the settlement nor the CMA agreement would apply to that situation nor should it. There's no competitive impact on rail service at that location, it remains exactly what it is today. Therefore, under the merger, no effect, no provision, no provision in the settlement agreement. There's only one modification I guess I would make to that, and that is with respect to a new shipper facility. And I mentioned that earlier in paragraph 2 of the CMA agreement.

Barber Dep. of 5/6/96, p. 14.

Witnesses Barber and Peterson's criticism of Dr. Majure's and my competitive analyses speak volumes about their and Applicants' approach to the competitive issues. These two witnesses are quite knowledgeable about the railroad industry; yet, they employ these facts, and their judgment, selectively. They prefer to arrive at conclusions about competitive problems from market to market by judgement and application of a selective, anecdotal approach to fact that does not have any clear and consistent set of assumptions or procedure. They do not hesitate to apply completely contradictory views, theories and judgments from issue to issue, depending on what outcome of the issue benefits their interests in this case.

^{12/}(...continued)

KCS witnesses Shade, May, Turner and Simpson, illustrate the different forms of indirect competition described in several ICC decisions that underlying our market definition.

On the contrary, I have followed a systematic approach, with the assumptions of the analysis very clearly laid out, with a set of rules and procedures applied uniformly to all traffic in all markets. The entire analysis, market by market, was fully provided. I did not override my rules when there were "outliers" or anomalies.

I fully acknowledge that several hundred million of dollars of revenues that Applicants count as 2-to-1 are not counted as such in my analysis.^{13/} Clearly, there are cases, such as the access of BN/Santa Fe into Salt Lake City, that could have been included as 2-to-1, and my total would have been increased;^{14/} however, once one begins to utilize a selective, judgmental approach to an analysis market by market, all objectivity and value are lost.

^{13/} This is because my analysis focused upon independent routings between BEA-to-BEA origin-destination pairs and Applicants' analysis focused upon points. Thus, a 2-to-1 point shipper may exist within a BEA but was not counted as a 2-to-1 shipper by me because a third independent routing may have existed between the origin and destination BEA's or because there may have been a bottleneck carrier at destination (or origin) and thus there were not two independent routings available.

^{14/} BN/Santa Fe's market share into and out of Salt Lake City is very small when compared to the UP's and SP's market shares. Accordingly, Salt Lake City to various origins and destinations could be counted as a de facto 2-to-1, which it is, but nonetheless, my analysis counted these movements as 3-to-2's due to the presence of BN/Santa Fe in the BEA and such revenue was not counted in the 2-to-1 markets. KCS-33, Vol. III, pg. 288-291.

V. CONCLUSION

Applicants' rebuttal filing notwithstanding, there remain critical concerns regarding competitive effects of this merger. One such area of concern is traffic between U.S. and Mexico. Granting the conditions sought by Tex Mex would preserve for thousands of shippers in the United States and Mexico a third alternative rail route for the shipment of their goods between those countries.

VERIFICATION

I, Curtis M. Grimm, certify under penalty of perjury, that to the best of my knowledge, the foregoing is true and correct.

Executed May 13, 1996.

Curtis Grimm
Curtis Grimm

APPENDIX C

REBUTTAL VERIFIED STATEMENT

OF

ALLEN W. HALEY, JR.

My name is Allen W. Haley, Jr. I am employed by The Kingsley Group, Inc. of San Francisco, California as a transportation consultant. My office is located at 107 North First Street in Marathon, Texas. I previously submitted a verified statement on behalf of the Texas Mexican Railway Company ("Tex Mex"), which was included in TM-23, dated March 29, 1996. My qualifications were set forth at pages 1-2 of my previous verified statement.

My previous verified statement presented my analysis of congestion on the Union Pacific's ("UP") Brownsville Subdivision, over which line the Burlington Northern/Santa Fe ("BNSF") would operate via trackage rights under the UPSP settlement agreement with BNSF, and compared congestion on that route with congestion on the route over which the Tex Mex seeks to operate (the traditional Southern Pacific route) to reach Houston.

In this second verified statement, I respond to certain criticisms of my analysis that were contained in the April 29, 1996 submissions of the UP/SP (UP/SP-232) and BNSF (BNSF 54).

1. Criticisms of the "Jam Capacity" Analysis

UP/SP witness R. Bradley King challenges my analysis of "jam capacity" on the UP's Brownsville line on two grounds: (1) He claims that I "overlooked" the UP's freight yard at Angleton in analyzing congestion on the line, and (2) he asserts that my assessment of congestion

was overstated because I included local traffic and road switchers in the calculations. (King Rebuttal V.S. at 17.) Mr. King is wrong on both counts.^{1/}

Mr. King states that there is "plenty of room for trains to meet" at Angleton, alleging that "[Haley] overlooked our substantial freight yard at Angleton, including a CTC-controlled second track, even though it is shown in [Haley's] workpapers." (King Rebuttal V.S. at 17.) My analysis of the jam capacity for the Angleton segment certainly considered the presence of the Angleton yard, but I determined that the Angleton yard would be ineffective for providing a meeting or passing point because seldom if ever is the yard clear and available for such purpose.

During my analysis I first took into consideration the existence of the yard and the eight tracks that are used for switching and making up trains. During a number of visits to the yard and on-site observation I observed the daily comings and goings and switching in the yard. I saw that over a period of several months, the "CTC-controlled second track" was seldom if ever available for use by main line trains for meeting or passing. Normally this second track was occupied by a yard switcher tailing out of the shorter yard tracks and using this "second track" for switching room, making up trains or holding cars to be switched. I also noted that the UP does not designate the controlled track as a siding for meeting or passing trains. The data shows that while trains can and do enter the yard at Angleton, they do so for setting out and picking up, not normally for meeting other trains.

^{1/} Without addressing my actual qualifications, Mr. King also seems to question the reliability of my analysis by making a cryptic reference to a 1994 study I performed for the SP in an unrelated proceeding. If anything it is Mr. King, who lacks train dispatching experience, who is in this proceeding offering up unjustified theories and opinions.

If anything, rather than providing room for meeting and passing of trains, the operations at the busy Angleton yard serve to worsen congestion on the main track, but my "jam capacity" analysis did not penalize this line segment for that, as I discuss below. In looking at the Angleton yard in making my analysis of jam capacity, I evaluated the effect on freight operations of the frequent blocking of the main track in the vicinity of the yard. In confirmation of what UP witness John Rebensdorf stated in his deposition in this proceeding, this section of track is one of the heaviest concentrations of petrochemical industries in the area. Large blocks of cars move frequently from the UP-served industries at Freeport into the yard at Angleton. These cuts of cars must either pull around the wye track at Angleton and into the yard tracks, or, as is more frequently done, they must pull through the wye moving eastward and then shove back westward, backing into the yard at Angleton. These moves frequently block the main track for long periods of time. However, my jam capacity calculation did not reflect the negative effect that this would have on main track trains. In an attempt to be as fair as possible to the UP/SP and BNSF in this analysis, I decided not to factor such blockages of the main track into my jam capacity analysis for this segment of the line. In the real world of railroad operations, these switcher movements and blocking of main track in the vicinity of the Angleton yard would actually reduce the capacity of the route and produce frequent delays and jams.

In determining the jam capacity of a route, "a movement is a movement." Train priorities affect the amount of delays that occur on a train-by-train basis but, contrary to Mr. King's belief, have little or no affect on the practical capacity of a route. Certainly when a jam occurs on a line low priority trains receive delays more severe than higher priority trains, but in a jam condition delays to all movements will occur. Mr. King suggests that UP/SP will

eliminate all delays on the route by not permitting local trains and road switchers to foul the main track and create the jams. (King Rebuttal V.S. at 17.) This is simply not practical. Petrochemical plants are not going to be kept waiting for inbound cars, nor will the high revenue outbound loads be delayed, while road switchers are held in the yards and off the main track in order to eliminate delays to through freight trains. In fact, the UP records for this line that I utilized for the jam capacity analysis show that the road switchers and locals cause numerous and long delays to through freight trains today, and there is no reason to believe that they will not do so in the future.

BNSF witness Neal D. Owen asserts that my jam capacity analysis utilizes an "apples to oranges" comparison of the proposed BNSF and Tex Mex routes, claiming that I adjusted the jam capacity of the BNSF route over the UP line downward based on "real-time experience" while failing to make such an adjustment for the Tex Mex Route over the SP line. (Second Owen V.S. at 9). This is simply not true. In order to avoid criticism and to provide every benefit of the doubt to the BNSF route, I utilized much longer than usual running times for the Tex Mex route. This conservative approach meant that I used running times for SP lines that were greatly in excess of normal times that I knew from my experience as a dispatcher on the route. This exaggerated running time was then reflected in the proposed Tex Mex train schedules, in order to prevent any criticism that the Tex Mex schedules were unrealistic or too fast to allow for normal delays.

At the same time as I was adjusting running times on the Tex Mex route for a "worst case" scenario, my adjustments with respect to the BNSF route were designed to be realistic and, if anything, were based on best possible running times on that route. I utilized actual data from

the UP's dispatch computer records to determine normal running times across the route segments. For the purposes of my calculations, however, I excluded any trains that were delayed for excessive times, in an effort to eliminate from the calculation any train that may have had problems outside the control of the dispatcher or otherwise had an abnormal delay. At the same time, I included in the calculation trains which were shown in UP's data as having made almost unbelievable record-breaking runs.

In sum, to the extent that my analysis could be accused of being "apples to oranges," any disparity was in favor of the BNSF route, not the Tex Mex route.

Mr. Owen, like Mr. King, states that I failed to allow for the "theoretical" siding at Angleton, namely, the Angleton yard. (Second Owen V.S. at 9, n.13). As discussed above, it is not realistic to view the yard as a place for the meeting and passing of trains.

Mr. Owen also accuses my jam capacity analysis of failing to account for "fleeting" of trains. (Second Owen V.S. at 9, n. 13). Like many managers who have no actual train dispatching experience, Mr. Owen incorrectly assumes that fleeting of trains eliminates all congestion and solves the jam problems. It is true that fleeting of trains can help a route segment recover from a particular jam, but fleeting cannot be continued over a long period of time or be used on a sustained basis because it can create even worse jams and result in delays much greater than would be incurred in non-fleeting operations. My own practical experience of dispatching and supervising territories on the SP in which fleeting was used was that consistent fleeting of trains reduces practical capacity and creates a railroad that cannot recover from unusual or unforeseen delays. For example, fleeting frequently occurs on the SP's route from Houston to Shreveport. This route is susceptible to frequent long delays and numerous

"12-hour" tie-ups while dispatchers are required to fleet trains across the territory. It is my opinion that if fleeting of trains was incorporated into the jam capacity analysis I performed with respect to the UP Brownsville Subdivision, the practical capacity of the route would not be doubled (as Mr. Owen suggests) but would instead be reduced.^{2/}

2. Criticisms of the Tex Mex Route

Messrs. King and Owen both criticize the Tex Mex's choice of the route from Corpus Christi to Houston via Victoria and Flatonia. (King Rebuttal V.S. at 16; Second Owen V.S. at 7-8.) There is no merit to these criticisms.

They assert first that the Tex Mex route is longer than the BNSF route. (Mr. Owen says that it is about 60 miles longer; Mr. King incorrectly describes it as 100 miles longer.) While it is true that the route is longer, Messrs. King and Owen overlook the fact that had the Tex Mex sought the route from Corpus Christi to Houston via Angleton and Algoa, it would have required Tex Mex to obtain rights to operate over 24 miles of track (from Algoa to Houston) owned by BNSF, not by either of the applicants. Messrs. King and Owen also fail to mention that the vast majority of BNSF's traffic between Midwest points and points south of Houston operates via Dallas-Ft. Worth and Caldwell, and for such traffic the BNSF will have to use a

^{2/} Mr. Owen also challenges my assertion that BNSF would not be able to use a single crew for the run between Houston and Robstown, claiming that my view is refuted by Mr. Bredenberg's experience with detour movements over the route. (Second Owen V.S. at 9). Mr. Bredenberg's recollection of SP trains moving from Houston to Corpus Christi over the UP route during a time of floods has not been documented by any other evidence, and Tex Mex has checked and has found no records of such trains during such period. Even if there had been SP trains operating over the UP lines at such times, Mr. Bredenberg was too high up in the organization to be involved in the actual planning and monitoring of train movements, and his impressions would have been formed based on second-hand information from subordinates.

routing via the UP's Brownsville line that is 99 miles longer than the SP route from Caldwell via Flatonia and Victoria.

Messrs. King and Owen also suggest that there are long distances of slow track along the proposed Tex Mex route. Mr. Kings asserts that "[h]alf of the route selected by Tex Mex has only one siding and is limited to speed limits of 10 to 40 miles per hour." (King R.V.S. at 16.) The segment to which Mr. King is referring (between Placedo and Flatonia) represents only 30 percent of the entire Tex Mex route, and there are only two short locations on this segment where trains are reduced to 10 mph. (Mr. King fails to note that there are some 10 mph restrictions on the BNSF route as well.) While most of the BNSF route would be subject to maximum speed of 50 mph, which is greater than the speed on the Placedo to Flatonia segment, Mr. King does not mention that 40 percent of the proposed Tex Mex route is over territory with speeds of 65 miles per hour or greater. The Tex Mex route does not, therefore, suffer by comparison to the BNSF route when they are examined in full.

Messrs. King and Owen claim that the SP line from Flatonia to Houston is busy and congested, and Mr. Owen asserts that my analysis of the various routes overlooks a projected increase in traffic volume on the Flatonia to Houston segment of the Tex Mex route and overlooks a projected decrease in traffic volume on the Algoa to Angleton segment of the BNSF route. These statements are simply incorrect.

My assessment that the Algoa to Angleton segment would be congested did take into consideration the changes proposed in the UP/SP operating plan, and also took into consideration the proposed BNSF operation over that line. The UPSP operating plan contemplates a decrease of through trains on this segment to eight per day. However, operations by BNSF are estimated

to be 3.7 trains per day, for a total of 11.7 through trains per day as compared to 12 trains per day under pre-merger operations. Additionally, the BNSF Bay City turn adds two more movements per day over this route, for a total of 13.7 train movements per day over the Algoa to Angleton segment, excluding locals and switchers. While my first verified statement did not include this factual information, these changes and operations were taken into consideration in my calculations. My analysis and determination that this route segment would be congested and that BNSF would have difficulty traversing it is based upon post-merger conditions, not pre-merger conditions.

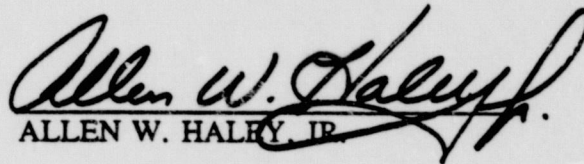
As noted above, my analysis of conditions on the SP's Flatonia to Houston segment, which is part of the proposed Tex Mex route, also was based on post-merger conditions. My jam capacity analysis for this segment took into consideration the fact that the UP/SP operating plan contemplates 18.4 trains per day on this segment and the fact that Tex Mex operations would add four trains per day on this segment. I found, however, that the total of 22.4 trains per day is well below the jam capacity for this line.

Finally, while describing the UP line from Algoa to Angleton as high speed CTC, the UPSP and BNSF witnesses fail to acknowledge that the SP line from Flatonia to Houston is predominantly CTC with track speeds of up to 79 mph. Recently, new long CTC siding have been added on this SP line at Lissie and East Bernard, and CTC has been extended to the west end of Eagle Lake. (Mr. Owen incorrectly states that there is only 30 miles of CTC.) These improvements have increased the capacity of the route significantly over what existed in 1994.

VERIFICATION

I, ALLEN W. HALEY, JR., verify 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.

Executed on May 10, 1996.


ALLEN W. HALEY, JR.

APPENDIX D

REBUTTAL VERIFIED STATEMENT
OF
PATRICK J. KRICK

Introduction:

I have been asked to submit this rebuttal verified statement to explain the effects on my earlier revenue, expense and net financial projections if the Surface Transportation Board limited Tex Mex's trackage rights conditions to exclude Tex Mex from carrying shipments between Houston and Beaumont that have no prior or subsequent movement by rail south of Houston. The effects would not affect Tex Mex's ability to furnish the essential services it provides to its local customers.

TM's Financial Outlook Under the "TM Rights-Limited" Scenario:

In my initial verified statement, I evaluated the financial effects on a "base case" future outlook for Tex Mex of the proposed UP/SP merger conditioned only by the BN/Santa Fe settlement, and as conditioned by the rights Tex Mex sought in its responsive application. I call these two scenarios "Merger" and "TM Rights," respectively. I based my evaluation of the financial impacts of these scenarios in part on the traffic diversions that Tex Mex's witness Joseph F. Ellebracht estimated for Tex Mex.

The TM Rights scenario included approximately 400 carloads and 3,300 intermodal units that Tex Mex would not handle if the Surface Transportation Board limited Tex Mex's requested conditions to exclude Tex Mex from carrying shipments between Houston and Beaumont that have no prior or subsequent movement by rail south of Houston.

I have analyzed the effects on Tex Mex's gross revenues' costs, and earnings of such a limitation on its trackage rights, which I will refer to as the "TM Rights-Limited" scenario. Tex Mex revenue from this foregone traffic would be approximately \$822,000 in the first year in which the effects are fully experienced.^{1/} This is reflected in Table 1 below.

Tex Mex would also save about \$572,000 in expenses that would have been incurred in carrying this traffic under the TM Rights scenario.^{2/} This is reflected in Table 2 below.

The combined net effect of limiting Tex Mex's requested conditions to exclude Tex Mex from carrying shipments between Houston and Beaumont that have prior or subsequent movement by rail south of Houston would be a reduction of Tex Mex's net income of approximately \$250,000 per year.

As can be seen from Table 3 below, Tex Mex would be both viable and profitable under the TM Rights-Limited scenario. If the STB granted the rights Tex Mex requests, but limited in the way described, Tex Mex will nevertheless be able to continue the operations that have enabled its on-line customers to flourish. The overall effect would not limit Tex Mex's ability to provide essential services to its local customers.

^{1/} I assumed in my initial verified statement that this traffic and the associated revenue would be phased in 50% in 1996 and 100% by 1997. Further, I assumed that this traffic would experience some growth, on the order of 3% per year from 1997 through 1999.

^{2/} Under the TM Rights-Limited scenario, there will be cost savings due to less intensive train service between Beaumont and Houston, lower equipment rents, equipment maintenance, fuel and trackage fees expense arising from the elimination of the foregone volumes, and lower originating and terminating expenses.

TABLE 1
TEX MEX REVENUES ASSOCIATED WITH
THE FOREGONE TRAFFIC
(in \$ 000)

Year	Revenue		
	TM Rights	TM Rights - Limited	Difference
1997	\$28,318	\$27,496	\$ (822)
1998	\$29,051	\$28,202	\$ (849)
1999	\$29,846	\$28,993	\$ (853)

TABLE 2
TEX MEX EXPENSES ASSOCIATED WITH
THE FOREGONE TRAFFIC
(in \$ 000)

Year	Expenses		
	TM Rights	TM Rights - Limited	Difference
1997	\$28,049	\$27,477	\$ (572)
1998	\$28,743	\$28,139	\$ (604)
1999	\$29,356	\$28,729	\$ (627)

TABLE 3
COMPARISON OF OUTLOOKS OF TEX MEX INCOME
FROM OPERATIONS UNDER FOUR OUTLOOK SCENARIOS
(in \$ 000)

Scenario	1997	1998	1999
"Base Case"	\$ 591	\$ 647	\$ 877
"Merger"	\$ (691)	\$ (721)	\$ (623)
"TM Rights"	\$ 269	\$ 308	\$ 508
"TM Rights-Ltd."	\$ 19	\$ 63	\$ 264

Conclusion:

If the Surface Transportation Board limited the trackage rights granted to Tex Mex to exclude Tex Mex from carrying shipments between Houston and Beaumont that have no prior or subsequent movement by rail south of Houston, the revenues, expenses and net financial results I have projected for Tex Mex would be affected, but the lower net income level would not prevent Tex Mex from continuing to provide the interline and local service required to keep Tex Mex viable and furnishing the essential services it provides to customers local to its line.

VERIFICATION

I, Patrick J. Krick, certify under penalty of perjury, that to the best of my knowledge, the foregoing is true and correct. Executed May 10th, 1996.

Patrick J. Krick

APPENDIX E

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

Verified Statement of Frederic E. Schrodt
on behalf of FARMLAND INDUSTRIES, INC.

My name is Frederick E. Schrodt. I am the Vice-President of Transportation for Farmland Industries. Farmland is a federated cooperative owned by approximately 1,400 member coops, who in turn are owned by approximately 500,000 farmers, producers and ranchers. These farmers, producers and ranchers are from the Midwest, predominantly Kansas, Iowa, Minnesota, Missouri, Colorado, Oklahoma, Texas, Arkansas, Montana, Nebraska, North and South Dakota and Wyoming.

Farmland has been an active party to this proceeding, expressing its serious concerns about the merger unless the Board imposes conditions to minimize the competitive impact on Farmland and its members. On behalf of Farmland, I submitted comments by letter dated November 7, 1995. I also submitted a verified statement as part of the Western Shippers Coalition Comments and Supporting Evidence filed on March 29, 1996. Tex Mex has asked me to expand upon my comments and initial verified statement to describe further Farmland's operations and rail transportation options for transportation between the United States and Mexico. This statement is in response to that request and is meant to

supplement, not replace, my earlier statement. Farmland stands by its March 29, 1996 comments.

Farmland and its member coops purchase and sell products throughout the United States, Mexico and Canada, as well as elsewhere around the world. We are already active in the markets that NAFTA will further develop. Because transportation is such a vital part of our industry, both from a logistical and cost standpoint, it is vital to Farmland, its member coops, and others in the agricultural industry that competition remain strong over the NAFTA corridors between the United States and Mexico. If the merger remains unconditioned except by the BN/Santa Fe agreement, we will lose an important part of that competition.

Farmland today can and does move products over the Eastern Mexico gateways, particularly Laredo and El Paso. Although we use the Laredo gateway to a much greater degree than any other Eastern Mexico gateway, our use of the Burlington Northern Santa Fe through El Paso for the same traffic has increased.

Three railroads moving over the Eastern Mexico gateways vie for our business today. Unless the Surface Transportation Board acts to permit a third railroad in the NAFTA corridor, then we will only have two railroads competing for our business. We will have lost a valuable competitive option. If the Union Pacific then acquires the Northeast Mexican railroad concession, the competitive situation will be further exacerbated.

VERIFICATION

I declare the foregoing to be true and accurate to the best of my knowledge under penalty of perjury of the laws of the State of Missouri. Further, I certify that I am qualified and authorized to file this verified statement. Executed on this 10th day of May, 1996.



Frederic E. Schrod
FARMLAND INDUSTRIES, INC.

APPENDIX F

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Union Pacific Corp., Union Pacific)	
R.R. Co. And Missouri Pacific RR Co.)	
- Control and Merger - Southern)	
Pacific Rail Corp., Southern)	
Pacific Trans. Co., St. Louis)	
Southwestern Rw. Co., SPCSL Corp.)	
and The Denver and Rio Grande)	
Western Corp.)	

Finance Docket No. 32760

**SUPPLEMENTAL STATEMENT OF
THE KANSAS, COLORADO AND OKLAHOMA SHIPPERS ASSOCIATION**

Comes now the Kansas, Colorado and Oklahoma Shippers Association and files this supplemental statement in order to correct the Burlington Northern Santa Fe assertion in its response filed on April 29, which essentially states that no other Eastern Mexico Gateway competes with Laredo. I have the authority to submit this verified statement on behalf of the above named shippers group. The assertions of the BNSF is simply not true.

BACKGROUND INFORMATION

On March 29, 1996, the KCOSA filed a statement of support of the Tex Mex Railroad which was named the Kansas-Colorado Shippers Association as the interested group. Since that filing we have received the Enid Board of Trade and the W.B. Johnston Grain Company as members of our association. One joined the SFE and the other the UP-MP shippers group. We are now the above named group.

With the exception of a cement, lumber and plastic shipper or receiver, the balance of our members are agricultural oriented and ship wheat, corn, milo and soybeans. If we had an excellent harvest in 1995, instead of a drought, our members could ship on the BNSF through El Paso or Eagle Pass, on the Union Pacific through Laredo or Brownsville, or on the Southern Pacific (through Eagle Pass or Laredo via the Tex Mex).

As mentioned in our previous filing, car supply, rates would determine the gateway to move grain to a particular destination within Mexico.

With the SP now operating over the BNSF tracks from Hutchinson via Newton to Wichita and Winfield south to Fort Worth, if grains will be available, our Kansas shortline railroads shippers could use the SP Tex Mex routes named supra.

KCOSA, Page 2

Laredo has the most brokers to help move products over the border, but there are brokers at the other gateways as well. The bottom line is that the grain shippers in the Midwest presently have three rail alternatives over the Eastern Mexico rail gateways that they can use to move grain to Monterrey, Mexico City and other destinations within Mexico. They could use each of these gateways.

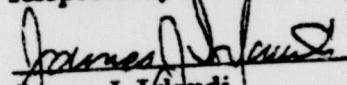
STATE OF OKLAHOMA IS NOW ACTIVELY INVOLVED

As an advisor to Oklahoma shippers named supra, it is my understanding that the Governor of Oklahoma has filed a response statement that another Class I carrier is needed to serve the State of Oklahoma. In addition, that the Oklahoma General Assembly overwhelmingly passed a resolution which requires the STB to give a third Class I railroad access between Oklahoma and Fort Worth for grain from Oklahoma and Kansas. As you are aware, the Governor of Kansas also would approve the merger if the railroads would meet the three conditions which was stated in his statement. One such condition was competitive access to a third Class I carrier in the Wichita grain trading area.

THREE CARRIERS TO TWO CARRIERS

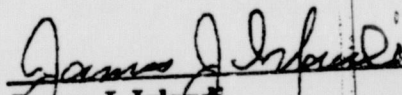
Presently, there are three major carriers our shippers may utilize to gain access to the Mexico markets. If the merger is approved they will have only two rail alternatives. With another poor wheat harvest facing Kansas and Oklahoma shippers, we have to look to the future with a hopeful bountiful fall harvest. There is a need for the future for the third option. Assuming arguendo that a third carrier would be authorized to serve the states of Kansas, Colorado and Oklahoma, said carrier could utilize the Tex-Mex railroad to provide the competition which we would need in the future. Please grant the Tex Mex the trackage rights it requests in this proceeding. Without the need for the third carrier and Tex Mex trackage rights, our shippers will suffer the harm which a duopoly will provide by the UPSP and BNSF railroads.

Respectfully submitted,


James J. Irlandi
Advisor
The Kansas-Colorado-Oklahoma
Shippers Association
1809 N. Broadway, Suite F
Wichita, Kansas 67214
(316) 264-9630

By: James J. Irlandi
STB Practitioner
1809 N. Broadway, Suite F
Wichita, Kansas 67214
PH: (316)264-9630
FAX: (316) 264-9735

I, James J. Irlandi, 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. Executed on this 7th day of May 1996.


James J. Irlandi

APPENDIX G

REDACTED

ICC FINANCE DOCKET NO. 32760

HIGHLY CONFIDENTIAL

HC32 - 000052

REDACTED

ICC FINANCE DOCKET NO. 32760

HIGHLY CONFIDENTIAL

HC32 - 000053

REDACTED

ICE FINANCE DOCKET NO. 32760

HIGHLY CONFIDENTIAL

HC32 - 060054

REDACTED

ICC FINANCE DOCKET NO. 32760

HIGHLY CONFIDENTIAL

HC32 - 000247

REDACTED

ICC FINANCE DOCKET NO. 32760

HIGHLY CONFIDENTIAL

HC32 - 000248

REDACTED

CC FINANCE SECRET NO. 32760

HIGHLY CONFIDENTIAL

HC32 - 000250

APPENDIX H

BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL 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
HIGHLY CONFIDENTIAL

Washington, D.C.

Monday, May 6, 1996

Deposition of RICHARD J. BARBER, a
witness herein, called for examination by counsel
for The Kansas City Southern Railway Company in
the above-entitled matter, pursuant to agreement,
the witness being duly sworn by JAN A. WILLIAMS,
a Notary Public in and for the District of
Columbia, taken at the offices of Covington &
Burling, 1201 Pennsylvania Avenue, N.W.,
Washington, D.C., 20044, at 10:05 a.m., Monday,
May 6, 1996, and the proceedings being taken down
by Stenotype by JAN A. WILLIAMS, RPR, and
transcribed under her direction.

APPEARANCES:

On behalf of The Kansas City Southern
Railway Company:

ALAN E. LUBEL, ESQ.
Troutman Sanders
NationsBank Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
(404) 885-3174

On behalf of Union Pacific Corporation:

ARVID E. ROACH, ESQ.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-6000

ALSO PRESENT:

CURTIS M. GRIMM

1 A. I don't understand. We were talking
2 earlier and I was talking earlier about so-called
3 two-to-one points. Are you telling me this is
4 now a one-to-one point? You're not talking about
5 a two-to-one location as that term has been used
6 by me, by the applicants, and is used in the
7 BN/Santa Fe settlement?

8 Q. The situation I intend to pose is just
9 where a shipper is physically served, you know,
10 today, physically served only by Union Pacific,
11 not by Southern Pacific.

12 A. So it could be at location X, wherever
13 that is, and UP serves it, no other railroad
14 serves that location. The settlement -- neither
15 the settlement nor the CMA agreement would apply
16 to that situation nor should it. There's no
17 competitive impact on rail service at that
18 location, it remains exactly what it is today.
19 Therefore, under the merger, no effect, no
20 provision, no provision in the settlement
21 agreement.

22 There's only one modification I guess I
23 would make to that, and that is with respect to a
24 new shipper facility. And I mentioned that
25 earlier in paragraph 2 of the CMA agreement.

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1 Q. Okay. So, to determine which route you
2 might eliminate as meaningful competitors, one
3 factor you would use would be the circuitry of the
4 route?

5 A. In this case Mr. Majure didn't take
6 account of anything, he let a computer go wild,
7 print out results which he apparently endorsed or
8 at least clipped to the back of his witness
9 statement. I don't think that makes any sense in
10 this case. Circuitry is a factor and the other is
11 degree of participation, effectiveness of that
12 participation for the traffic.

13 Q. Maybe we're saying the same thing, but
14 would another factor be the number of carloads of
15 traffic over the route?

16 A. Traffic loads or units or tons would
17 enter into what I call the market participation,
18 flow participation.

19 Q. And let me just clarify what I'm asking
20 here. I know you made some criticism of
21 Mr. Majure, but I'd like to know your view of how
22 you determine which routes to eliminate as
23 meaningful competitors, if you're doing a
24 competitive analysis?

25 A. In terms of this, I would want to know

The second point is that BN/Santa Fe I'm certain might think that, with the commission having approved its merger, that, if UP and SP were to propose to merge, that the commission might approve the merger and either not accept the arguments that competition would be harmed at these two-to-one points or at all of them or adopt some other approach that was -- that might put in say some regional railroads into these locations, in which case then BN/Santa Fe might not gain any advantages and UP/SP might secure approval on terms from a public standpoint that might conceivably have meant that they wouldn't have to face up to as tough a competitor as BN/Santa Fe.

So I think overall BN/Santa Fe, and I certainly cannot speak for them and do not and can't crawl into their mind, that they see that this agreement, though it poses UP/SP as a stronger competitor, that BN/Santa Fe gets advantages of real financial concern. And I think that BN/Santa Fe like UP/SP believe that, if they can both get in the same position, get on the same turf with the same number of players on each side with no handicaps, that they're

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1 those situations the strongest rail competitor in
2 the West. They did that from a period well
3 before the application was put in.

4 And, in fact, the settlement agreement
5 with BN/Santa Fe, the primary one was executed in
6 September. So they faced the problem to cure it
7 to avoid the kind of result that took place
8 between SF and SP. I now have to amend my
9 answer, I said it was 179.9 degrees apart, I
10 charge that, 180 degrees apart.

11 Q. To follow up on that, Mr. Barber, could
12 you compare the competitive impact of the SP/SF
13 proposed merger which you opposed with the UP/SP
14 proposed merger unconditioned; in other words, if
15 you didn't have the Burlington Northern/Santa Fe
16 trackage rights agreement?

17 A. First, there's no question in my mind
18 now or then that SF/SP would have choked off an
19 enormous amount of competition, in extensive
20 testimony I think that was clear and would accept
21 it. Second, without a condition there would be
22 some adverse effects in the UP/SP merger, there
23 would be adverse competitive effects at the
24 two-to-one locations and in certain corridors
25 absent some corrective relief.

BEFORE THE
SURFACE TRANSPORTATION BOARD

1
2
3
4 Union Pacific Corp., Union *
5 RR. Co. And Missouri Pacific *
6 RR Co.-- Control and Merger -- *
7 Southern Pacific Rail corp., * Finance Docket No. 32760
8 Southern Pacific Trans. Co., * HIGHLY CONFIDENTIAL
9 St. Louis Southwestern RW. Co., *
10 SPCSL Corp. And The Denver and *
11 The Denver and Rio Grande *
12 Western Corp. *

13
14 ORAL DEPOSITION OF
15 ROLLIN BREDEMBERG
16

17 On the 8th day of March, 1996, at 9:00 a.m., the
18 oral deposition of the above-named witness was taken at the
19 instance of the Kansas City Southern Railway before Susan S.
20 Klinger, Certified Shorthand Reporter in and for the State
21 of Texas, at the Hyatt Hotel, Dallas Fort Worth
22 International Airport in the City of Dallas, County of
23 Dallas, State of Texas, pursuant to notice and the agreement
24 as stated in the record herein.
25

1 A. Right.

2 Q. And then wouldn't you have to connect in Corpus
3 Christi with Mr. Allen's client, Tex Mex?

4 A. That is correct.

5 Q. Is the Burlington Northern Santa Fe doing
6 anything that you are aware of to increase its share of
7 traffic to Mexico?

8 A. Yes.

9 Q. What is it doing?

10 A. It is aggressively increasing its traffic over
11 Eagle Pass.

12 Q. Anything else?

13 A. At this point in time that is all that is
14 available to it. And we, in addition to that use the El
15 Paso gateway to get to shippers on the, a line of the
16 Mexican railway principally Torleon. But also south of
17 Torleon we also run container traffic over El Paso from the
18 port of Long Beach to Mexico City. We are through the Eagle
19 Pass gateway now giving chemical shippers, metals shippers
20 and especially ag commodities, customers proposals that
21 utilize our haulage rates to Eagle Pass.

22 Q. In terms of the connection with Tex Mex in
23 Robstown, are you aware of the, are you aware of the rate
24 increases that Burlington Northern imposed during the last
25 year?

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1 I also hope to say as I've said before that Mr. Skinner had
2 no desire and no intention that the report of his
3 conversation with you be made public. It was, his report
4 was prepared for internally TMM consumption, but it has been
5 made public so that is what we're here to discuss. I
6 believe you indicated that Mr. Krebs told you that you would
7 be the point man for BN Santa Fe?

8 A. I don't think that that, point man was not his
9 terminology. It might have been mine, but it wasn't his.
10 I simply asked him who the point man was going to be. And
11 I did not expect the answer to be me, but that is the way
12 it turned out.

13 Q. And was that the point man for --

14 A. For dealing with Mexican issues.

15 Q. For dealing with Mexican issues and U.S. Mexican
16 traffic?

17 A. Right, primarily the operational issues.

18 Q. And is that still the case as far as you are
19 aware?

20 A. Well, up to the time of this deposition it has
21 been.

22 Q. You mean as of right now?

23 A. As of right now.

24 Q. Does this mean unless things change, that you
25 will be involved in any bid that BN Santa Fe makes on the

1 Mexican lines?

2 A. Yes.

3 Q. And did I correctly understand that at least as
4 of now you don't know whether or not BN Santa Fe will make
5 a bid for the Mexican lines?

6 A. That is correct.

7 Q. Do you know when the bid will be due?

8 A. I do not. I have not seen the material that has
9 been sent to Doug Bab who is chief of staff and I guess
10 clarifying that I will --

11 MR. WEICHER: Let him ask a question.

12 THE WITNESS: I will be involved in it,
13 but I will not be principal decision maker in all of that.

14 BY MR. ALLEN:

15 Q. In the meeting that you had in January in
16 Mexico, this January of '96 with Dr. Sacrostan and other
17 Mexican officials I gather who was there for the BN Santa Fe
18 besides yourself and Mr. Krebs if anybody?

19 A. Yes, Doug Bab and Greg Swenton.

20 Q. That is it?

21 A. And their representative in Mexico, Arthur
22 Lukelo.

23 MR. ENGLERT: I hate to do this, but Dr.
24 Sacrostan wasn't there I believe you testified.

25 BY MR. ALLEN:

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 32760
4 UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
5 COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
6 -- CONTROL MERGER --

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

11 HIGHLY CONFIDENTIAL

12 Washington, D.C.

13 Monday, March 4, 1996

14 Continued deposition of CARL R. ICE, a
15 witness herein, called for examination by counsel
16 for the Parties in the above-entitled matter,
17 pursuant to agreement, the witness being
18 previously duly sworn, taken at the offices of
19 Mayer, Brown & Platt, 2000 Pennsylvania Avenue,
20 N.W., Washington, D.C., 20006-1882, at 9:35 a.m.,
21 Monday, March 4, 1996, and the proceedings being
22 taken down by Stenotype by JAN A. WILLIAMS, RPR,
23 and transcribed under her direction.

1 got the routing which we wanted to have.

2 MS. JONES: Can we go off the record
3 for just a second.

4 (Discussion off the record.)

5 BY MR. FINIZIO:

6 Q. What rights were you seeking on that
7 route that you did not receive?

8 A. Can I look at the agreement for just a
9 second.

10 Q. Sure.

11 A. We asked for the right between Houston
12 and Brownsville to have an agent perform services
13 on our behalf.

14 Q. Who is that agent?

15 A. We didn't identify an agent. We wanted
16 the right to declare an agent and have an agent
17 operate on our behalf.

18 Q. Did you discuss any possible agents
19 internally at BN/Santa Fe?

20 A. Any possible agents?

21 Q. Yeah.

22 MR. WEICHER: Other than relating to
23 the litigation strategy, if there was any in this
24 area, you may respond.

25 THE WITNESS: I can't respond to

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1 determination on who our agent should be. One of
2 the parties we identified as a possible agent was
3 the Tex-Mex.

4 BY MR. FINIZIO:

5 Q. Were there other parties?

6 A. I don't recall any other specific
7 parties we mentioned, but there were a number of
8 shortline operators that often perform those
9 sorts of services.

10 Q. You identified three broad areas a few
11 minutes ago in response to my question as to what
12 rights you did not receive. The second one was
13 the routes where there was a potential
14 competitive impact that you identified but you
15 were not interested in pursuing. Can you
16 identify those circumstances for me?

17 A. I don't believe I said routes in that
18 case, I think I said -- I think I said rights in
19 that case.

20 Q. That's probably right.

21 A. There's one I can mention without any
22 problem with the instructions I've received, and
23 that's a utility that's at Labadie, Missouri,
24 that is presently served by the UP and the SP.
25 We decided that we were not interested in

1 Q. When did that agreement become a
2 package?

3 MR. WEICHER: I'm going to object to
4 the extent you're asking for the give-and-take of
5 negotiations or internal litigation strategy of
6 the company and direct the witness not to answer.

7 BY MR. McGEORGE:

8 Q. I'll go more directly to the topic that
9 came up in the discovery conference. When did
10 trackage rights between Houston and Brownsville
11 first become part of a larger package?

12 MR. WEICHER: I'm going to object.
13 But, in light of Judge Nelson's ruling who I
14 understand overruled such objection, we will
15 permit the witness to answer.

16 THE WITNESS: At the first meeting.

17 BY MR. McGEORGE:

18 Q. At the first meeting. Okay. And how
19 did you find out that it was part of a package?

20 A. At the first meeting, the Union Pacific
21 indicated the locations that -- and routes that
22 at that point they were willing to consider in a
23 settlement agreement. And they asked me which
24 ones of those that I would be interested in as
25 part of the settlement agreement.

1 contractor to serve the Houston-Brownsville
2 trackage rights?

3 A. No. It wasn't that detailed of a
4 discussion at that point. It only related to the
5 routings they wanted to know we were interested
6 in.

7 Q. At this point did you indicate that you
8 wanted to have the option of using a contractor
9 to provide service over the Houston-Brownsville
10 route?

11 A. Yes. We said we wanted to use an
12 agent. I'm not sure if agent and contractor are
13 the same to you.

14 Q. I'm not sure. I'll use your term.

15 A. Okay.

16 Q. Do you know which at which of these
17 meetings you expressed that view?

18 A. Not specifically, no.

19 Q. It was not the first meeting; is that
20 correct?

21 A. It was not the first meeting.

22 Q. And what was their response?

23 A. They were very concerned about that
24 request. Their view was it caused -- it put them
25 potentially at a competitive disadvantage, that

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 32760
4 UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
5 COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
6 -- CONTROL MERGER --
7 SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
8 PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
9 SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
10 DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
11 HIGHLY CONFIDENTIAL

12 Washington, D.C.

13 Thursday, May 9, 1996

14 Deposition of ROBERT D. KREBS, a
15 witness herein, called for examination by counsel
16 for the Parties in the above-entitled matter,
17 pursuant to agreement, the witness being duly
18 sworn by JAN A. WILLIAMS, a Notary Public in and
19 for the District of Columbia, taken at the
20 offices of Mayer, Brown & Platt, 2000
21 Pennsylvania Avenue, N.W., Washington, D.C.,
22 20006-1882, at 11:05 a.m., Thursday, May 9, 1996,
23 and the proceedings being taken down by Stenotype
24 by JAN A. WILLIAMS, RPR, and transcribed under
25 her direction.

1 APPEARANCES:

2
3 On behalf of The Kansas City Southern
4 Railway Company:

5 ALAN E. LUBEL, ESQ.

6 Troutman Sanders

7 NationsBank Plaza, Suite 5200

8 600 Peachtree Street, N.E.

9 Atlanta, Georgia 30308-2216

10 (404) 885-3174

11 and

12 JOHN R. MOLM, ESQ.

13 Troutman Sanders

14 601 Pennsylvania Avenue, N.W.

15 Suite 640 North Building

16 Washington, D.C. 20004

17 (202) 274-2950

18 and

19 VIRGINIA R. METALLO, ESQ.

20 Collier, Shannon, Rill & Scott

21 3050 K Street, N.W.

22 Washington, D.C. 20007

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24
25