130
62340

Item No. _____

Page Count 30

Mar #837

MAHER
AT LAW
RTH STREET
X 351
EVADA 89446
FAX: (702) 623-2468

VIA FEDERAL EXPRESS

March 28, 1996

Vernon A. Williams, Secretary
Case Control Branch; Attn: Finance Docket 32760
Surface Transportation Board
United States Department of Transportation
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Re: Finance Docket 32760

Dear Mr. Secretary:

Transmitted herewith for filing and the attention of the Commission are an original and twenty (20) copies of the Verified Statement of D. Stephen West filed on behalf of the City of Winnemucca, a Nevada municipal corporation, and the County of Humboldt, a political subdivision of the State of Nevada. Also enclosed is a 3½" diskette with the Verified Statement in WP51 format. A Certificate of Service is attached.

Please confirm your receipt and acceptance of this filing by returning the attached copy of this letter and the Certificate of Service, endorsed with your "Filed" stamp in the enclosed postage prepaid, self-addressed envelope.

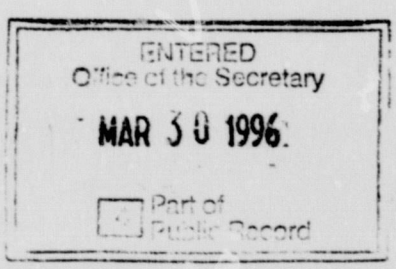
If you have any questions or comments concerning this filing, please contact me at the address or telephone number set forth above. Thank you.

Sincerely,

O. Kent Maher
Winnemucca City Attorney

OKM:rap
Encs.

xc: City
County



O. KENT MAHER
ATTORNEY AT LAW
33 WEST FOURTH STREET
P. O. BOX 351
WINNEMUCCA, NEVADA 89446

TEL: (702) 623-5277 FAX: (702) 623-2468

VIA FEDERAL EXPRESS

March 28, 1996

Vernon A. Williams, Secretary
Case Control Branch; Attn: Finance Docket 32760
Surface Transportation Board
United States Department of Transportation
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Re: Finance Docket 32760

Dear Mr. Secretary:

Transmitted herewith for filing and the attention of the Commission are an original and twenty (20) copies of the Verified Statement of D. Stephen West filed on behalf of the City of Winnemucca, a Nevada municipal corporation, and the County of Humboldt, a political subdivision of the State of Nevada. Also enclosed is a 3½" diskette with the Verified Statement in WP51 format. A Certificate of Service is attached.

Please confirm your receipt and acceptance of this filing by returning the attached copy of this letter and the Certificate of Service, endorsed with your "Filed" stamp in the enclosed postage prepaid, self-addressed envelope.

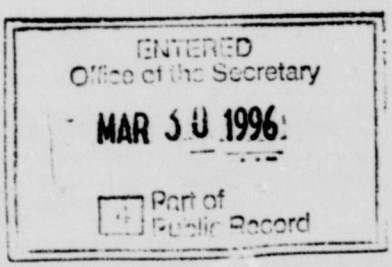
If you have any questions or comments concerning this filing, please contact me at the address or telephone number set forth above. Thank you.

Sincerely,

O. Kent Maher
Winnemucca City Attorney

OKM:rap
Encs.

xc: City
County



BEFORE THE

SURFACE TRANSPORTATION BOARD

UNITED STATES DEPARTMENT OF TRANSPORTATION

In the matter of the Application of Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company	Finance Docket No. 32760

VERIFIED STATEMENT OF D. STEPHEN WEST

FOR

THE CITY OF WINNEMUCCA

AND

THE COUNTY OF HUMBOLDT

R. Michael McCormick, Esq.
Humboldt County District Attorney
County of Humboldt
50 West Fifth Street
P.O. Box 909
Winnemucca, Nevada 89446
Tel. (702) 623-6363
Fax. (702) 623-6365

Attorney for County of Humboldt

O. Kent Maher, Esq.
City Attorney
City of Winnemucca
33 West Fourth Street
P.O. Box 351
Winnemucca, Nevada 89446
Tel. (702) 623-5277
Fax. (702) 623-2468

Attorney for City of Winnemucca

VERIFIED STATEMENT

OF

D. STEPHEN WEST

1.0 INTRODUCTION/QUALIFICATIONS

My name is D. Stephen West. I am the City Manager/City Engineer ("Manager") for the City of Winnemucca, Nevada ("City"). I am responsible for the day to day management of the affairs of the City, including streets, traffic and certain emergency services. As Manager, I have been authorized to submit this Verified Statement setting forth the position of the City of Winnemucca and the County of Humboldt (collectively referred to herein sometimes as "Winnemucca") relating to the proposed Union Pacific/ Southern Pacific ("UP/SP") merger.

I have a Bachelors Degree in Civil Engineering. After graduation I was employed from 1977 to 1982 with a private consulting engineering firm. In 1982 I accepted employment with Winnemucca as the City Engineer, a position I held until 1986 when I assumed additional responsibility as City Manager. I have been the City Manager/City Engineer for Winnemucca since 1986.

2.0 AREA PROFILE

Humboldt County ("County") is situated in north central Nevada encompassing an area of approximately 9625 square miles. The City of Winnemucca, the only incorporated city in the County, is located in the southeasterly portion of the County occupying an approximate 5.45 square mile area. Situated on the Humboldt River, the City is approximately 165 miles east of Reno, 265 miles southwest of Boise, Idaho, and 360 miles west of Salt Lake City, Utah. The City is bisected in a northeast to southwest direction by Interstate 80 freeway ("I80"), by Union Pacific Railroad ("UP") and by Southern Pacific Railroad ("SP"). A portion of the City is bisected in a north/south direction by U.S. Highway 95. Appendix A contains a map illustrating the transportation routes.

The County has an approximate population of 16,000, with an estimated 7,500 residents living within the City limits. The population for Winnemucca has increased 7.8% in the last year, 25% in the last five (5) years, and 40% in the last decade.

Historically, the principal economy has been agriculture and mining. Mining, agribusiness, recreation and tourism are the principal economic influences today.

The UP/SP merger application characterizes Winnemucca as a town where there are two grade crossings. There appear to be residences to both sides of the line, with a large residential

area to the south of the tracks at the south end of town.[1] This description of Winnemucca is neither accurate nor complete. The City is a growing regional business and transportation center that supports expanding mining and agribusiness activities throughout northern Nevada. Commercial, industrial and residential development have been expanding accordingly.

The UP route skirts the northern edge of the City, while the SP line bisects the central core of Winnemucca. Local roads cross the UP twice at grade and the SP three times. The busiest grade crossing is Bridge Street, situated on the SP line in the heart of the City. Located within two to three blocks of this crossing are the City Fire Station, the Rural Fire Station, and the Police Station. The Elementary School, Hospital, City Park, Recreation Center, and Swimming Pool are between one and two blocks from the main line tracks. Immediately adjacent to the main line tracks are the Junior High School, the Little League Baseball Complex, and Haskell Street, which is a primary collector street.

The Municipal Airport, the BLM Fire Unit (based at the airport), and the Care-Flights, which transport hospital patients to and from Reno, are accessed using the Airport Road grade crossing. Public safety vehicles are already delayed in responding to a large portion of the County when waiting for trains at the crossing or when forced to use another more distant crossing.

3.0 FACT FINDING REPORT

Winnemucca retained the services of Nolte and Associates ("Nolte") and Kleinfelder to perform a study on the proposed UP/SP merger and determine the effects of the proposed merger on the County and City. The study involved City and County staff, railroad personnel, engineering professionals, legal experts and in-house railroad specialists. Information on transportation issues relating to the railroad through Winnemucca was obtained. Additionally, historical data and the UP/SP merger application were examined and used to develop estimates on the rail traffic changes. The objective of the study was to determine the pertinent facts surrounding the effects of the merger on the City and to assist the City and County in establishing a position on the merger.

During the time the study was being conducted, the UP/SP group held a town meeting in Winnemucca to discuss the proposed merger with City and County officials and the general public. At the meeting, several concerns and proposals relating to the UP/SP merger were discussed. Two of the proposals received consideration by UP/SP personnel and are discussed later in this statement.

4.0 WINNEMUCCA TRANSPORTATION PROFILE

4.01 Railroad Operations in General

Railroad operations through northern Nevada and Winnemucca utilize two main line routes. The first is the UP's line from Sacramento through Winnemucca via the Feather River

canyon. The second is the SP route from Roseville through Winnemucca via the Donner pass. The UP and SP lines converge at the Weso station, 3 miles east of the City. East of Weso, SP and UP share double track main lines for about 182 miles to the Alazon station.

The SP route is at least 136 miles[2] shorter than the UP route between Oakland and Salt Lake City, saving an estimated two crews per train between those points. The UP line consists of single track (except Weso to Alazon) with maximum 1% grade over the Sierras, while the SP line is predominantly double track with maximum 2.6% grade over Donner Summit. The section of SP track through Winnemucca is single track with a siding for meeting and passing trains. The gradients of both the SP track and the UP track through Winnemucca are less than 0.6% grade and slope away from downtown to the west. The UP route is cleared for maximum-height double-stacked containers, the SP route is not.[1] Appendix A contains route maps and track charts illustrating these lines.

4.02 Current SP Winnemucca Operations

Winnemucca is located on the Nevada District Control Region of the SP at Mile Post (MP) 417.3.[3] Two tracks pass through downtown Winnemucca, identified as the mainline and the siding. Centralized Traffic Control (CTC) governs train movements from MP 406.8 (Rose Creek) to MP 420.9 (Weso). Established train operating rules mandate maximum train speeds of 40 mph for both passenger and freight as they pass between MP 417.4 and MP 417.9.

Presently, Amtrak operates 4 trains east and 4 trains west through Winnemucca each week. These trains are generally about 1,200 to 1,500 feet long including locomotives. Winnemucca is a regular station stop for intercity passenger trains.

Approximately 13 freight trains[2] presently operate on SP tracks through Winnemucca each day. SP train density records from 1994 validate this number. These trains consist of expedited automobile, intermodal, manifest (box car), unit grain, and coal trains operating 24 hours per day, seven days per week. Train lengths vary depending on train type, tonnage, and commodity. Auto and intermodal trains are generally 5,000 to 6,000 feet long and generally operate at faster speeds than the heavier, longer manifest and unit trains. The manifest trains can range from 5,000 to 8,000 feet long and are much heavier. Unit grain and coal trains usually operate with 65 to 75 cars and weigh approximately 7,500 to 10,000 tons at lengths ranging from 5,000 to over 6,000 feet.

An actual 24-hour lineup of trains through Winnemucca on February 8, 1996, showed 16 trains including one local engine that performs industry work. The same lineup on January 22, 1996, showed a total of 14 trains. These trains included all categories of passenger and freight

---

[1] The merger application indicates the costs of increasing overhead clearances on SP=s route to be $18 million. A similar program was completed on UP=s route around 1990.

[2] This number was generated from an analysis of SP train density records showing train traffic on the division during two representative days in 1994.

operating through Winnemucca.

4.03 Current UP Winnemucca Operations

East of Winnemucca, Union Pacific operates jointly with Southern Pacific from Alazon, Nevada to Winnemucca. Adjusted 1994 records indicate that UP operates 18 freight trains per day over the 182 miles between Alazon and Winnemucca. Between Winnemucca and Flanigan, California, a distance of 152 miles, the records indicate 16 freight trains per day. Recent records show 55 mph trains speeds from MP 530.7 to MP 536.0[4]. The UP/SP connection is at Weso, Nevada at UP MP 536.0.

4.04 Railroad Property Issues

There are two issues: (i) ownership of the railroad right-of-way; and, (ii) ownership of the right to cross the railroad over a City street.

The first issue concerns both the size and type of title of the existing right-of-way through Winnemucca. Since the ownership of much of the right-of-way results from the Congressional Land Grant, SP and UP may still have some control over the property occupied by others, even after the merger.

Two methods of disposal of land grant property are most common. The first is an Act of Congress granting title to a purchase. The second is a long term lease giving the railroad the right to cancel the lease if the property is needed for railroad operating purposes. Southern Pacific has also used other means of conveying title. A thorough analysis of the present status of title to the property composing the original land grant is needed, as there is indication that SP may have conveyed property to other owners at several points in this rail corridor.

The second issue, that is who owns the property needed to cross the City streets over the railroad, depends on whether the street was in use by the public before the railroad was built. If the railroad came first, they own the property under the street and will usually grant the City an easement to cross the tracks. If the street existed before the railroad was built, the City owns the property under railroad and will generally grant the railroad a franchise to cross the street.

Whether the railroad or the City owns the property has a direct bearing on how the costs of improving grade crossings are allocated according to Nevada Public Service Commission (PSC) and federal rules. The agreement contained in a deed of easement or the franchise usually controls.

4.05 Other Railroad Corridor Facilities

An MCI fiber optic cable is the principle "information superhighway" between Sacramento and Salt Lake City. This facility is buried at various depths and locations adjacent to the SP tracks.

4.06 Railroad Crossings in Winnemucca

Winnemucca streets and roads cross both UP and SP at grade. Grade crossings of UP are located at Rinehart Dam Road and at Weso. Herschell Road, Airport Road and Bridge Street (through downtown Winnemucca) cross the SP at grade. Downtown grade-separated crossings include Highway 95 (UP), Highway 40 (SP), and Hanson Street (SP). Appendix A contains a map showing these crossings.

4.07 Vehicular Traffic Levels

Traffic counts show significant use of Bridge Street and light to moderate use of Airport Road. Daily counts from 1994 show 4,200 vehicles crossed at Bridge Street and 795 vehicles used Airport Road. More recent data for Bridge Street indicates 4,300 vehicles now cross daily. The daily traffic count at Herschell Road is 50. At Weso, 190 vehicles per day cross the UP tracks at grade, and 120 vehicles per day cross at Rinehart Dam Road.

The data indicates the Southern Pacific tracks are crossed approximately 1.9 million times a year while the Union Pacific tracks are crossed about 113,000 times per year. The 1994 figures are somewhat lower than current figures as Winnemucca has continued to grow over the past few years.

4.08 Pedestrian Traffic Levels

Quantitative information on pedestrian movements across the tracks and trains blocking pedestrian access were not available at the time of the study. City emergency response and law enforcement professionals expressed concern over uncontrolled pedestrian movements across the SP tracks. They were most concerned about the substantial foot traffic moving over the tracks between the elementary and junior high schools and the municipal park and ball fields.

4.09 Accident History

Twelve accidents occurred at grade crossings in Winnemucca from 1970 through 1995. Of the 12 accidents, three were at UP crossings while nine were at SP crossings. Seven of the nine SP accidents occurred at the Bridge Street crossing. At Bridge Street there were two fatal accidents, one injury accident, and six collisions causing damage of property. Bridge Street is a public grade crossing with an active crossing warning system consisting of automatic gates and flashing lights. There were two injury accidents at UP's Rinehart Road crossing, one of which was fatal. One accident causing property damage occurred at Weso. Two accidents occurred on SP's grade crossing at Herschell Road, one of which was fatal.

4.10 Emergency Access

The records show that the majority of calls to Winnemucca fire departments require them to respond by crossing the SP railroad tracks at Bridge Street. A significant number of responses by the other emergency agencies use Bridge Street and Airport Road. Emergency services that normally use the Bridge Street crossing can divert to grade separated crossings at either Highway 40 or Hanson Street. However, this diversion adds several minutes to a response call. The additional few minutes can mean life or death in an emergency situation. A more thorough analysis should be performed to determine the exact effect of crossing blockages on emergency response times.

Emergency service agencies in the City frequently use the grade crossings. The Winnemucca Police Department, Humboldt County Sheriff's office, City Fire Department, County Fire Department, and Ambulance have all furnished estimates of the number times they are required to cross the tracks in response to emergencies.

The City Police Department estimates that officers cross the railroad tracks at Bridge Street under emergency conditions three times a day. The County Sheriff's office estimates they cross railroad tracks in the County approximately once every three days responding to calls requiring immediate attention. The City Fire Department has records of 30 and 28 calls requiring them to cross the tracks at Bridge Street in 1994 and 1995 respectively. The County Fire Department has records of 28 calls requiring them to cross at Bridge Street, 2 crossings of Herschell Road, 1 crossing of Rinehart Road, and 4 crossings of Airport Road. There were between 400 and 500 calls last year requiring the ambulance to cross railroad tracks in Winnemucca, a significant increase over the prior year.

4.11 Air Quality

Winnemucca and Humboldt County lie in Air Quality Control Region (AQCR) 147. AQCR 147 is designated as being in attainment of federal air quality standards for all criteria pollutants except sulfur dioxide and particulate matter (PM).[5]

5.0 IMPACTS OF MERGER

5.01 Proposed Merged UP/SP Operations

The merged railroads' operating plan (Plan) included in the merger application shows one passenger and 28 freight trains per day will operate over both UP and SP lines through Winnemucca.[6] Of these 22 freight and 1 passenger trains will move over the SP route through the downtown area, according to the Plan. Six freight trains will continue to move via the UP route. These numbers do not include the anticipated 6 daily Burlington Northern Santa Fe

(BNSF) trains[3] or local UP or SP operations. The Plan calls for an increase in train tonnage and movements on the SP line through Winnemucca from the present level of 22 million to 35 million gross tons per year, an increase of 58%. The increase comes from diversion of trains off the UP route resulting in a decrease in gross tons per year on the UP of 62%. No provision is included for post-merger rail traffic growth or for the BNSF trains.

It is estimated that actual post-merger traffic will be 34 through-freight, 2 passenger (on average), and 2 local trains per day on the SP route through Winnemucca **resulting in 38 trains per day**.[4] Historical trends factored into this estimate take into account the 22 trains per day moving on the SP route through Winnemucca in 1980,[5] the former Western Pacific Railroad (WP) operation of 6 trains per day, anticipated BNSF traffic of 6 trains per day,[6] expected and historic passenger train activity at 2 trains per day on average, and 2 movements of the local switch engine through town. This projection also takes into account the anticipated growth in rail traffic resulting from Port of Oakland expansion plans that envision 6% average annual growth in rail demand. With UP's enhanced competitive position over the central corridor brought on by this merger, intermodal traffic through Winnemucca should grow at a rate at least equivalent to this rate.[7]

Southern Pacific historically operated over Donner Summit with trains that ranged up to 8,000 feet in length and 10,000 tons. Trains of 7,000 feet (8,000 tons) or greater generally required helper locomotives to negotiate the 2.6% grade and heavy curvature. SP trains historically averaged around 6,000 feet in length.[8] Union Pacific operating personnel have indicated they will probably operate most trains on this route without helper locomotives, indicating that most trains will not exceed 7,000 feet. The Nolte study team believed average post-merger train lengths will be around 6,500 feet with a few in the 7,000 to 8,000 foot range using helper locomotives. UP could, however, choose to operate standard-length 8,000 foot trains should business and locomotive availability favor the use of helper locomotives on this route segment.

Hazardous materials are most generally handled in manifest trains under strict positioning rules and regulations. Cars must be placarded identifying the commodity or chemical being moved. According to statistics from the American Association of Railroads (AAR) movement of these chemicals by rail is considerably safer than movement over the highway. It is possible

---

[3] Verified statement of Mr. Neal D. Owen in BN/Santa Fe=s Comments on the Primary Application, Dec. 29, 1996.

[4] Based on the knowledge of Nolte railroad operations specialists and historical trends in northern Nevada.

[5] A time of peak traffic on the SP route as evidenced by the 1980 Reno trainway bond issue vote.

[6] Verified statement of Mr. Neal D. Owen in BN/Santa Fe's Comments on the Primary Application, Dec. 29, 1996, representing a possible diversion from their southern Calif. to Chicago route. This study assumes all 6 BNSF trains will use the Donner Pass route due to its reduced operating costs. Diversion to the Feather River route would reduce this number; however, increases due to additional business could offset these reductions.

[7] Western Region Automotive Intermodal Terminal Rationalization, Revised 9/21/95, Page 13, indicates that 50,000 additional containers will be handled through the Oakland railroad intermodal yards per year, post merger, due to truck-to-rail traffic diversions.

[8] According to a former SP Sacramento Division operating superintendent.

that a modest increase of this traffic will occur through Winnemucca as a result of this merger. The heavier and slower manifest trains most likely to carry these commodities will probably be routed through the Feather River (UP) line to avoid delaying the expedited intermodal and auto trains using the Donner route. Similarly, unit coal, grain, and ore trains (80 to 90 cars, 12,000 tons, 5,000 feet) will also probably operate via the Feather River (UP) route.

5.02 Traffic Effects

As part of the Nolte study, the team calculated the average time crossing gates would be down at Bridge Street. It was determined that a 6,000 foot train traveling at 40 mph would result in gates down for 2.3 minutes; a 6,500 foot train would hold gates down for 2.4 minutes; a 7,000 foot train would hold gates down for 2.5 minutes; an 8,000 foot train would hold gates down for 2.8 minutes; and a 1,500 passenger or local freight train would keep gates down for 1 minute. The Nolte study estimated that current gate down time based on 13 trains per day (11 freight, 1 passenger, and 2 local switching movements) would be 2 hours per day. Post-merger gate down time, using these same calculations applied to anticipated train traffic levels, would be 1.43 hours per day or 278% of present levels.

The crossing blockage estimate does not account for a situation where two trains simultaneously converge on the downtown area. In such case the crossing gates would stay down for up to 5.5 minutes. It also does not account for a train entering or leaving the siding. For instance, a 7,000 foot train traveling at 10 MPH into or out of the siding would block Bridge Street for at least 8.5 minutes. If this train was entering or leaving the siding immediately before or after the passage of a main line train, the crossing could be blocked for 11 minutes or more.

5.03 Environmental Assessment Thresholds

The ICC requires an environmental analysis when increases in rail traffic exceed the thresholds established in 49 CFR 1105.79(e)(5)(i) and (ii). These thresholds include air quality for line segments with increases of 8 trains per day in attainment areas and 3 trains per day in non-attainment areas. They also include noise for line segments with increases of 15 trains per day or 100% of annual gross ton miles. The SP route through Winnemucca exceeds these thresholds. The merger application therefore includes an air quality and noise analysis for the increased rail traffic through Winnemucca.

5.04 Air Quality

The merger application indicates an increase in air pollutants from locomotives working between Winnemucca and Sparks that is proportional to the anticipated increase in train traffic.[7] These additional pollutants include 44.14 tons per year of HC (Hydrocarbons), 137.24 tons per year of CO (Carbon Monoxide), 22.27 tons per year of PM (Particulate Matter), 1027.26 tons per year of NO_x (Nitrogen Oxides), and 74.44 tons per year of SO_2 (Sulfur Dioxide). The Air Quality Control Region (AQCR) 147, which includes Winnemucca, is in a non-attainment (NA) status for PM and SO_2. However, if these pollution numbers are adjusted for the correct number

of anticipated trains, they would need to be increased by approximately 121%. These figures do not include added air pollutants from idling vehicles trapped in queues behind the crossing gates which may triple over current levels.

Kleinfelder estimated vehicular air emissions resulting from an increase in the number of trains traveling through Reno, Nevada. Emissions of volatile organic compounds (VOC), carbon monoxide (CO), oxides of nitrogen (NO_X), and particulate matter with aerodynamic diameter less than 10 microns (PM_{10}) occur when vehicles decelerate to a train crossing, idle, and then accelerate from the train crossing. The number of train trips through the Reno area is expected to closely match Winnemucca.

The results of emissions calculations for Reno for VOC, CO, NO_X, and PM_{10} were 85.4 tons/year, 1112 tons/year, 24.8 tons/year, and 0.55 tons/year, respectively.* Vehicular emissions due to increased train traffic in Winnemucca would surely be significantly less than these figures. However, the merger application should be revised to account for this added source of air pollution in downtown Winnemucca and throughout Humboldt County, especially in light of AQCR 147's non-attainment status on PM.

5.05 Noise

The merger application indicates a substantial increase in railroad-generated noise in Winnemucca due to the UP/SP merger. The number of sensitive receptors (i.e. schools, churches, and residences) in town receiving over 65 decibels (dBA) of railroad noise, plus sensitive receptors with increases of more than 3 dBA over current levels, increased as a result of the merger. The number of sensitive receptors go from 44 (43 residences and 1 church) to 123 (120 residences, 1 school, and 2 churches) according to the application.[8]

The merger application, however, may be based on buildings shown on a 7.5 minute USGS map which is not current. The result of using this map would be to substantially understate the number of sensitive receptors affected by the merged train traffic levels. For instance, it appears that 2 schools and many more residences were not included in the noise influence zone that was used in the railroad application. The application should be revised to reflect current land uses and development in downtown Winnemucca.

5.06 Emergency Services-Public Safety

Emergency service in the City of Winnemucca will be impacted to a great extent by the proposed merger of Union Pacific and Southern Pacific Railroads. This community has developed around the railroad; however, the significant increase in utilization of the SP corridor by the post-merger Union Pacific operation and the additional traffic from the BNSF will increase the danger and adverse impact of the rail operation in the downtown area. Local safety and law enforcement professionals are very concerned about hazards the trains will present to the numerous children who will cross the tracks each day. They also indicate a substantial detrimental effect on emergency response times (police, sheriff, fire, and ambulance) due to

Bridge Street blockages and subsequent rerouting to other crossings. None of these effects were discussed in the merger application.

5.07 Economic Effects of Merger on the Railroad

The combined UP/SP route between Oakland and Chicago will be shorter than the UP or the SP route. Mileage reductions will come from combining parts of the UP and SP routes to create a new route that is much shorter than either railroad's present system. Oakland to Chicago, via the combined route, will show a reduction of 388 miles from SP's present route and 189 miles from UP's line.[9]

This merger will generate significant net savings to UP. Overall benefit to the merged system will be approximately $750 million annually.[9]

6.0 CONCLUSION AND DISCUSSION

6.01 Problem Statement

The City and County, through the Nolte study, attempted to more sharply focus the challenges caused by the merger into a concise problem statement. It was determined that along with the problems brought on by a significant increase in train traffic through Winnemucca there is an opportunity to solve a long-standing problem, now brought into the spotlight. This problem statement has evolved into the following:

> ***Increased train traffic through downtown Winnemucca as a result of the UP/SP merger will increase grade crossing blockages, noise, and air pollution beyond acceptable limits, but also creates the opportunity to reshape the railroad transportation infrastructure of Winnemucca to realize significant railroad operations, land use, and economic benefits.***

6.02 Potential Solutions

Vehicle/train interference at Bridge Street can be mitigated in two ways as follows:

1. A grade separation at Bridge Street
2. Rerouting main line railroad traffic to the UP line with a new connection to the SP near Rose Creek (including a new bridge across the Humboldt River)

A new grade separation at Bridge Street at a location near the present center of town appears feasible. It would be extremely disruptive to emergency services and general downtown

---

[9] Ibid., Page 93.

commerce during construction. It would alleviate vehicular and a portion of the pedestrian interference problems. However, it would not solve conflicts between school children crossing the tracks near the junior high school or the municipal park. The grade separation option also would not mitigate potential railroad spills or releases in the downtown area.

UP/SP personnel estimated the cost of the new grade crossing near Bridge Street to be approximately $4 million. UP/SP indicated a willingness to contribute 13 percent of the projected cost.

A proposed line change of the SP tracks to a point near the UP tracks east of Winnemucca and parallel to the UP tracks through Winnemucca to a point west of the Airport, probably west of the I80/SP crossing near Rose Creek, would eliminate the vast majority of the interference between train movements and vehicular/ pedestrian traffic in Winnemucca and allow rail traffic throughout the City to use the UP line which has no at grade crossing inside the City. It would also relocate a potential spill or release to a less populated area of town. The existing SP main line and siding would be eliminated through Winnemucca with the exception of rail service to local industries at the east end of the City by removal of that part not required through the City and west of town. The only railroad operations crossing Bridge Street would be a local switching movement probably no more than once a day (possibly at night).

The UP/SP indicated that the estimated cost for such proposal would be approximately $25.5 million.

The costs, even with the limited UP/SP offer to participate, for either of the two (2) proposals considered by the UP/SP personnel are prohibitive to the City and County.

The City and County are opposed to proposed UP/SP merger to the extent that there will be significant adverse effects on the area residents and their quality of life. If the UP/SP addresses the health, safety and environmental concerns of the City and County in a meaningful manner and presents proposals that will mitigate such concerns to the satisfaction of the City and County, then there will be no opposition to the proposed merger by the City and County.

Respectfully submitted,

HUMBOLDT COUNTY DISTRICT ATTORNEY

R. Michael McCormick, Esq.

WINNEMUCCA CITY ATTORNEY

O. Kent Maher, Esq.

VERIFICATION

STATE OF NEVADA.)
) SS.
COUNTY OF HUMBOLDT.)

D. STEPHEN WEST, being first duly sworn on oath, deposes and says under penalties of perjury:

He is the City Manager/City Engineer of the City of Winnemucca, State of Nevada; he has read the Verified Statement of D. STEPHEN WEST and knows the contents thereof; and, the Verified Statement is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

D. Stephen West

D. Stephen West

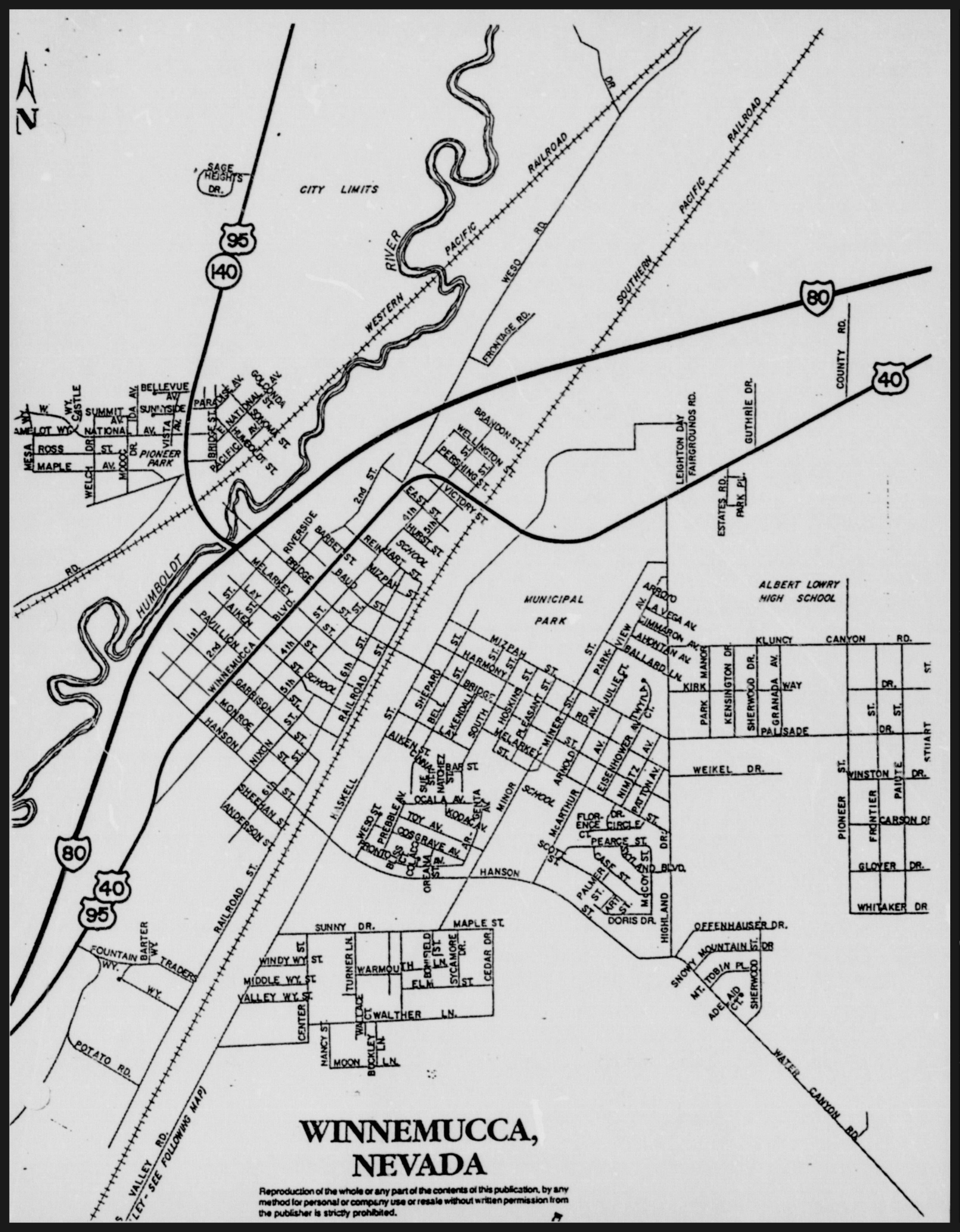
SIGNED AND SWORN to before me on March 28, 1996 by **D. STEPHEN WEST.**

CECILIA E. MOGUS
Notary Public - State of Nevada
Appointment Recorded in Humboldt County
No: 95-0458-9 - EXPIRES NOV. 11, 1999

Cecilia E. Mogus 11-11-99

Notary Public Commission expires

APPENDIX A - MAPS AND CHARTS



WINNEMUCCA, NEVADA

The HUMBOLDT

35 CENTS WEDNESDAY, NOV. 30, 1994 WINNEMUCCA, NEVADA VOLUME 23, ISSUE 93

Population outpaces growth projections

As of July 1, 1994, Humboldt County exceeded population growth projections by the state through the year 2000.

According to estimates from the Nevada Department of Taxation and State Demographer, Humboldt County has 15,640 people – an increase of 40 percent in the past decade.

The 7.8 percent population jump from last year is the largest recorded in the past eight years of steady growth in the county.

Population projections for Humboldt County, made last December by the State Demographer, were for diminishing growth and a total of 15,630 residents by the year 2000.

The 1994 population makes Humboldt the ninth most populous of Nevada's 17 counties, exceeded by Clark, Washoe, Carson City, Elko, Douglas, Lyon, Churchill and Nye.

For the City of Winnemucca, the 1994 population is estimated to be 7,170 people – an increase of 3.8 percent over the past year and growth of 43 percent in the past decade.

The city has the eighth highest population of Nevada's 18 incorporated cities, exceeded by Las Vegas, Reno, Henderson, North Las Vegas, Sparks, Elko and Fallon.

Statewide, Nevada has recorded a 6.7 percent growth rate in the past year for nearly 1.5 million residents. This compares with a 1984 population of 922,580 and over-the-decade growth of 40 percent.

Clark County has posted the most significant population gains in the past decade, with more people now in that county than were in the entire state 10 years ago.

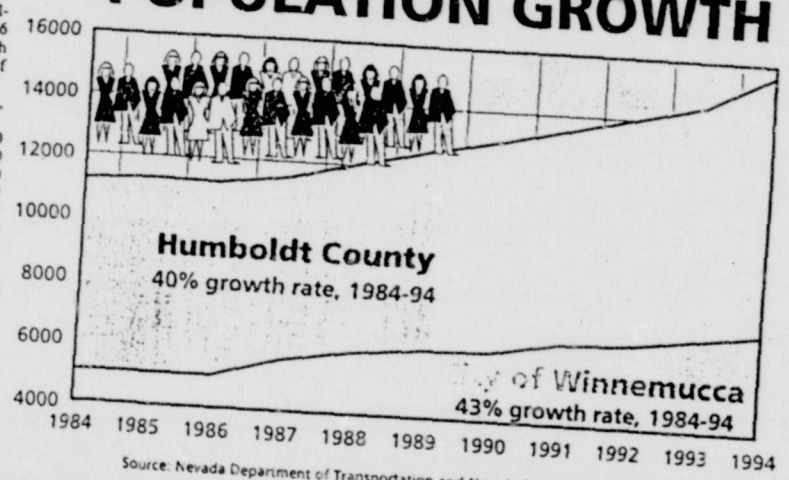
Population estimates are undertaken by the Department of Taxation annually and used to allocate state funds to cities and counties and for grant applications.

Two methods are used to develop estimates for counties: housing units and employment. The official county figure is an average of the two.

For Humboldt County, the State Demographer found 2,489 single-family homes; 316 single-family homes in attached housing units; 2,466 mobile homes; and 316 multi-family housing units. This was multiplied out to reach a total of 15,376 residents, which was averaged with the total workforce estimate of 15,912 people.

County populations as of July 1, 1994, are as follows:

State of Nevada	1,493,000
Clark	971,630
Washoe	282,610
Carson City	44,620
Elko	41,010
Douglas	34,620
Lyon	25,390
Churchill	20,570
Nye	19,560
Humboldt	**15,640**
White Pine	9,280
Mineral	6,420
Lander	6,410
Pershing	4,740
Lincoln	4,340
Storey	3,110
Eureka	1,550
Esmeralda	1,390



Source: Nevada Department of Transportation and Nevada State Demographer, UNR

Vandals wreak havoc on elementary school over holiday weekend

By Jackie Kaczmarek
Sun Associate Editor

A destructive spree over the weekend caused approximately $10,000 worth of damage to Grass Valley Elementary School.

According to Principal Margo [illegible] as vents and covers on the roof and the wires to the satellite and cable television systems.

"It was mostly a malicious damage," said Hendrix.

Extra crews were brought in Saturday to complete the process of cleaning up broken glass and [illegible]

POPULATION OF NEVADA'S COUNTIES AND INCORPORATED CITIES

POST APPEAL--BOULDER CITY CORRECTED, 11/4/94, NYE COUNTY CORRECTED, 1/24/95.

	JULY 1 1994	JULY 1 1993	JULY 1 1992	JULY 1 1991	JULY 1 1990	JULY 1 1989	JULY 1 1988	JULY 1 1987	JULY 1 1986	JULY 1 1985	JULY 1 1984
Carson City	44,620	43,460	42,140	41,130	40,950	39,970	38,280	36,990	36,340	35,650	34,950
Churchill County	20,570	19,850	19,210	18,330	18,100	17,990	17,790	16,710	15,400	15,120	14,810
Fallon	7,190	7,060	6,870	6,680	6,480	6,070	5,750	5,390	5,080	4,990	4,840
Clark County	971,680	898,020	856,350	820,840	770,280	708,750	661,690	616,650	587,760	562,280	539,030
Boulder City	13,640	13,350	13,000	12,960	12,760	12,740	12,130	11,580	11,120	11,070	10,830
Henderson	105,610	94,760	85,770	76,560	69,390	58,760	51,590	48,680	38,690	35,930	33,320
Las Vegas	346,350	323,300	303,140	289,690	268,330	245,600	218,690	208,220	195,110	186,380	180,930
Mesquite	3,850	3,270	2,370	2,070	1,960	1,740	1,510	1,420	1,340	1,270	1,110
North Las Vegas	69,700	60,880	55,400	51,060	50,030	49,230	48,930	48,290	45,770	45,030	44,470
Douglas County	34,620	30,390	29,470	28,810	28,070	26,930	25,900	25,070	24,030	23,000	21,990
Elko County	41,050	39,340	37,420	35,950	33,770	31,830	27,010	24,300	23,320	22,350	21,420
Carlin	2,470	2,430	2,420	2,410	2,410	2,210	1,720	1,550	1,350	1,340	1,330
Elko	17,110	16,570	16,270	15,730	14,950	14,350	12,320	11,960	10,320	10,190	10,060
Wells	1,280	1,250	1,230	1,230	1,250	1,260	1,230	1,230	1,240	1,240	1,240
West Wendover	2,582	2,550	2,170	2,030	2,010	–	–	–	–	–	–
Esmeralda County	1,390	1,320	1,410	1,390	1,350	1,360	1,440	1,540	1,540	1,540	1,680
Eureka County	1,550	1,650	1,580	1,560	1,550	1,530	1,510	1,490	1,330	1,300	1,260
Humboldt County	15,640	14,510	14,000	13,500	13,020	12,580	12,050	11,490	11,220	11,260	11,190
Winnemucca	7,170	6,910	6,640	6,560	6,160	6,140	5,950	5,610	5,020	5,020	5,020
Lander County	6,410	6,430	6,380	6,370	6,340	6,270	5,480	4,600	4,510	4,520	4,590

Estimates from Nevada Department of Taxation and
Nevada State Demographer, Bureau of Business and Economic Research, College of Business Administration, University of Nevada, Reno.
20-Jan-95 c:\populate\estimate\94est\popprin.wq2

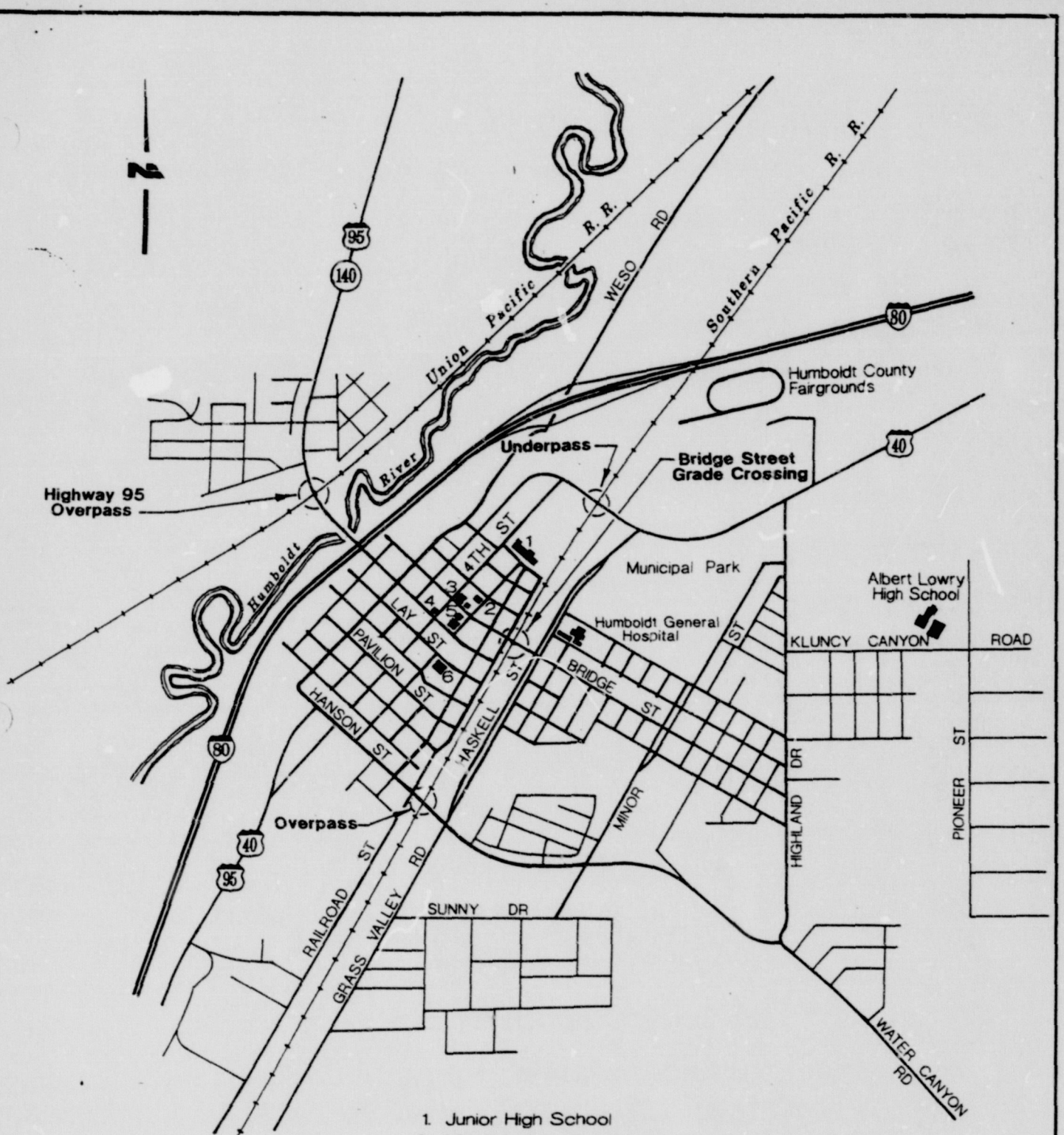
AMERICA'S 50 HOTTEST LITTLE BOOMTOWNS

With populations of 50,000 or less, all of these places offer a broad mix of professional or technical jobs and a median household income of at least $27,737, 23% above the U.S. average for towns of this size. We've ranked the top 50 by population growth—a proxy for economic vitality.

Rank	Town	Nearest metro area	Population/ % increase, 1990-95	Median household income	Cost of typical three-bedroom house	Where the jobs are
1	⊛ St. Marys, Ga.	Jacksonville	23,702/51%	$29,558	$68,500	Kings Bay Naval Submarine Base; Gilman Paper Co.
2	⌂ Divide, Colo.	Colorado Springs	15,081/35	33,816	100,000	Cripple Creek casinos; nearby Colorado Springs
3	◌ Kihei, Hawaii	Honolulu	16,891/31	40,558	250,000	Resorts; Maui Research & Technology Park
4	▭ Elko, Nev.	Salt Lake City	31,456/29	37,909	125,000	Gold mines; casinos, restaurants, hotels
5	◌ Mintum/Red Cliff, Colo.	Denver	14,719/29	40,273	154,000	Vail and Beaver Creek resorts; home-based businesses
6	◌ Oakhurst/North Fork, Calif.	Fresno	25,180/29	30,742	137,500	Yosemite resorts; medical center; home-based businesses
7	⌂ Battlefield, Va.	Washington, D.C.	14,480/26	42,535	125,000	D.C.; northern Virginia; Richmond
8	▭ Winnemucca, Nev.	Reno	13,652/25	34,849	100,000	Gold mines; cattle ranches
9	◌ Bluffton, S.C.	Savannah	38,408/24	40,130	150,000	Hilton Head resorts; Beaufort military bases
10	◌ North Kona, Hawaii	Honolulu	27,227/23	35,364	225,000	Resorts; University of Hawaii–Hilo
11	⌂ Salem, Va.	Richmond	13,158/23	44,853	64,000	D.C.; northern Virginia; Richmond
12	◌ Atlantic, N.C.	Norfolk	12,616/22	32,005	131,575	Outer Banks resorts; home-based businesses
13	▭ Flowery Branch, Ga.	Atlanta	13,505/22	33,385	100,800	Manufacturers, including chewing-gum maker Wrigley
14	◌ Gardnerville/Minden, Nev.	Reno	18,962/22	35,031	131,587	Lake Tahoe resorts; casinos; electronics manufacturers
15	⌂ Jefferson, Va.	Lynchburg	14,570/22	40,384	150,000	Lynchburg; local manufacturers and construction companies
16	◌ Jackson Hole, Wyo.	Salt Lake City	13,086/21	31,831	400,000	Resorts; home-based businesses
17	▭ Stony Creek, N.C.	Rocky Mount	24,317/21	37,758	117,481	Manufacturers, including medical-products maker Abbott Laboratories
18	⌂ Mount Vernon, Wash.	Seattle	25,181/20	27,977	135,000	Everett and Seattle; Shell and Texaco oil refineries
19	▭ Pleasant, Ind.	Fort Wayne	12,834/19	27,768	87,000	Manufacturers, including many automotive-parts makers
20	▭ East Wenatchee, Wash.	Seattle	22,459/17	29,776	125,000	Manufacturers, including Alcoa (Aluminum Co. of America)
21	⌂ Lawrenceburg, Ky.	Lexington	12,329/17	27,737	80,500	Lexington and Frankfort
22	⊛ South Whidbey, Wash.	Seattle	11,701/17	31,771	172,500	Whidbey Island Naval Air Station; tourist industry
23	▭ Winterville, N.C.	Greenville	21,708/17	35,305	100,000	East Carolina University in Greenville; county medical center
24	⌂ Elgin, S.C.	Columbia	17,247/16	30,837	85,000	Columbia; local power equipment and other manufacturers
25	Glenwood Springs, Colo.	Denver	17,530/16	31,979	185,000	Aspen resorts; medical center; home-based businesses
26	⌂ Heber, Utah	Provo	11,642/16	28,022	170,000	High-tech Wasatch Front firms; Provo and Salt Lake City
27	⌂ Newport, Va.	Norfolk	14,085/16	32,518	90,000	Norfolk; local firms, including Smithfield Foods
28	⌂ Blue Ridge, Va.	Roanoke	14,088/15	28,285	110,000	Roanoke; local paper and other manufacturers
29	⌂ Clayton, N.C.	Raleigh	13,958/15	31,203	97,500	Raleigh; local medical-products firms
30	⌂ Cranberry, Pa.	Pittsburgh	17,095/15	41,006	125,000	Pittsburgh; local medical instrument and other manufacturers
31	⊛ Fallon, Nev.	Reno	20,506/15	29,220	115,000	Naval Air Station; defense contractors; casinos
32	▭ Hollister, Calif.	San Jose	35,683/15	36,370	130,000	Air bag and other manufacturers; San Jose
33	◌ Kahului, Hawaii	Honolulu	19,126/15	38,390	250,000	Resorts; Maui Research & Technology Park
34	◌ Wailuku, Hawaii	Honolulu	15,332/15	40,314	310,000	Resorts; Maui Research & Technology Park
35	▭ Fort Atkinson, Wis.	Madison	11,669/14	28,892	100,000	Plastics and other manufacturers; medical center
36	⌂ Shawnee, Va.	Washington, D.C.	12,371/14	35,671	58,500	D.C., northern Virginia; local medical center
37	⌂ Anacortes, Wash.	Seattle	17,080/13	30,483	150,000	Everett and Seattle; local shipbuilders, oil refineries
38	Everett, Ga.	Savannah	13,362/13	31,183	40,000	Resorts on nearby Jekyll Island and St. Simons Island
39	⊛ North Whidbey, Wash.	Seattle	38,964/13	27,836	131,000	Whidbey Island Naval Air Station; tourist industry
40	⌂ Dutchville, N.C.	Raleigh	11,270/12	29,892	107,500	Raleigh; state psychiatric center
41	▭ Hutchinson, Minn.	Minneapolis	12,927/12	29,492	70,000	Manufacturers, including computer-partmaker Hutchinson Technology
42	◌ Lower Keys, Fla.	Miami	11,669/12	32,624	160,000	Resorts; home-based businesses
43	▭ Paso Robles, Calif.	San Luis Obispo	35,917/12	30,975	136,000	Electronics manufacturers; wineries
44	⌂ St. Helens, Ore.	Portland	18,028/12	30,055	100,000	Portland; high-tech firms in nearby Silicon Forest
45	⌂ Tooele/Grantsville, Utah	Salt Lake City	24,830/12	30,658	97,500	Salt Lake City
46	▭ Wayne, Ind.	Fort Wayne	25,098/12	31,881	138,000	Manufacturers, including leading makers of orthopedic products
47	Makawao/Paia, Hawaii	Honolulu	17,067/11	41,777	232,500	Resorts; Maui Research & Technology Park
48	⌂ Opequon, Va.	Washington, D.C.	11,466/11	32,836	117,400	D.C.; northern Virginia; local medical center
49	▭ Smyrna, Del.	Dover	11,797/11	29,179	89,000	Medical center; Kraft and other manufacturers; Dover Air Force Base
50	⌂ Stonewall, Va.	Richmond	17,176/11	29,007	104,000	Richmond; local manufacturers, including Merck

KEY: ▭ Computer age ◌ Resort neighbors ⊛ Guns and butter ⌂ Bedroom in the sticks

Sources: Century 21 Real Estate Corp., Claritas, TGE Demographics



1. Junior High School
2. Library
3. City and Rural Fire Departments
4. City Hall
5. Police and Sheriff
6. Elementary School

DATE: MARCH, 1996	NOLTE AND ASSOCIATES	City of Winnemucca
SCALE: NTS	SAN JOSE • WALNUT CREEK	RAILROAD MERGER STUDY
DRAWN BY: WCJ	SAN DIEGO • SACRAMENTO	WINNEMUCCA NEVADA
CHECKED BY: MRC		
JOB NO. WC0329-BB	APPROVED: _____	DATE: _____

SAN JOSE BLUEPRINT CO.
PRINTED ON JR 330

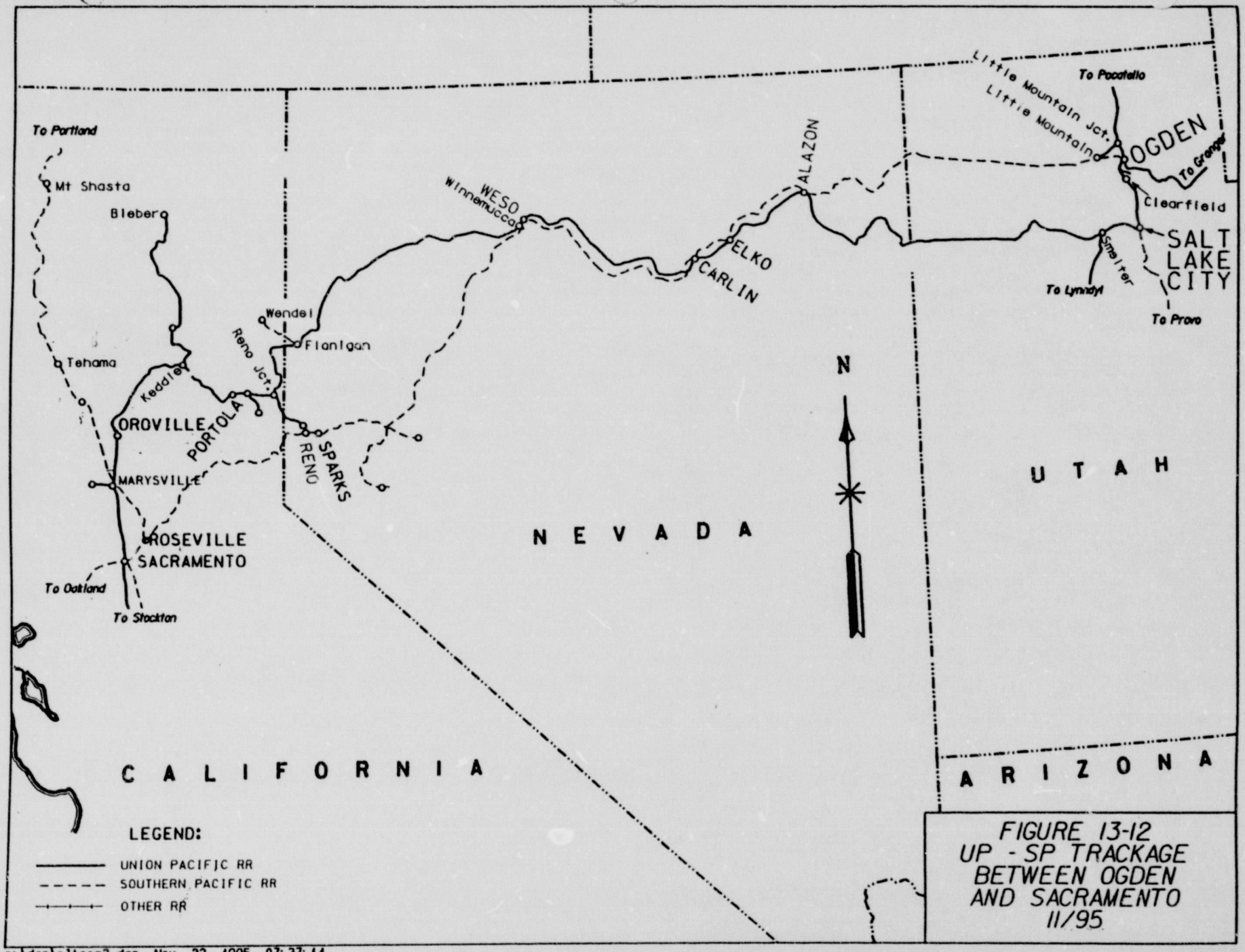


FIGURE 13-12
UP - SP TRACKAGE
BETWEEN OGDEN
AND SACRAMENTO
11/95

NEVADA DISTRICT

WESTWARD ↓		STATIONS		↑ EASTWARD	
Station Number	Siding Feet	Ogden Line			Mile Post
07100		CARLIN (UP Conn)	QY	ABS DT	534.5
		14.2			
06940		BARTH (UP Conn)			520.3
		12.1			
06930		BEOWAWE (UP Conn)			508.2
		15.3			
06915		MOSEL			492.9
		17.1			
06900	6500	BATTLE MOUNTAIN			475.8
		27.7			
06875		IRON POINT			448.1
		8.8			
06870		PREBLE			439.3
		16.5			
06860		TULE			422.8
		1.9			
06855		WESO (UP Conn)		CTC	420.9
		3.6			
06850	6756	WINNEMUCCA			417.3
		10.5			
06845		ROSE CREEK			406.8 406.6
		9.6		ABS DT	
06840		COSGRAVE			397.0
		8.3			
06835		MILL CITY			388.7
		4.6			
06830		IMLAY			384.1
		7.1			
06825		HUMBOLDT			377.0
		11.2			
06820	M6200	RYE PATCH			366.0
		8.2			
06815		OREANA			357.8
		13.5			
06800	E6075	LOVELOCK			344.3
		3.8			
06735		PERTH			340.5
		3.7		CTC	
06730	9940	GRANITE POINT			336.8
		8.4			
06725	9620	TOY			328.4
		8.4			
06720	9860	OCALA			320.0
		8.3			
06715	9600	PARRAN			311.7
		9.7			
06710	10200	UPSAL			302.0
		9.5			
06705	6185	MASSIE			292.5
		4.4			
06548	6500	HAZEN			288.1
		3.6			
06544	9400	DARWIN			284.5
		8.4			
06540	10100	FERNLEY	T		276.1
		9.9			
06536	9600	THISBE			266.2
		4.1			
06534	5745	CLARK			262.1
		4.8			
06528	5875	PATRICK			257.3
		4.2			
06524	5990	HAFED			253.1
		4.0			
06520		VISTA			249.1
		2.9		ABS DT	
06500		SPARKS	QTY		246.2
		(288.3)	(Route A)		

Between Carlin and Weso, UP and SP trackage are used jointly. Unless otherwise instructed, eastward trains of both companies will use UP track and westward trains of both companies will use SP track.

ADDITIONAL STATIONS

Mile Post	Station	Station Number	Mile Post	Station	Station Number
	Ogden Line		466.3	Mote	06885
260.2	Wunotoo	06532	487.7	Argenta	06910
350.1	Colado	06810	525.7	Palisade	06945
434.0	Golconda	06865		**Mina Branch**	
457.5	Valmy	06880	330.8	Fort Churchill	06576

NEVADA DISTRICT

MAXIMUM AUTHORIZED SPEED FOR TRAINS

OGDEN LINE

BETWEEN SPARKS and WESO

EASTWARD	Psgr	Frt
243.2 and 247.1	30	30
247.1 and 249.4	60	60
249.4 (Turnout)	50	50
249.4 and 252.1	60	60
252.1 and 252.7	40	40
252.7 and 253.8	60	60
253.8 and 262.3	70	60
262.3 and 264.8	60	60
264.8 and 270.8	70	60
270.8 and 273.8	60	60
273.8 and 274.1	55	55
274.1 and 285.0	70	60
285.0 and 287.0	70	60
287.0 and 322.9	79	60

EASTWARD	Psgr	Frt
322.9 and 323.5	75	60
323.5 and 329.0	79	60
329.0 and 331.3	75	60
331.3 and 340.2	79	60
340.2 (Turnout)	50	50
340.2 and 343.8	70	60
343.8 and 344.8	40	40
344.8 and 406.5	70	60
406.5 (Turnout)	50	50
406.5 and 417.4	79	60
417.4 and 417.9*	40	40
417.9 and 420.9	79	60
420.9 (Crossover)	20	20

BETWEEN SPARKS and CARLIN

AGAINST CURRENT OF TRAFFIC

EASTWARD	WESTWARD TRACK	Psgr	Frt
#	246.0 and 247.1	30	30
#	247.1 and 249.3	59	49
	340.2 and 343.8	59	40
	343.8 and 345.0	40	40
	345.0 and 358.2	59	49
	358.2 and 403.0	50	40
	403.0 and 406.8	59	49

EASTWARD	WESTWARD TRACK	Psgr	Frt
	420.7 and 475.3	59	49
	475.3 and 476.0	45	45
	476.0 and 517.9	59	49
	517.9 and 525.9	55	50
	525.9 and 528.0	45	45
#	528.0 and 533.9	59	49
#	533.9 and 535.9	25	25

BETWEEN CARLIN and SPARKS

WESTWARD	Psgr	Frt
535.9 and 533.9	25	25
533.9 and 528.0	60	60
528.0 and 525.9	45	45
525.9 and 517.9	55	50
517.9 and 507.3	70	60
507.3 and 500.9	79	60
500.9 and 500.3	55	55
500.3 and 476.0	79	60
476.0 and 475.3*	45	45
475.3 and 443.5	79	60
443.5 and 442.6	70	60
442.6 and 434.3	79	60
434.3 and 428.6	70	60
428.6 and 424.7	60	60
424.7 and 421.0	70	60
421.0 and 417.9	79	60
417.9 and 417.4*	40	40
417.4 and 406.5	79	60
406.5 (Turnout)	50	50
406.5 and 403.0	70	60
403.0 and 358.2	50	40

WESTWARD	Psgr	Frt
358.2 and 344.8	60	60
344.8 and 343.8	40	40
343.8 and 340.2	60	50
340.2 (Turnout)	50	50
340.2 and 331.3	79	60
331.3 and 329.0	75	60
329.0 and 323.5	79	60
323.5 and 322.9	75	60
322.9 and 287.0	79	60
287.0 and 274.1	70	60
274.1 and 273.8	55	55
273.8 and 270.8	60	60
270.8 and 264.8	70	60
264.8 and 262.3	60	60
262.3 and 253.8	70	60
253.8 and 252.7	60	60
252.7 and 252.1	40	40
252.1 and 249.4	70	60
249.4 (Turnout)	50	50
249.4 and 247.1	60	60
247.1 and 246.0	30	30

AGAINST CURRENT OF TRAFFIC

WESTWARD	EASTWARD TRACK	Psgr	Frt
406.8 and 344.8		59	49
344.8 and 343.8		40	40
343.8 and 340.2		59	49

WESTWARD	EASTWARD TRACK	Psgr	Frt
#	249.3 and 247.1	59	49
#	247.1 and 246.0	30	30

*RULE 10(E). Speed may be increased when lead engine passes increased-speed sign.

Refer to Rule 93 Yard Limits.

SPEEDS ON OTHER THAN MAIN TRACK:

Sidings: Hafed, Patrick, Clark, Thisbe, Fernley, Darwin, Hazen, Parran, Toy, Granite Pt., Massie, Upsal, Ocala and Winnemucca	25
Sidings: Lovelock, Rye Patch and Battle Mtn.	10
Nevada Earth Co. track scales	3
Locomotive maintenance facility tracks Carlin and Sparks	5
Track #4411 (between Rose Creek and Winnemucca)	5
All other tracks Nevada District	10

APPENDIX B - LETTERS AND DATA

CITY OF WINNEMUCCA

90 WEST FOURTH ST.
WINNEMUCCA, NV 89445

D. Stephen West, P.E., *Manager/Engineer* 623-6333
Mary Echeverria, *Treasurer* 623-6338
Don Wright, *Police Chief* 623-6396
Gene Bernardi, *Public Works Supervisor* 623-6361
Steve Strecker, *Recreation Director* [illegible]
Henry Tinney, *Building Inspector* 623-6319
Fax Number (702) 623-6321

February 22, 1996

Attn: Mike Christensen
Nolte and Associates, Inc.
2950 Buskirk Avenue, Suite 225
Walnut Creek, CA 94565

Re: Union Pacific/Southern Pacific Railroad Merger

Dear Mr. Christensen:

Per your request to Steve West, City Manager for the City of Winnemucca, following please find information regarding traffic counts at specific railroad crossings. If you require additional information or require further clarification, please do not hesitate to contact this office at (702)623-6319.

Sincerely,

Sherrie Chaplin

Sherrie Chaplin
Public Works Administrative Asst.

/sac

RAILROAD CROSSING ACCIDENTS

1970 THRU OCTOBER 1995

CROSSING	FATAL ACCIDENTS	INJURY ACCIDENTS	PROPERTY DAMAGE ACCIDENTS	TOTAL ACCIDENTS
UNION PACIFIC RAILROAD				
RHINEHARDT DAM RD.	1	1	0	2
WESO	0	0	1	1
UNION PACIFIC TOTALS	1	1	1	3
SOUTHERN PACIFIC RAILROAD				
HERSCHELL RD.	1	0	1	2
AIRPORT RD.	0	0	0	0
BRIDGE ST.	1	1	5	7
SOUTHERN PACIFIC TOTALS	2	1	6	9
TOTAL WINNEMUCCA AREA	3	2	7	12

NOTE: ACCIDENT TOTALS ARE RECORDED FROM MOTOR VEHICLE ACCIDENT REPORTS RECEIVED FROM WINNEMUCCA POLICE DEPARTMENT, HUMBOLDT COUNTY SHERIFFS OFFICE AND NEVADA HIGHWAY PATROL. AS TRAIN V.S. PEDESTRIAN INCIDENTS ARE NOT CONSIDERED MOTOR VEHICLE ACCIDENTS, WE RECEIVE NO REPORTS OF THESE OCCURRENCES.

SUMMARY TABLE
ESTIMATES OF RAILROAD CROSSINGS

	BRIDGE	AIRPORT	HERSCHELL	WESO	REINHART
DAILY TRAFFIC COUNT	4,200	795	50	190	120
ANNUAL TRAFFIC COUNT (based on daily avg.)	1,533,000	290,175	18,250	69,350	43,800
TOTAL ACCIDENTS 1970-1995	7	0	2	1	2
EMERGENCY TRAFFIC CROSSINGS					
Fire/City	28				
County	28	4	2	0	1
Police	36				
Sheriff	108				
Ambulance	400-500 (almost all at Bridge St)				

Police Chief Wright says the Police Dept. responded to 16,000 calls this past year or 44 calls per day. Of those, a minimum of three calls per day required officers to cross the Bridge Street tracks in a life or death situation.

The Humboldt County Sheriff's office estimated they crossed the various railroad tracks approximately 8-10 times per month responding to emergency calls (requiring immediate attention).

(The above numbers do not reflect the number of times the officers/deputies crossed the tracks on regular patrol or responding to non-emergency situations.)

The City Fire Dept. recorded 77 fire calls in 1995. 28 of those calls required the Fire Dept. to cross the railroad tracks at Bridge Street. The Fire Dept. recorded 74 fire calls in 1994. 30 of those calls required the Fire Dept. to cross the railroad tracks at Bridge Street.

The County Fire Dept. recorded 53 fire calls in 1995. 28 of those calls required the Fire Dept. to cross the railroad tracks at Bridge Street, 2 at Hershell Road, 1 at Reinhart, and 4 at the Airport Road crossing.

The ambulance responded to 746 ambulance calls last year. Of those calls, ambulance staff estimated they crossed the railroad tracks 400-500 times. There was an increase of 100 calls over the previous year; and the numbers seem to be rising. The ambulance administrator is also concerned that if, and when, the Melarkey Street Bridge is reconstructed (which could be a lengthy process) the ambulance will be forced to use the E. Second Street/Reinhart track crossing which would then be the ONLY access to the area north of the river until the construction is completed.

A record of accidents which occurred at railroad tracks from 1970 through 1995 is attached.

Don Campbell of the Dept. of Transportation provided the latest DAILY traffic counts available to him at railroad crossings from 1994 (he felt these numbers may be low for now):

Bridge Street -	4,200
Reinhart -	120
Hershell Road -	50
Airport Road -	795
Weso	190

NEVADA DEPARTMENT
OF TRANSPORTATION
SPECIAL STUDIES SECTION
RQ-CARSON CITY, NV

Site Code : 00000000
Start Date: 03/07/96
File I.D. : TURN0002
Page : 1

REVISED 3/6/96

Vehicle group 1

	BRIDGE ST. Southbound				HASKEL ST. Westbound				BRIDGE ST. Northbound				HASKEL ST. Eastbound				
	Other	Right	Thru	Left	Other	Right	Thru	Left	Other	Right	Thru	Left	Other	Right	Thru	Left	Total
ace 03/07/96																	
8:00	0	15	36	21	0	39	15	5	0	5	61	13	0	0	22	16	248
8:15	0	19	47	18	0	21	7	1	0	11	56	3	1	1	22	29	233
8:30	0	10	17	6	0	12	19	2	0	3	22	1	0	4	17	25	138
8:45	0	9	31	11	0	13	13	1	0	1	41	5	0	2	28	19	174
r Total	0	53	131	56	0	85	54	9	0	20	180	22	1	7	89	89	793
---------- * BREAK * ----------																	
1:00	0	13	37	16	0	13	22	1	0	1	27	2	0	8	26	16	182
1:15	0	18	25	8	0	16	17	3	1	5	29	6	0	7	26	18	178
1:30	0	19	34	21	0	22	27	1	0	0	28	6	0	6	23	10	197
1:45	0	25	51	13	0	23	29	4	0	3	43	8	0	8	23	31	260
r Total	0	75	147	58	0	74	95	9	1	9	127	21	0	28	97	75	817
2:00	0	29	75	13	0	26	24	0	0	8	38	9	0	7	21	22	272
2:15	0	16	32	18	0	17	24	1	0	1	29	9	0	7	26	23	205
2:30	0	6	37	8	0	4	27	22	0	18	30	12	0	28	27	2	221
2:45	0	8	66	13	0	9	27	38	0	26	16	29	1	34	24	3	314
Hr Total	0	59	210	52	0	56	102	61	0	55	133	59	1	76	98	50	1012
:	0	17	34	19	0	27	21	0	0	0	42	7	1	7	25	27	227
1	0	13	22	14	0	14	10	1	0	1	22	3	0	4	11	14	128
13:30	0	14	27	14	0	23	13	5	0	7	41	9	0	5	29	33	208
13:45	0	19	31	13	0	23	19	1	0	7	30	4	0	4	28	19	199
Hr Total	0	63	114	60	0	87	63	7	0	15	135	23	1	20	94	81	762
14:00	3	29	39	12	0	29	19	2	0	10	38	6	0	2	28	15	232
14:15	2	20	41	15	0	16	15	3	1	1	31	3	0	7	16	19	194
14:30	0	23	38	10	2	17	18	3	0	2	31	7	0	4	22	22	199
14:45	0	16	60	13	0	18	24	2	0	1	32	4	0	10	23	23	228
Hr Total	5	88	178	50	2	80	82	11	1	14	132	20	0	23	89	78	853
15:00	0	31	66	23	0	32	24	2	3	2	76	17	2	8	17	34	337
15:15	12	31	51	14	2	36	27	2	2	5	73	9	1	15	20	33	333
15:30	2	27	39	16	0	21	22	4	2	7	51	12	1	9	42	35	270
15:45	5	21	49	27	0	19	34	1	2	8	37	5	0	7	36	26	277
Hr Total	19	110	195	80	2	108	107	9	9	22	237	43	4	39	115	118	1217
16:00	1	25	44	14	0	26	33	5	0	6	33	7	0	8	53	20	275
16:15	1	15	36	28	0	22	25	3	1	7	41	8	1	12	35	25	259
16:30	1	23	47	20	0	29	36	4	1	0	36	8	0	6	23	22	255
16:45	1	29	62	17	0	30	32	1	1	7	38	12	1	8	27	24	290
Hr Total	4	92	189	79	0	107	126	12	3	20	148	35	2	33	138	91	1079

NEVADA DEPARTMENT
OF TRANSPORTATION
SPECIAL STUDIES SECTION
HQ-CARSON CITY, NV

Site Code : 00000000
Start Date: 02/07/96
File I.D. : TURN0007
Page : 2

Vehicle group 1

	BRIDGE ST. Southbound				MASKEL ST. Eastbound				BRIDGE ST. Northbound				MASKEL ST. Eastbound				
	Other	Right	Thru	Left	Other	Right	Thru	Left	Other	Right	Thru	Left	Other	Right	Thru	Left	Total
Date 02/07/96																	
17:00	0	45	107	23	0	29	33	3	3	4	44	19	0	2	34	24	37
17:15	0	22	57	16	1	28	54	4	0	4	38	8	2	5	32	17	28
17:30	0	17	42	9	0	21	51	3	0	3	43	10	0	5	26	19	24
17:45	0	22	44	11	0	27	42	8	1	2	42	8	0	7	26	18	25
Hr Total	0	106	250	59	1	105	180	18	4	13	167	45	2	19	118	78	115
TOTAL	28	646	1414	491	5	702	809	136	18	168	1259	267	11	246	838	660	768

2579

1712

7689

4291 BRIDGE STREET

March 22, 1996

Mr. D. Stephen West, P.E.
City Manager/Engineer
90 W. Fourth St.
Winnemucca, NV 89445

Mr. Tom Fransway
County Commissioner
Humboldt County
Courthouse
Winnemucca, NV 89445

Dear Messrs. West and Fransway:

With reference to our meeting of March 15, 1996 concerning the rail merger impact on the City of Winnemucca:

We appreciate the time that both of you, Rod Nelms and Mike Christensen spent with us to explain the concerns with the existing Southern Pacific crossing at Bridge Street. We have looked at Rod's proposal of building a new connection west of town and I am attaching a print that will show this proposed new connection, along with the existing sidings that would have to be constructed adjacent to both the Southern Pacific and Union Pacific main lines to handle the proposed traffic. The connection and the sidings have all been summarized under Alternate #2 and the estimated cost to do this relocation would be $25.5 million.

We have also looked at the proposed underpass at Melarkey Street, if you went from Melarkey Street to Bridge Street. You will see from the plan and profile we propose to raise the tracks slightly through Bridge Street in order to accommodate the proposed underpass. The proposed approach grades for this underpass are shown on the attached Drawing SK-1. Drawing SK-2 shows what the proposed underpass would look like. Just to let you know what the grades would be if you went straight through Melarkey Street, we have shown the approach grades on Drawing SK-3. I don't believe this would be acceptable to either the City or its citizens.

In connection with both of the Melarkey to Bridge Street underpass, we have proposed that Railroad Street would have to be closed on both sides of Melarkey and a cul de sac constructed. On the summary sheet, this is shown as Alternate #1 with a cost of $4,000,000 with the railroad willing to contribute 13% of the cost, which then leaves approximately $3,500,000 for which the City/County would have to find the funding. We will continue to work with the City and their consultant to see what funding is available if the City/County desires to pursue the underpass proposal.

If you or the City need any further information to help facilitate your review, please call.

Yours truly,

Bill Wimmer

CC: Mr. C. Rod Nelms
Executive Legislative Director
United Transportation Union
1210 Mizpah
Winnemucca, NV 89445

Mr. Michael R. Christensen, P.E.
Vice President
Nolte and Associates
2950 Buskirk Ave., Ste. 225
Walnut Creek, CA 94596

Mr. Drew Lewis, Union Pacific Corporation, Bethlehem, PA
Mr. Dick Davidson, Union Pacific Corporation, Bethlehem, PA
Mr. Mike Rock, External Relations, Washington, D.C.
Mr. Wayne Horiuchi, Special Representative, UPRR, Sacramento, CA
Mr. Jerry Rugg, Southern Pacific Lines, Denver, CO

WEW0322A.ds

Summary of Winnemucca Proposals

Location	Description		Estimate of Probable Cost
Alternate No. 1	***Proposed Grade Separation on SP***		
Underpass	Underpass from Melarkey St. to Bridge St.	$	4,000,000
	(less UP/SP contribution of 13%)	$	520,000
		$	3,480,000
Alternate No. 2	***Proposed New Construction to Replace SP Through Town***		
Connection W. of Town	2.2 mile connection UP to SP	$	8,100,000
Siding on SP	9300' siding on SP west of new conn.	$	2,500,000
Siding on UP	2 train lengths just east of new conn.	$	5,700,000
Extend both ends of UP siding at Winnemucca	Extend 2.4 miles west	$	4,200,000
	Extend to 2.8 miles east	$	5,000,000
		Total $	25,500,000

DATE: 22-Mar-96
FILE: h:\upspmerg\winemuca.xls

1. Railroad Merger Application, Volume 6, Part 2, Section 2.45.2, Page 59.
2. ICC Finance Docket No. 32760, Railroad Merger Application, Volume 3, Attachment 13-6, Pages 378, 384, and 385.
3. SP Mileposts begin near San Francisco (MP 0) and increase to the east.
4. These locations utilize UP mileposts.
5. Railroad Merger Application, Volume 6, Part 2, Section 2.45.1, Page 59.
6. ICC Finance Docket # 32760, Railroad Merger Application, Volume 3, Page 385.
7. Ibid., Part 2, Table 2-22, Page 85.
8. Railroad Merger Application, Volume 6, Part 2, Table 2-15.
9. City of Reno Railroad Fact Finding Study Report, March 1996, Nolte and Associates, Inc.
10. Ibid., Volume 1, Pages 29 & 30.

CERTIFICATE OF SERVICE

I, O. KENT MAHER, certify that a copy of the foregoing "VERIFIED STATEMENT OF D. STEPHEN WEST" was served upon all parties of record in Finance Document No. 32760 on this 28th day of March, 1996 by first class, postage prepaid U.S. mail.

O. Kent Maher

STB FD 32760 3-29-96 D 62336

Item No. _____

Page Count 9

Mar #833

62336 122

UP/SP-192

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' SUBMISSION OF VERIFIED STATEMENT CONCERNING
SETTLEMENT AGREEMENT WITH ILLINOIS CENTRAL RAILROAD COMPANY

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

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

CARL W. VON BERNUTH
RICHARD J. RESSLER
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018
(610) 861-3290

JAMES V. DOLAN
PAUL A. CONLEY, JR.
LOUISE A. RINN
Law Department
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000

ARVID E. ROACH II
J. MICHAEL HEMMER
S. WILLIAM LIVINGSTON, JR.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

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

March 29, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' SUBMISSION OF VERIFIED STATEMENT CONCERNING
SETTLEMENT AGREEMENT WITH ILLINOIS CENTRAL RAILROAD COMPANY

Applicants submit herewith the Verified Statement of Richard B. Peterson concerning Applicants' settlement with Illinois Central Railroad Company.

Respectfully submitted,

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

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

CARL W. VON BERNUTH
RICHARD J. RESSLER
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018
(610) 861-3290

JAMES V. DOLAN
PAUL A. CONLEY, JR.
LOUISE A. RINN
Law Department
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000

ARVID E. ROACH II
J. MICHAEL HEMMER
S. WILLIAM LIVINGSTON, JR.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

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

March 29, 1996

CERTIFICATE OF SERVICE

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

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

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

Karen W. Kramer

VERIFIED STATEMENT

OF

RICHARD B. PETERSON

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

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

This statement discusses the settlement agreement that Applicants executed with Illinois Central Railroad Company ("IC") on January 30, 1996 and submitted to the Board on February 2, 1996. See UP/SP-74.

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

In general, the settlement with IC calls for continued use of efficient interline routes involving IC, and for developing traffic with IC through joint marketing efforts after the consummation of the UP/SP merger. Applicants are of the view that joint-line routings with IC would continue to be used whenever they are efficient even without the settlement agreement, but in the interest of resolving disputes amicably through settlement, Applicants agreed that UP/SP will continue to join with IC in joint routings when it is efficient to do so. Other provisions of the agreement address specific joint marketing opportunities which Applicants have agreed with IC, in the parties' mutual interest, to work to develop. The agreement also contains provisions designed to ensure efficient operations after the merger, such as a clarification of interchange arrangements in the Chicago area.

The settlement agreement does not call for or require any rail line abandonments, and none is planned as a result of the agreement. The agreement also does not require any railroad construction projects. However, the agreement provides UP/SP with the optional right to build connections between existing UP trackage or trackage rights and IC

trackage at 16th Street, 21st Street and Brighton Park in Chicago. Applicants have not made a final decision to build any of these connections, and a preliminary review by UP has indicated that some of these possible connections are not feasible from an engineering standpoint. However, one or two connections at Brighton Park are under active consideration, and might be built as part of a project to reduce freight volume on a UP commuter line. There previously had been connections at this location, and Applicants are considering rebuilding this connection. If the connection is re-established, approximately four to six trains per day could be rerouted from UP's route from Chicago to Buda, Illinois, via Nelson to a combination IC-BN/Santa Fe route through Joliet. The agreement also provides that UP/SP will cooperate, within five years after the merger, with IC in seeking to rebuild the interlocking plant at the east end of the New Orleans Public Belt Railway Company's Huey Long Bridge near New Orleans. The agreement is contingent upon certain financing arrangements. This project, assuming it takes place, would not involve construction of new tracks or connections.

Applicants do not anticipate that the agreement will have a material effect on traffic, or cause any of the traffic threshold limits in 49 C.F.R. § 1105.7(e)(4),(5) to be exceeded. In general, the agreement provides for joint-line routings and rates that Applicants would have maintained and offered even without the agreement. The agreement should not

result in traffic diversions from any other carriers. We do not expect that there will be any significant rerouting of traffic, and the agreement would not require any changes in UP/SP's Operating Plan.

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

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

Richard B. Peterson
RICHARD B. PETERSON

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

Doris J Van Bibber
NOTARY PUBLIC

My Commission Expires: Nov. 30, 1996

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

G:\LAWADM\SEC\CLF\FORMS\VERIF.PRM

STB FD 32760 3-29-96 D 62333

62333

150

Item No. _____

Page Count 8

Mar # 830

SLOVER & LOFTUS
ATTORNEYS AT LAW
SEVENTH STREET, N. W.
WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

*ADMITTED IN PENNSYLVANIA ONLY

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

202 347-7170

March 29, 1996

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

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

Enclosed please find an original and twenty (20) copies of the Statement of Central Power & Light Company Regarding the Proposed UP/SP Merger (CPL-3). This document is being served upon parties of record in the manner described in the Certificate of Service attached thereto. In accordance with the Board's order in this proceeding, we have also enclosed a Wordperfect 5.1 diskette containing the enclosed Statement.

An extra copy of this filing is enclosed. Kindly indicate receipt and filing by time-stamping this copy and returning them to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

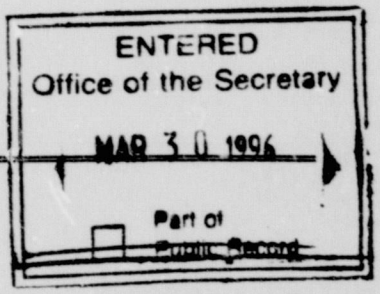
C. Michael Loftus
An Attorney for Central Power & Light Company

Enclosures

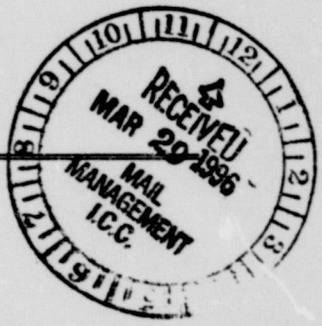
cc: Arvid E. Roach II, Esq.
Paul Cunningham, Esq.
The Honorable Jerome Nelson

CPL-3

BEFORE THE
SURFACE TRANSPORTATION BOARD



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	Finance Docket No. 32760



STATEMENT OF
CENTRAL POWER & LIGHT COMPANY
REGARDING THE PROPOSED UP/SP MERGER

CENTRAL POWER & LIGHT COMPANY

By: C. Michael Loftus
Donald G. Avery
Patricia E. Kolesar
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Central Power & Light Company

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: March 29, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

CPL-3

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	Finance Docket No. 32760

STATEMENT OF
CENTRAL POWER & LIGHT COMPANY
REGARDING THE PROPOSED UP/SP MERGER

Pursuant to the procedural orders issued by the Surface Transportation Board ("STB" or "Board") in this proceeding, Central Power & Light Company ("CPL") hereby submits this statement regarding the application filed by the Applicants Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Company ("SP")(jointly, "Applicants" or "UP/SP"),[1] which application seeks the Board's approval and authorization under 49 U.S.C. §§ 11343-11347 for UP's acquisition of control and merger with SP, the consolidation of the rail operations of UP and SP, and the resulting common control of UP and SP.

---

[1] "Applicants" include UP and SP, and other related corporate entities which have been identified as Applicants in the Board's Decision No. 1 in this proceeding (at 1 n.1).

IDENTITY AND INTEREST

CPL has previously filed a Notice of Intent to Participate in this proceeding on January 16, 1996. CPL is an investor-owned electric utility serving over half a million residential, commercial, and industrial customers in a 44,000 square mile area of south Texas. CPL owns and operates the Coleto Creek Generating Station near Fannin, Texas, which consumes between 2 and 2.5 million tons of coal per year from mines in Colorado and elsewhere, including from mines in the Powder River Basin ("PRB") in Wyoming. The Coleto Creek Station is served exclusively by SP at destination and is located approximately 16 miles from Victoria, Texas, where SP interchanges with the Missouri Pacific Railroad Company ("MP"), an affiliate of UP.

Until December 31, 1995, when an existing coal supply contract expired, most of CPL's current coal supplies originated in Colorado on the Denver & Rio Grande Western Railroad (which is under common control with SP) and were delivered to Coleto Creek by SP. CPL is a party to a separate coal supply agreement with a Colorado mine which does not expire until 1999. Despite its historical reliance on Colorado coal, CPL has also recently embarked upon a coal conversion project in order to enable Coleto Creek to burn PRB coal. CPL has invested over $17 million in its conversion project, and its efforts have been rewarded as Coleto Creek is now capable of burning PRB coal -- to the tune of 65% to

75% of its total burn -- in direct competition with Colorado coal sources.

STATEMENT OF POSITION

As a member of the Western Coal Traffic League ("WCTL"), CPL is participating in and supports the Comments on the UP/SP merger application that are being filed this date by WCTL. In these separate comments, CPL wishes to explain to the Board its situation with regard to an issue that affects CPL uniquely.

CPL's principal concern in this proceeding involved the protection of the possible favorable outcome of its currently pending rate litigation against SP. See Docket No. 41242, Central Power & Light Company v. Southern Pacific Transportation Company, filed on April 12, 1994. In Docket No. 41242, CPL seeks the prescription of a maximum reasonable rate for the transportation of coal by SP in unit train service, from an interchange with MP at Victoria, Texas, to the Coleto Creek station. If CPL is successful in obtaining a rail rate covering the movement of its trains by SP between Coleto Creek and Victoria, Texas, two strong competitive options for the movement of PRB coal would be available to CPL in the absence of the merger, namely:

* A coal movement by the UP from the PRB to Victoria, with delivery to Coleto Creek accomplished under the common carrier rate by the SP; or

* . A joint move by the BNSF out of the PRB, connecting with the SP for movement to destination.

A favorable decision in Docket No. 41242 would thus effectively provide CPL with access to competitive rail service for Coleto Creek from either SP or UP. CPL has accordingly been very concerned that Applicants recognize CPL's right to competitive service should CPL succeed in the rate case and also that Applicants acknowledge that the merger should not be viewed as mooting the rate case, creating any new legal defenses, or otherwise influencing the outcome of the rate case. Applicants have accommodated CPL in addressing these concerns.

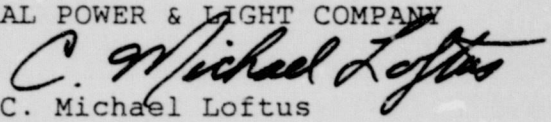
Applicants have assured CPL that if the merger is consummated and CPL is successful in Docket No. 41242 in obtaining a rail rate for the movement of its coal traffic between the Coleto Creek Station and Victoria, Texas, CPL will be afforded treatment as a two-to-one customer at Victoria, Texas under the Settlement Agreement, dated September 25, 1995, as amended on November 18, 1995, between Applicants and the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BNSF"). As a two-to-one customer, CPL would be entitled to BNSF service for CPL's coal trains to and from Victoria via efficient routings pursuant to trackage rights under Section 8(i) of the Settlement Agreement.

Applicants have also acknowledged and agreed that the merger would not moot the litigation, or give rise to legal defenses in the litigation that would not exist in the absence of

the merger, and that for purposes of the litigation, service from BNSF should be deemed to be available to CPL at Coleto Creek. Accordingly, CPL's concerns in this proceeding relating to its efforts to establish a competitive option for its Coleto Creek coal traffic through its rate litigation in Docket No. 41242 have been addressed by Applicants.

Respectfully submitted,

CENTRAL POWER & LIGHT COMPANY



By: C. Michael Loftus
Donald G. Avery
Patricia E. Kolesar
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Central Power & Light Company

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: March 29, 1996

CERTIFICATE OF SERVICE

I certify that I have this 29th day of March, 1996, served copies of the foregoing Statement of Central Power & Light Company Regarding the Proposed UP/SP Merger by hand upon Applicants' counsel:

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 hand upon:

Michael D. Billiel, Esq.
Joan S. Huggler, Esq.
U.S. Department of Justice
Antitrust Division, Suite 500
325 Seventh Street, N.W.
Washington, D.C. 20530

I further certify that copies of the foregoing document were served by first class mail, postage prepaid on:

The Honorable Federico Pena
Secretary
U.S. Department of Transportation
400 7th Street, S.W., Suite 10200
Washington, D.C. 20590

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
10th & Constitution Ave., N.W., Room 4400
Washington, D.C. 20530

and upon all other parties of record in Finance Docket No. 32760.

Patricia E. Kolesar

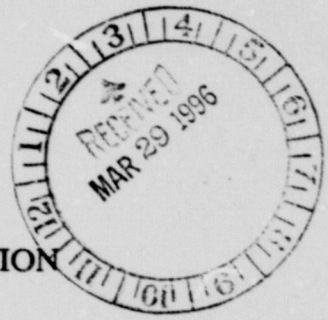
Patricia E. Kolesar

Item No. _____

Page Count 25

Mar #827

62330



BEFORE THE

SURFACE TRANSPORTATION BOARD

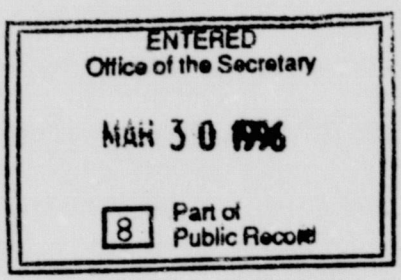
UNITED STATES DEPARTMENT OF TRANSPORTATION

In the matter of the Application of Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company	)	Finance Docket No. 32760

VERIFIED STATEMENT

OF

MICHAEL R. CHRISTENSEN, P.E.



Larry W. Telford, Esq.
Severson & Werson, a
Professional Corporation
One Embarcadero Center, 26th Fl.
San Francisco, CA 94111
Tel. (415) 398-3344
Fax. (415) 956-0439

Attorneys for the Town of Truckee

TRCK-3

VERIFIED STATEMENT OF MICHAEL R. CHRISTENSEN

My name is Michael R. Christensen. I hold a B.S. in Civil Engineering from Arizona State University, and am a registered civil engineer in Kansas (1984), Oregon (1987), Arizona (1994), California (1985), Nevada and New Mexico (1995 as to each). I am currently employed as Vice President of Nolte and Associates, Inc., headquartered in Nolte's Walnut Creek, California office. Prior to joining Nolte I was President and Chief Executive Officer of Summit/Lynch Consulting Engineers from September 1993 to October 1995, when Summit/Lynch was acquired by Nolte. Prior to that I held various positions in the Engineering Department of Southern Pacific Transportation Company over a span of sixteen years, including Chief Environmental Affairs Officer, Assistant Chief Engineer for Design and Construction (San Francisco), Division Engineer (Oregon), Resident Engineer (Los Angeles), Project Manager (Kansas City), and District Maintenance of Way Manager (Martinez). Projects involved both design and construction and ranged from small track construction jobs to the largest single paving job in California in 1985, the $80 million Intermodal Container Transfer Facility in Los Angeles.

In February 1996 Nolte and Associates, Inc. was retained by the Town of Truckee to perform an analysis of the Application in this matter, and the impact on Truckee of the combined operations of the merged Union Pacific/Southern Pacific and Burlington Northern Santa Fe ("BNSF") through Truckee. I was the Nolte representative in charge of the project, performed most of the analysis myself, and am personally familiar with the matters stated herein. Much of the information concerning traffic volumes over the Donner Summit and Feather River trans-Sierra routes of the merged carrier was developed in connection with Nolte's work on a similar study for the City of Reno. Since all through rail traffic passing through Reno on the Donner Summit line must necessarily also pass through Truckee there was no need to duplicate the work.

Our team started this project by meeting with Town officials, railroad personnel, local traffic engineering professionals, legal experts, and in-house railroad specialists. We gathered information on past, present, and future surface transportation issues related to the railroad through Truckee. Our team examined historical data, reviewed the UP/SP merger application, examined information generated for the Reno study, and developed estimates on the rail traffic changes. Nolte worked with the Town's traffic consultant, Leigh, Scott & Cleary, Inc., (LSC) who generated the traffic data needed to support this study.

1 Town of Truckee Community Profile

1.1 History Truckee holds an important place in both United States and Railroad history. The Donner Party crossing of the Sierras through where the Town of Truckee now stands highlights its desirability as an East/West crossing. Truckee is also known for its scenic beauty and difficult weather. The historic community itself was

established in 1863 with railroad construction over the Sierras being completed in 1869. The Town of Truckee has been classified by the State Archaeological Clearing House as being one of the richest locations in California in terms of density and variety of significant cultural resources, containing over 115 documented sites. The immediate downtown contains several structures dating back to 1870. The important railroad heritage is ingrained in the Town as part of its culture. However, current levels of rail and auto traffic are negatively impacting the Town's historic ambiance and unique features as a prime gateway entry point into both California and the Lake Tahoe Basin.

1.2 Gateway to the Sierras The Town of Truckee is strategically located on Interstate 80, approximately thirty minutes west of Reno and two hours east of Sacramento. From Interstate 80, State Highways 267 and 89 connect Truckee to the California and Nevada portions of North Lake Tahoe (Kings Beach/Incline Village and Tahoe City, respectively) approximately fifteen minutes south. These are the only routes to these areas. Truckee functions as the Gateway for the Reno/Tahoe connection and the California/Tahoe connections. Nearly 8 million vehicles annually travel through Truckee to Lake Tahoe and nearby resorts. This traffic is evenly divided between State Highways 267 and 89.

Geographically, downtown Truckee is nestled in a narrow, steep-sided valley carved out by the Truckee River. Crowded into the valley are the historic core of Truckee, the Truckee River, Highway 267 and the Southern Pacific mainline, sidings and balloon track. This concentration of features severely limits future roadway options.

1.3 Demographics Truckee's permanent population is approximately 12,700 occupying about half of the Town's 9,000 dwelling units. During the summer and on winter weekends and holiday periods, the Town's population doubles as second homes are occupied by owners and visitors seeking the beauty and recreational opportunities available in the Truckee/Lake Tahoe region. Truckee continues to grow rapidly with the permanent population increasing 5% annually and total dwelling units 4% annually. It is anticipated that growth pressures will continue because of the desirability of the region and the development restrictions in place within the Lake Tahoe Basin. Truckee functions as the center for retail sales and service for the Truckee/North Tahoe region. In 1992, total taxable sales in Truckee were $91 million with approximately 40% attributable to Truckee residents and the remainder to visitors, second home owners and North Tahoe residents. Easy access to and from the Tahoe Basin is critical to maintaining the region's economic vitality.

2 Railroad Operations through the Town of Truckee

Railroad operations over the central Sierra Nevada utilize two main line routes. The first is the UP's line from Sacramento to Winnemucca via the Feather River canyon. The second is the SP route from Roseville through Truckee to Winnemucca via the Donner pass.

The SP route is at least 136 miles[1] shorter than the UP route between Oakland and Salt Lake City, saving an estimated two crews per train between those points. The UP line consists of single track with maximum 1% grade, while the SP line is double track with maximum 2.6% grade. The gradient of the SP track through Truckee ranges from 1.1% to 1.9% downward to the east.[2] The UP route is cleared for maximum-height double-stacked containers while the SP route is not.[3] Appendix A contains route maps and track charts illustrating these lines.

Union Pacific does not presently access the Town of Truckee.

2.1 Current SP Truckee Operations Truckee is located on the Roseville Subdivision of the SP at Mile Post (MP) 208.0 Two main tracks pass through the Town, identified as No. 1 for westward trains and No. 2 for eastward. Established train operating rules mandate maximum train speeds of 40 mph for both passenger and freight trains east of MP 208.0 (at the railroad station just west of the Highway 267 crossing). The maximum authorized speed west of MP 208.0 is 33 mph for passenger and 30 mph for freight trains.

Approximately 12 freight trains[4] presently operate through Truckee each day. These trains consist of expedited automobile, intermodal, manifest (box car), unit grain, ore, and coal trains operating 24 hours per day, seven days per week. Train lengths vary depending on train type, tonnage, and commodity. Auto and intermodal trains are generally 5,000 to 6,000 feet long and are operated at faster speeds than the heavier, longer manifest and unit trains. The manifest trains can range from 5,000 to 8,000 feet long and are much heavier. Unit grain and coal trains usually operate with 65 to 75 cars and approximately 7,500 to 10,000 tons at lengths from 5,000 to over 6,000 feet.

An actual 24-hour lineup of trains on the SP route on January 19, 1996, showed 15 trains. The same lineup on January 22, 1996, showed a total of 14 trains These trains included all categories of passenger and freight operating over Donner Summit.

Southern Pacific presently serves customers in Truckee with through freights or road switchers. SP operates helper locomotives on some heavy or long trains traveling over Donner Pass. Most helpers push from the rear of the last car with only a small percentage

---

[1] ICC Finance Docket No. 32760, Railroad Merger Application, Volume 3, Attachment 13-6, Pages 378, 384, and 385.

[2] SP track chart, route A, page 33, revised January, 1996.

[3] The merger application indicates the costs of increasing overhead clearances on SP's Sierra tunnels to be $18 million. A similar program was completed on UP's route around 1990.

[4] This number was generated from an analysis of SP train density records showing train traffice between Sparks and Roseville on two representative days in 1994.

being entrained.[5] About 2% of the time these helper locomotives are added or removed from through trains at Truckee, causing additional delay at the Highway 267 crossing. The remaining 98% of the time helpers are added or removed at Lawton, Floriston, or other locations between Truckee and Sparks.[6] During winter storms, railroad snow removal equipment also travels through the Town and often turns around at the "balloon" track just east of the Highway 267 crossing.

Amtrak currently operates 4 trains east and 4 trains west through Truckee each week. These trains are generally 1,200 to 1,500 feet long including locomotives. Truckee is a regular stop of these intercity trains, and station stops sometimes block the Highway 267 crossing for up to 20 minutes.

2.2 Proposed Merged UP/SP Operations The merged railroads' operating plan (Plan) included in the merger application shows one passenger and 20 freight trains per day over Donner Pass for an increase of 7 trains per day from current levels.[7] These numbers do not include Burlington Northern Santa Fe (BNSF) trains, Reno Fun trains, Ski and special excursion trains, or local operations. The Plan calls for an increase in train tonnage through Truckee from the present level of 20 million to 33 million gross tons per year, an increase of 63%. The environmental report section of the merger application, however, indicates an increase in train traffic of 9 trains per day,[8] which is different than Volume 3. Also, the Plan is based on 1994 data. It only looks at what traffic levels will be the day after the merger and/or construction projects take place with no provision for future growth.

Hazardous materials are most generally handled in manifest trains under strict positioning rules and regulations. Cars must be placarded identifying the commodity or chemical being moved. According to statistics from the American Association of Railroads (AAR), movement of these chemicals by rail is considerably safer that movement over the road. It is possible that a modest decrease of this traffic will occur through Truckee as a result of this merger. Heavier and slower manifest trains most likely to carry these commodities will probably be routed through the Feather River line to avoid delaying the expedited intermodal and auto trains using the Donner route.

Similarly, unit coal, grain, and ore trains (80 to 90 cars, 12,000 tons, 5,000 feet) will also probably operate via the Feather River route.

---

[5] "Entrained" helper locomotives are placed within the train, usually about 1/3 of the way up from the rear.

[6] Based on interviews with SP operating personnel.

[7] ICC Finance Docket # 32760, Railroad Merger Application, Volume 3, Page 385.

[8] Ibid, Volume 6, Page 2, Pages 56 and 93.

We estimate post-merger traffic at 34 freight and 2 passenger trains per day (on average) over Donner Pass **for a total of 36 trains per day.**[9] Historical trends factored into this estimate take into account the 22 trains per day moving through Truckee and Reno in 1980[10], the former Western Pacific Railroad (WP) operation of 6 trains per day, anticipated BNSF traffic of 6 trains per day[11], and expected and historic passenger train activity at 2 trains per day on average. This projection also takes into account the growth anticipated in rail traffic in and out of the Port of Oakland as part of their major expansion plans. The Port of Oakland is anticipating 6% average annual growth in rail demand. With UP's enhanced competitive position over the central corridor brought on by this merger, intermodal traffic through Truckee should grow at a rate at least equivalent to this rate.[12]

Southern Pacific historically operated over Donner Summit with trains that ranged up to 8,000 feet in length and 10,000 tons. Trains of 7,000 feet (8,000 tons) or greater generally required helper locomotives to negotiate the 2.6% grade and heavy curvature. SP trains historically averaged around 6,000 feet in length.[13] Union Pacific operating personnel have indicated that they will probably operate most trains on this route without helper locomotives, indicating that most trains will not exceed 7,000 feet. They could, however, choose to operate standard-length 8,000 foot trains should business and locomotive availability favor the use of helper locomotives.

We believe average post-merger train lengths will be around 6,500 feet with a few in the 7,000 to 8,000 foot range using helper locomotives.

The merged railroad operating plan showing 21 trains per day does not include the expected 6 BNSF trains and 1 Reno fun or ski train. In addition, the merged operating plan

---

[9] Based on the knowledge of railroad operating specialists and historical trends in northern California and Nevada.

[10] 1980 represents the year of the Reno trainway bond issue vote, marking a point when crossing blockages reached critical levels. It was also the year just prior to the UP/WP/MP merger that diverted significant Central Corridor rail traffic from the SP to the UP.

[11] Based on a review of the verified statement of Mr. Neal D. Owen in BN/Santa Fe's Comments on the Primary Application, December 29, 1995, and represents a possible diversion from their busy Southern California to Chicago route. We assume all 6 BNSF central corridor trains will use the Donner Pass route due to its reduced operating costs. Diversion to the Feather River route would reduce this number; however, increases due to additional business would offset these reductions.

[12] Western Region Intermodal Automotive Terminal Rationalization, Second Draft 9/21/95, Page 13, states that a diversion of truck traffic to rail at the Port of Oakland will result in an estimated 50,000 additional post-merger lifts at the railroad intermodal terminals.

[13] According to a former SP Sacramento Division operating superintendent.

shows 10 trains diverted away from the UP's Feather River route while only 7 are added to the Donner route.[14] Based on conversations with SP operating officers we believe that some trains might be diverted from the Feather River or Donner Pass routes to other rail routes including Roseville to Oregon and Roseville to southern California. We cannot, however, account for all trains removed from the Feather River route. We also believe that the operating plan does not account for peak volumes that occur seasonally. Train traffic during these "peak" periods might be more than has been previously stated.

2.3 Other Railroad Corridor Issues The SP right-of-way through downtown Truckee also contains another significant feature, a 8 inch petroleum product pipeline. The pipeline provides finished petroleum products to a large tank farm terminal in Sparks. This terminal is the easternmost outlet for pipeline-delivered petroleum products, serving northern Nevada and points east.

3 Railroad Crossings in Truckee

Vehicular traffic currently crosses the tracks at two locations. Highway 89 crosses under the railroad in a narrow two-lane concrete arch underpass at railroad MP 206.76, while Highway 267 crosses at grade at MP 208.03. The Highway 267 crossing is equipped with bells, flashing lights, and gates.

A two lane Highway 267 bypass has been designed and is awaiting construction funding. This bypass would cross the tracks on a grade separated overpass just east of the historic downtown area. The present Highway 267 grade crossing would remain open after the construction of this bypass. This project was initially funded by the state. However, construction funding was transferred to other priority projects elsewhere in the state. The project is therefore on hold until sufficient funding can be arranged.

The only pedestrian crossing over the tracks in downtown Truckee is at Highway 267. However, this crossing has no sidewalk, forcing pedestrians to cross either in a traffic lane or across the ties and rails outside the crossing. The Highway 89 undercrossing also does not have sidewalks and requires pedestrians to walk in narrow traffic lanes.

3.1 Current Vehicular Traffic An average of 16,880 vehicles cross the tracks on Highway 267 each day, 7,970 northbound and 8,910 southbound.[15] Current afternoon peak hour crossings are 1,425.[16] This roadway provides major access to downtown Truckee, I-80,

---

[14] The 7 trains would increase to 9 if the figures in Volume 6, Part 2 are used.

[15] Based on July 1994 CalTrans figures.

[16] Verified Statement of Gordon R. Shaw, TRCK-2

and the Tahoe Forest Hospital to the north, and Northstar Ski Area, Truckee-Tahoe Airport, Sierra Estates, and Kings Beach areas to the south.[17]

Twenty-six school buses cross the tracks on Highway 267 each school day. These buses carry around 829 daily student trips.[18]

The Highway 89 undercrossing, commonly referred to as "the mousehole" because of its relatively small diameter and narrow lanes, cannot accommodate oversized highway loads. This forces oversized loads onto West River Street and over the Highway 267 crossing.

3.2 Potential Traffic Delays Presently the Highway 267 crossing gates can be down for up to 14% of the time.[19] Increased crossing blockage proportional to a train traffic increase from 14 to 36 trains per day could result in the Highway 267 crossing gates being down over 32% of the time[20]. This translates to a potential 257% increase in post-merger crossing blockages.

At current levels of vehicular traffic, Highway 267 intersections at Donner Pass Road and at East/West River Street are operating at peak hour Levels of Service near or at capacity (LOS "D" or "E").[21] Any significant increase in crossing blockage time will result in LOS "F" (failure mode) of these and other adjacent intersections due to traffic queuing for the crossing.

At peak hour a typical train delays traffic 6.7 vehicle-hours at the Highway 267 crossing and adjacent intersections. Trains presently delay traffic for 46 vehicle-hours in a typical day and 14,000 vehicle-hours in a typical year.[22] Adjusting these figures for post-merger train increases, daily delays could reach 118 vehicle-hours and annual delays could be as much as 36,000 vehicle-hours without mitigation.

---

[17] Verified Statement of Gordon R. Shaw, TRCK-2

[18] Letter from Tahoe Truckee Unified School District, 2/7/96.

[19] LSC, Inc., field measurements, 2/7/96, 15:45 to 18:00, notes on file.

[20] Based on a worst-case extrapolation of observed crossing gate down times using LSC's 2/7/96 actual observations and anticipated increase in train traffic.

[21] Gooseneck Ranch Project Environmental Impact Report, September 14, 1993, R. C. Fuller Associates, Table J1, Page J-5.

[22] Verified Statement of Gordon R. Shaw, TRCK-2

It is important to note that the above figures have been estimated based on theoretical peak traffic volumes and estimated gate-down times. Actual peak traffic levels might be considerably greater and often are. Actual gate-down times also varied from less than one minute to over 20 minutes. The extreme, short-term peaks and/or long gate-down times often cause extreme vehicle queues and delays not included in the previous figures. When both occur simultaneously the entire downtown becomes gridlocked.

3.3 Accident History Collisions between vehicles and trains at the Highway 267 crossing are rare, possibly due to the relatively slow speed of the trains and vehicular traffic. However, accidents frequently occur in the traffic queues on either side of the crossings. In the past ten years 94 accidents occurred at the Donner Pass Road and River Street intersections adjacent to the crossing.[23] Since a number of these accidents are related to vehicle queues, increase crossing blockages would probably lead to more vehicular accidents in the queues.

3.4 Emergency Access Tahoe Forest Hospital admitted 2,903 patients in 1994. Of this number they estimate 781 gained access to the hospital across the Highway 267 crossing. In 1995 the hospital treated 12,233 patients, 3,642 of which crossed over the tracks on Highway 267.

Fire, ambulance, and police response across the Highway 267 crossing is considered to be unreliable and delay-prone, often resulting in rerouting of emergency traffic to other crossings such as Highway 89. This rerouting results in an average increase in police response time of 3 minutes per call.[24]

The Truckee Fire Protection District presently handles approximately 375 calls annually south of the tracks, 200 of which are medically related. The North Tahoe Fire Protection District transports about 350 patients annually to the Tahoe Forest Hospital across the Highway 267 crossing. The proposed increase in rail traffic will require additional routing of emergency vehicles on West River Street that will increase response time to Tahoe Forest Hospital from south of the tracks by approximately 4 minutes.[25] This routing requires emergency vehicles to travel through 3 additional intersections. Statistics show the leading cause of emergency vehicle accidents is related to intersections.

The proposed increase in train traffic and subsequent traffic queues will also increase response time from Fire Station 91 (downtown Commercial Row) having to divert onto West River Street. Response times from Fire Station 92 (Gateway area) will also increase. In the event of a wildland fire or other disaster within the Truckee Fire Protection District

---

[23] California Highway Patrol accident data, 1/1/85 through 12/31/95.

[24] Interview with Town of Truckee Fire/Ambulance and Police officials, 2/6/96.

[25] Letter from the Fire Chief of the Truckee Fire Protection District of Nevada County, 2/27/96.

north of the tracks mu ual aid from other agencies may also be delayed by trains or resulting traffic queues.

4 Environmental Issues

The ICC requires an environmental analysis when increases in rail traffic exceed the thresholds established in 49 CFR 1105.79(e)(5)(i) and (ii). These thresholds include air quality for line segments with increases of 8 trains per day in attainment and 3 trains per day in non-attainment areas. They also include noise for line segments with increases of 8 trains per day or 100% of annual gross ton miles. Changes to the SP route through Truckee exceed these thresholds. The merger application therefore includes an air quality and noise analysis for the increased rail traffic through Truckee.

Increased train traffic due to this merger could result in significant adverse environmental effects on the Town of Truckee. These could include air pollution, noise, and severe traffic delays.

4.1 Air Quality The Town of Truckee and the railroad segment through the Town and County are located in Air Quality Control Region (AQCR) 508. AQCR 508 is in a "non-attainment" status for one of the six USEPA criteria pollutants, Ozone (O_3).[26] Post-merger locomotives will add up to 291 tons per year of the Ozone-creating pollutants.[27] This number does NOT include additional pollutants from idling vehicles waiting in traffic due to the gates being down. In a study recently completed for the City of Reno, vehicles stopped for trains would emit an estimated additional 1,200 tons of air pollutants annually. Prorating the results of the Reno study to apply to Truckee, additional post-merger vehicular emissions could reach the following levels: 34 tons/year VOC, 440 tons/year CO, 10 tons/year NOx, and 0.2 tons/year PM10.[28]

A more serious air quality issue in Truckee, however, concerns particulate matter less than 10 microns in diameter (PM10). PM10 is defined as inhalable particulate matter which is 10 microns or less in size. Simply stated, PM10 is extremely "small" material that becomes easily lifted into or "entrained" in the air. PM10 has a greater health effect than larger particles since the human body's respiratory system is unable to filter out these smaller particles. Once in the lungs, most PM10 is not removed from the lungs by the body's natural defense systems. These small particles may include toxic components which can be absorbed by the blood and carried to other parts of the body. Those particles not

---

[26] Railroad Merger Application, Volume 6, Part 2, Section 2.44.1, Page 56.

[27] Northern Sierra Air Quality Management District Calculations from their memo of March 25, 1996 to Mr. Steve Wright.

[28] City of Reno Railroad Merger Study Fact Finding Report, March 1996, Nolte & Assoc. and Kleinfelder Assoc., Figure 5-1, Page 19.

absorbed can aggravate the lining of the lungs, causing irritation, inflammation, fluid buildup, and reduced lung capacity.[29]

At this time PM10 is the "problem" pollutant for Truckee. The Truckee air basin has exceeded State PM10 standards and even Federal standards at times during the past several years.[30] In 1993 and 1994 Truckee exceeded the Federal standard for PM10 (150 micro grams per cubic meter per 24 hours) 3 and 1 days, respectively. In 1993 and 1994 Truckee exceeded the more stringent State standard for PM10 (50 micro grams per cubic meter per 24 hours) 48 and 87 days, respectively.[31] Although PM10 air quality standards have been violated several times each year, the Town of Truckee and its environs have not been designated as a non-attainment area for PM10 by either the Federal Environmental Protection Agency (EPA) of the California Air Resources Board (CARB). A non-attainment status would be accompanied by mandated sanctions on growth and transportation. In order to avoid these sanctions the Town and the Northern Sierra Air Quality Management District (NSAQMD) have developed and must now implement a plan to **reduce** PM10.

PM10 consists of two types, direct emissions and secondary particulates. Direct emissions occur when solid particles are discharged directly into the air. Examples include wood stoves, wind blown dust, soot from internal combustion engines, dust from paved (sanded) and unpaved roads, and dust from agricultural operations. Examples of secondary PM10 include oxides of nitrogen (NOx) emissions from internal combustion engines such as automobiles, trucks, trains, airplanes, boats, and farm equipment.[32]

Using data provided in the Merger Application, locomotive emissions from post-merger railroad operations through Truckee would add 22.3 tons per year of PM10 to a basin already nearly in a non-attainment air quality status.[33] By comparison this represents 10% of the total PM10 from RWC sources for the area (220 tons per year).[34] A much greater potential increase of PM10 due to the railroad merger is the road dust generated by extra

---

[29] Air Quality Management Plan for the Town of Truckee, Winter 1996, Northern Sierra Air Quality Management District, Page 8.

[30] Preface to the Air Quality Management Plan for Particulate Matter for the Town of Truckee, Truckee Community Development Department, Page i.

[31] Air Quality Management Plan for the Town of Truckee, Winter 1996, Northern Sierra Air Quality Management District, Table 5, Page 14.

[32] Ibid., Page 9.

[33] Northern Sierra Air Quality Managment District calculations from their memo of March 25, 1996 to Mr. Steve Wright.

[34] Ibid., Page 27.

trips and diversions stemming from grade crossing blockages. We estimate that the total amount of PM10 due to road dust (dust from road sand on paved roads plus dirt roads) is currently around 800 tons per year. Increased traffic due to diversions around queues that would increase this source of PM10 by only 10% could create an additional 80 tons per year of PM10. Locomotive emissions and added road dust due to post-merger railroad operations could push the Truckee air basin into non-attainment status for PM10, saddle the Town numerous restrictions and requirements, and affect the health of thousands of residents and visitors.

4.2 Noise Noise will increase due to these additional trains. Merger documents noted an increase of 492 sensitive receptors (residences, schools, libraries, nursing homes, and churches) on this line due to increased train traffic, 66 of which are in the Town of Truckee.[35] We believe this effect may be understated, since the increased train traffic in the merger documents is also understated and should be reexamined.

5 Economic Effects of Merger

The combined UP/SP route between Oakland and Chicago will be shorter than the UP or the SP route. Mileage reductions will come from combining parts of the UP and SP routes to create a new route much shorter than either railroad's present system. Oakland to Chicago, via Reno, will show a reduction of 388 miles from SP's present route and 189 miles from UP's line.[36]

This merger will generate significant net savings to the UP due to these and similar improvements in efficiency. Overall it will benefit the merged system approximately $750 million.[37] UP representatives have told shippers on this corridor that 12% of these merger benefits will be rolled back into rate reductions.[38]

Additional train traffic resulting from this merger will have a negative impact on both the downtown area and on the traveling public. Downtown merchants would lose business due to the traffic delays, and tourism to the North Lake Tahoe area via Highway 267 will see major delays.

---

[35] Railroad Merger Application, Volume 6, Part 2, Table 2-14, Page 58.

[36] Ibid., Volume 1, Pages 29 & 30.

[37] Ibid., Page 93.

[38] UP presentation at Winnemucca, Nevada, 2/12/96.

6 Discussion

The proposed increased rail traffic exacerbates negative impacts to the historic downtown area caused by traffic congestion, increased noise levels, and other rail related impacts. The increased rail traffic has a significant negative effect on local vehicular and pedestrian circulation. More importantly, though, it negatively impacts the entire Tahoe/Sierra visitor experience. Reasonable vehicular access to Lake Tahoe and nearby resorts is fundamental to the continued viability of the Truckee and Lake Tahoe economies in both Nevada and California.

Traffic levels in historic downtown Truckee at peak hours are approaching "failure mode" Levels of Service even without train blockages. Current train traffic levels are causing vehicular queues to block adjacent intersections and cause gridlock in much of the downtown with little hope of accessing alternate routes.[39] Anticipated increases in train traffic levels will exacerbate the problem almost three-fold without some type of mitigation.

A two lane Highway 267 Bypass has been designed and is awaiting construction. This bypass would cross the tracks on a grade-separated overpass just east of the downtown area. The present Highway 267 grade crossing would remain in service after the construction of the bypass. While this bypass would improve peak hour Levels of Service at the Commercial Row/Bridge Street intersection, peak hour traffic operations in the rest of the area would remain at the LOS "F" level, especially with increased train traffic.[40] The two lane bypass itself would operate at a high LOS "D"/low LOS "E" level during the Sunday and weekday afternoon peak hours due to the anticipated high levels of vehicular traffic.[41]

Construction of this Highway 267 bypass is absolutely essential to allow the movement of traffic under a post-merger scenario. Even with the bypass, traffic in the downtown area will be significantly affected at peak hour by the passing of trains, albeit at a much more tolerable level. In several more years, however, vehicular traffic is projected to reach failure mode again at and around the Highway 267 grade crossing. Longer term solutions could include improving traffic control at selected intersections, widening and improving the Highway 89 undercrossing, and constructing another downtown grade separation that could eliminate the Highway 267 grade crossing while preserving circulation of traffic in the downtown area.

The railroad company might be able to make significant reductions in crossing gate down-time through changes in their train operations. These changes could include increased

---

[39] Verified Statement of Gordon R. Shaw, TRCK-2

[40] Gooseneck Ranch Project Environmental Impact Report, September 14, 1993, R. C. Fuller Associates, Page J-41.

[41] Cumulative Impact Analysis, Big Springs at Northstar, TJKM, October 1991 Page 34.

speeds, adjustments in Amtrak loading and unloading processes, and proper location of the helper locomotive exchange points.

Respectfully submitted,

Michael R. Christensen

VERIFICATION

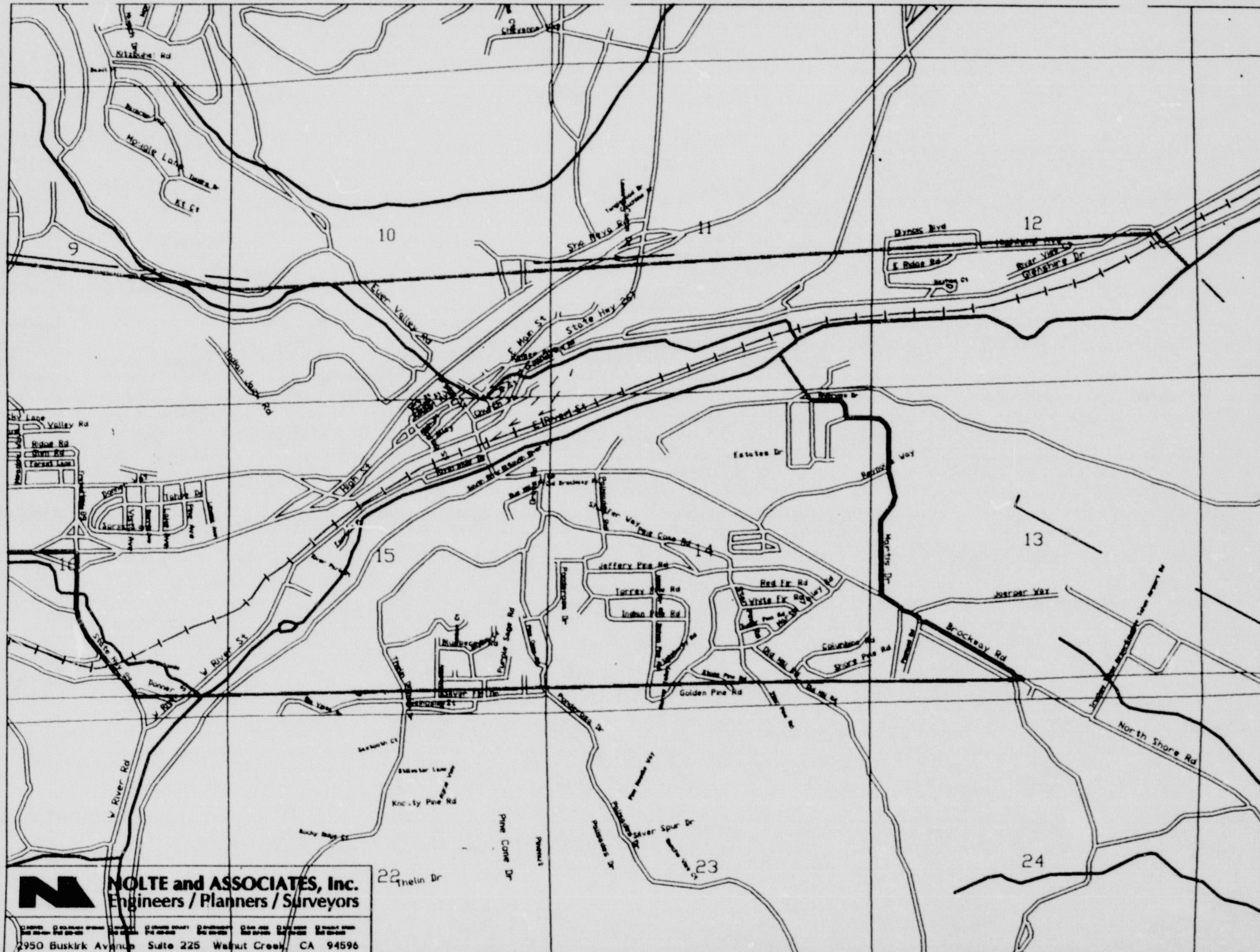
I, Michael R. Christensen, declare under penalty of perjury that the foregoing is true and correct as to all matters stated therein of my own knowledge, and as to matters stated therein on knowledge and belief, believe the same to be true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

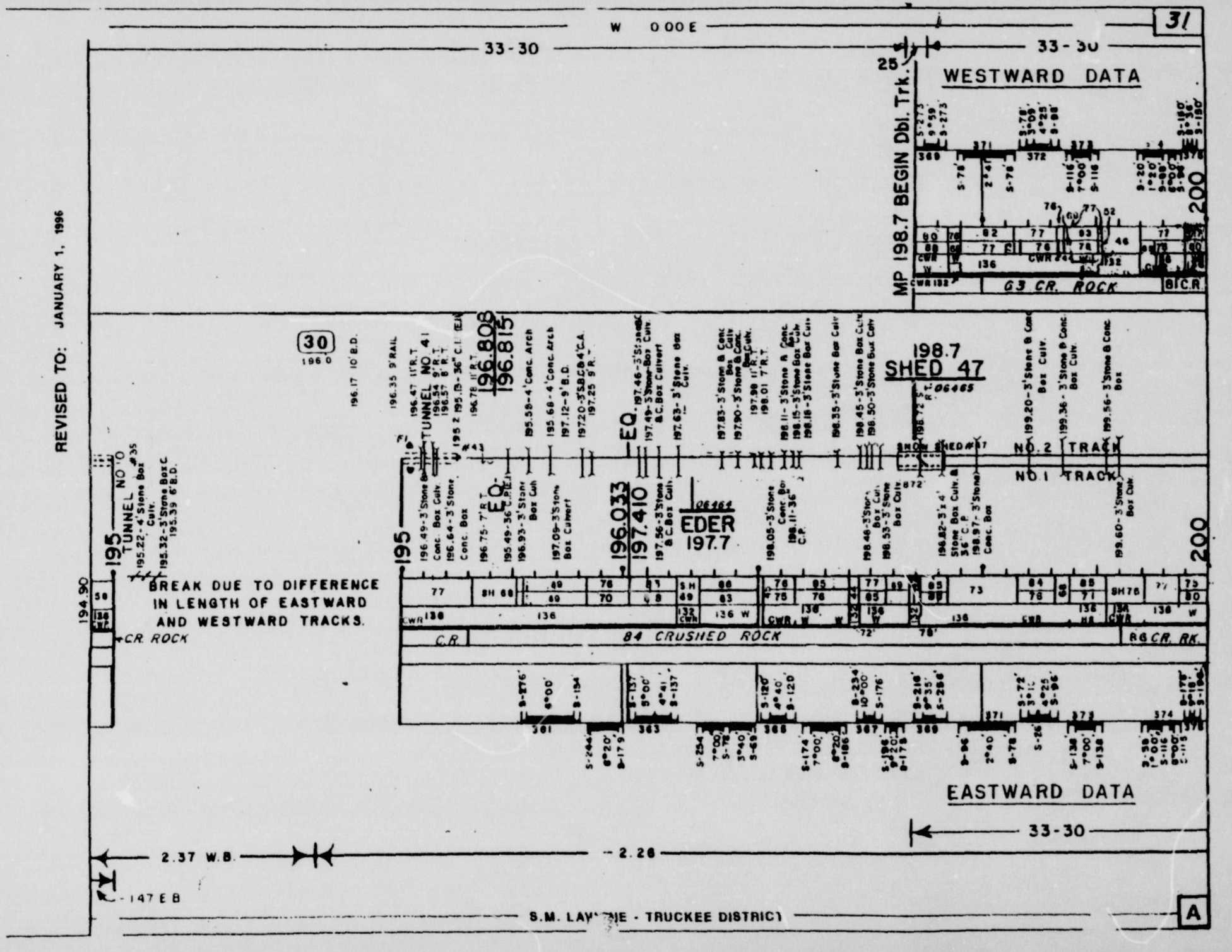
Executed on March 26, 1996, at Walnut Creek, California.

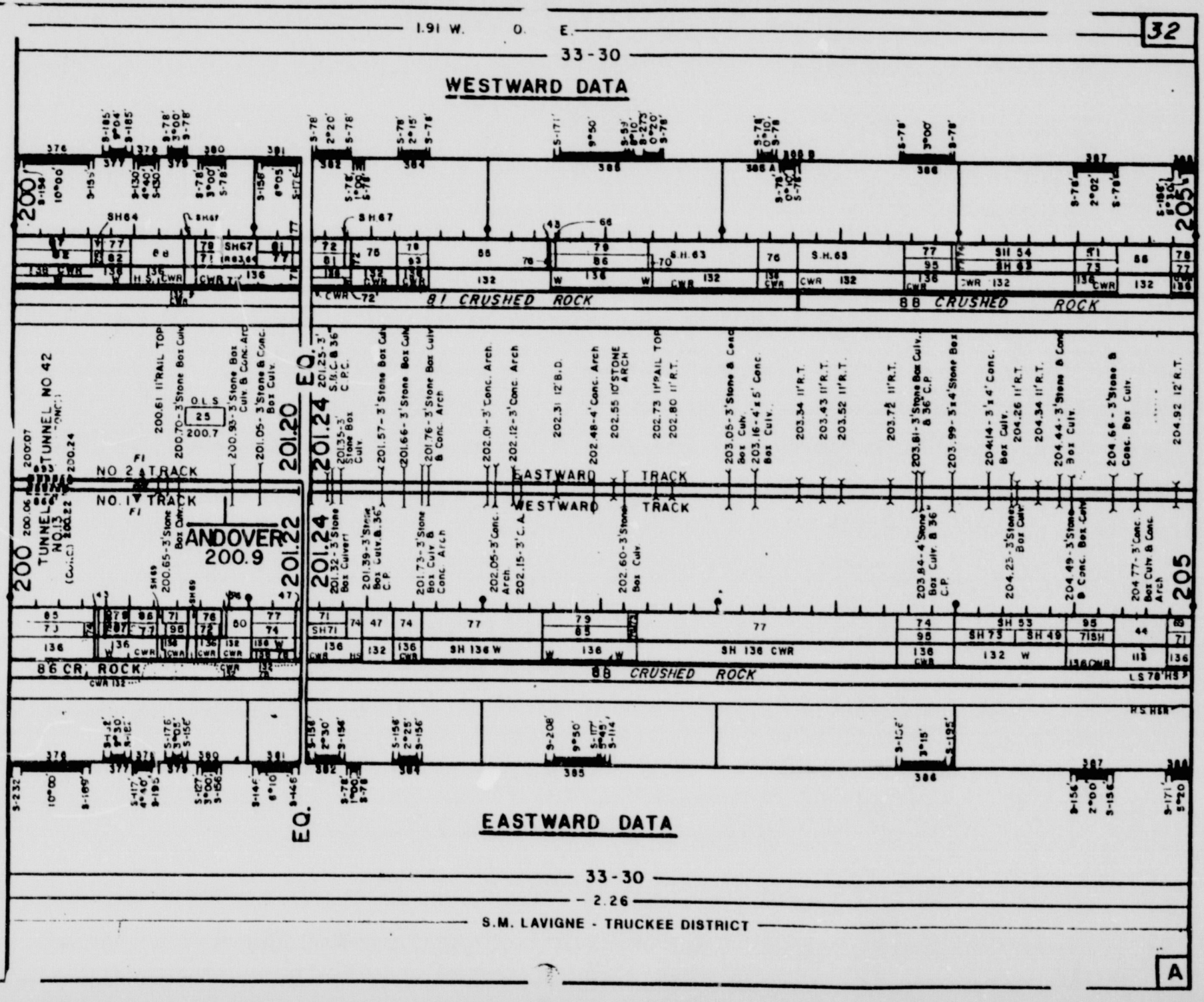
Michael R. Christensen

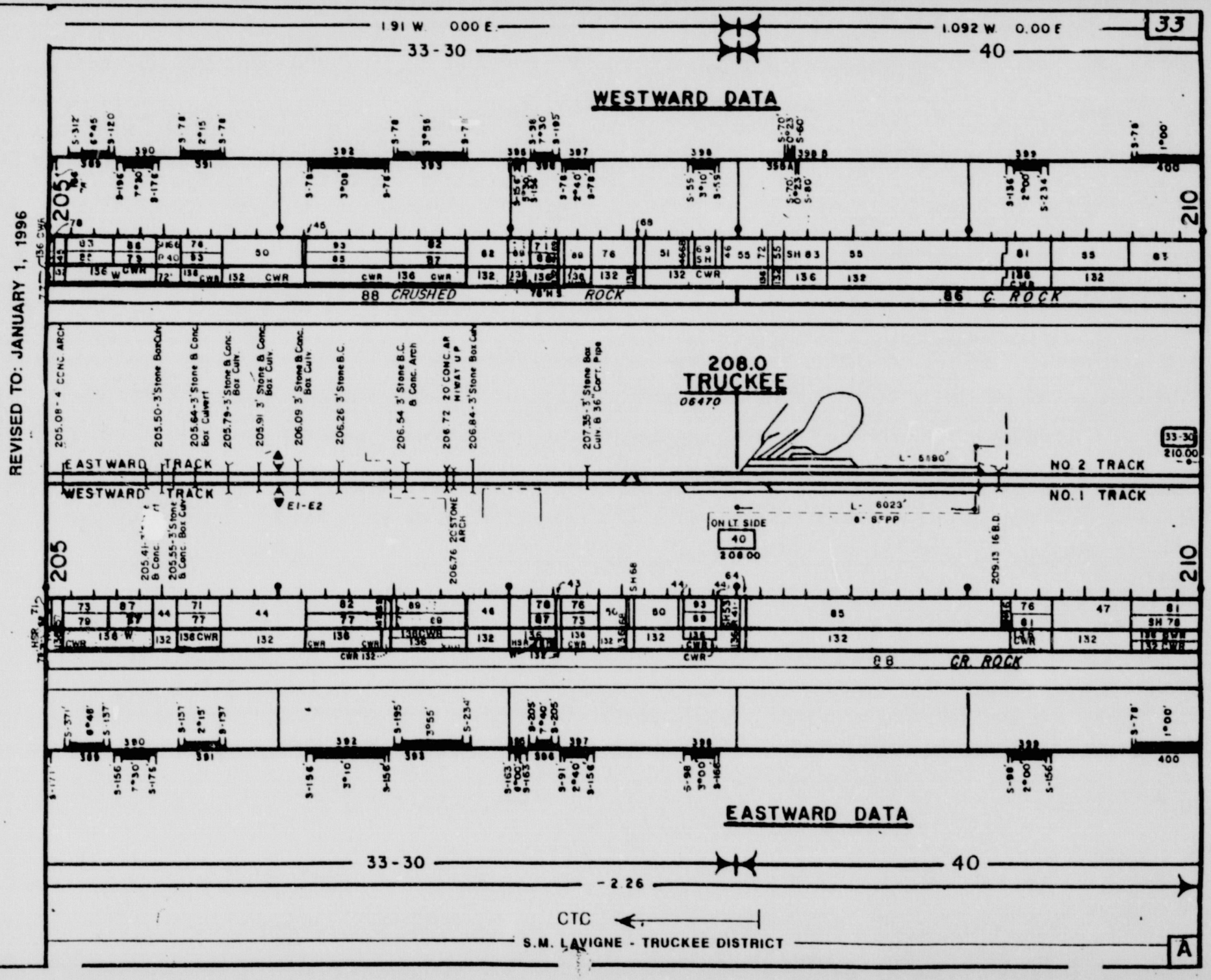
APPENDIX A

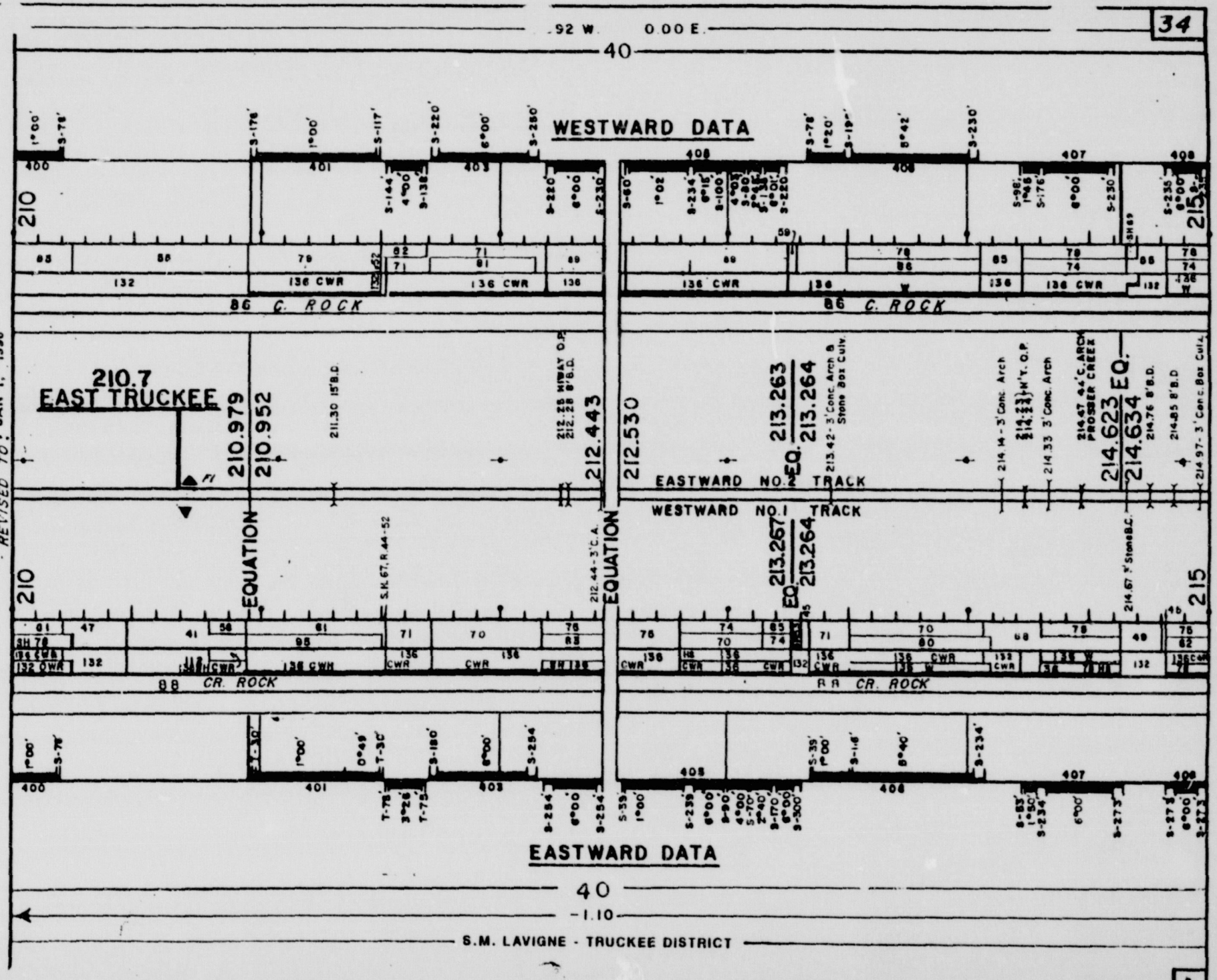
RAILROAD TRACK CHARTS AND MAPS


9
10
11
12
13
14
15
16
22
23
24
Kitzbuhel Rd
Highgate Lane
Sha Neva Rd
Dynois Blvd
E Ridge Rd
Grainshire Dr
River Way
Ever Valley Rd
E Main St
State Hwy 267
Indian Jack Rd
E River St
High St
Riverside Dr
Valley Rd
Ridge Rd
Glen Rd
Forest Lane
Donner Way
Tahoe Dr
Estates Dr
Martis Dr
Pine Cone Rd
Jeffery Pine Rd
Torrey Pine Rd
Indian Pine Rd
Red Fir Rd
White Fir Rd
Joerger Way
Brockway Rd
North Shore Rd
Golden Pine Rd
Shore Pine Rd
Old Mill Rd
State Hwy 89
W River St
Donner St
W River Rd
Knotty Pine Rd
Pine Cone Dr
Silver Spur Dr
Thelin Dr
NOLTE and ASSOCIATES, Inc.
Engineers / Planners / Surveyors
2950 Buskirk Avenue Suite 225 Walnut Creek, CA 94596


31
W 000 E
33-30
33-30
25
MP 198.7 BEGIN Dbl. Trk.
WESTWARD DATA
G3 CR. ROCK
8 C.R.
200
30
1960
196.808
196.815
EQ.
EQ.
196.033
197.410
EDER
197.7
198.7
SHED 47
SNOW SHED #47
NO. 2 TRACK
NO. 1 TRACK
TUNNEL NO 40
TUNNEL NO 41
195
BREAK DUE TO DIFFERENCE
IN LENGTH OF EASTWARD
AND WESTWARD TRACKS.
194.90
CR. ROCK
C.R.
84 CRUSHED ROCK
R6 CR. RK.
200
EASTWARD DATA
33-30
2.37 W.B.
2.26
147 E B
S.M. LAVAINE - TRUCKEE DISTRICT
A
REVISED TO: JANUARY 1, 1996


1.91 W.
O.
E.
32
33-30
WESTWARD DATA
REVISED TO: JANUARY 1, 1996
200
205
SH64
SH67
81 CRUSHED ROCK
88 CRUSHED ROCK
TUNNEL NO 42
TUNNEL NO 13
NO 2 TRACK
NO 1 TRACK
EASTWARD TRACK
WESTWARD TRACK
ANDOVER
200.9
201.20
201.24
201.22
EQ.
EQ.
86 CR. ROCK
88 CRUSHED ROCK
EASTWARD DATA
33-30
2.26
S.M. LAVIGNE - TRUCKEE DISTRICT
A


191 W 000 E
1.092 W 0.00 E
33
33-30
40
WESTWARD DATA
205
210
88 CRUSHED
86 C. ROCK
205.08-4 CONC ARCH
205.50-3'Stone Box Culv
205.64-3'Stone B Conc. Box Culvert
205.79-3'Stone B Conc. Box Culv.
205.91 3' Stone B Conc. Box Culv
206.09 3' Stone B Conc. Box Culv
206.26 3'Stone B.C.
206.54 3' Stone B.C. & Conc. Arch
206.72 20 CONC AR NIWAY UP
206.84-3'Stone Box Culv
207.35-3' Stone Box Culv & 36" Corr. Pipe
208.0
TRUCKEE
06470
EASTWARD TRACK
WESTWARD TRACK
E1-E2
NO 2 TRACK
NO. 1 TRACK
L- 5190'
L- 6023'
6° 8°PP
ON LT SIDE
40
208 00
205.41-3'Stone B Conc.
205.55-3'Stone B Conc. Box Culv
206.76 2C STONE ARCH
209.13 16 B.D
28 CR. ROCK
EASTWARD DATA
33-30
40
-226
CTC
S.M. LAVIGNE - TRUCKEE DISTRICT
A
REVISED TO: JANUARY 1, 1996



REVISED TO: JAN 1, 1996

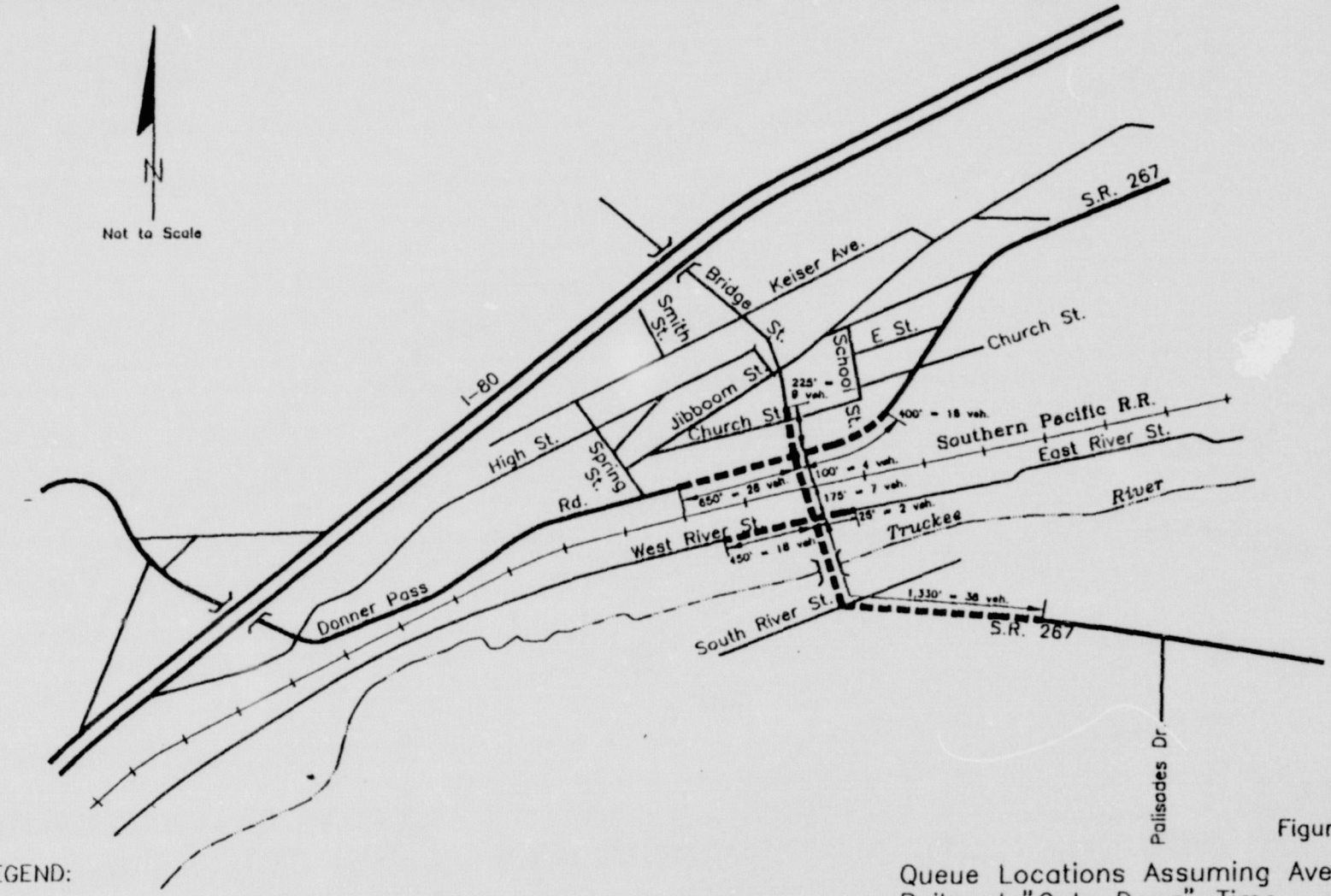


Figure 1

Queue Locations Assuming Average Railroad "Gate Down" Time

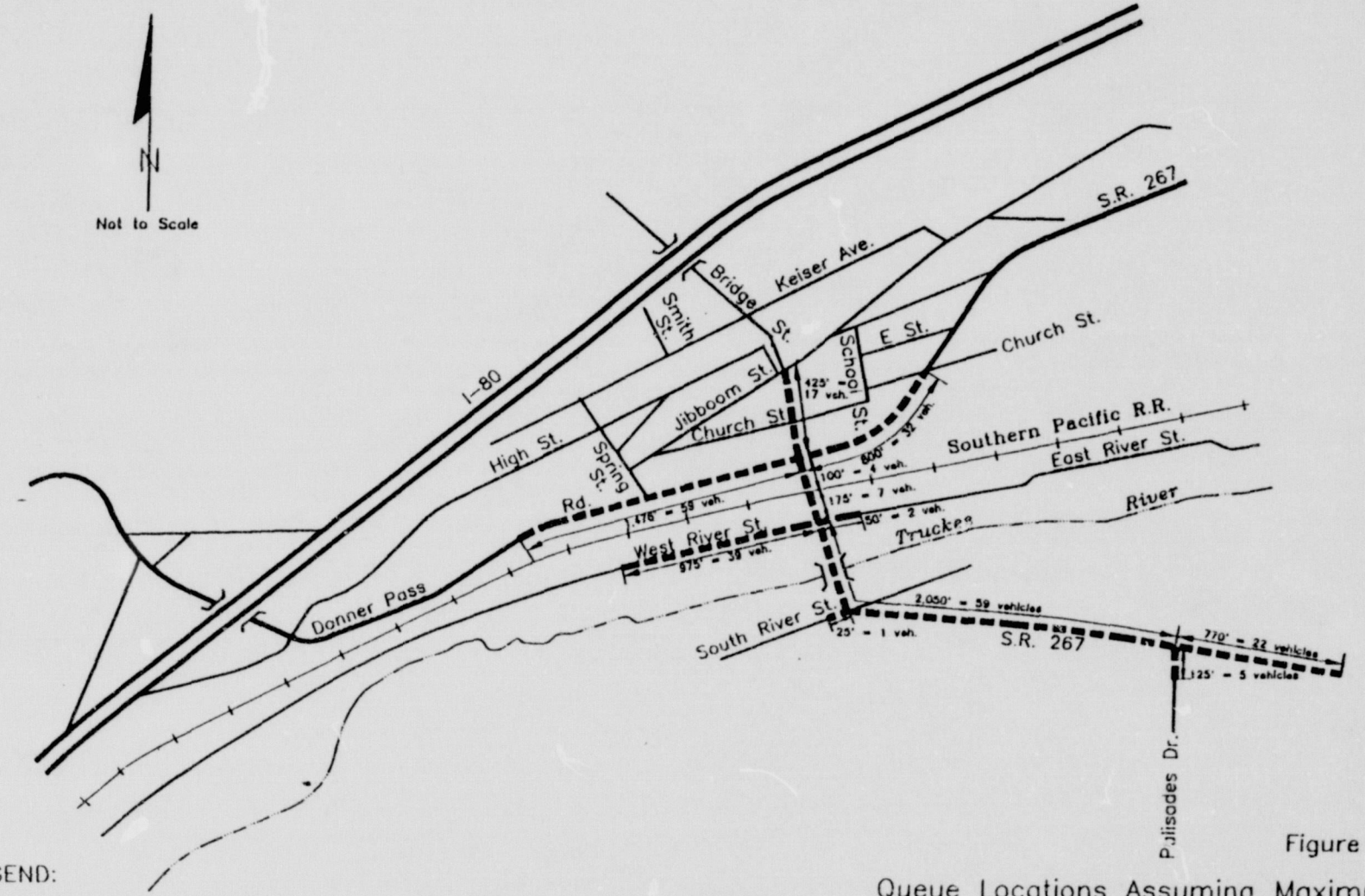
LEGEND:

▬▬▬ = Locations of vehicle queues

Source: LSC, Inc.

Truckee Rail Impact Study
(LSC #967050)
February, 1996

LEIGH, SCOTT & CLEARY, INC.



LEGEND:

▬▬▬ = Locations of vehicle queues

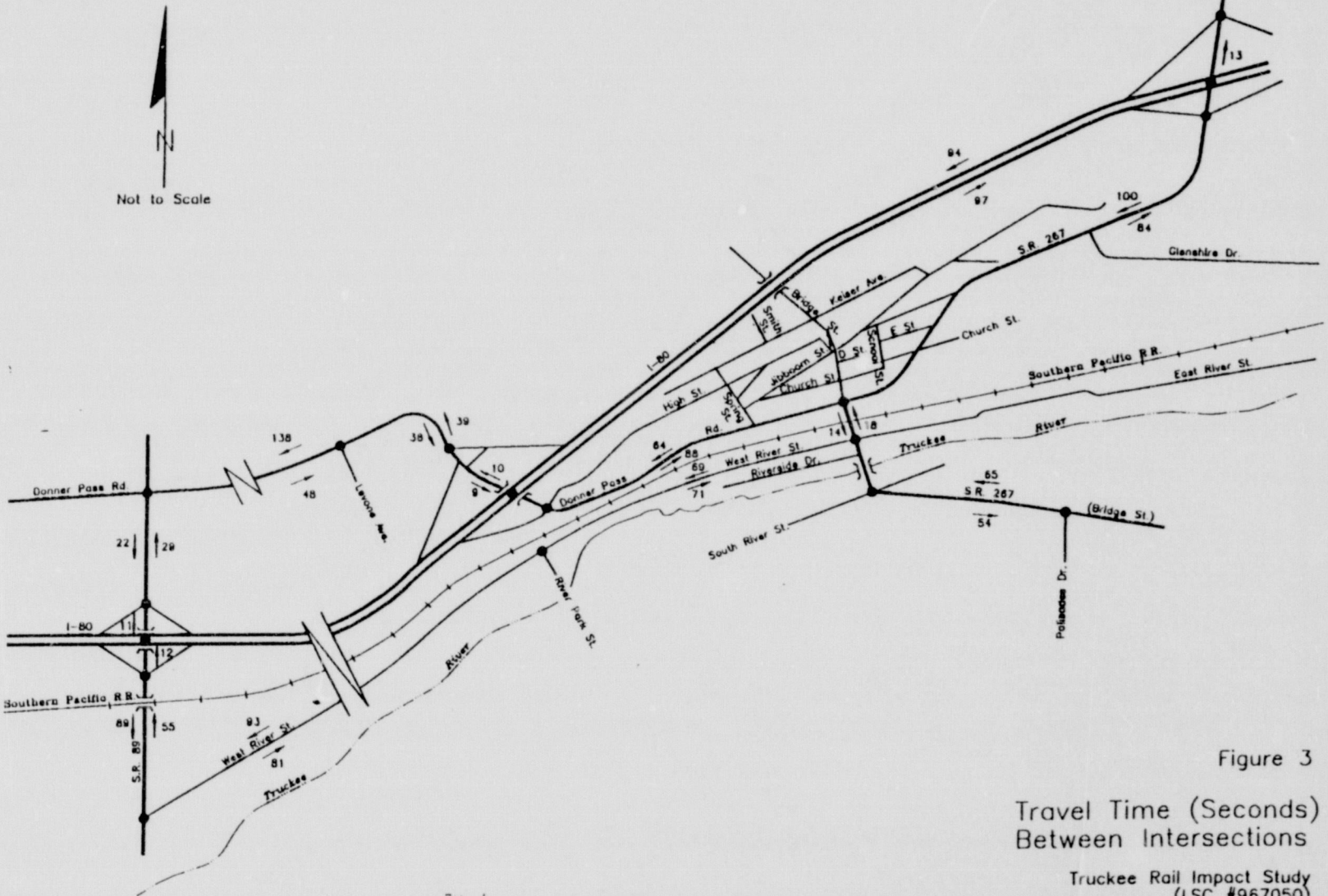
Source: LSC, Inc.

Figure 2

Queue Locations Assuming Maximum Railroad "Gate Down" Time

Truckee Rail Impact Study
(LSC #967050)
February, 1996

LEIGH, SCOTT & CLEARY, INC.



Source: LSC, Inc.

Figure 3

Travel Time (Seconds) Between Intersections

Truckee Rail Impact Study
(LSC #967050)
February, 1996

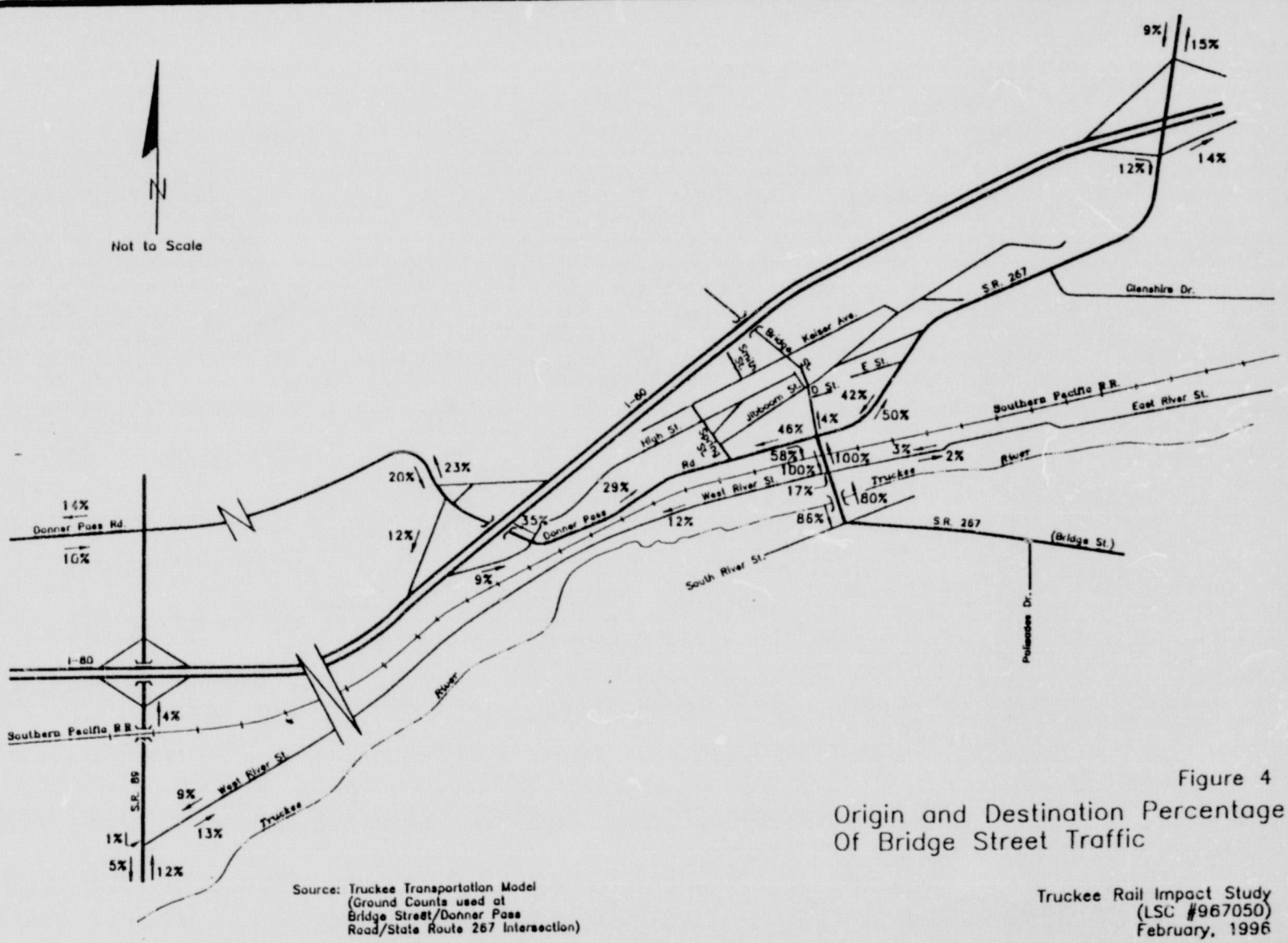


Figure 4

Origin and Destination Percentage
Of Bridge Street Traffic

Source: Truckee Transportation Model
(Ground Counts used at
Bridge Street/Donner Pass
Road/State Route 267 Intersection)

Truckee Rail Impact Study
(LSC #967050)
February, 1996

LEIGH, SCOTT & CLEARY, INC.

CERTIFICATE OF SERVICE

I certify that on this 28th day of March, 1996 a copy of the foregoing Verified Statement of Michael R. Christensen was served by Federal Express Overnight delivery to:

The Honorable Jerome Nelson
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 11F-21
Washington, D.C. 20426

Erika Z. Jones
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Suite 6500
Washington, D.C. 20006

Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

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

and by first class mail to all other parties of record listed on the service list attached to Decision No. 15, as amended and supplemented by Decision No. 17.

STB FD 32760 3-29-96 D 62329

62329

Law Department

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610

March 28, 1996

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

Re: Docket No. AB-3 (Sub-No. 130)
Abandonment Between Towner and NA Jct Colorado
(Related to FD 32760)

Dear Mr. Williams:

This is in response to the "Statement of Willingness to Assume Financial Assistance" filed by the State of Colorado under the Board's rules for Interim Trail Use and Rail Banking, 49 CFR §1152.29.

Pursuant to 49 CFR §1152.29(b)(iii)(5), Applicant Missouri Pacific Railroad Company advises that it is willing to negotiate an agreement for interim trail use/rail banking with the State of Colorado and/or its designee.

Very truly yours,

Robert T. Opal
General Attorney
Direct dial: (402) 271-3072
Fax: (402) 271-5610

cc: Jared Boigon, Policy Analyst
Office of the Governor
State of Colorado
Denver, CO 80203

G:\LAWADM\RTO\AB313O.STB

Law Department

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610

March 28, 1996

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

Re: Docket No. AB-3 (Sub-No. 130)
Abandonment Between Towner and NA Jct Colorado
(Related to FD 32760)

Dear Mr. Williams:

This is in response to the "Statement of Willingness to Assume Financial Assistance" filed by the State of Colorado under the Board's rules for Interim Trail Use and Rail Banking, 49 CFR §1152.29.

Pursuant to 49 CFR §1152.29(b)(iii)(5), Applicant Missouri Pacific Railroad Company advises that it is willing to negotiate an agreement for interim trail use/rail banking with the State of Colorado and/or its designee.

Very truly yours,

Robert T. Opal
General Attorney
Direct dial: (402) 271-3072
Fax: (402) 271-5610

cc: Jared Boigon, Policy Analyst
Office of the Governor
State of Colorado
Denver, CO 80203

G:\LAW\ADM\RTO\AB3130.STB

129 62293 DOW-12

EDACTED
in the Public Record)

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

Union Pacific Corporation, Union Pacific Railroad Company And Missouri Pacific Railroad Company

— Control And Merger —

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

COMMENTS, EVIDENCE, AND REQUEST FOR CONDITIONS

submitted on behalf of

THE DOW CHEMICAL COMPANY

Nicholas J. DiMichael
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for The Dow Chemical Company

March 29, 1996

TABLE OF CONTENTS

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

---

Presentation of Comments and Evidence by

THE DOW CHEMICAL COMPANY

Nicholas J. DiMichael
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for The Dow Chemical Company

March 29, 1996

TABLE OF CONTENTS

TABLE OF CONTENTS (CONT'D)

TABLE OF CONTENTS (CONT'D)

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

Union Pacific Corporation, Union Pacific Railroad Company And Missouri Pacific Railroad Company

— Control And Merger —

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

---

COMMENTS, EVIDENCE AND REQUEST FOR CONDITIONS

submitted on behalf of

THE DOW CHEMICAL COMPANY

Presentation of Comments and Request for Conditions

The Dow Chemical Company ("Dow") is an international producer of chemicals, plastics, hydrocarbons and a variety of consumer specialty products, headquartered in Midland, Michigan. Dow owns and operates one of the world's largest chemical and plastics production facilities at Freeport, TX. The proposed merger and consolidation of the Union Pacific Railroad ("UP")[1] and the Southern

---

1 All references to the "UP" include Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company.

Pacific Lines ("SP")[2] (collectively referred to as "Applicants") will adversely impact competition among rail carriers along the Texas Gulf Coast and will particularly adversely affect Dow, as a result of the loss of a build-in opportunity currently available to Dow in the vicinity of Freeport, TX to nearby SP rail lines. Accordingly, Dow respectfully requests the Surface Transportation Board ("Board"), pursuant to its authority under 49 U.S.C. § 11344(c)[3], to impose conditions governing the transaction and to require the Applicants, upon consummation of their proposed merger and consolidation, to protect competition for rail traffic at Dow's facilities at Freeport, TX. Those requested conditions and the reasons why such conditions must be imposed are detailed in this submission.

I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

A. Outline of This Submission

Dow's Comments, Evidence and Request for Conditions consists of a single volume comprised of five parts:

(1) Part A contains the Presentation of Comments and Request for Conditions which is set forth below. This part contains Dow's comments that summarize the evidence contained in the entire submission and it contains Dow's formal request for conditions.

(2) Part B contains the Verified Statement of William L. Gebo ("Gebo V.S.") and accompanying exhibits. Mr. Gebo is Dow's Manager, North

---

2 All references to the "SP" include Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company.

3 All statutory citations are to the former Interstate Commerce Act, 49 U.S.C. § 10101 *et seq.* (1995). The former Act was replaced on January 1, 1996 by the ICC Termination Act of 1995, Pub. L. No. 104-88, 1995 U.S.C.C.A.N. (109 Stat.) 803. However, according to the provisions of the new Act, all matters pending before the ICC on January 1, 1996 are to be resolved under the standards of the former Act. § 204(b), 109 Stat. at 941-42.

American Rail Procurement Services and is the primary presentor of Dow's facts.

(3) Part C contains the Verified Statement of Thomas D. Crowley ("Crowley V.S.") and accompanying exhibits. Mr. Crowley is an outside consultant who has conducted an independent analysis of Dow's competitive position before and after the merger.

(4) Part D contains the Verified Statement of John E. Kwoka, Jr. ("Kwoka V.S."), an expert economist who testifies about the effects on competition of "3 to 2" merger situations.

(5) Part E contains various exhibits which are documents that have been produced by the Applicants in their workpapers or through discovery.

B. Relief Requested

To ameliorate the anticompetitive effects of the proposed merger upon Dow's Freeport facilities, Dow requests the following relief:

Primary Request

1. Trackage rights for a carrier other than the BNSF, to be determined by Dow, over --

   a. The SP's line between New Orleans, LA and Houston, TX;

   b. The SP's line between Houston, TX and Memphis, TN;

   c. The UP's line between Houston, TX and Algoa, TX (including the portion of the BNSF line over which the UP currently operates pursuant to trackage rights); and

   d. The UP's line between Algoa and Angleton, TX with the right to connect to new line construction to serve Dow at Freeport

and

2. Trackage rights for the BNSF over the UP line between Algoa and Angleton, TX with the right to connect to new line construction to serve Dow at Freeport

Alternative Request

Trackage rights for a carrier other than the BNSF, to be named by Dow, over

a. The SP's line between New Orleans, Louisiana and Houston, Texas;

b. The SP's line between Houston, Texas and Memphis, Tennessee; and

c. The UP's line between Houston, Texas and

with the right to connect to new line construction in the vicinity of in order to serve Dow at Freeport and

II. STATEMENT OF FACTS

Dow is a world leader in the production of chemicals, plastics, and hydrocarbons. (Gebo V.S. at 3) In North America, Dow operates five major production facilities and numerous smaller facilities which produce several hundred product groups annually. (*Id.*) The two largest facilities are located along the Texas and Louisiana Gulf Coast at Freeport, Texas and Plaquemine, Louisiana. (*Id.*) Both facilities are rail-served solely by the UP. (*Id.* at 4) In this proceeding, Dow is concerned that the proposed merger will eliminate Dow's intramodal competitive options at its Freeport facilities.

Freeport is Dow's largest chemicals and plastics production facility. (*Id.* at 5) It generates carloads of rail traffic per year. (*Id.* at 7) Three separate plants, approximately seven miles apart, make up the Freeport facility.

(*Id.* at 6) Plant A is located on the waterfront, surrounded by the Old Brazos River and the Brazos River harbor area. (*Id.*) Plant B is located 7 miles inland, and the Oyster Creek plant lies between Plants A and B. (*Id.*) Plant B generates of the outbound bulk rail traffic, Plant A generates , and the Oyster Creek plant generates . (*Id.* at 7)

Freeport is situated on the Texas Gulf coast at the end of a 10 mile UP branch line that extends south from Angleton, Texas. (*Id.*) From Angleton, Dow's rail traffic can move southwest over the UP mainline to Corpus Christi, Brownsville and into Mexico or it can move northeast towards Houston and beyond. (*Id.* at 7) The nearest alternative rail carriers are located Both and operate lines from Houston to that pass through . (*Id.*)

For years, Dow has searched for ways to break the UP's firm grip at Freeport. , after meeting with Dow to discuss ways to reduce Dow's transportation costs, the SP suggested a build-in as one potential option. (*Id.* at 8) As of Dow and the SP were a build-in that would have connected Freeport with the SP . (*Id.*) . (*Id.*) , the UP had announced its intent to build-in to several captive SP shippers at Mont Belvieu, Texas.

III. THE INTERSTATE COMMERCE ACT, AS AMENDED BY THE STAGGERS ACT, REQUIRES THE BOARD TO BROADLY IDENTIFY POTENTIALLY HARMFUL COMPETITIVE EFFECTS OF A PROPOSED MERGER IN SPECIFIC CASES AND TO MITIGATE THOSE EFFECTS WHEREVER POSSIBLE

Under Section 11343 of the Interstate Commerce Act, a consolidation or merger of two carriers may be carried out only with the approval and authorization of the Surface Transportation Board as the successor to the Interstate Commerce Commission. 49 U.S.C. §11343(a). Both the legislative history of the statute and the agency's decisions implementing the law demonstrate that the agency must carefully and broadly consider the potential adverse effects on competition among rail carriers in an affected region.

Moreover, where a proposed merger results or may result in harmful competitive effects, the Board *must* impose conditions on the merger to eliminate those effects, as long as the conditions are operationally feasible and will produce public benefits outweighing any harm to the merger.

A. The Statutory Standard

The Interstate Commerce Act, in 49 U.S.C. §11344(b)(1), requires the Board to consider, in a proceeding involving the merger of two or more Class I railroads, at least the following:

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

The statute directs the Board to "approve and authorize a transaction . . . when it finds the transaction consistent with the public interest." 49 U.S.C. §11344(c). The same section also provides that the Board "may impose conditions governing the transaction." *Id.*

Subparagraph (E) of Section 11344(b)(1) was added to the Interstate Commerce Act by the Staggers Rail Act of 1980. Pub. L. 96-448, 94 Stat. 1931 (Oct. 14, 1980). A review of the legislative history of the amendment indicates that the legislature was well aware that the Staggers Act was intended to place and would place increased reliance on the forces of competition. 126 Cong. Rec. H8604 (daily ed. September 9, 1980)(remarks of Representative Panetta). The legislative history also plainly demonstrates that Congress added section

11344(b)(1)(E) in order to ensure that, whenever the agency was called upon to review a proposed rail merger, sufficient marketplace forces would be available after the consolidation to replace the strict regulation previously used to protect shippers from the effects of monopoly power. The Staggers Act thus reflects an *explicit* directive by Congress emphasizing the need to preserve competition when considering a major rail merger.

Moreover, the Staggers Act, in addition to amending section 11344(b) as described above, also adopted a separate rail transportation policy, 49 U.S.C. §10101a. Numerous provisions of that new policy reflected the Congress' directive that the agency should insure that competition be preserved and indeed enhanced in the administration of every aspect of its regulatory responsibilities. See, *e.g.*, 49 U.S.C. 10101a(1), (4), (5), (7), (11), (13). Of particular note was the very first policy, which indicated that it was the policy of the United States Government "to allow, *to the maximum extent possible, competition* and the demand for services *to establish reasonable rates for transportation by rail.*" 49 U.S.C. 10101a(1) [emphasis added]. The national transportation rail policy's emphasis on the role of competition was plainly intended to be implemented in major rail merger cases because of the adoption of the amendment to Section 11344. Indeed, the agency itself has recognized that "the rail transportation policy emphasizes the importance of the relationship between ensuring adequacy of transportation and the retention of competition." *Union Pacific Corporation, Pacific Rail System, Inc. and Union Pacific Railroad Company - Control - Missouri Pacific Corporation and Missouri Pacific Railroad Company*, 366 I.C.C. 462, 484 (1982) [*UP/MP Control*]

In addition to these explicit statutory considerations, the Board is also required by *McLean Trucking Co. v. United States*, 321 U.S. 67 (1944) and the *Northern Lines Merger Cases*, 396 U.S. 491, 510-513 (1970), to weigh the policy

of the antitrust laws disfavoring diminution in competition resulting from a proposed rail merger against the national transportation policy favoring improvements in efficiency from an integrated national transportation system. The agency has noted that, while it does not sit as an antitrust court, the antitrust laws give "understandable content to the broad statutory concept of the public interest." *UP/MP Control*, 366 I.C.C. at 485, *quoting FMC v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 338, 244 (1968). Even if a particular transaction would not violate the antitrust laws, the Board has the discretion to disapprove it. *Burlington Northern Inc. and Burlington Northern Railroad Co. -- Control and Merger -- Santa Fe Pacific Corp. and the Atchison , Topeka and Santa Fe Railway Company*, 1995 I.C.C. LEXIS 214, at 53 (Aug. 23, 1995) [*BN/SF Control*]

B. The Board's Implementation Of The Statute Indicates That It Must Identify Potentially Harmful Competitive Effects And Mitigate Those Effects Wherever Possible

1. The Board's policy statement on rail mergers explicitly requires it to consider any significant lessening or reduction in competition caused by a merger.

The Board's current policy statement on rail mergers is the result of a reevaluation of its former policy in light of the changes wrought by the Staggers Act. In promulgating this policy statement, the agency noted that its earlier statement could have left the impression that "our concern was solely with the possible 'elimination' of competition." *Id.* In light of the changes wrought by the Staggers Act, however, the agency emphasized that "we are necessarily also concerned about *any significant 'lessening' or 'reduction' in competition caused by a consolidation*." *See*, 363 I.C.C. at 786-87 [emphasis added].

As currently codified at 49 C.F.R. §1180.1(c), the Board's policy statement on major rail mergers states that the agency performs a balancing test, weighing the potential benefits to the applicants and the public against the potential harm to the public. The policy statement then goes on to detail the potential benefits and potential harm that it will balance and the evidence that it will consider in a major rail merger proceeding:

> If two carriers serving the same market consolidate, the result would be the elimination of the competition between the two. Even if the consolidating carriers do not serve the same market, there may be a lessening of potential competition in other markets. While the reduction in the number of competitors serving a market is not in itself harmful, a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest. . . . In some markets the Commission's focus will be on the preservation of effective intermodal competition, *while in other markets (such as long-haul movements of bulk commodities) effective intramodal competition may also be important.*

49 C.F.R. §1180.1(c) [emphasis added]. Thus, the Board's current policy statement *explicitly* recognizes that the preservation of effective rail-to-rail competition is frequently necessary when considering the effects of a rail merger on long haul movements of bulk commodities.

2. Case law clearly indicates that the Board will broadly impose protective conditions on a proposed merger in markets where effective competition is lessened.

Since the passage of the Staggers Act, the agency has consistently emphasized the need to protect the public from any harmful effects on competition resulting from a proposed rail merger. In its decision in *UP/MP Control*, the agency noted that

> [o]ur analysis of the potential harm from a proposed consolidation focuses on two impacts highlighted by the statutes and policies discussed above: *any reduction in either intra- or intermodal*

> *competition which would likely result from the consolidation*; and any harm to essential services provided by competing carriers . . .

366 I.C.C. at 486. In *Santa Fe Southern Pacific Corporation-Control-Southern Pacific Transportation Company*, 2 I.C.C.2d 709, 726 (1986) [*SF/SP Control*], the agency emphasized that "the effect of a transaction on competition is a *critical factor* in our consideration of the public interest. . . ." [Emphasis added]. See also, *BN/SF Control*. slip op. at 55.

Thus, the case law is clear that, in examining a proposed transaction, the Board must look at *specific* instances where a lessening or reduction in competition is alleged to take place, and that the Board must *broadly* consider all types of restrictions on competition.

3. The Board's power to condition a proposed consolidation in order to eliminate anticompetitive effects is broad

The Board's power to attach conditions to its approval of a major rail merger is, under the statute, unqualified, and the agency itself has characterized its authority as "broad." 49 U.S.C. §11344(c); *BN/SF Control*, 1995 I.C.C. LEXIS at 55; *UP/MP Control*, 366 I.C.C. at 562. The agency has observed that conditions generally will be imposed where certain criteria are met. *See, e.g., Union Pacific Corp, et al. — Control — Chicago and North Western,* Finance Docket No. 32133, served March 7, 1995, mimeo at 56 [*UP/CNW Control*]. When it is claimed that the proposed transaction will have a *direct* effect on competition, by eliminating competitive alternatives available to the public, the agency does *not* require a showing of harm to essential services before conditions will be imposed. *Railroad Consolidation Procedures,* 363 I.C.C. at 789. The agency has determined that if a transaction threatens harm to the public interest, conditions *should* be imposed if they are operationally feasible, ameliorate or

eliminate the harm threatened by the transaction, and they are more beneficial to the public than they are detrimental to the transaction. *UP/MP Control*, 366 I.C.C. at 564.

In the broadest sense, then, the agency has summarized its analysis of the changes wrought by the Staggers Act by recognizing that the Act

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

UP/MP Control, 366 I.C.C. at 502. *See also*, *SF/SP Control*, 2 I.C.C.2d at 727. With these principles in mind, the evidence presented in this Request for Conditions shows that there will be a substantial lessening of competition by the merged carrier for the transportation described in this Request for Conditions.

C. The Agency Has Recognized That It Must Carefully Examine Reductions In Competition In Situations Broader Than Just So-Called "2-To-1 Points"

The agency has recognized that a reduction in rail carriers from three to two does in some cases entail "a substantial lessening of competition." *UP/MP Control*, 366 I.C.C. at 531. For instance, in *Guilford Transp. Industries, Inc. - Control - Boston and Maine Corp.*, 5 I.C.C.2d 202 (1988), the ICC stated that a reduction from three rail carriers to two might be a significant lessening of competition where traffic is not considered highly truck competitive. *Id.* at 213. Similarly, in *SF/SP Control.*, 2 I.C.C.2d 709, 791, n.72 (1986), DOJ and DRGW argued, and the agency recognized, "that a reduction of competitors from 3 to 2

can result in significant anticompetitive behavior, such as collusion and mutual forbearance." The agency went on to state that:

> Vertical foreclosure can occur when the merged system is in a position to divert traffic from a competitor and foreclose it from continuing to compete. Reduction in the number of competitors from two to one, where the merging carriers have been the only competitors, creates the obvious problem of a monopoly. However, the mere reduction rather than elimination of competitors, e.g., from three to two, may create serious anticompetitive problems as well.

Id. at 792.

The agency is also cognizant of cases where a shipper may have more than one carrier available, but nonetheless is subject to anticompetitive impacts if one carrier is not useful. In *BNSF Control*, 1995 I.C.C. LEXIS 214, at 94 (1995) the agency stated that:

> Two independent railroads, we think, can provide strong, effective competition provided that, among other things, neither is subject to any artificial restrictions. The problem here, though, is that the 3-to-2 reduction in competitive alternatives faced by GNBC is in reality more complicated than a simple 3-to-2 description would indicate. On account of the blocking provision, the reduction in competitive alternatives faced by GNBC can more accurately be described as being three (two of which can handle only such traffic as BN itself cannot handle) to two (one of which can handle only such traffic as BN itself cannot handle). GNBC, that is to say, will not really be left with two unrestricted competitive alternatives.

Thus, the agency concluded that "[u]nconditioned common control of BN and Santa Fe . . . would have the effect of reducing GNBC's class I rail options from three (two of which are of limited usefulness) to two (one of which would be of limited usefulness)." *BNSF Control*, 1995 I.C.C. LEXIS 242, at *14 (1995). *See also, Norfolk Southern Corp. -- Control -- Norfolk & W. Ry. and Southern Ry.*, 366 I.C.C. 173 (1982).

IV. THE EVIDENCE CLEARLY DEMONSTRATES THAT THE MERGER WILL HAVE SIGNIFICANT ANTICOMPETITIVE EFFECTS FOR THE TRANSPORTATION OF DOW TRAFFIC AT FREEPORT

The Board will place protective conditions upon a merger only if the anticompetitive effects sought to be corrected are the result of the merger. *BNSF Control*, slip op. at 54; *UP/MP Control*, 366 I.C.C. at 562-63, 565. One of the ways in which a merger can have anti-competitive effects is by reducing or eliminating horizontal competition. Horizontal competition exists when two or more rail carriers offer competing service within a defined market. *BNSF Control* at 55. If two carriers that provide horizontal service merge, there is a reduction in horizontal competition. An anti-competitive merger will allow the newly combined carriers to exercise market power over the affected traffic. *Id.* at 54.

An examination of competitive constraints upon market power requires consideration of both actual and potential competition. The fact that a shipper is served by only a single rail carrier does *not* automatically mean the shipper cannot benefit from horizontal competition. If a second carrier operates nearby with the capability of extending its track to the shipper, that carrier can be just as effective a competitor as if it actually served the shipper directly. *Union Pacific Corp. - Control - Missouri-Kansas-Texas Railroad Co.*, 4 I.C.C.2d 409, 476-77 (1988). The incumbent carrier will have every incentive to discourage the build-in by pricing its services at a level that will make the build-in unattractive to a challenger. However, if the incumbent carrier fails to respond to a viable build-in threat, the build-in will be constructed and the incumbent carrier will lose the traffic. The shipper benefits in either instance. Thus, the threat of competition alone can have a restraining effect upon a would-be monopolist.

The merger of the UP and SP will have the anti-competitive effect of eliminating horizontal competition for Dow traffic from and to Freeport, Texas. The horizontal competition that will be eliminated is a prospective build-out from Freeport to the SP. The result is a concentration and enhancement of market power in the merged UP/SP. Furthermore, the loss of horizontal competition at Freeport will not be ameliorated by the limited instances of intermodal and source competition that may exist. Thus, Dow will suffer a serious loss of horizontal competition as a direct result of the UP/SP merger.

A. The Proposed Merger Will Eliminate a Feasible Build-In, Build-Out Option Currently Available to Dow

As a direct result of the merger, Dow no longer will have a build-in or build-out option to the SP. The threat of a build-in from the SP was very real

. A physically feasible route had been identified and Dow and the SP a build-in, which appeared promising. The proposed merger will eliminate this potential competitive threat.

1. The SP's proposed build-in is physically feasible.

The physical feasibility of the build-in is indisputable.

Although various obstacles were identified,

, none of these were considered insurmountable.

The most compelling evidence of physical feasibility is

:

The *total* potential traffic volumes available to the SP strongly suggest that the build-in could be economically viable. Dow's total annual traffic flows carloads at Freeport. (Gebo V.S. at 7)

carloads of traffic per year. (*Id.*) Thus, carloads annually would be available

Witness Crowley confirms the carload estimates made by Dow. His study of 1994 Costed Waybill Sample data for STCC 28 originations along the build-in route revealed carloads originated by the UP . (Crowley V.S. at 9) Witness Crowley further determined that %, or carloads, of this traffic would be available to the SP via the proposed build-in. (*Id.*)

. ( ) Witness Crowley concludes that "[t]his quantity of diverted traffic would be more than sufficient to support the cost of a build-in" to Freeport. (Crowley V.S. at 9)

. Thus, there would be substantial savings to Dow which would justify the cost of a build-out.

Dow has estimated that the rates it currently pays the UP are higher than the rates paid by chemical and plastics shippers that have head-to-head rail competition. (Gebo V.S. at 15)

As a result, there can be little doubt that Dow stands to gain significant savings from head-to-head rail competition at Freeport.

Dow could save annually if it can reclaim the premium it pays the UP. (Gebo V.S. at 15)

. Dow's traffic, however, accounts for

---

4 *See* Gebo V.S., note 6.

The potential savings to Dow from head-to-head rail competition and the volumes of traffic available strongly suggests that the build-in was economically viable.

B. Elimination of the SP Build-In, Build-Out Option Effectively Renders Dow a Two-to-One Point.

Although it could be argued that Dow's post-merger posture at Freeport has the appearance of a three to two situation, the effects Dow will experience are similar to those experienced by a two to one shipper. Freeport currently is captive to a single carrier, the UP,

. As a practical matter, the effect of the merger will be to deprive Dow of its sole opportunity to obtain the benefits of intramodal competition at Freeport.

1. There can be clear anticompetitive effects when markets experience a reduction in competition from three competitors to two.

The Interstate Commerce Commission has recognized that there can be clear anticompetitive effects even when markets experience a reduction in competitors in the market from three to two. *UP/MP Control*, 366 I.C.C. at 531; *SF/SP Control*, 2 I.C.C.2d at 791, n. 72. The agency's precedent is clearly consistent with longstanding and widespread economic teaching and analysis.

The research reviewed by Dow witness Kwoka strongly suggests that reductions from three to two competitors often represents the threshold at which the surviving firms can exercise market power. In particular, witness Kwoka emphasizes that "firms in small-numbers markets are characterized by the inherent interdependence of their actions and by their recognition of that interdependence." (Kwoka V.S. at 5-6) In his verified statement, Dr. Kwoka has

reviewed the very substantial body of economic analysis that confirms the frequently critical role that a third competitor plays in the market. The research, as Dr. Kwoka notes, cuts across the economy, and even includes such network-based industries as railroads and airlines.

In the face of this well-accepted economic research, extreme care should be taken in cases where there is a reduction in competition from three competitors to two: specific facts should be very carefully analyzed. Those who would argue that such a competitive reduction is of no consequence should be required to carry a high burden of proof, on the basis of substantial evidence of record, that the well-accepted teachings of economics do not apply in the particular case.

In the context of this particular case, however, the facts are *precisely* to the contrary: a candid analysis of the specific facts of this record shows that the presence of the SP was *critical* to the competitive situation surrounding the build-in to Dow, and that the *absence* of the SP would leave Dow with virtually no build-in alternative. As described further below,

is consistent with a study of over 300 manufacturing industries performed by witness Kwoka. He found that industry margins actually decline in the presence of a larger third firm and possibly fourth firm and concluded that "market power in an industry may be constrained by a mid-ranked firm, which appears more likely to compete than to coordinate with the dominant two." (Kwoka V.S. at 14) Other miscellaneous industry studies supported Kwoka's rivalry hypothesis. (*Id.* at 15-17) The refusal of the third firm to coordinate with the dominant two forces a competitive response from the two dominant firms.

It is to the specific facts of the SP's competition with respect to Dow that we now turn.

2. The three to two effects of the merger will have significant anti-competitive consequences for Dow at Freeport.

The evidence surrounding Dow's build-in option at Freeport strongly supports the theory that a reduction from three to two carriers will be anticompetitive. This is demonstrated by

The existing three carrier competition on the Texas Gulf Coast has provided a very competitive environment for chemicals and plastics traffic. In fact, Dow's build-in discussions with the SP can be traced directly to this fierce competition. In late 1993, the UP announced its intent to build-in to three exclusively SP-served chemical shippers at Mont Belvieu, Texas.

This type of aggressive competition will be significantly lessened after this merger.[6]

. The benefits to the railroad and the potential for coordinated activity in this situation, even passive coordination, are too great to ignore.

---

6 This conclusion is supported by empirical evidence developed in studies of the airline industry that shows that airlines refrain from aggressive competition on particular routes out of fear that their rivals will respond too aggressively. There are many similarities between the airline and railroad industries. In both industries, most routes are served by very few carriers, routes are linked into networks with the same carriers competing on many routes, and capital costs are large but can be redeployed among routes. Potential entry also is important to both industries but is more constrained in the railroad industry. (Kwoka V.S. at 17)

C. Intermodal Competition for Dow Traffic Is Severely Limited at Freeport.

A complete analysis of the competitive effects of a merger also requires consideration of intermodal competition. At Freeport, motor carrier, barge and ocean tankers are the principal providers of potential intermodal competition. Although each may act as a competitive constraint upon rail pricing in certain circumstances, these instances are . In most instances where a chemical or plastic commodity moves by a mode other than rail, it is because that is the most cost effective mode and rail is rarely ever considered an option.

Although Applicants have heavily emphasized intermodal competition as a competitive constraint upon rail carriers, such competition is for direct head-to-head rail competition at the origin. Thus, Dow's loss of a build-in option at Freeport by intermodal competition.

1. Trucks for the majority of Dow traffic

The ability of trucks to compete with rail is constrained by numerous factors, including distance, volumes, customer requirements, and market factors. As a general matter, trucks are less competitive at longer distances, particularly distances . (Gebo V.S. at 18; Peterson Tr. at 801) When trucks do haul chemicals and plastics over long distance, it is usually because: (1) the customer is unable to receive service by rail; (2) the volume of the movement is too small for rail; (3) the customer prefers service by bulk truck for just-in-time delivery inventory purposes; (4) the customer has requested an expedited shipment because rail shipment has been delayed or frustrated; (5) the shipment is

an emergency movement that is needed to maintain production or inventory balances; (6) product handling requirements, such as temperature control, cannot be accommodated by rail; or (7) forces of mother nature, such as floods or storms, make shipment by rail or marine temporarily impractical. (Gebo V.S. at 18-19)

Other factors to consider with trucks are (1) large volume moves by truck; (2) the marketplace dictates that some product groups, move primarily by rail; and (3) stewardship or safety concerns for particular products, . (*Id.* at 19)

2. Marine and rail transportation modes for Dow traffic.

Applicants place particular emphasis upon marine competition from barges and ocean vessels as a competitive alternative for Gulf Coast chemical movements. However, these too have Applicants' witnesses also have recognized this fact. (Peterson Tr. at 798 - 801)

The opportunity for marine competition is greatest when dealing with high volume commodities and both the origin and destination are located on a navigable waterway. For example, because barges carry the equivalent of 15 to 30 railcars, they are for service to customers that only take of a commodity per year. (Gebo V.S. at 20) Even shippers who take per year do not take delivery of their entire volume in a single movement. (*Id.*) Over of Dow's rail traffic lanes involve railcars per year and almost of Dow's rail traffic lanes involve per year. (*Id.*) In addition, although Freeport is located on the water, of its traffic lanes have direct access to water at the destination. (*Id.*)

Thus, there are high volume movements for which barge with rail.

Some smaller volume customers and customers not located on water may be accessed through barge transfer terminals but this too . First, the leasing or owning and operating a terminal often renders barge transport (*Id.* at 21) Second, there must be a large number of closely clustered customers upon whom the expense of barge transfer terminal facilities can be spread . (*Id.*) Third, barge transport is significantly slower than rail . (*Id.* at 22) Fourth, barge transport is for the movements of , which constitute over of all rail movements from Freeport (*Id.*) Finally, commodities typically are considered too hazardous to transport by water. (*Id.* at 23)

Most of the limitations applicable to barge transport are equally applicable to ocean carriage. Two significant differences are that barges are substantially cheaper to operate than U.S. flag ship ocean vessels and ocean vessels only will be considered for commodity moves. (*Id.* at 23) Combined, barge and ocean transport have the ability to impact of Dow's rail traffic lanes. (*Id.* at 21-22)

3. Roll-on, roll-off barge service at Freeport

The Applicants also have suggested that roll-on, roll-off railcar barge service can create intramodal rail competition and they have used Dow as an example of this. (Peterson V.S. at 241) This claim is and to consider the of such an operation. Both the BN and SP have proposed railcar barge operations at Freeport within

the last five years. Dow has rejected both proposals at Freeport.

The logistical problems at Freeport begin with the location of Dow's three plants.

. (*Id.*) Finally, even if the BN was somehow able to access all of Dow's plants, the proposed operation would have handled which would equal per year. (*Id.*) This is Dow's annual traffic volumes at Freeport. Thus, Dow would have remained captive to the UP for Furthermore, the UP could use its control over Dow's other major chemical and plastics production complex at Plaquemine, Louisiana to exercise some leverage over of the Freeport traffic. This is not competition.

Although the UP claims that Dow was able to leverage this railcar barge potential for , that claim is a gross misrepresentation. Almost were in place prior to the railcar barge proposal and the UP actually revoked these when Dow began discussions with the BN. (*Id.*) With the UP still in control of its Freeport rail traffic and Plaquemine rail traffic, Dow did not want risk the wrath of the UP to gain its Freeport traffic. (*Id.* at 25-26)

The additional Dow obtained from the UP came with a price of its own. Dow had to commit to tender per years from both Freeport and Plaquemine to receive the

discounts. (*Id.* at 26) If Dow fell below the minimum, it potentially . (*Id.*) On average, Freeport and Plaquemine combined generate per year. (*Id.*) Dow had never before been forced to commit on such a grand scale. (*Id.*)

In any event, the BN has since shut down its barge terminal operations at Galveston, Texas and the railcar barges have been sold. Also, because the BN service to Dow was intended to supplement a much large railcar barge service to Mexico, it is not at all clear that Dow's traffic alone could sustain a railcar barge operation. Thus, railcar roll-on, roll-off barge service for Dow at Freeport.

D. Source Competition for Intramodal Competition.

Applicants have claimed that abundant source competition exists in three forms: geographic competition, production shifts to other facilities served by a different rail carrier, and product swaps with competitors. These broad based theoretical claims are not supported by the realities of the chemical production market.

Applicants have made their claims based upon an analysis of chemicals and plastics at the seven digit Standard Transportation Commodity Code ("STCC") level. While this may be appropriate for rail transportation purposes, their are very important factors that further distinguish these commodities for chemicals and plastics producers and consumers. These factors include formulas, physical properties, and purity levels. (Gebo V.S. at 27-28) The most extreme example of differences beyond the seven digit STCC level is polyethylene, of which Dow produces at Freeport. (*Id.* at 28) Polyethylene

accounts for of Dow's Freeport bulk rail traffic. (*Id.* at 22) This fundamental lack of fungibility renders a seven digit STCC analysis meaningless.

A further limitation upon source competition is production capacity constraints. The highly competitive chemical and plastics industry requires producers to operate as close to capacity as possible and, in any event,

. (*Id.* at 28) Most plants operate in the (*Id.*) As a result, there is little room to absorb large commodity production shifts among competitors or even among the various facilities of a single competitor. Dow, in particular, because the only facility that has any significant production overlap with Freeport is Plaquemine, which also is captive to the UP. (*Id.* at 29)

Finally, product swapping among competitors raises significant concerns that make it a less than ideal competitive alternative to rail. The participants must be willing to make long term commitments and be willing to tie up their production capacities for the benefit of the other. (*Id.* at 30) In addition, because many chemicals can vary in physical properties, each participant must be willing and able to produce a product of the same quality and purity as the other. (*Id.* at 31) There also are many contractual liability issues that must be agreed upon. (*Id.*) Finally, any arrangement involving cooperation with one's competitors must be carefully scrutinized for potential antitrust issues. (*Id.*) All of these considerations combine to make it very difficult to arrange product swaps.

Thus, source competition in general is grossly overstated and oversimplified by the Applicants.

V. THE BOARD MUST GRANT DOW'S REQUEST FOR CONDITIONS TO ELIMINATE THE ANTICOMPETITIVE EFFECTS OF THE PROPOSED MERGER.

The anticompetitive effects of the merger on Dow's Freeport traffic can be ameliorated with the imposition of protective conditions upon the merger. Dow has presented a Primary and an Alternative request for conditions. Dow strongly believes that its evidence justifies the imposition of its Primary request. However, should the Board reach a contrary conclusion, Dow is entitled to its Alternative request at the very least. The following conditions upon the merger are necessary to preserve Dow's pre-merger competitive posture:

Primary Request

1. Trackage rights for the BNSF over the UP line between Algoa and Angleton, Texas with the right to connect to new line construction to serve Dow at Freeport and any other shippers located along the new line.

2. Trackage rights for a second carrier, to be determined by Dow, over --

   a. The SP's line between New Orleans, Louisiana and Houston, Texas;

   b. The SP's line between Houston, Texas and Memphis, Tennessee;

   c. The UP's line between Houston, Texas and Algoa, Texas (including the portion of the BNSF line over which the UP currently operates pursuant to trackage rights); and

   d. The UP's line between Algoa and Angleton, Texas with the right to connect to new line construction to serve Dow at Freeport

Alternative Request

1. Trackage rights for a carrier, to be named by Dow, over --

a. The SP's line between New Orleans, Louisiana and Houston, Texas;

b. The SP's line between Houston, Texas and Memphis, Tennessee; and

c. The UP's line between Houston, Texas and
with the right to connect to new line construction in the vicinity of in order to serve Dow at Freeport /

A. Justification for Dow's Primary Request

Dow has presented extensive evidence of the feasibility of a build-in by the SP to Dow's Freeport, Texas facilities which would have connected with the SP

The same fact would hold true to an even greater extent for any other carrier that might be granted trackage rights in order to construct the build-in .

because no other carrier's route structure would permit it to terminate as much traffic or obtain as many long-hauls as the SP that would be sufficient enough to economically justify the build-in for that carrier.

Because of these various factors, it is necessary to permit the build-in to be constructed from a point along the UP line between Angleton and Algoa, Texas. This will of the build-in which will render the build-in economically feasible for a tenant carrier who cannot realize the same traffic

and revenue levels as the SP over the build-in. This right must be granted to both the BNSF and a second carrier for two reasons. First,

Second,

, both BNSF and the second carrier must have a right to connect to the build-in .

The second tenant carrier will require trackage rights from Houston to New Orleans and Memphis in order to connect with its own tracks (e.g., IC and KCS) and in order to provide a sufficient long-haul to improve the economics of the build-in.

The combination of these conditions will restore Dow to an economical build-in situation.

B. Justification for Alternative Request

At the very least, Dow is entitled to its alternative request for conditions. This request will allow a second to connect to a build-in in exactly the same area as the proposed SP build-in. As a result, that carrier will be in the same physical, if not economic, position as the SP. The only variation is that trackage rights are requested over

Trackage rights are required for the tenant carrier between Houston and New Orleans and Memphis.

Respectfully submitted,

Nicholas J. DiMichael
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for The Dow Chemical Company

March 29, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

— CONTROL AND MERGER —

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

VERIFIED STATEMENT OF WILLIAM L. GEBO

Nicholas J. DiMichael
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for The Dow Chemical Company

March 29, 1996

TABLE OF CONTENTS

TABLE OF CONTENTS (CONT'D) Page

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

— CONTROL AND MERGER —

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

VERIFIED STATEMENT OF WILLIAM L. GEBO

I. INTRODUCTION

My name is William L. Gebo and I am Manager, North American Rail Services Procurement for The Dow Chemical Company. My business address is 2020 Dow Center, Midland, Michigan 48674. I have been employed by Dow in various capacities since 1968.

In my current position with Dow, I am responsible for railroad and rail car related services for Dow North America. These services include the negotiation of rail freight contracts; leasing, purchasing and selling of railcars; contracting with rail car maintenance shops; and arranging fleet administration support service contracts. I have held this position since July 1993.

I joined Dow as an engineer in 1968 after completing my MBA at the University of Michigan. I worked in Dow's marine transportation function as a marine economic evaluator from 1970 to 1973. During that time, I also was involved in the ship loading operations at Dow's Bay City, Michigan terminal. In 1973, I was named a chartering specialist for chemical intermediate products. Later, my responsibilities were expanded to include managing and sub-chartering time chartered LPG vessels. In 1975, I helped to set up our marine office in Houston. A year later, I moved to Brazil as Marine Transportation Manager to set up Dow's marine office in Brazil. My responsibilities included training personnel and arranging the acquisition and operation of vessels. I returned to Houston in 1980 where I spent a year as fleet manager for Dow's offshore shipping company, managing several time chartered vessels. In 1981, I was appointed crude oil transportation manager and had responsibility for the operation of two Dow-owned vessels as well as chartered-in vessels. In 1982, I was named manager of International Marine Transportation, combining the crude oil transport activities with the operation and chartering of vessels for other Dow export requirements. In February 1990, I relocated to Antwerp, Belgium as Marine Transportation Manager for Dow Europe. Later that year, I also assumed responsibility for distribution purchasing (which involved trucking, rail and terminal requirements) in addition to marine transportation. In July 1993, I returned to Dow's headquarters in Midland to take up my present position as Rail Services Procurement Manager.

The purpose of my verified statement in this proceeding is to illustrate the impact of the proposed merger between the Union Pacific Railroad ("UP") and the Southern Pacific Railroad ("SP") (collectively referred to as "Applicants") upon Dow's chemical and plastics production facilities at Freeport, Texas. I have reviewed the public version of the merger application and the Verified Statements

of Richard B. Peterson, Richard J. Barber, and Richard D. Spero, in particular.[1] In my statement, I will respond to various errors, mischaracterizations, and oversimplifications contained in the merger application as they apply to Dow. In addition, I shall respond to particular references made to Dow. Finally, I shall describe the particular loss of competition Dow will experience at Freeport after the merger and propose protective conditions that will remedy the competitive losses.

II. STATEMENT OF FACTS

A. Description of The Dow Chemical Company

The Dow Chemical Company is headquartered in Midland, Michigan. Dow is engaged in the manufacture and sale of chemicals, plastic materials, hydrocarbons, and a variety of consumer specialties. Dow's wide range of chemical products are used primarily as raw materials in the manufacture of customer products, or as aids or raw materials in the processing of customers' products and services. Dow ranks among the world leaders in the production of plastics, offering the broadest range of thermoplastic and thermoset materials of any manufacturer. In addition, Dow is the world leader in the production of olefins, styrene and aromatics. Finally, Dow's consumer specialties segment is today comprised primarily of agricultural products and consumer products. It is the chemicals and plastics portion of our business that will be most affected by the merger.

Dow operates five major production facilities in North America. By far, the two largest are located on the Gulf Coast near Freeport, Texas and Plaquemine, Louisiana. Dow also operates smaller facilities at Midland,

---

1 I also have reviewed the Highly Confidential portions of Mr. Peterson's Verified Statement that specifically refer to Dow and to events in which Dow was a participant (Peterson V.S., pp.). This review was permitted with the prior consent of the Applicants.

Michigan; Sarnia, Ontario; and Fort Saskatchewan, Alberta. Additionally, Dow operates a number of substantially smaller facilities located across North America. These smaller locations typically produce only products or product groups.

The competitiveness of Dow's Freeport, Texas facility likely will suffer the most severe negative impact as a result of the merger. This facility, which for rail shipments is now captive to the UP, produces approximately billion pounds of product annually and ships product by rail under more than Standard Transportation Commodity Code ("STCC") product groups. Throughout my statement, I will refer to various Dow produced materials by STCC to attempt to be consistent with the analysis conducted by the Applicants. However, I will also refer to specific chemical names or product group names. Within Dow, a substantial number of all STCCs represent a product group which can consist of up to a dozen and sometimes more distinct materials. For example, one major STCC, polyethylene, is comprised of with different chemical or physical properties.

While there is some commonality in the production capability of product groups at Dow's five major North American facilities, . The facility most like Freeport in terms of production capability is the Plaquemine site. However, Plaquemine, like Freeport, also is captive to the UP for rail shipments. A list of the various product groups shipped by rail at each of these two facilities is attached as Exhibit WLG-1.

Fort Saskatchewan or the "Fort" produces a narrow mix of product lines compared with Freeport. From this facility in northwest Canada, Dow ships approximately of total site production to the U.S. A substantial portion of this production exported to the U.S. is polyethylene. With respect to the polyethylene product group, production capacity is now being

utilized at . In other words, the plant is Additional products manufactured and shipped from the Fort include:

The Fort is not accessible by water so approximately of the volume of products shipped is moved by rail. Approximately pounds of product was shipped last year from the Fort.

The other major Dow site in Canada is at Sarnia. The production capability and product mix at this site has been over the last few years. Since production capability for

Products now shipped from Sarnia include:

Of the approximate pounds of products shipped last year, approximately moved by rail and the remainder was moved by bulk or packaged truck. There are currently no outbound barge movements of product from Sarnia.

Like the Sarnia site, production output at Dow's Midland, Michigan site has also over the last few years. Today this site is moving towards the manufacture of lower volume, specialty materials. Outbound shipments of product are by rail and truck because this site, like the Fort, is not located on the water. As can be seen in the attached chart (Exhibit WLG - 2)

B. Description of Dow's Freeport Facilities.

Dow's Texas operations at Freeport, constitute Dow's largest chemical and plastics production complex in the world. While Freeport itself has been

described by Applicants as a "small fishing town" located on the Texas Gulf Coast, it is perhaps more fairly described as an industrial center. Freeport is located approximately 40 miles southwest of Galveston and 55 miles south of Houston.

Three separate plants make up Dow's Freeport production complex. Plant A is located on the waterfront, surrounded by the Old Brazos River and the Brazos River harbor area. Plant B is located approximately 7 miles from Plant A, further inland. The Oyster Creek plant lies generally between Plants A and B, along the Dow barge canal. Maps of the Freeport area and the three distinct plant sites, attached as Exhibit WLG - 3, illustrate the general physical location of each plant.

C. Dow's Transportation Options at Freeport

Dow ships bulk chemicals, plastics and other commodities from Freeport to points all across the United States. These bulk products move by rail, truck, barge and ocean tanker. Additionally, from Freeport, Dow exports a substantial amount of product which is moved primarily by marine. If we exclude the quantity of product exported, the quantity moved in packages, and the quantity where transportation is controlled by our customers, then of the quantity of product moved from Freeport is moved by rail. The remaining of the product is moved in a ratio of approximately , marine to truck. For the reasons discussed in Part IV of my statement, rail, truck and water transport options compete with one another for the domestic outbound movement of bulk commodities from Freeport . Additionally, Dow receives purchased and imported materials at Freeport.

The UP provides rail service to Freeport exclusively and accesses all three plants via a branch line that extends 10 miles from Angleton, Texas to Freeport.

At Angleton, the branch line joins the UP mainline which runs from Houston to Brownsville, Texas. The nearest major interchanges are at Brownsville for Mexican bound traffic and at Houston for all other traffic. Although Dow owns the track within its plants, the UP owns the track that connects the three plants.

,

. The movement of bulk products by rail to and from our Freeport facilities therefore today are captive to the UP. This is also true for several other industrial shippers located near Freeport.

Dow's Freeport facilities generate over outbound carloads of bulk rail traffic per year. Approximately of the outbound bulk traffic is generated at Plant B. Plant A generates approximately of rail traffic. The Oyster Creek plant generates approximately of rail traffic. Exhibit WLG - 4

Approximately of Dow's bulk rail carloads from Freeport is terminated by the UP (including CNW). The remaining Freeport traffic is interchanged at five principal gateways. Of this remainder, approximately is interchanged at Chicago with CN North America ("CN"), Burlington Northern Santa Fe ("BNSF"), CP Rail ("CP"), Conrail, and other railroads. The Conrail interchange at St. Elmo, IL accounts for another of the remainder. In addition, approximately of the remainder is interchanged at New Orleans and with BNSF at Sweetwater, TX. Still another of the remainder is interchanged with Conrail, CSXT, Norfolk Southern ("NS"), and other railroads at E. St. Louis, IL. Additional interchanges for the remaining Freeport traffic include Houston, Memphis, El Paso, Kansas City, and Fort Worth.

III. THE PROPOSED MERGER WILL ELIMINATE A BUILD-IN ALTERNATIVE RECENTLY PROPOSED BY THE SP

Dow and the SP were engaged in discussions concerning a build-in to Freeport from the SP Discussions had been on-going since

Clearly, if the merger is consummated, a build-in from a combined UP/SP would be of no benefit to Dow. Thus, simply put, the merger would eliminate a viable and critical competitive option for Dow at Freeport.

A. History of the Build-In Discussions Between Dow and the SP

Discussions between Dow and SP about a build-in to Freeport began in Dow met with the SP on to express its desire to find ways to reduce its transportation costs. Very early, the SP expressed its desire to work with Dow to accomplish this objective. However, the SP noted that its ability to impact Dow's costs was limited by the fact that most of Dow's major production facilities were local to other carriers, especially Plaquemine and Freeport which were both captive to the UP.

Working within these confines, the SP made several suggestions Two suggestions, however, sought to circumvent the status of Freeport as a local UP point. The first suggestion was

. The second suggestion was a direct rail link via a build-in.

Periodic discussions continued until

The first meeting between Dow and the SP was held in Houston, Texas

Dow and the SP continued to exchange information

A second meeting was subsequently held in Denver, Colorado on

B. The Physical Feasibility of the Build-In

See note 2, *supra*.

Future discussions between Dow and the SP focused upon this route which had been identified as physically viable. From this point forward, the emphasis of our discussions shifted from the physical viability to the economic viability of the build-in.

C. The Economic Viability of the Build-In

My own knowledge of the potential traffic available to the SP via the build-in strongly suggests the build-in is economically viable. Dow's total outbound bulk traffic flows at Freeport are over carloads per year. Furthermore, , the SP easily could , for approximately . In addition, as I mentioned above, the build-in line would As a conservative estimate, the traffic flow carloads per year. Thus, the total potential traffic available to the SP over this build-in would be in excess of carloads annually.

The SP and Dow discussed several ways to finance the build-in.

Over the past few years, Dow has estimated that it pays the UP a premium in rates over competitively served chemical and plastics shippers.

If Dow can reclaim the premium by obtaining competition at Freeport, its annual savings would total directly as a result of the build-in.

Furthermore, Dow could expect to expand its sales to new customers for whose business Dow previously could not compete due to excessive transportation costs.

E. Competitive Impact of the UP/SP Merger on Dow's Build-In Option

I believe that the UP/SP merger will eliminate the competitive alternative of a build-in to Dow's Freeport facilities. Although the Applicants may assert that Dow still will have a build-in opportunity after the merger, I do not believe that with the same competitive vigor

I also believe that to build-in to Dow. I made on the potential traffic gains to each with direct access to Freeport. The potential gains exceeded those of by over per year.

In summary, I believe a potential build-in is a greater probability

The merger will eliminate the SP as a potential

competitor

IV. LIMITATIONS OF INTERMODAL COMPETITION

Dow ships chemicals and plastics in bulk from Freeport to points all across the United States. These commodities move by rail, truck, barge and ocean tanker. The Applicants' witnesses have selectively picked a few examples of truck and water moves throughout their statements to support their claims that there is extensive intermodal competition between rail, water, and truck. These various modes compete against one another,

The reality is that certain commodities are natural water movements for which rail and truck other commodities are rarely ever moved by water; and truck is competitive only for certain types of movements.

A. Truck Competition

The true competitiveness of bulk trucks is dependent upon a variety of factors. These factors include distance, volumes, customer requirements, and market factors. With respect to all pounds of bulk product shipped from Freeport by all modes of transportation, is shipped by rail as by bulk truck.

A principal determinant of the competitiveness of trucks is the distance of the movement. Trucks are less competitive at greater distances. As a general rule, bulk trucks are competitive with rail on hauls of This is not to say that trucks are never used for longer hauls. However, longer hauls usually are explained by one of the following factors: (1) the customer is unable to receive service by rail; (2) the volume of the movement is too small for rail; (3) the customer prefers service by bulk truck for just-in-time delivery inventory

purposes; (4) the customer has requested an expedited shipment because rail shipment has been delayed or frustrated; (5) emergency movements are needed to maintain production or inventory balances; (6) product handling requirements, such as temperature control, that cannot be accommodated by rail; or (7) forces of mother nature, such as floods or storms, make shipment by rail or marine temporarily impractical. Absent factors like these, there are truck hauls of chemicals or plastics shipments beyond

Another key factor that determines the competitiveness of bulk trucks with rail is the volume that is transported. Thus, if a customer requires shipment in less than a full tankcar load, then, in all likelihood, product will be shipped via truck. On average, a bulk railcar holds four times more volume than a tank truck. As a consequence, rail

Single bulk truckload moves to a customer, however, constitute of the total volumes shipped from Freeport. Additionally, a number of intrastate moves are made to customers located in Texas.

The marketplace also requires that some product groups be moved by rail rather than by bulk truck. For example, plastics by bulk truck from Freeport because the truck cannot be used by the receiver for storage. Most receivers of plastics use railcars for storage until the plastic is needed in the production process. Many customers lack permanent large scale storage facilities on-site.

Finally, in some cases, product is typically not shipped by truck for product stewardship or safety reasons. For example, Dow shipments of

Although trucks can be competitive for some chemical and plastics movements, bulk movements from Freeport.

B. Marine Transportation Competition

1. Barge competition.

Perhaps even more so than trucks, the Applicants portray barge transport as a fierce competitor to rail for chemicals and plastics traffic. Water movements, however, also have significant limitations upon their direct competitiveness. Furthermore, many chemical movements that are by barge are not really subject to rail competition because the efficiencies naturally favor water transport.

The most evident limitation upon barge competition is the existence (or lack thereof) of navigable waterways near the origin and destination. Because the Freeport site is located on the Texas Gulf Coast and has ship and barge loading facilities, it is a site from which waterborne movements can be originated. However, from Freeport have direct access to water at the destination.

A second critical factor affecting the competitiveness of barge is the volume of the commodity transported. A barge, depending upon its size, holds the equivalent volume of 15 to 30 railcars. Most of Dow's customers receive only of a commodity per year in In fact, per year are shipped of Dow's rail traffic lanes and per year are shipped of Dow's rail traffic lanes. It is extremely rare for a domestic freight customer to receive an entire year's inventory in a single load. As a result, barge is rarely competitive for these smaller volume movements.

One way by which Dow sometimes indirectly can serve a smaller customer by water is to operate a barge transfer terminal. In such a situation, a barge can haul the combined needs of many closely clustered customers. Individual customer orders can then be loaded onto railcars or trucks for delivery. For

example, Dow operates a barge transfer terminal for this purpose at Joliet, Illinois, and an ocean terminal at Bayonne, New Jersey. In addition, Dow leases tank storage in certain other public terminals.

Such facilities, however, are upon rail transport to a customer. The added for such an operation of barge transport over rail. In addition, barge transfer terminals are only economical when there is a large cluster of customers or receivers nearby. The investment in barge transfer terminal facilities can also be risky because customers can switch suppliers, thereby stranding the barge terminal investment. Finally, in order to establish a new barge terminal operation, Dow would need to have a core base of customers immediately available nearby.

by shifting that customer traffic to barge, because Dow must be able to shift all the nearby traffic of the product to barge to be able to have the volume to support leasing tank storage.

For those high volume customers located on water, barge is the preferred mode of transport. In fact, based on my 23 years of experience in marine transportation prior to my current position, rail rarely is an economically competitive alternative for such high-volume waterside customers. This is particularly true for certain chemicals that are transported in tremendous volumes, These are natural water moves. In these situations, it is rail that is not competitive with water. Thus, it is misleading for the Applicants to conclude, from a few examples of barge-rail competition, hat such competition exists for all chemical commodities. Water transport,

including ocean tankers, have the ability to impact

Barge transport also tends to be the slowest mode of transportation. For example, a typical rail move from to will take In contrast, a typical barge move for the same origin and destination will take approximately Similarly, the movement of products from to will typically take by rail and approximately by water. As a consequence,

Barge transport is not an alternative for plastics movements, which make up about of rail movements from Freeport. Concerns with plastics include product degradation and product contamination. Dow produces at Freeport, which can be differentiated by densities, melt index, co-polymer type, clarity, additives, as well as other chemical and physical properties. Contamination of a batch of one product by can reduce the value or utility of an entire shipment. Generally, the risk of contamination is substantially less with a rail hopper car because it holds less volume than a barge or ocean vessel and is easier to clean. Additionally, most plastics customers use rail cars to store plastics until they are needed, whereas a barge cannot be similarly used for storage. Furthermore, plastics customers take substantially less than a barge load in a single shipment. Lastly, plastics often are loaded and discharged via air conveyance through a piping system. For barge movements, such systems would need to be significantly longer than for a system designed for rail delivery. The heat generated by friction over the longer movement of the plastic pellets through the pipe will tend to significantly degrade the plastic.

Finally, some commodities are considered too hazardous to transport by water. For example, Dow considers to be dangerous water moves. The same is true for

In summary, the threat of barge competition, while real in some instances, is not nearly as prevalent as the Applicants portray it. Much of Dow's domestic bulk chemical traffic that moves by barge is never even considered for rail moves because rail simply cannot compete. This traffic should not even be considered in any competitive analysis. The amount of traffic for which rail and barge do directly compete

2. Ocean transport

The Applicants also have suggested that ocean transport is a competitive constraint upon rail. Many of the factors that I have addressed above, with respect to barge competition also are applicable to ocean transport. However, it is important to note that barge is significantly cheaper to operate per mile than a U.S. flag ship. Additionally, ocean tankers will only be considered for high volume commodity moves, Rail will not even be a consideration for most of these moves.

One exception, which the Applicants have focused upon, is discussed by witness Peterson at pages of his verified statement. This example involved the movement of annually from The only reason the UP was able to compete for this move at all is because ocean tankers to the West coast must travel a greater distance than rail and must pass through the Panama canal,

thus increasing the cost of ocean carriage. The UP could not have competed for a movement of this volume to an East coast destination.

C. Roll-On, Roll-Off Barge Threat At Freeport

The Applicants have highlighted a 1992[4] BN proposal for roll-on, roll-off barge service at Freeport as an example of barge creating rail competition at captive shipper locations. (Verified Statement of Richard B. Peterson at Mr. Peterson claims that the UP lowered its rates to Dow in response to this threat. There were then and there are today significant obstacles to implementing a roll-on, roll-off operation at Freeport and those problems were the primary reason Dow did not implement this project Furthermore, the benefits to Dow were far less than In addition, to receive the potential benefit of rate reductions from the UP, Dow

The BN made its roll-on, roll-off barge proposal to Dow in September 1992. Exhibit WLG - 11. At the time, BN was operating a railcar barge service to Mexico for grain out of a barge terminal in Galveston, Texas. The BN was attempting to supplement that traffic with additional traffic from other shippers. The premise of the operation was that Dow would continue to load various commodities into railcars, the railcars would be loaded onto a specially designed barge and the cars would be floated to Galveston where they would continue by rail to their final destinations.

---

4 Mr. Peterson has stated that this threat occurred in 1994. However, the proposal was made by BN in 1992

5

Although apparently feasible, the roll-on, roll-off operation

First, the operation would not have been able to handle all of Dow's traffic at Freeport. The BN's proposal allowed only for service which could handle only This would have allowed the BN to handle only per year. This is only of the total traffic volume at Freeport of per year. Thus, Dow would remain captive to the UP for To my knowledge, the UP was well aware of this fact.

Furthermore, there were several logistical problems that had to be overcome.

Despite these problems, the Applicants insist that Dow was able to leverage this threat for rate reduction. The Applicants, however, have grossly misrepresented the effect of the BN proposal. The is substantially greater than the true rate reduction and the reduction that was obtained was due to a combination of the barge threat and Dow's minimum volume commitment.

The truth is that approximately half of discount was part of pre-existing discounts that were rolled into the new contract. It had little to do with the barge threat. In fact, I understand that the UP revoked these discounts when it became aware of Dow's discussions with the BN and reinstated the discounts only after Dow rejected the BN's proposal. Dow realized that the BN

only had the potential to its rail traffic at Freeport and Dow did not want to jeopardize its UP discounts for the remaining traffic.

To get the additional in discounts, Dow had to commit a combined total of per year to the UP from Dow's Freeport and Plaquemine facilities. If Dow failed to meet the requirement, it would rate reduction. Although Dow has on occasion had to commit to a for specific movements, never had it been forced to commit to on such a grand scale. The average combined total number of carloads from Freeport and Plaquemine is approximately cars per year. Thus, Dow had of its historical rail shipments.

Whatever role the BN barge threat played in 1993, it does not play a role any longer. The BN since has shut down its Mexican barge route and the operation of the associated Galveston terminal. It is also my understanding that the barges have since been sold. Thus, roll-on, roll-off barge service at Freeport is no longer a realistic threat, if it ever was.

V. LIMITATIONS OF SOURCE AND PRODUCT COMPETITION

The Applicants have made expansive claims of source and product competition for chemicals and plastics commodities that keep rail rates competitive. Principally, they contend that (1) geographically diverse production facilities compel rail carriers to keep captive chemical producers competitive with competitively rail-served producers; (2) producers, such as Dow, can shift production to other facilities served by other railroads; and (3) producers can engage in product swapping to take advantage of the most favorable

transportation options. Although these principals may sound good in theory, they defy the realities of the chemical production market.

A. Geographic Competition

The Applicants raise the broad spectrum of geographic source competition as a significant competitive constraint upon railroad pricing. From my own experience, I find this contention to be The type of geographic competition described by the Applicants is highly reactive, making it incumbent upon a shipper to identify instances of source competition and to ask the carrier for relief. Geographic source competition also requires the coexistence of a number of different factors.

One critical factor is that the alternative source/origin must be served by a different carrier. Otherwise, the railroad will not compete against itself. Also, if only a few alternative sources are served by another carrier, these sources may not have the production capacity to act as a true competitive constraint.

Similarly, the destination must be served by a different carrier. Otherwise, the destination carrier can impose higher revenue requirements on transportation moves from alternative sources, thereby equalizing those rates with the origination points that are also served by the destination carrier. If the UP controls a large percentage of the total destinations for a commodity, the effectiveness of source competition will be reduced.

Another factor required for geographic source competition is that the commodity at issue be generic, or fungible. The Applicants have conducted their study of certain chemicals at the seven digit STCC level. Although these chemicals may be fungible for transportation purposes at this classification level, there often are differences in formulas, physical properties, or purity levels that

are critical to the consumer. As a consequence, the Applicants' seven digit STCC analysis of source competition is much too broad for many chemicals.

For example, of the commodities studied by the Applicants, polyethylene is a plastic that is not fungible at the seven digit STCC level. Dow, in fact, produces polyethylene at Freeport that vary on the basis of various chemical and physical properties, as noted above. Often these grades are produced to the specification of a single customer. One grade cannot simply be substituted for another. Even some of those commodities that may be viewed as "fungible" will often have as many as major customer specifications or grades.

Finally, chemical and plastics production plants have a finite capacity for production. In order to remain competitive in their industry, chemical producers aim to operate their plants as close to capacity as possible. sustained market growth will justify the enormous expense of adding new facilities. In the chemical and plastics industry, any plant operating below Most plants actually operate in the

If most competitors are operating at or near capacity, there is little room to absorb a large commodity shift from another competitor. Such shifts, when they occur, are only at the margins. Thus, a producer's ability to leverage source competition for competitive rail rates when another producer does have the capacity to absorb the new business.

A carrier rarely lowers its rate to the level it would be at if there was direct rail competition at the origin. Rather, the carrier lowers its rate just enough to enable with the alternate source if the producer its own revenue. Furthermore, a carrier like the UP often will not even suffer if Dow loses business to another source

because Dow will seek another customer for that product, thus ensuring that the carrier will still handle the traffic. This is particularly true when product availability is in short supply. The merger will only increase the number of UP captive destinations, further reducing the limited effectiveness of source competition.

B. Production Shifts

The Applicants' contention that producers can simply shift production to another facility not served by UP/SP in order to force a competitive response at a UP/SP exclusive facility is fundamentally flawed. It is flawed in general because it assumes an infinite capacity for production.

As I stated above, production capacity constraints the ability to shift chemical production incompetitive rail rates. The same principle holds true for production shifts

Even if the Applicants' contention is correct in theory,

for product groups produced by Dow at Freeport. As I have previously noted, Dow's two largest production facilities, Freeport and Plaquemine, are both captive to the UP. Plaquemine is the facility most like Freeport in terms of product mix and production capability. Thus, Dow meaningful competitive leverage upon the UP at Freeport by shifting production to another facility.

Applicants' witness Peterson erroneously uses Dow as an example of production shifts at page of his Verified Statement. Mr. Peterson suggests that Dow was able to avoid a rate increase from Plaquemine to by threatening to source from

if UP raised its rates. In fact, Dow and the UP recently

C. Product Swapping

A third competitive constraint suggested by the Applicants is "product swaps." A "product swap" occurs when two producers agree to produce commodities for each other. The Applicants contend that producers use product swaps to get lower transportation rates from carriers by shifting their production to a competitor's facilities which may have lower transportation costs as a result of modal competition and/or geographic location. In my experience, the primary driving force behind product swaps often is not transportation costs.

Chemical producers enter into both short-term and long-term product swaps. Short-term swaps are often associated with plant outages (scheduled or otherwise) and production shortfalls. If a plant must be shut-down for an inexpected reason or Dow is unable to produce sufficient quantities to satisfy customer demands, Dow may ask a competitor to produce the product for Dow at its facilities. In this situation, Dow may often have to pay a premium. Transportation costs are not the driving the factor in these instances and, sometimes, such costs may even be greater.

Long-term product swaps are generally negotiated commercial deals. Such swaps may be beneficial to both parties for a variety of reasons, which may include transportation costs. A number of factors must be present for long-term swaps to occur. Among them are participant producers willing to make long term commitments and both producers must be willing to tie up their production capacities for the benefit of the other. Swaps need to be structured to avoid legal concerns, particularly in the areas of antitrust and pricing. Because swaps are usually undertaken with direct marketplace competitors, consideration of legal

issues is always a critical matter. Participant producers must be capable of providing a product of the same quality and purity as the other requires. Also critical is the consideration of the customer's perception of the actual source of supply. The producers must agree on very important issues such as the assignment of liability in-transit, product performance guarantees, and liability for non-performance of contract. And finally, there is always a risk that the customer will decide simply to switch suppliers to alternate sources. Because of all of these considerations, the occasions where all the swap pieces fit together for both parties and their customers is limited. Therefore, I believe that Applicants' view of swaps as a competitive constraint is much overstated.

VI. REQUEST FOR RELIEF

The proposed merger of the UP and SP will result in the loss of a significant build-in option for Dow. Furthermore, there is insufficient intermodal or source competition to effectively and completely make up for the loss of the SP as a build-in carrier. What little source competition now exists will only be further reduced as a result of the merger. Therefore, I believe that certain conditions should be imposed upon the merger in order to preserve Dow's current competitive status.

The SP must be replaced by another carrier that has an equivalent incentive to aggressively pursue a build-in to Dow.

No other major carrier has shown an interest in serving the Gulf Coast. However, each of these carriers has a smaller and very different route structure from the SP. As a consequence, none of these carriers has the potential to gain as much revenue from a build-in to Freeport as the SP currently possesses. Therefore, the build-in that was economical for the SP may not be economical for these carriers.

At the very least, the Board should grant a carrier, to be determined by Dow, trackage rights to the original build-in point from the SP with the right to then build-in

These conditions, however, will not restore Dow to its current competitive situation.

Therefore, Dow urges the Board to impose a different set of conditions that would restore Dow to the same competitive situation that currently exists. In order to accomplish this, I believe that a carrier must be granted trackage rights at least to a point where a build-in would be economical for that carrier. Therefore, Dow requests that the Board grant trackage rights to a carrier to be named by Dow to any point along the line of the UP between Angleton and Algoa, Texas from which that carrier shall be permitted to connect to a build-in or build-out along the route of the build-out. This would significantly reduce the distance and cost of a build-in, thereby rendering such build-in economically attractive to another carrier for the amount of potential revenue that carrier could gain over the build-in.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

--CONTROL AND MERGER--

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

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

On Behalf of
Dow Chemical Company

Due Date: March 29, 1996

TABLE OF CONTENTS

LIST OF EXHIBITS

I. INTRODUCTION

My name is Thomas D. Crowley. I am President of L.E. Peabody & Associates, Inc. ("LEP&A") with offices located at 1321 Cameron Street, Alexandria, Virginia 22314. A summary of my experience and qualifications is included with this statement as Attachment 1.

My testimony is prepared on behalf of the Dow Chemical Company and addresses the Railroad Merger Application filed by the Union Pacific Railroad Company ("UP") and the Southern Pacific ("SP") and related affiliates (collectively "UP/SP") in Interstate Commerce Commission Finance Docket 32760.

I have been requested by Dow to analyze the potential effects which the subject merger would have on the rail transportation competitive options currently available to Dow at the Company's Freeport, Texas plants. My analysis centers on the feasibility of an SP build-in option which Dow would self-evidently lose in the event that the Application in its current form would be approved.

My analysis is based on my review of the UP/SP's Merger Application and supporting workpapers, the 1994 Costed Waybill Tape provided to me by the Interstate Commerce Commission ("ICC"), UP and SP 100 percent 1994 traffic tapes,

, UP/SP responses to interrogatories,

, the settlement agreements between UP/SP and several western railroads and information provided to me by Dow.

The balance of this verified statement addresses Dow's competitive position with respect to the merger under the following headings:

II. The SP Build-in Offer Clearly Provides Competitive Leverage to Dow

III. Did Not Have Sufficient Gulf Coast Infrastructure To Service Dow's Traffic

IV.

V. Dow Requests Trackage Rights Access to Points Near It's Freeport, Texas Plants As A Condition of the Merger

VI. Summary of Findings and Conclusions

II. THE SP BUILD-IN OFFER CLEARLY PROVIDED COMPETITIVE LEVERAGE TO DOW

Concurrently filed with my statement is the testimony of Dow Chemical Company witness William L. Gebo. Mr. Gebo has been directly involved in Dow's continuing efforts to retain competitive leverage from the ever decreasing number of rail alternatives available to Dow. Currently Dow is captive to the UP at its Freeport facilities.

Also, several other shippers with significant traffic volumes would be available to utilize the new rail line.

Based on my knowledge of the traffic available to and SP, the rail configuration, plant infrastructures, and traffic availability and routing, I conclude that SP's offer of a build-in provided substantial competitive leverage to the Dow Freeport plants. This leverage will obviously be lost if the merger application is approved without conditional provisions. I additionally conclude that

during the time period which it discussed these matters with Dow.

The viability of SP's build-in are discussed under the following topics:

A. SP Build-In Negotiations

B.

A. SP BUILD-IN NEGOTIATIONS

III.

Of the several functions which are relatively unique to the servicing of chemicals traffic, the ability to accomplish storage in transit ("SIT") is by far the most crucial. The fact that storage of commodities for the chemicals and plastics industry is integral to the transportation

and marketing of these products is illustrated by the statement of UP/SP witness Richard B. Peterson who acknowledges the importance of storage with his statement that:

> "Shippers of some bulk commodities such as plastic pellets often need in-transit storage of their product in shipper-owned railcars on railroad yard tracks. Storage in transit ("SIT") allows plants to be run at capacity and product to be readily available for prompt movement to various end markets as product price and demand change. The UP/SP merger will make new SIT yard capacity available at UP's Amelia Yard (near Beaumont) and in St. Louis, which will importantly increase the competitiveness of the merged system or these commodities. Also, UP's more extensive Gulf Coast SIT capabilities will be made available to SP shippers." (Application, Vol. 2, Peterson, Page 65)

UP/SP witness Robert D. Willig further validates the crucial role of storage with the following statement:

> "Storage for plastics represents another major dimension of nonprice competition between railroads, as plastics generally move from production directly to rail cars, and are often sold while they are in storage in railcars." (Application, Vol.2, Willig, Page 619)

Although stated for entirely different reasons, this portion of Dr. Willig's testimony puts a fine point on the importance of storage capacity in the determination of the relative viability of carriers competing for plastics traffic. Again, as is the case with other facets of operations, the Applicants have analyzed UP/SP's capabilities with respect to storage capacity

This is not functional for a company such as Dow which is located at Freeport, Texas.

IV. THE VOLUME OF TRAFFIC

In order to evaluate SP as a viable transportation alternative, I summarized the traffic that would become available to SP as the result of constructing the proposed build-in. The traffic used in my analysis is extracted from the ICC's 1994 Costed Waybill Sample data for STCC 28 originations from Freeport I first developed the amount of carload traffic originated by UP. Using this statistic, I summarized the number of originating carloads not terminated by UP that passed through SP-served gateways. This traffic reflects the amount of traffic available to SP through the build-in.

The results of my analysis show that of the carloads of STCC 28 traffic originated by UP along the build-in route, carloads would be available to the SP for passage through SP served gateways to destinations not served by UP. Stated differently, of UP's current traffic would be available to SP through the proposed build-in. This quantity of diverted traffic would be more than sufficient to support the cost of a build-in. Exhibit__(TDC-1) shows the 1994 UP originations from Freeport along with the amount of traffic, by gateway and terminating railroad, that would be available to SP through the build-in.

1/

V. DOW REQUESTS TRACKAGE RIGHTS ACCESS TO POINTS NEAR ITS FREEPORT, TEXAS PLANTS AS A CONDITION OF THE MERGER

As the forgoing testimony discusses, the UP/SP merger, if consummated under the current terms of the Application, would deprive Dow of its sole competitive alternative of the SP build-in option.

The disadvantages to Dow engendered by the loss of this option would be significantly magnified by the market power of a combined UP and SP through the expanded ability of UP/SP to control traffic at both origins and destinations. This situation leaves Dow with only one very tenuous alternative in seeking to retain a semblance of competitive leverage.

The trackage rights proposed in the UP/SP-BNSF settlement agreement already provide BNSF access to the rail line in the proximity of to the Dow Plant.

In addition and in order to further approach the competitive leverage enjoyed by Dow by prior to the merger, another willing Class

VI. SUMMARY OF FINDINGS AND CONCLUSIONS

The following findings and conclusions result from my analysis of those factors outlined in the introductory section of this statement.

1. The SP build-in option was both physically and financially feasible.

2.

3.

4.

5. The total volume of traffic divertable from UP to SP is sufficient to justify SP's participation in a Dow build-in

6.

7. In order to eliminate the reduction in competition BNSF and one other Class I carrier should be granted trackage rights to Angelton located on UP's mainline, north of Dow's facility.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

THOMAS D. CROWLEY, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

Thomas D. Crowley

Sworn to and subscribed
before me this 26th day
of March, 1996.

Witness my hand and official seal.

Kimberly D. Cassell / Boyd
My Commission Expires July 31, 1996

STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1321 Cameron Street, Alexandria, Virginia 22314.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering Association.

The firm of L. E. Peabody & Associates, Inc. specializes in solving economic, marketing and transportation problems. As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United

STATEMENT OF QUALIFICATIONS

States. The nature of these studies enabled me to become familiar with the operating and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from the Powder River Basin to various utility destinations in the midwestern and western portion of the United States. These field trips were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal, both inbound raw materials and outbound paper products to and from paper mills, crushed stone, soda ash, aluminum, fresh fruits and vegetables, TOFC/COFC traffic and numerous other commodities handled by rail.

I have presented evidence before the Interstate Commerce Commission ("ICC") in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs. I have submitted evidence applying the ICC's stand-alone cost procedures in "Coal Trading,"[1/] "DP&L,"[2/] and "Westmoreland"[3/] along with other proceedings before the ICC.[4/]

1/ ICC Docket No. 38301S, Coal Trading Corporation v. Baltimore & Ohio Railroad, et al., ("Coal Trading").

2/ ICC Docket No. 38025S, The Dayton Power and Light Company v. Louisville and Nashville Railroad Company ("DP&L").

3/ ICC Docket No. 38301S (Sub-No. 1), Westmoreland Coal Sales Company v. Denver and Rio Grande Western Railroad Company, et al., ("Westmoreland").

4/ ICC Docket No. 40224, Iowa Public Power and Light Company v. Burlington Northern Railroad Company; ICC Docket No. 37029, Iowa Public Service Company v. Burlington Northern, Inc.; ICC Docket No. 39386, The Kansas Power and Light Company v. Burlington Northern Railroad Company and Union Pacific Railroad Company; ICC Docket No. 38783, Omaha Public Power District v. Burlington Northern Railroad Company; Docket No. 36180, San Antonio, Texas, Acting By and Through Its City Public Service Board v. Burlington Northern Railroad Company, et al.

STATEMENT OF QUALIFICATIONS

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the ICC for the development of variable costs for common carriers, including Burlington Northern Railroad Company,[5/] with particular emphasis on the basis and use of Rail Form A. I have utilized Rail Form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.[6/]

I have also analyzed in detail, the Uniform Railroad Costing System ("URCS") and presented the results of my findings to the ICC in Ex Parte No. 431, *Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations*. I have been involved in the URCS process, either directly

---

[5/] The following two (2) cases are examples of litigation before the ICC where I developed and presented Burlington Northern Railroad Company's variable costs of handling unit coal trains. These two cases involve the most detailed examination of the variable cost of moving coal in unit train service of any proceeding thus far brought before the ICC. The first example involved the variable cost of service evidence I presented on behalf of the City of San Antonio, Texas in ICC Docket No. 36180, *San Antonio, Texas, Acting By and Through its City Public Service Board v. Burlington Northern Railroad Company, et al.*, 1 I.C.C. 2d 561 (1986) ("San Antonio"). In that case, the ICC extensively analyzed the variable costs for a unit train movement of coal on the Burlington Northern Railroad Company from the Powder River Basin, Wyoming to San Antonio, Texas. Also I presented the variable cost of service evidence in ICC Docket No. 38783, *Omaha Public Power District v. Burlington Northern Railroad Company* 3 I.C.C. 2d 123 (1986) ("OPPD"), in which the ICC developed the variable costs for the unit train movement of coal from the Powder River Basin, Wyoming to Arbor, Nebraska on the Burlington Northern Railroad Company. In San Antonio, the ICC found that the variable cost of service as of the first quarter of 1984 was $12.62 per ton, just 46 cents higher than my cost calculation of $12.16 per ton and substantially lower than Burlington Northern Railroad Company's calculation of $17.54 per ton. In OPPD, the ICC determined variable cost for the first quarter of 1985 was $5.31 per ton, just 11 cents higher than my calculation of $5.20 per ton, and substantially lower than Burlington Northern Railroad Company's calculations of $6.53 per ton.

[6/] Rail cost finding has been the cornerstone of this firm. Dr. Ford K. Edwards the senior partner of the firm Edwards & Peabody*, was the major architect in the development of Rail Form A. Mr. Peabody carried on this tradition of innovative cost finding until his retirement in 1983. Mr. Peabody's work included participation in the Tennessee Valley Authority's ("TVA") computerization of Rail Form A. Mr. Peabody was a member of a committee of transportation consultants which was organized to assess the TVA procedure in order to make available more complete and simplified input data for the Rail Form A computer program.

---

* Subsequent to the retirement of Dr. Edwards in 1965, the firm name was changed to L. E. Peabody & Associates, Inc.

STATEMENT OF QUALIFICATIONS

or indirectly, since the first interim report of the contractors was released. Throughout this process, I have consistently asked for and reviewed the support and workpapers underlying the different developmental stages of the formula. I received and presented comments in February 1982 on the ICC's *Preliminary 19[illegible] Rail Cost Study*. In December 1982, the ICC released the *Uniform Rail Costing System. 1980 Railroad Cost Study* which I reviewed along with the workpapers supporting that study and the entire developmental stage of URCS which was the basis for my Ex Parte No. 431 comments.

I have frequently presented both oral and written testimony before the Interstate Commerce Commission, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations, including interest. I have also presented testimony in a number of court and arbitration proceedings concerning the level of rates and rate adjustment procedures in specific contracts.

I have participated in every major ICC rulemaking proceeding since the mid-seventies, including each phase of Ex Parte 290 (Sub-No. 2), (Sub-No. 4), (Sub-No. 5) and (Sub-No. 7). On a number of occasions my predecessor, L. E. Peabody, Jr., and I have submitted evidence

STATEMENT OF QUALIFICATIONS

to the Commission concerning the determination of the Rail Cost Adjustment Factor ("RCAF") and the need for a productivity adjustment to properly reflect the change in railroad costs.[7/]

Since the implementation of the *Staggers Rail Act of 1980*, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges. In particular,

---

7/ L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, July 17, 1980; L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No.-2), Railroad Cost Recovery Procedures, August 20, 1980; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, January 9, 1981; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, July 9, 1982; L. E. Peabody, Jr.'s Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures -- Productivity Adjustment, October 25, 1982; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, February 11, 1985; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, March 28, 1985; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2) Railroad Cost Recovery Procedures, March 12, 1986; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2) Railroad Cost Recovery Procedures, March 12, 1987; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, December 16, 1988; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4), Railroad Cost Recovery Procedures -- Productivity Adjustment, January 17, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment-Implementation, May 26, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 4) and Ex Parte No. 290 (Sub-No. 7), Railroad Cost Recovery Procedures -- Productivity Adjustment, June 1, 1989; Thomas D. Crowley's Verified Statement, Ex parte No. 290 (Sub-No. 5) (89-3), Quarterly Rail Cost Adjustment Factor, June 13, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment -Implementation, June 26, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures - Productivity Adjustment, August 14, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No.4), Railroad Cost Recovery Procedures - Productivity Adjustment, August 29, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 5) Quarterly Rail Cost Adjustment Factor, September 18, 1989; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7), Productivity Adjustment Implementation, April 5, 1991; Thomas D. Crowley's Verified Statement, Ex Parte 290 (Sub-No. 2) Railroad Cost Recovery Procedures, November 9, 1992; Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, November 30, 1992; and, Thomas D. Crowley's Verified Statement, Ex Parte No. 290 (Sub-No. 7) Productivity Adjustment - Implementation, January 7, 1994.

STATEMENT OF QUALIFICATIONS

I have advised utilities on the theory and application of different types of rate adjustment mechanisms for inclusion in coal transportation contracts.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

I have been, or am currently, involved in the negotiation of transportation or coal supply contracts for over forty (40) utilities which burn coal or lignite produced in the west. These utilities purchase coal or lignite produced in Colorado, Illinois, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Texas, Utah and Wyoming. Generating stations operated by these utilities are located in the following nineteen (19) states: Arizona, Arkansas, California, Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, Texas, Wisconsin, and Wyoming.

As a result of assisting coal users in the eastern and western portions of the United States, I have become familiar with operations and practices of the rail carriers that move coal over the major coal routes in the United States as well as their cost and pricing practices.

I have developed different economic analyses for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters

STATEMENT OF QUALIFICATIONS

Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, the Fertilizer Institute and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various economic problems.

I have participated in various proceedings involved with the division of through rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al.* which was a complaint filed by the northern and midwestern rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of he northern and midwestern rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company*.

SUMMARY OF UP CARLOADS
AVAILABLE TO BNSF ASSUMING BUILD-IN
(SOURCE: ICC'S 1994 COSTED WAYBILL SAMPLE)

UP Off Juntion		UP Originating	Carloads Available to BNSF by Terminating Railroad			
City	State	Carloads	BNSF	SP	Other RR	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)

VERIFIED STATEMENT

John E. Kwoka, jr.

Introduction and Summary

My name is John E. Kwoka, jr. I am Professor of Economics at George Washington University, where I have taught since 1981. I have previously held permanent or visiting positions on the Economics Faculties of the University of North Carolina at Chapel Hill, Northwestern University, the University of Pennsylvania, and most recently Harvard University.

In addition to these academic positions, I have served in the Bureau of Economics of the Federal Trade Commission, the Antitrust Division of the Department of Justice, and the Common Carrier Bureau of the Federal Communications Commission. In these capacities I have worked on a variety of regulatory and antitrust matters. I have also been a Guest Scholar at the Brookings Institution. I have lectured widely, consulted for many government and international agencies and companies, and testified as an expert witness on numerous occasions.

I received my Ph.D. in Economics from the University of Pennsylvania in 1972. Since that time I have taught and conducted research in industrial economics, regulation, and antitrust. I regularly teach both graduate and undergraduate courses on these subjects. I have authored more than forty published articles on such issues as pricing practices, competition, and concentration, both in general and with

reference to specific industries. I have also co-edited a casebook on antitrust economics and am currently completing a book on the structure and performance of the U.S. electric power industry. I sit on the boards of three economics journals. My complete curriculum vitae is attached.

In the present matter, I understand that the proposed merger between the Union Pacific Railroad Company (UP) and the Southern Pacific Transportation Company (SP) would create market situations commonly described as "three-to-two." In such cases there are now three rail carriers (generally, UP, SP, and the Burlington Northern/Santa Fe (BNSF)), but the merger would reduce this to two. Applicants state without qualification that the merger "will greatly intensify rail competition in the West."[1] They cite fact and expert witnesses for the conclusions that 'competition will be stronger for both '2-to-1' shippers...and all other shippers, including in particular those who go from three serving railroads to two..," and that "there is no risk of 'collusion' between UP/SP and BN/Santa Fe."[2]

I have been asked by counsel for Dow Chemical to evaluate the competitive consequences of a three-to-two merger. This is a standard type of question in industrial organization economics. In this statement I will draw on relevant economic theory and empirical evidence in order to explain what we know about the likely effects of a reduction in the number of firms in a market

---

[1] Application, p. 17.

[2] Application, pages 18 and 19, respectively.

from three to two. My conclusions may be summarized as follows:

(1) Economic theory predicts that a number of factors will influence the likelihood of coordination among firms, but foremost among these typically are numbers of firms and entry conditions. A small number of firms or a reduction in their number greatly simplifies the task of price coordination, reduces incentives to cheat, and facilitates detection and deterrence of any cheating that may occur.

(2) Examination of cross-industry studies clearly reveals the importance of small numbers of firms in determining industry performance, and a number of studies find specific evidence of the procompetitive role of a sizeable third firm in counteracting dominant leading firms.

(3) Industry-specific studies from a wide variety of markets, including airlines and railroads themselves, provide broad confirmation of the importance of individual firms when numbers become very small. Estimated price effects from the demise of a third firm in these markets are significant and often extremely large.

(4) The price-constraining effect of potential competitors is significant as well, although typically smaller than that of an actual rival.

(5) Evidence from auctions and bidding markets also confirm the importance of numbers of bidders in determining the final price in a market.

(6) Railroad markets appear to be subject to the same

small-numbers effects as all other markets. Below a certain point, a merger that reduces the number of effective competitors raises demonstrable risks of an anticompetitive price increase.

Implications of Economic Theory for a Three-to-Two Merger

The theory of mergers in economics derives in large measure from the theory of coordinated behavior. Coordinated behavior encompasses parallel pricing or other practices by companies that, while short of outright collusion, nonetheless represent forbearance from competition in the expectation of greater collective benefit. The relevant theory describes the incentives and the ability of firms to arrive at such behavior and to maintain coordination despite individual incentives to break away ("cheat").

A merger may raise risks of coordinated behavior in two possible ways. It inevitably reduces the number of firms in a market, and in addition it may affect the nature of competition among the remaining firms. A merger may be said to be anticompetitive to the extent that, by changing structure, it directly or indirectly (via altered conduct) fosters a higher post-merger equilibrium price.[3]

There is an enormous body of research on coordinated behavior. Here I will emphasize a number of propositions distinguished by their central nature and by their relevance to this proceeding. Most fundamentally, firms in small-numbers markets are characterized by the inherent interdependence of

---

[3] My subsequent use of the term "price" should be interpreted to encompass, where appropriate, any other dimension of competition. An anticompetitive price increase should be significant and nontransitory (language borrowed from the Merger Guidelines). This proposition abstracts from failing firms, possible efficiencies, and other issues separately addressed in Guidelines merger analysis.

their actions and by their recognition of that interdependence. They rationally take no action without consideration of rivals' responses, because any action must be expected to elicit a reaction and because both the action and the reaction jointly determine the profit consequences.

In such a setting, economic theory predicts that certain features of markets, firms, products, and transactions will determine the likelihood of success in efforts at coordination. A standard list such as may be found in any industrial organization text[4] would include the following factors:

▪Number of firms. A smaller number of firms favors successful coordination for any of several possible reasons: Greater likelihood of agreement on preferred price. Less chance of maverick behavior. Fewer communications required. Relatively less to gain by defecting.

▪Entry conditions. More difficult entry conditions favor coordination by removing the constraint from firms not currently in the market. Such firms would otherwise raise difficulties similar to those noted for more numerous firms actually in the market.

▪Time horizon. A longer time horizon for competition among firms favors coordination since it exposes a defecting firm to punishment in more numerous future periods, making it easier to

---

[4] See, for example, Stephen Martin, Industrial Economics (1995); Dennis Carlton and Jeffrey Perloff, Modern Industrial Organization (1994); or F.M. Scherer and David Ross, Industrial Market Structure and Economic Performance (1990).

deter defection in the first place. "One-shot" interactions are more likely to induce vigorous competition.

▪Multimarket contacts. The more geographical or product markets the same firms face each other in, the greater the prospects of coordination. Such contacts facilitate learning about rivals' strategies and provide better opportunities to discipline or punish cheating.

▪Product differentiation. A greater degree of product homogeneity facilitates coordination by minimizing the number of dimensions on which competition--and therefore possible defection--may occur.

▪Size and frequency of sales. Small and frequent sales are more conducive to coordination for two reasons: They convey more information about rivals' strategies, and they limit a firm's incentive to bid aggressively for any one sale.

▪Information. To the extent that information about price, output, or other competitive strategies is available to rivals, coordination is facilitated. Such information reveals strategies, exposes defectors, and permits rapid punishment.

▪Firm homogeneity. Greater homogeneity in firm structures and strategies generally facilitates coordination. Similarity in size, vertical integration, costs, technology, diversification patterns, and so forth all help to reconcile objectives.

These factors represent the principal determinants of firms' efforts at coordination, but the actual outcome in any particular market is complicated by several considerations. First, these

factors vary in relative importance, and may even do so differently in different circumstances. Consequently, there is no formula that "weights" them or states, for example, that "six out of eight factors" suffice for a certain conclusion.

Second, most of these factors can be satisfied to differing degrees, rather than a simple determination as to whether they are satisfied or not. This implies the possibility of trade-offs among them in which weaker conformity with one criterion may be offset by very strong conformity with another.

Third, when some important factor favoring coordination appears to be violated, firms are not without recourse. If by addressing that area coordination becomes possible, firms have strong incentives to develop compensating or facilitating practices. Examples of these include product standardization, rules of thumb pricing, predisclosure of information, most favored customer clauses, de facto customer or territorial divisions, and so forth. While not necessarily anticompetitive themselves, compensating and facilitating practices may serve to resolve critical impediments to coordination.

For all these reasons, the analysis of the competitive consequences of a merger is not a mechanical exercise. That said, most analyses begin in the same place, namely, with market concentration and entry conditions. The reason is that low concentration and easy entry make coordination essentially impossible. Those factors simply cannot be offset by other favorable considerations nor (in all likelihood) by facilitating

practices. For example, neither product homogeneity nor rule of thumb pricing is likely to bring about coordination in the face of large numbers of firms and ease of entry.

Symmetrically, small numbers and high entry barriers strongly favor a coordinated equilibrium in the market. These conditions make it easier to arrive at an agreement and to enforce adherence to it, and they make the gains from coordination large and clear to all firms. Under unusual circumstances the advantages of small numbers and entry barriers may be eroded by other factors, but those would have to be extreme and the very potential of the situation would encourage the firms to overcome any such countervailing influence.

These observations suggest a special importance to concentration and entry. While all the factors enumerated above may play some role, knowledge of concentration and entry probably serves to narrow the range of predictable outcomes more substantially than any other factor. This perspective is presumably the reason that the Merger Guidelines introduce their discussion of "The Potential Adverse Competitive Effects of Mergers" with the following statement (Section 2.0):

> Other things being equal, market concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power...If collective action is necessary for the exercise of market power, as the number of firms necessary to control a given percentage of total supply decreases, the difficulties and costs of reaching and enforcing an understanding with respect to the control of that supply might be reduced.

The Guidelines go on to state that market share and concentration only represent starting points for analysis since other factors

do matter. But starting points they are, since concentration and entry provide the greatest insight and predictive power into the competitive effects of a merger.

In the present industry this starting point is very revealing. For the three-to-two situations that are the focus of present concern, the potential for coordination inherent in industry structure could scarcely be greater. There will be only two major firms in the postmerger environment. Achieving coordination between them is transparently much easier than with any larger number. Each firm has less to gain by defecting from the agreement. Discovery of cheating and identification of the cheater could not be easier. Any punishment is easier to target and impose. There is simply no structural situation more favorable to coordination.

We are nonetheless assured by applicants that the two railroads will compete so vigorously that price will not rise after the merger. (Indeed, because of cost savings, we are promised that price will actually fall.) Although this is a logical possibility, the necessary circumstances do not appear present here. One such possible circumstance would be if entry conditions were so easy as to sharply constrain incumbent firms. This, of course, is not what applicants argue since meaningful rail entry is unrealistic and in no way impedes efforts at cooperation. Rather, they appeal to other factors which are said to be so unfavorable to coordination as to completely prevent the exercise of any market power whatsoever in rail services, despite

only two firms, no entry threat, and powerful incentives to overcome any other obstacles.

Such a strong proposition so contrary to the indisputable impact of the key factors--firm numbers and entry conditions--carries a very heavy burden of proof. The straightforward predictions of economic theory can be overturned only by the most convincing evidence, not mere speculation. The plausibility of applicants' claim will be examined here by reference to actual market practices. As we shall see, empirical evidence clearly indicates that firms generally do succeed in coordinated pricing in small-numbers settings, including three-to-two situations where they can be tested.

Statistical Evidence on Small-Numbers and Three-to-Two Mergers

There is a considerable body of empirical evidence that examines the impact of different numbers of firms on industry pricing and other measures of performance. Some of the evidence is not specific to any industry but nonetheless predicts the effects of reductions in firm numbers. Other evidence addresses the three-to-two situation fairly directly and in some cases with specific application to the railroad industry.

Perhaps most generally, the very large body of empirical evidence on industry structure and pricing is relevant, since that evidence forms part of the intellectual basis for merger policy. It is scarcely necessary to observe that the present merger involves an industry with a very high level of concentration and one where concentration will increase substantially due to the merger. This represents the clearest possible case of competitive concern.

More specifically, I shall now reference and briefly discuss a series of studies that bear on this merger more directly. These studies fall into five categories: Cross-industry studies, miscellaneous industry studies, airline studies, railroad studies, and auction market evidence.

CROSS-INDUSTRY STUDIES

Cross-industry studies are those that analyze market power across significant numbers of industries. The general approach of these studies is to statistically relate firm or industry prices, price-cost margin, or profitability--which represent

alternative measures of performance--to the market shares of leading firms. This determines which firms (that is, the first, or first and second, etc.), and at what share levels, succeed in elevating price above the competitive norm. This procedures also identifies any competitive restraint that may be exerted by certain firms.

A benchmark study of this type is that by Kwoka (1979).[5] Using a data base of over 300 manufacturing industries, I found, first, that industry price-cost margins are larger when the leading and second ranked firms in each industry have larger shares. By itself this result suggests that the measure of industry structure most relevant to performance is the two-firm concentration ratio, defined as the sum of the top two shares. It is those firms in particular that appear to determine the degree of coordination and market power.

This result represented a significant modification of the conventional perspective in industrial economics. The discipline had previously relied upon four-firm concentration ratios (the sum of the largest four shares) and would soon adopt the Herfindahl index. My study showed that neither captures the exercise of market power as well as a focus on two firms. But perhaps more striking was my other finding, that industry margins actually decline in the presence of a larger third firm and

---

[5] J. Kwoka, "The Effect of Market Share and Share Distribution on Industry Performance," Review of Economics and Statistics, 1979. Also, J. Kwoka, "Does the Choice of Concentration Measure Really Matter?" Journal of Industrial Economics, 1981.

possibly fourth firm. This implies that market power in an industry may be constrained by a mid-ranked firm, which appears more likely to compete than to coordinate behavior with the dominant two.

The magnitudes of these effects are quite significant. In one model specification with critical values for shares, industry margins rise by four-to-five points each for a leading share of at least 26 percent and for a second firm share of 15 percent or more. But a third firm with a share of at least 16 percent brings industry margin back down to the competitive level. In my words at the time, "Equality of size among three large firms appears to breed a rivalry capable of simulating competitive performance levels."

This result--sometimes termed the "third-firm effect" or the "rivalry hypothesis"--has been tested in other studies. LeCraw (1983)[6] examines 153 transnational corporations in five Southeast Asian LDCs and reports higher firm profitability from larger shares of the top two firms in each market and lower profitability from the third. These results exactly mirror those I had previously found. All effects are statistically significant. Kwoka and Ravenscraft (1986)[7] use FTC Line of Business data to estimate individual firm effects in a somewhat

---

[6] D. Lecraw, "Performance of Transnational Corporations in Less Developed Countries," Journal of International Business Studies, 1983.

[7] J. Kwoka and D. Ravenscraft, "Cooperation vs. Rivalry: Price-Cost Margins by Line of Business," Economica, 1986.

different model of performance. We find that profitability of the leading line of business is greater as its own share is greater, but declines with larger second-ranked firms in many industries and with larger third firms in the food sector.

These cross-industry studies find systematic evidence of a rivalry effect from larger nonleading firms. Nonleading firms do seem to exert a significant restraint on the dominant firm or firms, at least when the former reach sufficient size. This result suggests the distinctive importance of such firms to the market process since they may be the very embodiment of competition.

MISCELLANEOUS INDUSTRY STUDIES

Other studies examining this rivalry hypothesis have done so on an industry-specific basis. Here I will make brief mention of three studies in miscellaneous industries, postponing discussion of airlines and railroads.

Lamm (1981)[8] analyzes market baskets of supermarket items in 18 SMSAs and finds a positive and significant effect from the top three shares, and rivalry from the fourth leading firm. In his words, "Apparently the presence of an aggressive fourth retail chain in a metropolitan market complicates the coordinating problem sufficiently to make tacit collusion difficult. Hence the fourth firm is generally a rival." He finds critical share values of 24, 13, 10 and 8 percent, quite

---

[8] R. McF. Lamm, "Prices and Concentration in the Food Retailing Industry," Journal of Industrial Economics, 1981.

similar to mine for the corresponding share effects.

Geithman, Marvel, and Weiss (1981)[9] evaluate the impact of concentration on gasoline prices using various levels of aggregation, that is, the sums of one, two, three, etc., firms. As in my study, the level of aggregation that best explains the data can be taken to indicate which firms--the top two, or three, etc.--exert collective market power. They report "The two-firm critical concentration ratio [critical concentration is the point at which price jumps to some noncompetitive level] is at 35, precisely the number that Kwoka found. It turns out that R^2 is slightly higher using the two firm concentration than for any other number of leading firms." This corroborates my finding that two firms is typically the point at which above-competitive pricing appears.

Koller and Weiss's study of the portland cement industry (1989)[10] also searches for the critical number of leading firms, finding a rivalrous effect from a fifth or sixth-ranked firm more often than for a higher ranked one. Weiss's summary table in that book lists the "best-fitting CRn"--the level of firm aggregation "n" that best fits the data--for the large number of studies in the entire volume.[11] The critical number of firms

---

[9] F. Geithman, H. Marvel, and L. Weiss, "Concentration, Price, and Critical Concentration Ratios," Review of Economics and Statistics, 1981.

[10] R. Koller and L. Weiss, "Price Levels and Seller Concentration: The Case of Portland Cement," in Concentration and Price, edited by L. Weiss (1989).

[11] Weiss, "Conclusions," in Concentration and Price (1989).

averages 2.3, again implying that quite small numbers of firms are critical to successful coordination of behavior and that rivalry typically begins with the third firm.

These miscellaneous industry studies largely support the rivalry hypothesis found in Kwoka (1979). Coordination typically takes place between two firms and it is their collective share that most influences industry price or other performance measure. A substantial third firm, or in some studies a lower ranked one, can exert significant competitive restraint on the market power of the dominant firms, reducing price generally in the industry.

AIRLINE INDUSTRY STUDIES

The airline industry has been the focus of considerable research into individual firm effects on prices. As with rail routes, most airline routes are served by very few carriers. Routes are linked into networks, with the same carriers competing on many routes. Capital costs overall are large but can be redeployed among routes. Potential entry may in principle be important, but is constrained by various practical considerations in both airlines and railroads. If anything, entry would appear more feasible for airline routes than for railroads.

Research examining the effects of firm numbers on the price of airline service was pioneered by Morrison and Winston. Their 1987 study[12] measured the impact of varying numbers of actual and potential competitors on market "welfare." Welfare

---

[12] S. Morrison and C. Winston, "Empirical Implications and Tests of the Contestability Hypothesis," Journal of Law and Economics, 1987.

represents monetized price and nonprice effects on consumers, the latter including such things as flight scheduling. Every additional actual competitor serving a city-pair market (there are 769 such routes in their study) lowers price or otherwise raises welfare by a statistically significant amount. This confirms that the competitiveness of airline markets is enhanced by the presence of more carriers.

A second striking finding in this study concerns potential competitors, defined as other carriers serving at least one airport on the route and thus best positioned for entry. Each additional potential competitor also exerted a statistically significant procompetitive effect, but that effect was only about one-third the magnitude for actual competitors. Morrison and Winston conclude, "Three potential competitors thus have approximately the same effect on welfare as does one actual competitor."

Later research by Morrison and Winston confirmed these effects. Their 1989 study[13] of fares on 112 routes concluded that going from three to two firms, as by merger, would increase fares by just under one cent per mile, while a merger from two to one firms would raise them by fully 9 cents per mile. These effects represent changes ranging from 2 percent to 32 percent, and are magnified to the extent that the merger affects airline hubs and networks as well. A reduction in the number of

---

[13] S. Morrison and C. Winston, "Enhancing the Performance of the Deregulated Air Transportation System," Brookings Papers on Microeconomics, 1989.

potential competitors in the route increases the fare by about one-half the amount of a three-to-two merger.

Morrison and Winston's 1990 paper[14] again reports that the number of actual "effective competitors" (a measure that takes their relative size into account) and the number of potential competitors have statistically significant effects on airline fares. In the 1978-82 period each actual competitor reduced fares by 3.7 percent (0.6 percent if the route was slot-controlled), whereas a potential competitor did so only by 0.6 percent. In the post-1982 period, the effect of actual competitors on fares rose both absolutely (to 12 percent) and relative to potential competition.

Most recently, Morrison and Winston's book[15] finds that each competitor on a route serves to lower price by 2.7 percent, and each competitor at an airport lowers price by 12 percent. Their data consist of 5513 routes in 1990.

A study by Hurdle, et al[16] examines the impact of actual concentration and "likely potential entrants" (LPEs) on fares in 867 city-pairs. Without the constraint of LPEs, a merger of the only two incumbents would increase the fare between 11.9 and 33.0 percent, while a three-to-two merger would increase fare between

---

[14] S. Morrison and C. Winston, "The Dynamics of Airline Pricing and Competition," American Economic Review, 1990.

[15] S. Morrison and C. Winston, The Evolution of the Airline Industry, Brookings, 1995.

[16] G. Hurdle, R. Johnson, A. Joskow, G. Werden, and M. Williams, "Concentration, Potential Entry, and Performance in the Airline Industry," Journal of Industrial Economics, 1989.

4.1 and 12.4 percent, all effects statistically significant. More numerous likely potential entrants also exert a significant downward effect on airline fares.

In a slightly different but quite relevant vein, Evans and Kessides[17] test whether the frequency and pattern of contacts among the same airlines in one thousand of the largest domestic routes affect pricing. Their evidence strongly supports the proposition that greater "multimarket contact" causes airlines to be significantly less aggressive in competing on particular routes, consistent with the view that such contact enhances information and discipline among sellers. The cooperative effect on fares is in the range of several percentage points.

This extensive literature on airlines provides direct evidence on the effect of reducing the number of competitors in a small numbers market, including three-to-two situations. The evidence is clear and convincing: Such a change systematically increases price. As summarized by Borenstein,[18]

> many studies have found that the number of airlines actually competing on a route has a significant effect on the price level [references omitted]. In 1990, prices on routes with two active competitors averaged about 8 percent lower than on monopoly routes. A third active competitor was associated with another 8 percent drop.

RAILROADS

---

[17] W. Evans and I. Kessides, "Living by the 'Golder Rune': Multimarket Contact in the U.S. Airline Industry," Quarterly Journal of Economics, 1994.

[18] S. Borenstein, "The Evolution of U.S. Airline Competition," Journal of Economic Perspectives, 1992.

The purpose of the above studies has been to demonstrate the wide range of circumstances in which third-firm effects on prices have been found. There are, however, additional studies that investigate the impact of numbers of firms in railroad transportation markets themselves and are therefore directly relevant to the case at hand. They come to similar conclusions as those for airlines and other markets.

The first of these studies is due to Levin[19] who simulates the effect of deregulation by statistically estimating certain relationships and assuming values and ranges of other variables based on available evidence. His key measure of competition is a variable that reflects particular behavior by each firm (Cournot) and allows the number of firms hypothetically to vary.[20] He then finds that "the degree of interrailroad competition has a powerful influence on the level of rates..." The details differ by commodity and other assumptions, but typical results are that moving from five firms to three raises rates by 29 percent, and

---

[19] R. Levin, "Railroad Rates, Profitability, and Welfare Under Deregulation," Bell Journal of Economics, 1981.

[20] Doubts have been raised about Levin's study due to this assumption of Cournot behavior (R. Willig, Verified Statement, p. 559). In particular, it is said that the model says nothing about more rivalrous interactions among firms, such as allegedly will characterize postmerger rail markets. This criticism is incorrect. The same effects will hold for any value of the disputed conjectural variation, not just Cournot, so long as that value is unchanged by the merger. See J. Kwoka, "The Private Profitability of Horizontal Mergers with Non-Cournot and Maverick Behavior," International Journal of Industrial Organization, 1989. In the present case there is no reason to assume that the conjectural variation will conveniently increase as required to offset the effects of a reduction in firm numbers.

moving from three to one (that is, monopoly) more than doubles rates.

Grimm's study directly examines the effects of rail mergers by estimating the effect of concentration on prices in 111 markets in 1977.[21] He finds an important and statistically significant relationship between the two. Detailed analysis of the effect by concentration category casts light on various possible industry restructurings, including the specific effects of three-to-two mergers. The evidence in fact allows Grimm to conclude that "transformations of markets with three firms, not equally sized, to two firms appear to produce the greatest harm," the very circumstance relevant to this case.

MacDonald conducted two studies of prices of agriculatural commodities using waybill data for 1983.[22] Both found

---

[21] C. Grimm, "Horizontal Competitive Effects in Railroad Mergers," Research in Transportation Economics, 1985. This study has been dismissed because of its use of pre-deregulation era data (Willig, p. 563). While the institutional environment has certainly changed since 1980, it seems more likely that concentration and mergers would have a larger effect now than before since rate effects were previously constrained by regulation.

[22] J. MacDonald, "Competition and Rail Rates for the Shipment of Corn, Soybeans, and Wheat," Rand Journal of Economics, 1987; and "Railroad Deregulation, Innovation, and Competition: Effects of the Staggers Act on Grain Transportation," Journal of Law & Economics, 1989. MacDonald's use of waybill data has been dismissed based on a letter to UP from one J. Nash of the ICC noting that unreported contract rates may obscure actual revenue (Willig, p. 564). That may be the case, but despite implications to the contrary, it does not necessarily invalidate use of the data. What is described is statistical error rather than bias. Statistical error only makes effects more difficult to discern--it does not reverse them. Moreover, Nash's admonition is only that the waybill sample should not be the sole source of data. Other studies in fact corroborate MacDonald's conclusions.

statistically significant effects from market concentration, and in each case he used those results to infer the effects of mergers. One study examined the then-proposed mergers of Conrail with Norfolk Southern and of the SP with the Sante Fe. In all regions where concentration increased appreciably and was not constrained by barge competition, export rates for corn and soybeans under the merger were predicted to rise significantly, by as much as 18 to 24 percent.

MacDonald's other study examines deregulation more generally. Anticipating the effects of mergers, he concludes, "The addition or subtraction of a competitor has a larger effect on rates, the fewer the number of competitors in the market." Moving from three competitors to two raises rates by 15.2 percent in the corn market, while a further reduction from two down to one increases them by an additional 17.4 percent.

Finally, Winston, Corsi, Grimm, and Evans's book[23] represents a comprehensive examination of rail freight markets under deregulation. As was done in airlines, they use a measure that captures both price and nonprice effects ("welfare") and find that for all commodities the addition of one single-line rail competitor or one interline competitor improves welfare by a

---

The same response is appropriate for the second criticism leveled at MacDonald, namely, that his use of data compiled by crop reporting districts invalidates his conclusions (Willig, p. 567). Even if such data are subject to statistical error, it can be concluded that the magnitude of the measured effect is distorted.

[23] C. Winston, T. Corsi, C. Grimm, and C. Evans, The Economic Effects of Surface Freight Deregulation, Brookings, 1990.

statistically significantly amount.[24] The effect of a single-line firm is three times as large as that for the interline competitor. This mirrors the differential found between actual and potential airline competitors.

Studies of rail pricing confirm the findings of studies of other markets: Market concentration matters. In small numbers settings, each individual firm becomes relevant to industry pricing. Three-to-two mergers in particular have the predictable effect of significantly raising price.

AUCTION MARKETS

Shippers seeking rail services operate in what resembles an auction market setting. That is, they solicit bids on a specific unique service--transport of a particular commodity at specified times, distances, volumes, etc.--from two or more potential suppliers. The low bidder typically secures the business on an exclusive contractual basis for a significant period of time. During the contract period, all other potential sellers remain on the sidelines, waiting to reenter the bidding for the next round.

Auction markets may differ from the markets described above in that firm share and rank are not the only ways of characterizing competition. Unless the shipper divides its business on an on-going basis, there simply may be no second or third firm with positive share. Rather, there will be a

---

[24] The key regression in this study has been criticized for failing to take density into account (Willig, p. 573). The authors explicitly state, however, that they "attempted to control...for density effects using dummy variables. But these variables were statistically insignificant." Winston, et al, page 47, n. 10.

"monopoly" at any time plus potential entry at the time of a new bid solictitaion. At that point there may be multiple parties in a position to compete by submitting bids. This scenario raises the issue of competition somewhat differently than posed above, namely, the price effect of the number of bidders in the market.

Auction market theory, experimental evidence, and studies of actual auctions all demonstrate that an increased number of bidders increases the winning bid in sales auctions. Equivalently, in purchase auctions such as the rail service example, a larger number of bidders can be expected to reduce the winning offer price. These effects emerge in different types of auctions, under different assumptions about information available to participants, and for reasons in addition to coordinated behavior. For example, the final price may change as a larger number of bidders represents a wider range of the distribution of possible values. But the results are consistent with all earlier evidence.

Gaver and Zimmerman (1977)[25] examined bidding on 77 BART construction projects and found that a smaller number of bidders resulted in a significantly lower winning bid. The best estimates showed an increasing effect from the number of bidders as those numbers dwindled from four to three, then to two, and finally down to a single bidder.

---

[25] K. Gaver and J. Zimmerman, "An Analysis of Competitive Bidding on BART Contracts," Journal of Business, 1977.

Hendricks, Porter, and Boudreau (1987)[26] analyzed over one thousand federal auctions of oil and gas leases for the Outer Continental Shelf. The winning bid fell by 39 percent by moving from three to two bidders, and by fully 52 percent when the number fell to just one bidder.

Brannman, Klein, and Weiss (1987)[27] report the results of their reexamination of three data sets, on bond underwriting, offshore oil leases, and timber sales. The winning bid varied systematically with the number of bidders in all these auctions. Reduction of the number from three to two bidders alters the winning bid by amounts ranging from 7.3 percent to 57 percent, and from two to one bidders, by amounts between 16.4 percent and 132 percent.

To the extent that auction markets describe the process by which a shipper secures a price for rail transportation services, the literature offers the same conclusion as that from traditional market settings: Competition--in the form of the number of actual bidders--matters to the final outcome. Small numbers of bidders, or their reduction to small numbers, are associated with higher offer prices in buying auctions.

---

[26] K. Hendricks, R. Porter, and B. Boudreau, "Information, Returns, and Bidding Behavior in OCS Auctions: 1965-69," Journal of Industrial Economics, 1987.

[27] L. Brannman, J. D. Klein, and L. Weiss, "The Price Effects of Increased Competition in Auction Markets," Review of Economics and Statistics, 1987.

Summary Observations

My review has covered over twenty studies that focus very specifically upon third-firm effects, small-numbers mergers, or bidder numbers in auction markets. Some studies cut across industries, while others analyze specific cases. The markets range from supermarkets to bond underwriting and to railroads themselves. Each of these studies has its own distinctive strengths and, as does all empirical research, may have some weaknesses.

The conclusion to be drawn from these diverse studies is, however, clear and consistent. As a practical matter, market settings with very small numbers of firms systematically operate in ways that diverge from the competitive norm. With only a handful of firms, the price effects of further reductions in numbers--such as three-to-two mergers--can be quite large. Railroads are typical of industries where these effects emerge, and rail mergers in these circumstances raise serious competitive concerns.

The theoretical possibility that other factors will prevail over small numbers and effectively blockaded entry does not appear to be realized. Indeed, if any obstacles are present in these cases, small numbers of firms appear capable of surmounting them, as of course they have every incentive to do in order to achieve some measure of price coordination. As noted earlier, various facilitating practices and devices can help overcome these obstacles. In the case of railroads, multimarket contact

and trackage rights agreements are obvious candidates.

Moreover, in the present case there is no need to speculate. The existing economics literature clearly implies that rail markets with very small numbers of firms price above competitive levels. More specifically, the evidence indicates that three-to-two mergers, such as contemplated in this proceeding, can be expected to allow further significant price increases.

VERIFICATION

COUNTY OF [INSERT COUNTY] : Fairfax
: ss:
STATE OF [INSERT STATE] : Virginia

JOHN E. KWOKA, JR.,

[INSERT WITNESS], being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

John E Kwoka, Jr
JOHN E. KWOKA, JR.
[INSERT WITNESS]

Subscribed and sworn to before me, a Notary Public, this 26th day of March, 1996.

Patricia A. Edwards
Notary Public

My Commission expires: 10-31-97

Curriculum Vitae

JOHN E. KWOKA, JR.

Current Position: PROFESSOR OF ECONOMICS
GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC 20052
(202) 994-6922
(202) 994-6147 (fax)

Address: 9552 Pine Cluster Circle
Vienna, VA 22181
(703) 242-6321

Education:

1967-71 UNIVERSITY OF PENNSYLVANIA
Ph.D. in Economics
Dissertation: Federal Milk Market Regulation: Objectives and Impact

1964-67 BROWN UNIVERSITY
A.B. in Economics, cum laude

1963-64 RENSSELAER POLYTECHNIC INSTITUTE

Fields of Specialization:

Industrial organization
Antitrust and regulatory economics
Microeconomic theory, applied microeconomics

Academic Positions:

HARVARD UNIVERSITY
1994-95 Visiting Professor of Economics

GEORGE WASHINGTON UNIVERSITY
1985-pr. Professor of Economics
1981-85 Associate Professor of Economics

NORTHWESTERN UNIVERSITY
1980-81 Visiting Associate Professor of Economics

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
1972-75 Assistant Professor of Economics

UNIVERSITY OF PENNSYLVANIA
1972 Lecturer in Economics
1970-71 Instructor

Non-Academic Positions:

THE BROOKINGS INSTITUTION
1995 Guest Scholar

FEDERAL COMMUNICATIONS COMMISSION
1987-88 Special Assistant to the Chief
Common Carrier Bureau

DEPARTMENT OF JUSTICE, ANTITRUST DIVISION
1985 Economist, Economic Policy Office

FEDERAL TRADE COMMISSION
1975-81 Economist, Bureau of Economics

Honors and Awards:

Faculty Associate in Public Policy, George Washington University, 1986 to present

Speaker, Federal Trade Commission Distinguished Speaker Series, 1990

Research Grant, Program in Public Policy, George Washington University, 1983

Award for Meritorious Service, Federal Trade Commission, 1980

Economic Policy Fellowship, Brookings Institution, 1975-76

Research Grants, Business Foundation of the University of North Carolina, 1973, 1974

Fellowship for Dissertation in Regulated Industries, Brookings Institution, 1970-71

Doctoral Fellowships, Ford Foundation, 1976-70

Books:

Transforming Power: Ownership, Integration, and Competition in Electric Utilities, in process.

The Antitrust Revolution, co-edited with Lawrence J. White, Scott, Foresman, 1989; The Antitrust Revolution: The Role of Economics (second edition), HarperCollins, 1994.

Articles:

"Altering the Product Life Cycle of Consumer Durables: The Case of Minivans," Managerial and Decision Economics, January/February 1966.

"The Sales and Competitive Effects of Styling and Advertising Practices in the U.S. Automobile Industry," Review of Economics and Statistics, November 1993.

"Implementing Price Caps in Telecommunications," Journal of Policy Analysis and Management, Fall 1993.

"Regulation and Deregulation American Style," Sosyal Bilimler Dergisi, Fall 1993

"The U.S. Automobile Industry: Overtaking an Oligopoly," in Industry Studies, Larry Deutsch, ed., Prentice-Hall, 1993

"The Effects of Divestiture, Privatization, and Competition on Productivity in U.S. and U.K. Telecommunications," Review of Industrial Organization, no. 1, 1993

"The Effects of Divestiture, Privatization, and Competition on Productivity in U.S. and U.K. Telecommunications: A Briefer Reply," in Review of Industrial Organization, 1993.

"Market Segmentation by Price/Quality Schedules: Some Evidence from Automobiles," Journal of Business, October 1992.

"The Output and Profit Effects of Horizontal Joint Ventures," Journal of Industrial Economics, September 1992.

"The American Antitrust Revolution," Consumer Policy Review, July 1992.

"Price Squeezes in Electric Power: The New Battle of Concord," Electricity Journal, June 1992.

"Productivity and Price Caps in Telecommunications," in Price Caps and Incentive Regulation in Telecommunications, M. Einhorn, ed., Kluwer, 1991.

"Price Cap Reform in Telecommunications: A Penny Saved..." Regulation, Winter 1990.

"The Effect of Market Growth and Contraction on Industry Price-Cost Margins," Eastern Economic Journal, July-September 1990.

"The Private Profitability of Horizontal Mergers with Non-Cournot and Maverick Behavior," International Journal of Industrial Organization, Fall 1989.

"International Joint Venture: General Motors and Toyota," in The Antitrust Revolution, J. Kwoka and L.J. White, eds. Scott, Foresman, 1989; second edition, HarperCollins, 1994.

"Design Criteria for Incentive Regulation," in Report of D.C. Public Service Commission on Symposium, "Competition and the Regulation of Telecommunications Services in the District of Columbia," December 1988.

"Accounting for Losses: The Great Detroit Newspaper War," Journal of Media Economics, Fall 1988.

"Cooperation vs. Rivalry: Price-Cost Margins by Line of Business," with David Ravenscraft, Economica, August 1986.

"Efficiencies, Failing Firms, and Alternatives to Merger: A Policy Synthesis," with Frederick R. Warren-Boulton, Antitrust Bulletin, Summer 1986.

"Messy Merger Guidelines: Comment," Antitrust Law and Economics Review, 1986 (No 2).

"The Herfindahl Index in Theory and Practice," Antitrust Bulletin, Winter 1985.

"Markets: A Magical Mystery Tour of Current Policy," Society, November/December 1984.

_____, reprinted in Thomas Swartz and Frank Bonello, Taking Sides (Duskin, 1986).

"Market Power and Market Change in the U.S. Automobile Industry," Journal of Industrial Economics, June 1984.

"Market Share Distribution and Industry Performance: A Reply," Review of Economics and Statistics, May 1984.

"Output and Allocative Efficiency Under Second-Degree Price Discrimination," Economic Inquiry, April 1984.

"Advertising and the Price and Quality of Optometric Services," American Economic Review, March 1984.

"The Limits of Market-Oriented Regulatory Techniques: The Case of Automotive Fuel Economy," Quarterly Journal of Economics, November 1983.

"Self-Regulation in Optometry: The Impact on Price and Quality," with R. Bond, J. Phelan, and I. Whitten, Law and Human Behavior, Vol. 7, Nos. 2/3, 1983.

"Monopoly, Plant, and Union Effects on Manufacturing Wages," Industrial and Labor Relations Review, January 1983.

_____, reprinted (in Spanish) in El Mercado de Trabajo y la Estructura Salarial, Centro de Publicaciones, Ministerio de Trabajo y Seguridad Social, Madrid, 1988.

"Regularity and Diversity of Firm Size Distributions in U.S. Industries," Journal of Economics and Business, October 1982.

"Does the Choice of Concentration Measure Really Matter?" Journal of Industrial Economics, June 1981.

Effect of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry, with R. Bond, J. Phelan, and I. Whitten, FTC Staff Report, September 1980.

"Establishment Size, Wages, and Job Satisfaction: The Trade-offs," in The Economics of Firm Size, Market Structure and Social Performance, Conference Proceedings, Federal Trade Commission, July 1980.

"EIS Market Share Data: Nature, Reliability, and Uses," Antitrust Law Journal, Vol. 47, No. 3, 1979.

"The Effect of Market Share Distribution on Industry Performance," Review of Economics and Statistics, February 1979.

_____, excerpt in Donald Watson and Malcolm Getz, Price Theory in Action, (Houghton Mifflin, 1981).

Market Shares, Concentration, and Competition in Manufacturing Industries. FTC Staff Report, August 1978.

"Regional Distribution of the 'Subsidy' Under Federal Milk Market Regulation," in Farm Size and Regional Distribution of the Benefit Under Federal Milk Market Regulation. FTC Staff Report by David R. Fronk, May 1978.

"Pricing Under Federal Milk Market Regulation," Economic Inquiry, July 1977.

"Large Firm Dominance and Price-Cost Margins in Manufacturing Industries," Southern Economic Journal, July 1977.

"The Organization of Work: A Conceptual Framework," Social Science Quarterly, December 1976.

"Federal Milk Market Regulation: The Multiple Pricing System," Proceedings, Conference on Milk Prices and the Market System, Community Nutrition Institute, Washington, D.C., January 1976.

"Optimal Policy When Effects on Distribution are Unknown," with James C. Ohls, Public Finance Quarterly, April 1975.

Book Reviews:

Costs and Productivity in Automobile Production: The Challenge of Japanese Efficiency by Melvyn Fuss and Leonard Waverman, in Review of Industrial Organization, June 1994.

The Economics and Regulation of United States Newspapers by Stephen Lacy and Todd Simon, in Journal of Media Economics, no. 1, 1994.

Profits and the Stability of Monopoly by M. A. Utton, in The Antitrust Bulletin, Summer 1987.

The Japanese Automobile Industry by Michael Cusumano, in Journal of Economic History, June 1987.

Industrial Organization by Kenneth Clarkson and Roger Miller, in Antitrust Law and Economics Review, 1985 (No. 3).

Power and Market: Government and Economy by Murray Rothbard, in Southern Economic Journal, October 1978.

Monographs:

"Vertical Integration and Its Alternatives for Achieving Cost Efficiencies in Electric Power," GWU Department of Economics Discussion Paper, March 1996.

"The Price Effects of Buying Rings: Evidence from 'Knockouts' in Real Estate Auctions," GWU Department of Economics Discussion Paper D-9503, March 1995.

"Public vs. Private Ownership and Economic Performance: Evidence from the U.S. Electric Power Industry," Harvard Institute of Economic Research Discussion Paper 1712, February 1995.

"Ownership, Competition, and Price Performance of Electric Utilities," GWU Department of Economics Discussion Paper D-9408, October 1994.

"Lengthening and Strengthening the Product Life Cycle: The Case of Minivans," GWU Department of Economics Discussion Paper D-9212, November 1992.

"The Sales and Competitive Effects of Styling and Advertising Practices in the U.S. Automobile Industry," GWU Department of Economics Discussion Paper D-9109, March 1991.

"Policy and Productivity in the U.S. and U.K. Telecommunications Industries," GWU Department of Economics Discussion Paper D-9004, April 1990.

"Regulation American-Style: Heavy-Handed, Light-Handed, and (Sometimes) Off-Handed," March 1990.

"Unleashing Market Forces: Lessons from Deregulation of U.S. Industry," February 1990.

"Accounting for Losses: The Great Detroit Newspaper War," GWU Department of Economics Discussion Paper D-8809, February 1988.

"Antitrust Policy and Foreign Competition," GWU Department of Economics Discussion Paper D-8711, November 1984.

"Efficiencies, Failing Firms, and Alternatives to Merger: A Policy Synthesis," with F. Warren-Boulton, Department of Justice, Antitrust Division Discussion Paper EAG 86-14.

"Market Segmentation by Product Quality: Some Evidence from Automobiles," GWU Department of Economics Discussion Paper D-8603, May 1986.

"Industrial Contraction and Sunk Costs as Constraints on Concentration," GWU Department of Economics Discussion Paper D-8502, June 1985.

"Market Power from Horizontal Mergers and Joint Ventures," GWU Department of Economics Discussion Paper D-8413, January 1985.

"Cooperation vs. Rivalry: Price-Cost Margins by Line of Business," with D. Ravenscraft, Federal Trade Commission Bureau of Economics Working Paper No. 127, June 1985.

"More on Market Share Distribution and Industry Performance," GWU Department of Economics Discussion Paper D-8210, September 1982.

"Advertising and the Price and Quality of Optometric Services," GWU Department of Economics Discussion Paper D-8209, September 1982.

"Behavior of an Auto Firm Under the Fuel Economy Constraint," FTC Bureau of Economics Working Paper No. 28, June 1980.

"Output Under Second-Degree Price Discrimination," FTC Bureau of Economics Working Paper No. 21, October 1979.

"Does the Choice of Concentration Ratio Really Matter?" FTC Bureau of Economics Working Paper No. 17, October 1979.

"The Diversity of Firm Size Distributions in Manufacturing Industries," FTC Bureau of Economics Working Paper No. 12, February 1978.

"The Effects of Market Shares and Share Distribution on Industry Performance," FTC Bureau of Economics Working Paper No. 2, March 1977.

Other:

Board of Editors, Review of Industrial Organization, 1983 to present.

Board of Editors, Journal of Media Economics, 1987 to present.

Associate Editor, Journal of Industrial Economics, 1990-95

Advisory Board, Antitrust Law and Economics Review, 1985-90

Membership in: American Economic Assocation
Industrial Organization Society
European Association for Research in Industrial Economics

"Antitrust Analysis and the 'Cooperative Core': It's the First Two Market Shares That Count," interview, Antitrust Law and Economic Review, 1983 (No. 4), and 1984 (No. 1).

Testimony before Committees of U.S. House, U.S. Senate, and State Legislatures.

Analysis and testimony in antitrust, regulatory, and international trade proceedings.

Personal Information:

Born October 4, 1945
Northampton, MA
Married, one child

96.03

EXHIBIT

REDACTED

IN ITS ENTIRETY

EXHIBIT

REDACTED

IN ITS ENTIRETY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Redacted Version of The Dow Chemical Company's COMMENTS, EVIDENCE AND REQUEST FOR CONDITIONS has been served by first class mail, postage prepaid, on all parties of record in this proceeding on this 29th day of March, 1996.

Jacqueline A. Spence

STB FD 32760 3-29-96 D 62258

62258

Item No. _____

Page Count 2

Mo. #755

Representatives

Christine Hernandez
District 124

March 25, 1996

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

RE: Finance Docket 32760

Dear Secretary Williams:

This is a follow-up to my previous correspondence to you dated March 4, 1996 on the proposed merger between the Union Pacific Corporation (UP) and Southern Pacific Rail Corporation (SP).

Texas State Representatives Robert Junell, John R. Cook, and Robert Saunders are submitting for the board's consideration a request for conditions (JRC-2, RAJ-2, RMS-2) regarding finance docket number 32760. This letter is to express my support of this request.

What our state needs is another Class I railroad which will ensure rail competition and employment opportunities, not another merger. I firmly believe that only a Class I railroad system is in the best interest of our shippers, communities, and Texas' economy.

However, my colleagues are recommending some solutions that would offset the adverse effects of an otherwise monopolistic rail system. I agree with them that as a condition of the merger's approval, Burlington Northern-Santa Fe (BN/SP) must be allowed to operate on certain UP trackage, and that UP should be required to divest any parallel trackage presently owned by SP to a carrier unaffiliated with UP, SP, or BN/SF.

Further assurances for competition would be enhanced if the Texas Mexican Railway is given trackage rights and access to switching in Houston. This will allow Tex Mex to compete with UP and BN/SF for U.S.-Mexico traffic through Laredo. Also, if South Orient Railroad is given certain trackage and shipping terminal rights in Dallas, they would be able to compete for Eastern

ADVISE-C-ALL

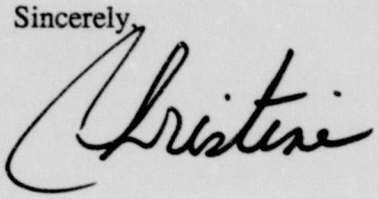
P.O. Box 2910 • Austin, Texas 78768-2910 • 512-463-0634 ◆ 301 South Frio • San Antonio, Texas 78207 • 512 270-4597
Committees: Appropriations, Public Education, and Legislative Budget Board

U.S. traffic through Texas.

I would also like to express my support of the need for a third rail carrier by allowing divestiture of SP lines from Houston to Memphis, Tennessee, and from Texarkana to St. Louis, Missouri. This will permit access to Eastern U.S. Traffic for a third rail carrier. Finally, I am in favor of the recommendation to allow open reciprocal switching in industrial centers throughout Texas.

I wholeheartedly support the request for these conditions and urge your serious consideration.

Sincerely,



Christine Hernandez

CH/em

STB FD 32760 3-29-96 D 62257

62257

Item No. ____

Page Count 1

Mar #754

The Senate of The State of Texas

J.E. "BUSTER" BROWN
State Senator
District 17

PRESIDENT PRO TEMPORE
1989

COMMITTEES

CHAIRMAN:
NATURAL RESOURCES
SUBCOMMITTEE ON
VETERAN AFFAIRS

VICE CHAIRMAN:
FINANCE
SUBCOMMITTEE ON WATER

MEMBER:
CRIMINAL JUSTICE

March 28, 1996

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

RE: Finance Docket 32760

Dear Secretary Williams:

As you are aware, the Texas Railroad Commission voted this week to oppose the proposed railroad merger between Union Pacific Railroad Company and Southern Pacific Lines.

The Railroad Commission voted to oppose the merger because of the competitive implications the merger would have on the State of Texas. As proposed, the merger would grant UP control over a reported 90% of rail traffic into and out of Mexico, 70% of the petrochemical shipments from the Texas Gulf Coast, and 86% of the plastics storage capacity in the Texas/Louisiana Gulf Region. UP also acknowledges that the merger would greatly reduce rail competition and has proposed a trackage rights agreement with Burlington Northern-Santa Fe (BN-SF) as the solution. A tracking rights agreement, however, does not solve the problem.

Owners of rail lines have incentives to invest in the track and to work with local communities to attract economic development. Furthermore, owners have control over the services they provide--its frequency, its reliability, its timeliness. Texas needs another owning railroad, not another merger or tracking rights agreement, to ensure effective rail competition.

As a member of the Texas Senate, I support the decision made by the Railroad Commission on behalf of the State of Texas. The Commission conducted vast amounts of research on this issue and held public hearings in three of the largest cities in Texas. I am very confident the decision made by the Commission reflects the opinion of the people of Texas.

Thank you for your attention to this matter. If I can be of further assistance regarding this issue, please do not hesitate to contact my office.

Sincerely,

ADVISE OF PROCEEDINGS

JEB:cl

P.O. BOX 12068
AUSTIN, TEXAS 78711-2068
512/463-0117 • FAX 512/463-0639
TDD 512/475-3758

P.O. BOX 888
LAKE JACKSON, TEXAS 77566-0888
409/297-5261 • FAX 409/297-7996

9801 WESTHEIMER
SUITE 807
HOUSTON, TEXAS 77042
713/784-2797 • FAX 713/784-2798

STB FD 32760 3-29-96 D 62256

Iowa Department of Transportation
800 Lincoln Way, Ames, Iowa 50010
515-239-1454
Fax: 515-239-1975

March 27, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
1201 Constitution Avenue
Washington, D. C. 20423

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

Dear Secretary Williams:

Enclosed for filing with the Surface Transportation Board in the above captioned proceeding are an original and twenty (20) copies of the Iowa Department of Transportation's comments on this Railroad Control and Merger Application.

Copies have also been sent to:

- Secretary, U.S. Department of Transportation;
- U.S. Department of Justice, Anti-Trust Division;
- Representatives of each applicant; and
- To each Party of Record identified in STB Decision No. 15, dated February 15, 1996

Sincerely,

Darrel Rensink, Director
Iowa Department of Transportation

Enclosures

IDOT-2

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 REO GRANDE WESTERN RAILROAD COMPANY

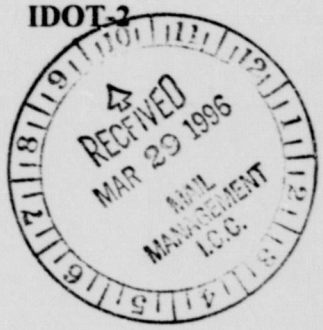
COMMENTS OF THE

IOWA DEPARTMENT OF TRANSPORTATION

IOWA DEPARTMENT OF
TRANSPORTATION
Thomas F. Jackson, Director
Office of Planning Services
Planning and Programming Division
800 Lincoln Way
Ames, Iowa 50010
515-239-1454

DATE: March 27, 1996

IDOT-2



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 REO GRANDE WESTERN RAILROAD COMPANY

COMMENTS OF THE
IOWA DEPARTMENT OF TRANSPORTATION

The Iowa Department of Transportation (IDOT), pursuant to 49 U.S.C. §10901 and §§11343-45, and the Interstate Commerce Commission Decision No. 9 (served December 27, 1995) , hereby submits its comments in support of the merger of Union Pacific and Southern Pacific Railroads.

INTRODUCTION

IDOT has reviewed the proposed merger of the Union Pacific Railroad (UP) and the Southern Pacific Railroad (SP) for evidence of significant anticompetitive effects and loss of competition. Many Iowa shippers have reported that their competitive choices will be improved after the merger, while many others have reported that their competitive choices will be reduced.

DISCUSSION

Staff has thoroughly reviewed the contents of the proposed merger application and took part in discussions on the subject conducted by the state of Illinois. In addition, we contacted and surveyed approximately 60 Iowa shippers, shipper organizations, agri-business organizations, regional and area planning agencies, and the regional and short line railroads operating in Iowa.

Iowa has four Class I, three Class II, and ten operating Class III railroads. Of those responding to IDOT's survey, only the Iowa Northern Railroad Company reported its intent to support the merger. The Burlington Northern/Santa Fe and the Illinois Central/Chicago, Central and Pacific Railroads will not oppose the merger because they have reached trackage rights and operating agreements with the UP.

Many Iowa shippers believe that the merger will be beneficial for Iowa by providing long haul, single-line access to the west coast, the southwest cattle feedlots and to the Mexican markets. There is potential for improved operating efficiencies and reduced route circuity which could result in lower operating costs. Other Iowa shippers, however, believe that the merger will reduce competition and transportation options to markets important to the state's producers of agricultural commodities and manufactured goods. Many Iowa shippers, agricultural and non-agricultural alike, believe that rail rates will become even less competitive and will continue to increase as they did when UP took over the Chicago and North Western Railroad Company.

CONCERNS AND CONDITIONS

Based on the information contained in the merger application, and from the numerous other interested and knowledgeable parties, the IDOT has particular concerns regarding the potential reduction in competition in the corridor connecting Iowa to the Gulf Coast Ports and Mexican Markets. Even with the proposed trackage rights agreements with the Burlington Northern/ Santa Fe (BN/SF) and the Illinois Central/Chicago, Central and Pacific (IC/CCP) Railroads, the combined UP/SP Railroad

will possess a dominant position in the corridor for many types of freight movements important to Iowa. Therefore, IDOT supports the proposed merger provided requirements for granting further trackage rights or line sales to a third Class I carrier be imposed by STB with the intent of reducing potential market dominance by the UP/SP in that corridor. Reasons for imposing this condition include the following:

- A substantial share of freight shipments terminating in Iowa originate in Texas, Louisiana, Oklahoma and Arkansas. (See Figure 1 attached.) This is particularly true for products of the petro-chemical industry, which are important both to Iowa agriculture and the plastics industry. Based on current traffic the combined UP/SP railroad would dominate as much as 70 percent of these shipments.

- A substantial share of freight shipments originating in Iowa, particularly corn and soybeans and their derivative products, terminate along the Gulf Coast for export. (See Figure 2 attached.) Although barge transportation down the Mississippi River provides competition for some of these rail movements, this option is not always available, as has been the experience in the recent past due to low water levels.

- Mexico is becoming an increasingly important market for Iowa producers of agricultural commodities and manufactured goods. Since 1987, the volume of non-agriculture exports from Iowa to Mexico has tripled making Mexico Iowa's third most important destination for exports. Even with the granting of trackage rights to the BN/SF, the combined UP/SP railroad will likely dominate shipments to Mexico from the Upper Midwest. This is particularly true for shipments originating in Iowa because the BN/SF does not serve the major agricultural production areas or manufacturing centers of the State. Therefore, it is unlikely that the BN/SF would have an opportunity to participate in shipments originating on the UP/SP.

- Grain shippers located on the grain gathering lines in northwest Iowa have expressed

concerns regarding the future cost and quality of service to their facilities. Therefore, it is important that options for connecting with multiple carriers be maintained. Maintaining these options will encourage competition among carriers, which will result in the beneficial impact of lower rates and better service than if these shippers become captive to a single carrier. Also, the State has a substantial financial interest in preserving competitive access for these railroad lines. Since 1974, the State has participated in 21 rail assistance projects and 12 rail economic development projects involving the investment of over $28 million of public funds in these lines. In addition, shippers have contributed over $20 million, and the railroads over $26 million to these projects.

CONCLUSION

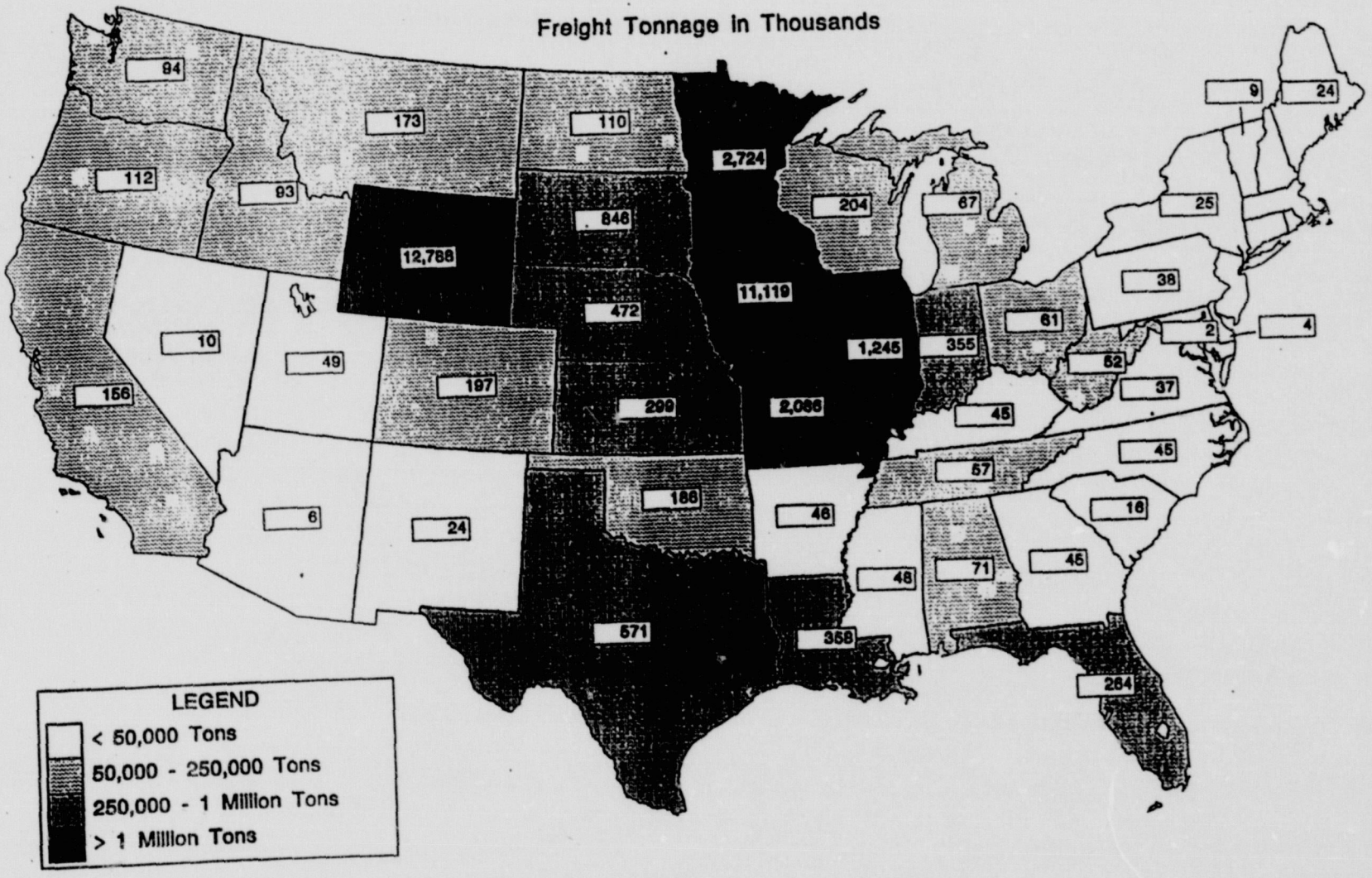
THEREFORE, the Iowa Department of Transportation supports the control and merger application of the Union Pacific Corporation, et al. and the Southern Pacific Rail Corporation, et al., provided the Surface Transportation Board impose requirements for granting further trackage rights or line sales to a third Class I carrier with the intent of reducing potential market dominance by the UP/SP in that corridor.

Respectfully Submitted,

By: Darrel Rensink
DARREL RENSINK, Director
Iowa Department of Transportation

March 27, 1996

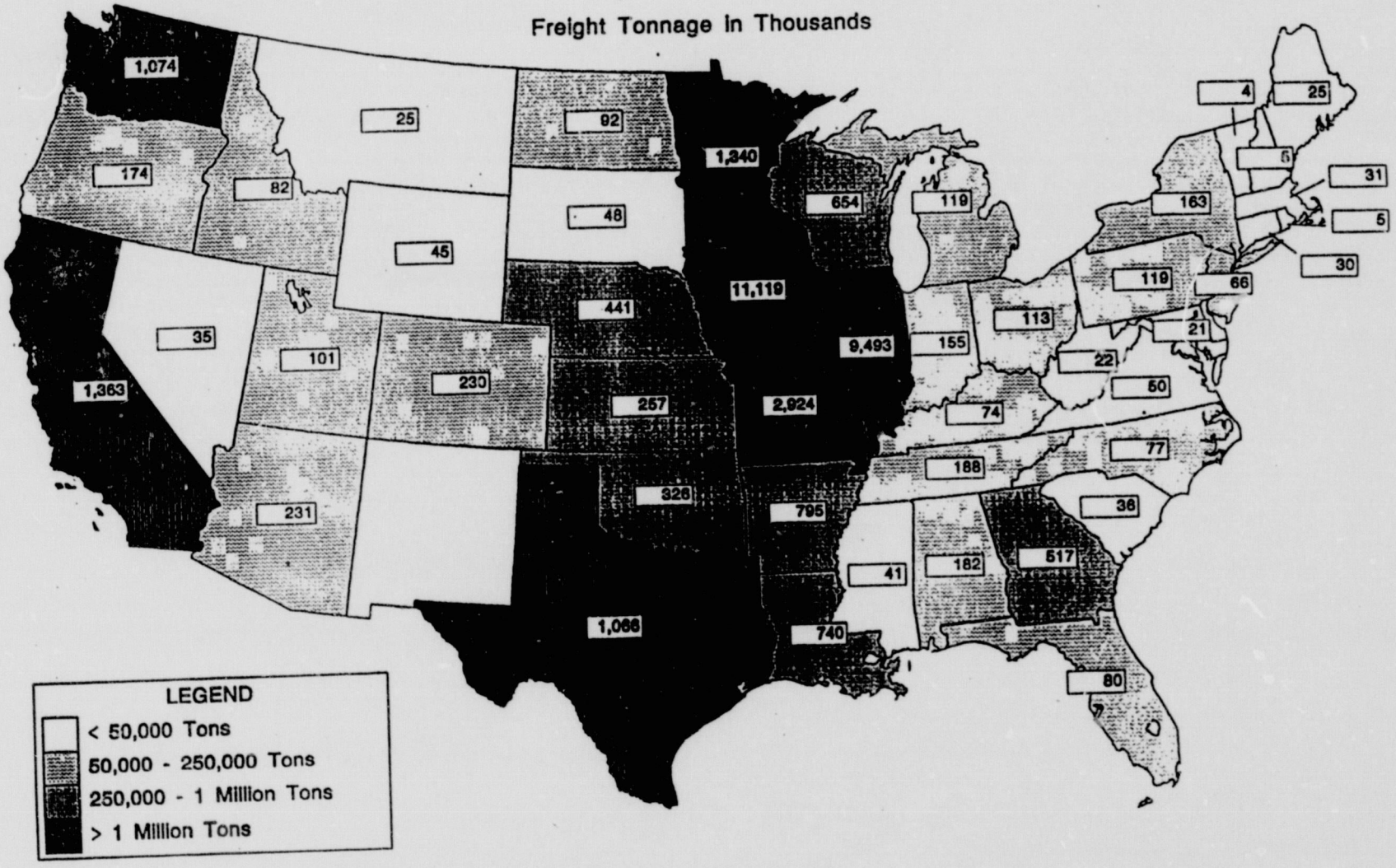
ORIGINATION OF RAIL FREIGHT TONNAGE TERMINATING IN IOWA



DATA SOURCE: 1992 ICC Waybill Sample

FIGURE 1

TERMINATION OF RAIL FREIGHT TONNAGE ORIGINATING IN IOWA



DATA SOURCE: 1992 ICC Waybill Sample

FIGURE 2

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of March, 1996, a copy of the foregoing document was served upon all parties of record to STB Finance Docket No. 32760, by depositing a copy thereof in the U.S. Mail, postage prepaid.

Zoeann Kramer

Zoeann Kramer

STB FD 32760 3-29-96 D 62250

62250

12

Minnesota Department of Transportation
Office of Railroads and Waterways
Mail
395
St. P

Item No.
Page Count 11
DOR #747

Phone: 612/ 296-0355
Fax: 612/ 297-1887

March 19, 1996

Mr. Vernon A. Williams, Secretary
Case Control Branch
Attn. Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue NW
Washington, D.C. 20423

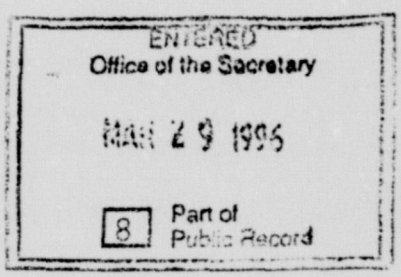
Dear Secretary Williams:

Enclosed for filing are the original and twenty copies of comments by the Minnesota Department of Transportation as announced by the Surface Transportation Board for Finance Docket No. 32760, on March 29, 1995.

Sincerely,

Allan J. Vogel

Allan J. Vogel, Director
Office of Railroads & Waterways



BEFORE THE
SURFACE TRANSPORTATION BOARD

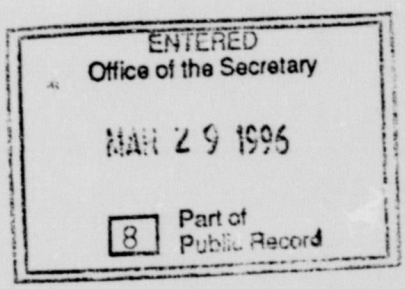
FINANCE DOCKET NO. 32760

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

MINNESOTA DEPARTMENT OF TRANSPORTATION COMMENTS ON THE CONTROL AND MERGER OF THE UNION PACIFIC RAILROAD COMPANY AND THE SOUTHERN PACIFIC RAILROAD COMPANY



Allan J. Vogel, Director
Office of Railroads & Waterways
Minnesota Department of Transportation
John Ireland Blvd.
Suite 925 Kelly Annex
Transportation Bldg.
St. Paul, MN. 55155

March 28, 1996

My name is Allan J. Vogel, Director of the Office of Railroads and Waterways for the Minnesota Department of Transportation (Mn/DOT). Mn/DOT is the state agency responsible for rail planning and programs in Minnesota. Part of Mn/DOT's responsibility is to comment on mergers, consolidations, acquisitions or other significant transactions involving railroads that do or may affect Minnesota. The transaction proposed in the above docket is a matter falling within the jurisdiction of Mn/DOT.

Mn/DOT supports this merger if certain assurances and conditions are made by the Union Pacific Railroad (UP) to improve service to Minnesota shippers. One, that the car supply to the shippers on U.P. lines and shortlines in Minnesota are improved and given special consideration during each harvest season, two, that switching at Winona, Minnesota is improved, three, some geographic restrictions on the Roseport Terminal traffic are lifted, four, joint track ownership is negotiated to alleviate competitive problems in Minnesota, the southwest, west and routes to Mexico, and five, line sales, abandonments and employment in Minnesota are strictly honored as stated in the application.

The Mn/DOT supported the Burlington Northern Railroad Company and the Santa Fe Railroad (BN/Santa Fe) merger because in most areas it was an end to end merger. Where there were competitive problems usually there were two or three carriers remaining after the merger and trackage rights were a suitable and appropriate solution. The UP merger with the Southern Pacific (UP/SP) is different in two very important ways. One, this merger is not an end to end but a parallel merger and two, often there will be only one railroad remaining in a service area. The following are assurances and conditions that the State of Minnesota requests if this merger is allowed to transpire. These conditions are necessary to ensure that our shippers remain competitive in local and world markets. Also, these conditions will allow industrial development

of property with the advantage of having competitive rail service with numerous markets.

Conditions

1. If this merger is to receive Surface Transportation Board (STB) approval, it must be conditioned on a plan by the UP that responds to the integration of the SP system with guarantees that Minnesota shippers will receive rail cars and be provided service that is beneficial to the shippers' ability to move their products to markets. Some of our shippers indicated that they only received 40% of their required car supply in 1995 after the Chicago & Northwestern (C&NW) takeover.

2. The rail switching at the Port of Winona by the UP is slow and cumbersome. Therefore, Dakota, Minnesota & Eastern Railroad (DM&E) should have switching rights or the right to buy the trackage from the UP to serve the Winona grain elevators. Most of the grain is delivered to the Port of Winona by the DM&E Railroad. The UP's slow switching causes as much as a 100% increase in car turnaround time which means a need for more cars.

3. A trackage agreement dated April 17, 1968 between the Soo Line Railroad and the C&NW covering geographic restrictions on the Roseport Terminal area traffic be lifted. This agreement prevents shippers from receiving goods and shipping products at a competitive rate.

4. Additional trackage agreements including joint track ownership with other carriers including the BN/Santa Fe in the south and southwest to allow competition to set rail rates and not monopolistic conditions.

5. The merger application does not mention any rail line abandonments in Minnesota. We expect the application language to be honored. This will create rail line stability for Minnesota shippers for the foreseeable future.

Comments Solicited

Mn/DOT has solicited comments from Minnesota's shippers, shippers organizations, and other railroads on this merger.

Service Improvements

Minnesota shippers had a negative experience with the UP in 1995 involving the takeover of the C&NW. The shippers in Minnesota experienced major problems with rail car availability and service. Corn was (and still may be) on the ground, causing our farmers to miss opportunity to realize maximum profits. We understand that these problems were a result of the movement of people between job locations and the two railroads.

The takeover of the C&NW was a small undertaking in comparison to the UP merger with the Southern Pacific Railroad Company (SP). Mn/DOT can foresee similar problems for Minnesota shippers if this mega-merger is allowed to transpire without this condition. If the UP/SP merger is to be successful major change by UP management in their takeover strategy is needed. In this mega-merger Minnesota wants guarantees that the car shortage and service problems our shippers experienced with the takeover by the UP of the C&NW will not recur.

Competitive Concerns

Most major companies in Minnesota support this merger because they have facilities on the UP system and do not want problems with their major carrier. Though most of our shippers support this merger Mn/DOT believes that the rail competition in the western one-half of the nation will be put in jeopardy. Our concern is not with physical rail competition in Minnesota since we do not have any SP trackage and our number of class one carriers will not diminish from the three we currently have. We do see a duopoly in the western one-half of the country which could result in a real opportunity for rate collusion and an increase in cost to our shippers. When there is only two very large carriers with two strong regions of service it is thinkable that there may be some collusion not to compete with vigor in certain areas.

Roseport Industrial Area Geographic Restrictions:

Roseport industrial area has several rail shippers and is located just south of the Minneapolis/St. Paul area.

In our request for comments from our shippers and the railroads that serve Minnesota we learned about an agreement that took place on April 17, 1968 between the Soo Line Railroad Company (Soo) now a part of Canadian Pacific (CP) and C&NW covering geographic restrictions in Minnesota and the western United States. In this agreement, item 13, restricts the Soo from handling traffic in certain western states and between the Roseport Industrial Area and points in Minnesota south of Roseport. This agreement was consummated at a time when there were several railroads that served Southern Minnesota and competition was not a problem. This agreement is obsolete and has lost its intent and value. Many shippers mentioned that because

of the extra switching they have to wait for cars an additional two to four days. These switching delays cause the shippers to be less competitive and they may lose clients. Before the UP takeover of the C&NW, deliveries from Roseport to customers on the Dakota, Minnesota & Eastern Railroad (DM&E) had joint rates that were competitive with truck. Those rates have been canceled by the UP. Also, the UP has indicated that they are not interested in providing rail service to DM&E on a truck competitive level, though the shippers would furnish the tank cars with zero mileage allowance.

Roseport has more land that could be developed if conditions were such that new businesses could be attracted. One factor that has slowed the development of this area is the geographic restriction that is now in place. This restriction prevents businesses from getting supplies in and shipping products out competitively. It is very likely that new businesses would be easily attracted to this area if Roseport is served by two railroads.

Trackage Rights and Line Sales Agreement (BN/Santa Fe)

The trackage rights and line sales agreements the UP/SP has negotiated with the BN/Santa Fe and the Illinois Central (IC) are token steps to allow minimal competition in the aforementioned area. If trackage rights agreements were as good as ownership the railroads would not own the trackage but only operate over them. Because the BN/Santa Fe and the IC have no yards or storage facilities for cars in these new areas being competitive may be very difficult if not impossible. With trackage rights agreements the owning railroad remains in control of the track usage by other railroads. This means that the BN/Santa Fe, the IC and shippers are at the mercy of the UP/SP. A railroad monopoly or a duopoly should not be the controlling factor in setting rates for shippers. The controlling factors in setting rates for shippers should be business efficiency and competitive railroads with direct routes. Some routes that BN/Santa Fe will have

to points in Texas, and the Mexico connection are circuitous and may not be competitive for Minnesota shippers. Currently, the UP controls about 49% of the Mexican traffic, with the addition of the SP, the UP will control about 90% of the Mexican traffic. This leaves the BN/Santa Fe with only a 10% share of the Mexican traffic and certainly not much of a competitor in the Mexican market. Therefore, Mn/DOT feels strongly that these agreements do not adequately satisfy the competitive problems in these areas.

Abandonments, Lines Sales and Employment

The UP application does not mention any line abandonment, line sales or major employment loss in Minnesota. We expect this to be true.

Summary

If this merger is allowed to occur there will be no going back and the only way to correct competitive problems or any mismanagement of the remaining railroads is total re-regulation. The very least the STB should do is allow the conditions that the State of Minnesota requests. To effectively serve the shippers in the southwest joint track ownership of some lines should be negotiated, especially, where competition has decreased from two carriers to one carrier. Joint track ownership would allow all users equal yard and track rights.

Minnesota shippers have been very dissatisfied with the UP service since the takeover of the C&NW. Minnesota shippers must have better service (faster switching time and an abundance of cars) by UP than what they experienced following the UP takeover of the C&NW in 1995. Abandonments, line sales and employment must remain as stated in the merger application. To be competitive Minnesota shippers must not be hampered by archaic geographic shipping

restrictions made to satisfy conditions that no longer exists. The conditions that Mn/DOT request will allow competition to be the determining factor in the setting of rates so Minnesota shippers will remain competitive in the world markets.

Respectfully Submitted

Allan J. Vogel, Director
Office of Railroads & Waterways

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Allan J. Vogel makes the oath and says that he has been authorized to verify and file, with The Surface Transportation Board, the foregoing response in Finance Docket No. 32760; that he has carefully examined the facts and matters relied upon, and that all representations set forth are true and correct to the best of his knowledge, information, and belief.

Allan J. Vogel

Director, Office of Railroads and Waterways

Subscribed and sworn to before
me in and for the above named
state and county, this 28TH
day of MARCH 1996.

Richard R. Walker

Notary Public

RICHARD R. WALKER
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES JANUARY 31, 2000

My Commission Expires:
JANUARY 31, 2000

CERTIFICATION OF SERVICE

Copies of Comments for the State of Minnesota by the Minnesota Department of Transportation have been served this the 29 day of March 1996, by first-class mail, on all persons designated by the Board as parties of record in Finance Docket No. 32760.

Allan J. Vogel, Director
Office of Railroads & Waterways

Dated: March 29, 1996

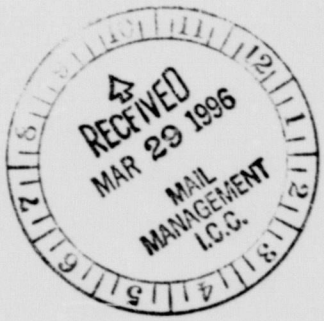
STB FD 32760 3-29-96 D 62245

62245 32

Item No. _____

Page Count 2

Mar #725



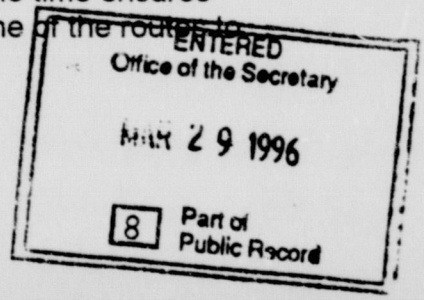
The Honorable Vernon A. Williams
Secretary Surface Transportation Board
Case Control Branch
12th St. and Constitution Ave. NW
Washington, D.C. 20423

On 16, October 1996, Crown Pacific Lumber, L.P. , 121 SW Morrison St. Suite 1500, Portland, Oregon, filed a statement in support of the proposed Union Pacific/Southern Pacific merger. Subsequent to our filing, we have learned that an entity controlled by the majority shareholder of Montana Rail Link will be filing with the Surface Transportation Board an inconsistent or responsive application in which that entity will propose acquiring one of the Union Pacific or Southern Pacific routes between California and Kansas City (the "MRL Proposal"). In our opinion, without the MRL or a comparable solution, the UP/SP proposal eliminates rail competition in the Central Corridor. The trackage rights UP/SP have agreed to grant to BNSF are unlikely to result in BNSF's providing meaningful competition in the Central Corridor. It will cost BNSF nothing if it elects not to use those rights. Competition can only be assured with an independent third party owner/operator acquiring one of the Union Pacific or Southern Pacific routes between the West Coast and the Kansas City area. We, therefore, condition our support of the merger on sale of a Central Corridor route to an independent party that would have to provide competitive service in order to justify its investment in that rail line.

Crown Pacific, strongly supports Montana Rail Link's proposed acquisition of the Union Pacific line between Silver Bow, Montana and Pocatello, Idaho as a strategic element of the Central Corridor solution. The Silver Bow - Pocatello line ties together the present MRL system with the Central Corridor route at Ogden, Utah, providing important traffic to support the new Central Corridor system and affording the economic synergy's of tying both MRL systems together. The MRL Central Corridor solution will provide routing options on both Union Pacific and Burlington Northern Santa Fe as well as direct routing via their own proposed system.

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

ADVISE OF ALL PROCEEDINGS



Crown Pacific owns and operates over 575,000 acres of high quality timberlands and eight conversion facilities, located in the Oregon, Washington, Idaho and Montana. Operating facilities include six sawmills, a plywood plant and a lumber remanufacturing plant. Crown also buys and sells logs in domestic and international markets. We ship approximately 5000 carloads by rail each year, which is over half of Crown Pacific forest products. Most of our facilities are serviced by both Union Pacific and Burlington Northern/Santa Fe, although our Montana facility is rail served only by BNSFand our facility in Gilchrist, Oregon is rail served only by Southern Pacific. Our rail shipments move through many parts of the country. This includes movements of finished products from the Northwest to California, Arizona, Colorado, the Midwest and Eastern United States. Crown also moves logs from Mexico and the Western United States to our conversion facilities in the Northwest. The opening up of the Central Corridor to an additional carrier will help ensure continued competitive service in these areas.

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

Maria Griffith

Maria Griffith
Traffic Manager
Crown Pacific Lumber, LP

Item No.

Page Count 4

Mar #722

March 25th, 1996

62242 91

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

8 Part of Public Record

Before the
Surface Transportation Board
United States Department of Transportation

Finance Docket No. 32760

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company
- Control and Merger -
Southern Pacific Rail Company, Southern Pacific Transportation Company, SPSCL Corporation and the Denver and Rio Grande Western Railroad Company.

Written comments submitted by Stimson Lumber Company, Portland, Oregon.

My name is Kandy Davis , Traffic Manager for Stimson Lumber Company. I have been employed in this position for over 8 years and have 12 years of experience within the transportation industry. Stimson Lumber Company is a 6th generation timberland owner and manufacturer of lumber, plywood and hardboard products, with 8 production facilities in Oregon and Montana. Stimson produces the equivalent of 8,200+ rail carloads annually.

Of Stimson's 4 mills in Oregon, 3 are Portland Western (PW) served for Southern Pacific Lines (SP) at Seghers, and 1 is Burlington Northern (BN) served at Clatskanie. Of the Montana facilites, 2 at Bonner are Montana Rail Link (MRL) served for BN, and 2 in Libby are BN served. All locations currently enjoy reload option from Union Pacific (UP); Seghers and Clatskanie at Portland, Bonner at Silverbow/Butte, and Libby at Eastport, ID. Seghers production is also reloaded on the BN at both Salem, Oregon and Portland, Oregon.

Stimson Lumber Company generally supports the acquisition of Southern Pacific Lines

by Union Pacific Railroad, with the inclusion of the agreement with Burlington Northern Santa Fe, and the application of conditions requested herein.

Condition 1. The combined railroad of UP/SP must ensure the competitive posture of Portland area (north of Eugene) shippers relative to pricing. Stimson's Seghers facilities have been operating since 1931, captive on SP rail. Over the last 5 years SP service has been poor, at best. In 1994 our stud mill was producing 6 days a week, yet the facility was rail served only 3 days per week. Car supply was inconsistent over these 3 days, resulting in an unpredictable loading schedule. Portland Western (PW) began servicing our branch line in August of 1995. Since that time, service has improved relative to car supply and the number of switches required, but a competitive pricing issue continues to erode our markets. SP has broken Oregon into 4 origin pricing or rate groups. The southern groups (south of Eugene) benefit from lesser rates to western markets, in spite of comparable costs. SP indicates their pricing is "truck competitive" but does not consider that all shippers, both in northern and southern Oregon, compete for the same fiber in a common market. "Truck competitive" by itself is an ineffective measurement, omitting cost based and other rail competitive analysis. The result of SP's current I-5 corridor pricing package is that northern shippers have added cost in the transportation of their product when shipping via SP, or, northern shippers subsidize southern shippers that have similiar or equal costs, as in the Roseburg origin group. As the SP's northern most shipper, our Dimension mill at Seghers produces the equivalent of 1,500 carloads per year. In 1995, less than 10% of this volume shipped via SP. This was a result of an aggressive marketing strategy that become necessary for our survival, as we are not priced competitively with southern Oregon shippers via SP. Truck, reload and barge shipments have

added congestion as a result.

To further complicate this matter, SP has aggressively priced with an adjoining railroad north of Portland (BN) for incremental volumes from the Seattle market place. BN shippers in this market can reach Los Angeles on the SP at the same transportation cost as a Portland SP shipper. Thus, the SP-Portland rate group also subsidizes the BN-Seattle market place.

Stimson Lumber was a victim of the 1994 SP power shortage, and is therefore concerned about congestion in local yards as a result of the merger. Also, as the largest truckload shipper in Washington County, the motor carrier traffic at our Seghers facility is significant, approximately 125 trucks per day. Therefore, we also find issue in UP and SP subsidizidng reload operation in already congested areas.

Condition 2 is also relative to reload operations. At UP's Portland reload operated by Savage Industries, we currently wait an average of 6 business days for a car to be loaded, after completing inbound truckload shipments. Industry standard is 2 days. The extended window is a result of congestion issues in the local UP yard. We would here suggest that the combined railroad not immediately abandon or downsize any yard (Brooklyn) that currently offers a means of flexibility.

Condition 3 is relative to issues mentioned in conditions 1 and 2. As previously noted, we currently enjoy the option of BN reloading in Oregon. I also advised of our concerns surrounding truck congestion at Seghers, the already congested industrial reload areas, and the issue of low mill loaded rail volume, due to competitive pricing issues. Our serving short-line, PW, can physically interchange to BNSF, though the PW's current operating agreement with SP does not allow for this. As this merger would further define BNSF vs. UP/SP markets, we

suggest that the Surface Transportaton Board expand the BNSF agreement and UP/SP merger application to include open interchange from SP and SP-short lines origins to BNSF. To expand on this idea, we also suggest that the agreement and application be amended to allow MRL origin traffic to be interchanged to UP over Butte/Silverbow, rather than over the already congested Portland, Oregon.

Condition 4 is also relative to switching/interchange. We suggest that the combined railroad continue UP's reasonable switching agreement with BNSF.

Stimson Lumber Company has a growing, not declining need, to be rail served in both Oregon and Montana. This is a need that, in Oregon, has not been recently met. We would like the Surface Transportation Board to note that in nearby Tillamook, Oregon, the Federal Emergancy Management Agency has granted $3,000,000 for flood related repairs to a struggling short line. While our serving short line is in fine operating condition, it has proven ineffective due to the competitive pricing issues sited herein. Due to our pricing issues with SP, we naturally tend to support the merger, but feel the implementation of the conditions sitied herein will be fully necessary in order to establish a competitive rail environment that will result in the health and longevity of both the rail and forest products industries, and the Pacific Northwest economy.

Sincerely,

Kandy Davis

Kandy Davis
Traffic Manage

cc: Steve Schmitt, VP Marketing, Stimson Lumber Company
Arvid E. Roach II, Covington & Burling
Paul Cunningham, Harkins, Cunningham
James V. Dolan, Union Pacific Railroad Company
Cannon Y. Harvey, Southern Pacific Transportation Company
Cannon Y. Harvey, Southern Pacific Railroad Company
John Hovis, VP Forest Products, Burlington Northern Santa Fe
Susan Walsh-Enloe, Director Marketing and Sales, Portland and Western Railroad
Larry L. Huff, Marketing Manager, Montana Rail Link
Claudia Howells, Railroad Services Coordinator, Oregon Department of Transportation
Jack Estes, Coalition for Competitive Rail Transportation

State of Oregon)
)ss.
County of Multnomah)

Personally appeared the above-named Kandy Davis who, being first duly sworn, acknowledged that the foregoing instrument is a voluntary act and deed.

BEFORE ME:

Nancie Jorgenson
Notary for State of Oregon
My commission expires 6/12/96

OFFICIAL SEAL
NANCIE JORGENSON
NOTARY PUBLIC - OREGON
COMMISSION NO.015094
MY COMMISSION EXPIRES JUNE 12, 1996

Item No.
Page Count 2
Mar #720

02240

STATE OF KANSAS

(913) 296-3232
1-800-432-2487
TDD: 1-800-992-0152
FAX: (913) 296-7973

OFFICE OF THE GOVERNOR

March 28, 1996

Vernon Williams, Secretary
Surface Transportation Board
Department of Transportation
1201 Constitution Avenue, NW
Washington, DC 20423

RE: Finance Docket #32760

Dear Secretary Williams:

The railroad industry continues to fulfill its historically significant role in serving agriculture and industry in the State of Kansas. Our manufacturers and agricultural producers rely on competitive access to distant markets, and vital goods are transported across our state on a daily basis. As the geographical center of the continental United States, Kansas proudly serves as the distribution hub to markets throughout our nation.

My family owned and operated an interstate motor carrier for almost fifty years. Our success over the years was due in part to our ability to make acquisitions and merge with other motor carriers. As a result, I am a firm believer in the free enterprise system.

The proposed merger of Union Pacific and Southern Pacific will create economic efficiencies, which in turn will provide finances for corridor upgrades and other capital investments in Kansas. The merger will potentially bring substantial improvements in rail service, particularly along Southern Pacific lines which have suffered from the railroad's weak competitive position. For these reasons, I support the merger.

My support for the merger is conditioned upon the resolution of three potential negative impacts on my state. These are concerns I share with several Kansas communities and shippers. I respectfully ask the Surface Transportation Board to study the following three issues and exercise its authority and responsibility to protect the best interests of Kansas citizens.

Two of my concerns focus directly on reductions in competition:

- A significant impact will occur along the line from Herington, Kansas to Pueblo, Colorado. According to the merger documents, this main line will be downgraded in Kansas and completely abandoned in Colorado. This will adversely affect

communities and shippers in the heart of wheat country, where competitive rail service is critical. The Surface Transportation Board must ensure reliable and affordable rail transportation to the communities and shippers along this line.

- The City of Wichita will also suffer a decrease in competition, from three major carriers to two. My staff has explored options to retain a third Class I railroad in Wichita and believes them to be possible and practical. Please consider bringing a third Class I railroad back into the Wichita market if the merger is approved.

The third issue of concern involves the safety, quality of life, and economic well-being of Kansans. The increased traffic density on the "Kansas City By-pass" will exacerbate historic problems with rail crossings in several Kansas communities. I would particularly direct your attention to the serious situation in Wichita, the state's largest population center. I realize you do not traditionally consider rail crossings in merger cases, but your analysis weighs the "public interest," and public safety, quality of life and economic health are truly at stake. I would ask that you condition your approval of the merger upon a reasonable solution to these problems.

I encourage you to ultimately approve the merger, while protecting the interests of Kansans. Union Pacific and Southern Pacific have been good corporate citizens in the State of Kansas, and I look forward to a continuing positive relationship with the merged corporation.

Sincerely,

BILL GRAVES
Governor

BG:rf